ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-037

December 21, 2001

ALBERTA GOVERNMENT SERVICES

Review Number 2168

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Summary: The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Government Services ("Government Services") for a record that related to an allegation that a company was doing business without a license in Alberta. Government Services refused to disclose the responsive information. The Applicant asked the Commissioner to review the response of Government Services. Before the inquiry, Government Services released some information in the records to the Applicant. Adjudicator Bell held that Government Services had properly identified some information in the records as non-responsive, and had properly applied section 16(1) and section 20(1)(b) to withhold information in the records. He upheld the decision of Government Services to withhold the information.

Statutes Cited: *Fair Trading Act*, S.A. 1998, c. F-1.05, s. 104; *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(n), 1(1)(r), 7(2), 16, 20(1)(b), 67(1),67(2).

Order Cited: AB: Order 97-020.

I. BACKGROUND

[para. 1.] On March 22, 2001, Alberta Government Services ("Government Services" or the "Public Body") received this access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") from the Applicant:

> Copy of letter stating that info. was recv'd re: our co. … doing business, allegedly, without a license, in Alberta, sent in '00. Also, info. re: who provided this so-called 'info' to C&C Alberta. [Alberta Consumer & Corporate Affairs]

[para. 2.] By letter dated April 23, 2001, Government Services denied access to the responsive records.

[para. 3.] By letter dated April 25, 2001, the Applicant requested that the Information and Privacy Commissioner review the decision to deny the Applicant access under the Act. Mediation was undertaken, but failed.

[para. 4.] A Notice of Inquiry was issued on August 16, 2001, setting down a written inquiry. Affected parties were notified. Acting Information and Privacy Commissioner Work delegated to me the task of hearing this inquiry.

[para. 5.] Before the inquiry, Government Services released some of the information in the records to the Applicant. This information is not at issue in the inquiry.

[para. 6.] Government Services and two Affected Parties filed initial inquiry submissions. Government Services provided an *in camera* submission, which I accepted. No rebuttal submissions were filed by any party.

II. RECORDS AT ISSUE

[para. 7.] There are 11 pages at issue, numbered 1-11. Government Services removed all the information at pages 6, 7, 9, and 11, on the basis that the information was not responsive to the access request. It also removed some information at pages 8 and 10, on the same basis. Government Services applied section 16(1) to information at page 8 of the records, and refused to disclose that information. It also applied section 20(1)(b) of the Act to information on pages 2, 4, 5, and 10, and refused to disclose that information.

III. ISSUES

[para. 8.] There are three issues in this inquiry:

A. Is the information in certain records responsive to the Applicant's access request?

B. Does section 16 apply to the records?

C. Did the Public Body properly apply section 20(1)(b) of the Act to the records?

Burden of proof

[para. 9.] The relevant provisions of section 67 of the Act state:

67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[para. 10.] Section 67 (1) directs that Government Services bears the burden of proof for issues A and C. If Government Services establishes that section 16(1) applies to the information in the records, then section 67(2) directs that the Applicant bears the burden of proof for issue B.

IV. DISCUSSION

ISSUE A. Is the information in certain records responsive to the Applicant's access request?

1. Summary of the arguments of the parties

[para. 11.] Government Services argues that it is obvious on the face of the documents that the information it removed is not responsive to the Applicant's access request. No other parties made a submission on this issue.

2. Discussion

[para. 12.] The concept of responsiveness is implicit in the Act. It arises largely out of the reference in section 7(2) of the Act to an access request that is made in "enough detail to enable the public body to identify the record." The request itself will circumscribe the records that correspond to the request.

[para.13.] In Order 97-020, Commissioner Clark stated that the concept of "responsiveness" refers to any information or record that is reasonably related to an applicant's access request. Commissioner Clark held that the Act allows a public body to remove non-responsive information before processing an access request. I adopt this analysis.

[para. 14.] After reviewing the records, I am satisfied that the information removed from the identified records is not responsive to the Applicant's access request. The information was properly removed from the records.

