ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 96-010

AUGUST 15, 1996

ALBERTA MUNICIPAL AFFAIRS

(REVIEW NUMBER 1102)

BACKGROUND

On January 2, 1996, Alberta Registries, a division of the Department of Municipal Affairs ("Municipal Affairs"), received a letter from a third party, expressing concern about the Applicant's ability to safely operate a motor vehicle. On March 1, 1996, Municipal Affairs sent a letter to the Applicant, stating that its Motor Vehicles Branch ("Motor Vehicles") had been advised that the Applicant may have a medical or driving problem affecting the Applicant's ability to safely operate a motor vehicle, and requiring that the Applicant submit a medical report and undergo a vision screening and a road test.

The Applicant successfully completed these three requirements. The Applicant then requested that Municipal Affairs provide the Applicant with records regarding the complaint to Motor Vehicles, including the identity of the person who made the complaint. The Applicant also requested all information about the Applicant on file in Motor Vehicles.

Of the 10 relevant records, 8 were released in their entirety to the Applicant and 2 were released with severing. Municipal Affairs severed the name and address on, and the contents of, the letter received from the third party. In the copy of its letter responding to the third party, Municipal Affairs severed the third party's name and address.

On March 22, 1996, the Applicant requested that my office review the 2 records from which identifying information was severed.

Under s. 65 of the *Freedom of Information and Protection of Privacy Act* ("the Act"), mediation was authorized between the Applicant and Municipal Affairs, but was not successful. The Applicant and Municipal Affairs were subsequently notified that an inquiry would be held.

Prior to the inquiry, Municipal Affairs notified the Applicant and this office that it wished to rely on an additional discretionary ("may") exemption not previously raised in support of non-disclosure of the severed information. In Order 96-008, I stated that I was still considering whether to implement a policy refusing the late raising of discretionary exemptions that result in a delay or work to the prejudice of another party. In this case, the late raising of the discretionary exemption did not delay or prejudice the Applicant because Municipal Affairs notified the Applicant and this office well in advance of the inquiry. Furthermore, the burden of proof regarding the discretionary exemption was on Municipal Affairs, not on the Applicant. This does not mean that I am less concerned about the late raising of discretionary exemptions in the future. In this case, the late raising of a new discretionary exemption did work against the Applicant.

Municipal Affairs presented its case on July 17, 1996 and the Applicant's case was presented on July 22, 1996.

RECORDS AT ISSUE

The records under consideration are the two letters:

> (i) Record 1: Letter sent by the third party to Municipal Affairs, expressing concern about the Applicant's ability to operate a motor vehicle (name and address of third party and contents of the letter severed)
>
> (ii) Record 2: Letter sent by Municipal Affairs to the third party, responding to the third party's original letter (name and address of third party severed).

ISSUES

Issue A:

Does any information contained in the Records qualify as "personal information" as provided by section 16(1) of the Act and as defined in section 1(1)(n) of the Act?

If the answer to that question is "yes", did Municipal Affairs correctly apply the mandatory exemption provided by section 16 of the Act to the Records?

If the answer to this question is "yes", and the Records contain personal information of identifiable individuals other than the Applicant, did Municipal Affairs properly refuse to disclose the personal information because disclosure would be an unreasonable invasion of a third party's personal privacy, as provided for in section 16(1)?

Issue B:

Did Municipal Affairs correctly apply the discretionary exemption provided by section 19(1) ("law enforcement") of the Act to Records 1 and 2?

DISCUSSION

Issue A:

Do the Records contain "personal information"? The relevant clauses of section 1(1)(n) that define personal information are as follows:

> *1(1)(n) "personal information" means recorded information about an identifiable individual, including*
>
> > *(i) the individual's name, home or business address or home or business telephone number*
> >
> > *(viii) anyone else's opinions about the individual*
> >
> > *(ix) the individual's personal views or opinions, except if they are about someone else*

Record 1 contains personal information about the Applicant. Under section 6(1) of the Act, the Applicant is entitled to any record containing the Applicant's personal information, including anyone else's opinions about the Applicant. However, Records 1 and 2 also contain a third party's personal information, namely, the third party's name and address. Furthermore, Record 1 contains other recorded information about the third party that is attributable to and likely identifies the third party.