ISSUE B. Does section 16 apply to the records?

(i.) Is the severed information in the record personal information of a third party?

[para. 15.] Section 16(1) of the Act states:

> *16(1) 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.*

[para. 16.] "Personal information" is defined in a non-exhaustive fashion in section 1(1)(n) of the Act. The relevant provisions read:

> *1(1) In this Act ...*
>
> *(n) 'personal information' means recorded information about an identifiable individual, including*
>
> *(i) the individual's name...*

[para. 17.] "Third party" is defined in section 1(1)(r) of the Act:

> *1(r) 'third party' means a person, a group of persons or an organization other than an applicant or a public body;*

[para. 18.] After reviewing the evidence, I find that the severed information in the record contains personal information of a third party.

(ii.) Would disclosure of the personal information be an unreasonable invasion of a third party's personal privacy?

[para. 19.] The relevant provisions of section 16(4) of the Act read:

> *16(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> *...*
>
> *(g) the personal information consists of the 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,*

[para. 20.] After reviewing the record, I find that the information consists of a third party's name and references to that third party. This information appears with other information already released to the Applicant. Therefore, I find that disclosure of the

personal information is presumed to be an unreasonable invasion of the third party's personal privacy under either section 16(4)(g)(i) or (ii).

(iii.) What relevant circumstances did Government Services consider under section 16(5)?

[para. 21.] The relevant provisions of section 16(5) read:

> *16(5) In determining under subsections (1) and (4) 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*
>
> *...*
>
> *(c) the personal information is relevant to a fair determination of the applicant' s rights,*

[para. 22.] In determining under section 16(4) whether a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy, the head of a public body must consider the relevant circumstances, including those specifically set out in section 16(5) of the Act.

[para. 23.] The Public Body argues that the third party complainant's personal information is not relevant to a fair determination of the Applicant's rights under section 16(5)(c) because no legal action has been taken against the Applicant as a result of the information provided by the third party.

[para. 24.] I note that that the only action taken was an investigation under section 104 of the *Fair Trading Act* (the "FTA"). The investigation resulted in an informational letter issued to the company, concerning registration and licensing requirements to conduct business in Alberta.

[para. 25.] Therefore, I accept the Public Body's argument that the third party's personal information is not relevant to a fair determination of the Applicant's rights. Consequently, section 16(5)(c) does not weigh in favour of disclosing the third party's personal information.

[para. 26.] Since there are no relevant circumstances weighing in favour of disclosing the third party's personal information, I find that the Public Body properly concluded that disclosure of the third party's personal information is presumed to be an unreasonable invasion of the third party's personal privacy. It is therefore up to the Applicant to prove that disclosure of the personal information would not be an unreasonable invasion of the third party's personal privacy.

(iv.) Did the Applicant meet the burden of proof under section 67(2) of the Act?

[para. 27.] The burden of proof for this issue is set out at paragraph 10 of this Order. The Applicant did not provide a submission for me to consider. I find that the Applicant has not provided evidence or arguments to support the argument that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy under the Act.

(v.) Conclusion

[para. 28.] I conclude that Government Services properly determined that disclosure of the third party's personal privacy is presumed to be an unreasonable invasion of the third party's personal privacy, taking into account the relevant circumstances. I find that section 16(1) applies to the record, and Government Services properly refused to disclose the information in the record to the Applicant.

ISSUE C. Did the Public Body properly apply section 20(1)(b) of the Act to the records?

1. Summary of the arguments of the parties

[para. 29.] Government Services argues that the information in the records severed under section 20(1)(b) was obtained from the Canshare database. That database is a vehicle for national information sharing under the Cooperative Enforcement Agreement on Consumer Related Measures (the "CEA"). The CEA facilitates the enforcement of Canadian consumer legislation, including the FTA, by governments and their agencies. The information at issue was prepared, supplied and received in confidence. The consent clause in the CEA, and the Privacy provision in the Canshare database Policy and Procedure Manual, establish the explicit, or alternately, the implicit confidentiality of the information.