Under section 16(1) of the Act, the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. This determination must be made by the head of the public body. My role to not to review the

head's decision, but to see that the head used the right process in making his decision. Municipal Affairs claims that it properly refused to disclose the severed information under this provision.

Municipal Affairs submits that section 16(2)(b), (g) and (3)(f) are relevant to its refusal to disclose under section 16(1). Section 16(2)(b) and (g) provide that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if:

> *(2)(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation*
>
> *(g) the personal information consists of a third party's name when*
>
> *(i) it appears with other personal information about the third party, or*
>
> *(ii) the disclosure of the name itself would reveal personal information about the third party*

I am of the opinion that section 16(2)(b) of the Act is not relevant to Record 1 because the personal information about the person who wrote the letter was not compiled as part of an investigation into a possible violation of law. Instead, the letter and the personal information it contains preceded the investigation. Simply because personal information in a record is the "trigger" or catalyst for an investigation does not mean it was compiled as part of the investigation. Therefore, Municipal Affairs incorrectly applied section 16(2)(b) to Record 1 when refusing to allow the Applicant access to the entirety of Record 1.

Municipal Affairs also claims that section 16(2)(g) is relevant to Record 1. Record 1 contains the third party's name and address, which is the third party's personal information and which has properly been severed. The contents of Record 1 describe events and circumstances of which only an eye witness to the Applicant's driving ability would know. It also describes facts of which only a limited number of persons would be aware. As such, the information would readily identify the third party. I have carefully reviewed Record 1, and find that the third party personal information cannot be severed without making the rest of the Record meaningless.

In determining whether a disclosure of personal information constitutes "an unreasonable invasion of a third party's personal privacy" under section 16(1)

and (2), the head of a public body must consider all the relevant circumstances, including a number of factors under section 16(3). Municipal Affairs applied section 16(3)(f) (personal information supplied in confidence). Therefore, I must consider section 16(3) of the Act. That section reads:

> *(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> > *(f) the personal information has been supplied in confidence*

I do not accept Municipal Affairs' contention that it is an underlying assumption in all law enforcement matters that sources of law enforcement information must be kept confidential. I do accept Municipal Affairs' evidence that, both historically and subsequent to the proclamation of the Act, it is a policy of Motor Vehicles to keep the names and addresses (or other identifying characteristics) of information sources confidential. The "Licence Enforcement - Notice to Report" policy contains the written evidence of this policy. The primary intentions of the policy are to satisfy the privacy concerns of those who report possible violations and to encourage reporting of possible violations. I also accord some weight to Municipal Affairs' contention that releasing personal information supplied in confidence would reduce the instances of legitimate reporting.

Record 2 is a different matter. Municipal Affairs claims that section 16(2)(b) applies to Record 2. In support of this contention, Municipal Affairs cites the following potential contraventions as possible violations of law:

> (i) Alberta Motor Vehicle Administration Act, section 14(1) (requirement to report changes in health)
>
> (ii) Alberta Highway Traffic Act, Part 3 (rules of the road) and section 123 (careless driving).

To prove that it carried on an investigation into a possible violation of law, which is another requirement of section 16(2)(b), Municipal Affairs provided a copy of its internal procedure, "Licence Enforcement - Notice to Report", which it follows when it receives a letter such as the third party's letter. Municipal Affairs also submitted evidence about how it followed the procedure in this investigation.

In Order 96-006, I expressed my view as to the interpretation of "law". I find that the letter from Municipal Affairs to the letter writer meets the criteria indicated in that order, and that this matter involves a "possible violation of

law" as required by section 16(2)(b). I accept Municipal Affairs' evidence that the personal information in this Record not only concerns "an investigation into a possible violation of law", but was also compiled and is identifiable as part of that investigation.

I turn now to the Applicant's submission. Section 16 places the burden of proof on the Applicant to prove that disclosure of personal information would not be an unreasonable invasion of a third party's personal privacy (section 67(2) of the Act).

The Applicant believes that Record 1 is not a result of concern about the Applicant's driving or public safety, but is a letter from a person the Applicant knows who is waging a personal vendetta against the Applicant. The Applicant alleges that this person has endangered the Applicant's privacy and security in a number of instances. The Applicant wants the entirety of Record 1, as well as an unsevered version of Record 2, to confirm the identity of the person who reported the Applicant, and to know the nature of the person's complaints about the Applicant's driving. The Applicant also says it will not be possible to improve the Applicant's driving without knowing the specific allegations of poor driving. The Applicant contends that:

> (i) the Act shouldn't allow people's rights to freedom and decency to be affected,
>
> (ii) a person should not be allowed to hide under the umbrella of a public agency, nor behind the Act, for the purpose of harassing someone,
>
> (iii) a person has a right to know his or her accuser and to be advised about what the person is suppose to have done wrong, and
>
> (iv) a person who is being punished should know the reasons why.

The Applicant emphasized the embarrassment and inconvenience the Applicant suffered in having to retake driving and other tests.

I am sympathetic to the Applicant's concerns about privacy and security. However, the name as it appears on Record 1 and the name of the person the Applicant believes is harassing the Applicant are not the same. Therefore, I cannot accept the Applicant's argument that the personal information should be released on the ground of protecting the Applicant's security. Furthermore, it does not appear from the contents of Record 1 that whoever wrote it is hiding behind a public agency or the Act in order to harass the Applicant.

The Applicant's third submission was that the Applicant should know the accuser. The letter which is Record 1 only triggered the investigation by

Municipal Affairs. It was Municipal Affairs which made the accusation as a result of the letter and its investigation. Any action against the Applicant was the action of Municipal Affairs, not the letter writer, and was based on the result of Municipal Affairs' investigation. Since the investigation was conducted according to written policy, I see nothing arbitrary or malicious at work here.

Finally, I do not believe that the Applicant was punished. I want lay to rest the common belief that a person has an unconditional right to drive a motor vehicle. The British Columbia Information and Privacy Commissioner has also dispelled this notion in British Columbia Order No. 28-1994. Driving is a privilege, not a right, as stated in the Alberta case of *R. v. Such* (1992), 132 A.R. 323 (Q.B.). The Applicant is not being punished by being asked, in accordance with policy, to prove competency to drive. In determining whether to require the Applicant to take the driving and other tests, Motor Vehicles followed its written procedure, and examined the content and spirit of Record 1. The Applicant was not singled out or treated arbitrarily in this regard.

I find that the Applicant's case does not meet the burden of proof under section 16(1).

I find that Municipal Affairs correctly applied section 16(2)(b) to Record 2 and correctly applied section 16(2)(g) to Record 1. If, after weighing all relevant circumstances, including those listed in section 16(3), the head has determined that the invasion of personal privacy is unreasonable, the head is required to refuse access. Section 68(2)(c) says that, where the head is required to refuse access, if the Commissioner is satisfied that the head exercised the head's discretion correctly, the order must be to uphold the head's decision to refuse access. Therefore, I uphold Municipal Affairs' decision to sever the personal information and to refuse access to that severed information on the basis of section 16.

As I see it, in this case, the head was confronted with finding a balance between two standards, namely, access to information and protection of personal privacy. It was clear to the head that the Applicant was entitled to the Applicant's personal information, including the third party's opinion about the Applicant, but it was equally clear that the third party was entitled to have the third party's personal information protected. Because the identifying particulars of the third party were evident throughout the text of the third party's opinion about the Applicant, the third party's personal information could not be separated from the Applicant's personal information. Consequently, the head, referring to the purpose of the Act, and keeping in mind the constraints on the right of access when subject to specific exceptions under the Act, chose the protection of personal privacy over the right of access.

Moreover, the head gave convincing evidence about the many attempts made to determine whether one or another part of Record 1 could be released. After each of these attempts, the head determined that if the information were left in, it would identify the third party, that the information left was so minimal as to be meaningless, and that the release of that minimal information would not accomplish the Applicant's purpose. I accept the head's conclusion in this regard.

Issue B:

Did Municipal Affairs correctly apply the discretionary exemption provided by section 19(1) ("law enforcement") of the Act to Records 1 and 2?

Since I have already made a decision that the information was properly withheld on the basis of section 16, I do not need to consider Municipal Affairs' argument that section 19(1)(c) and (d) apply to Records 1 and 2.

ORDER

For the reasons stated in this order, I uphold Municipal Affairs' decision to sever the personal information in Records 1 and 2, and to refuse access to that severed personal information.

Robert C. Clark
Information and Privacy Commissioner