[para. 30.] Government Services submits that the Head of Government Services exercised his discretion against disclosing the information, because disclosure would violate the CEA and contravene the privacy provision in the Canshare Policy and Procedure manual. It would also undermine the legislative policy underlying s. 20(1)(b) of the Act, which is to protect the free flow of information between governments. Disclosure could cause governments to hesitate to use the Canshare database in the future to assist other governments in consumer protection, undermining the CEA on a national scale.

[para. 31.] Two affected parties supported the position of Government Services, and echoed its arguments. One affected party argued that information his governmental organization supplies to Canshare is provided on the basis that it will remain confidential and not be distributed to parties who are not Canshare members, unless the information provider authorizes in writing that the information may be publicly disclosed. At inquiry, he indicated that his organization refuses to authorize the disclosure of the information the Applicant wants.

2. General

[para. 32.] The relevant portions of section 20 of the Act read:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *...*
>
> *(b) reveal information supplied, explicitly or implicitly, in confidence by a government…*
>
> *...*
>
> *(4) This section does not apply to information that has been in existence in a record for 15 years or more.*

[para. 33.] Alberta and certain of the affected parties are signatories to the CEA, which was in force when the information at issue was obtained by Government Services. The consent clause in the CEA, which in my view goes directly to the issue of confidentiality, reads:

> *8. A requesting authority may not disclose to a third party information obtained from the responding authority without the written consent of the responding authority.*

[para. 34.] The privacy provision in the Canshare database Policy and Procedure manual reads:

> *To maintain security and privacy, only agencies approved by the CMC* [Committee on Consumer Related Measures and Standards] *...will be able to access this information as per the Cooperative Enforcement Agreement. To protect complainants, their names and addresses will be removed from the record.*

3. Discussion

[para. 35.] To determine if the information in the records meets the requirements of section 20(1)(b), I must decide the following:

> -was the information supplied by a government;
> -was the information supplied, explicitly or implicitly, in confidence;
> -would the disclosure of the information sought reasonably be expected to reveal the information that was supplied in confidence; and
> -has the information been in existence in a record for less than 15 years?

[para. 36.] The evidence shows that multiple governments (each a "responding authority" under the CEA) supplied the information through the Canshare database to Government Services (the "requesting authority" under the CEA). I am satisfied that this information was supplied explicitly in confidence, under the terms of the CEA, to authorized users of the Canshare database, which includes Government Services. The confidential nature of

the information is evidenced by the language of the CEA consent clause, cited above. I accept that the rationale for imposing confidentiality on the information in the Canshare database is that it is a key tool for consumer protection throughout Canada. As the Canshare policy and procedure manual introduction states: "the Canshare system forms the basis for the development of an effective, cooperative law enforcement system to combat fraud and misrepresentation in the consumer marketplace." I am satisfied that disclosure of the information in the records would reveal the information that had been supplied in confidence.

[para. 37.] I find that section 20(4) does not apply, since the substance of the information, the "dates posted" notation on the electronic records, and the print-off date of the paper copies, show that all of the records are considerably less than 15 years old.

[para. 38.] I am satisfied that Government Services properly exercised its discretion to withhold the information under the Act, after considering the relevant law, facts, policy issues, and the specific circumstances surrounding this access request. I conclude that section 20(1)(b) was properly applied to the records, and I uphold the decision of Government Services.

V. ORDER

[para. 39.] I make the following Order under section 68 of the Act:

1. I find that the information in the records that was removed by the Public Body is not responsive to the Applicant's request. I uphold the decision of the Public Body to remove this information from the records.

2. I find that section 16(1) applies to the records. I uphold the decision of the Public Body to refuse to disclose information under this provision.

3. I find that the Public Body properly applied section 20(1)(b) to the records. I uphold the decision of the Public Body to refuse to disclose information under this provision.

[para. 40.] The result is that the Applicant does not have a right to access the information withheld by the Public Body under the Act.

Dave Bell
Adjudicator