ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2004-025

November 30, 2006

CALGARY POLICE SERVICE

Review Numbers 2864 and 2989

Office URL: http://www.oipc.ab.ca

Summary: The Applicant made two requests to the Calgary Police Service (the "Public Body") for access to information about himself, and for correction of records under the *Freedom of Information and Protection of Privacy Act* (the "Act"). He received 114 pages of records with information severed under sections 17 (third party personal privacy) and 20 (law enforcement) of the Act. The Public Body declined the Applicant's requests to correct the records.

The Adjudicator found that the Public Body had not properly severed some information under sections 17 and 20 of the Act. The Adjudicator ordered the Public Body to make one correction while confirming its decision not to correct other information. The Adjudicator also found that the Public Body had failed to annotate the record for the refused corrections.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, s. 17, 17(1), 17(2), 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(4)(h), 17(5), 17(5)(e), 17(5)(f), 20, 20(1)(c), 36, 36(1), 36(2), 36(3), 72.

I. BACKGROUND

[para 1] The Applicant requested and was shown records containing his personal information held by a member of the Calgary Police Service (the "Public Body"). He then made a formal request under the *Freedom of Information and Protection of Privacy Act* (the "Act") for access to his personal information held by the Public Body and for two corrections to information in the records.

[para 2] The Public Body advised the Applicant that specific information would be severed from a five-page record which was responsive to his request. He was also advised that his requests for correction were denied. The Applicant was given reasons for the Public Body's decisions.

[para 3] The Applicant requested that this Office review the decision of the Public Body not to correct the information in the records. File # 2864 was opened to address the Applicant's concerns. Mediation was authorized, but not successful.

[para 4] The Applicant made another access request to the Public Body for all police reports in which he was named in any way. The Public Body advised him that there were 109 pages of responsive records and asked for a fee. After correspondence between the two parties, the Public Body waived the fee for the Applicant. All 109 pages of records were released to the Applicant, many with information severed under sections 17 or 20 of the Act.

[para 5] This Office received a second request for review from the Applicant, resulting in the opening of file #2989. Mediation was again authorized, without success. Both files were set down to be heard in one written inquiry. One affected party was identified for the inquiry.

[para 6] Initial submissions were received from the Public Body and the Affected Party, but not from the Applicant. The Affected Party's submission was received *in camera*. Under the circumstances, no rebuttals were possible. I have considered information in the Applicant's correspondence to the Public Body and this Office in conducting this inquiry.

II. RECORDS AT ISSUE

[para 7] The first record provided by the Public Body was a five-page police report about an incident in 1992. It will be referred to in this Order as the "1992 report". In response to his second request the Public Body provided 109 pages. Twelve pages were copies of 10 police narratives about incidents from 1979 to 1989. They are referred to as the "narratives." The remaining 97 pages were 23 incident report cover sheets from 1979 to 2004. They are referred to as the "incident reports."

[para 8] In its submission the Public Body referred to the number of pages of records as "214." From my review of the records and the correspondence between the parties throughout the two matters, I take that to be a typographical error. The total number of pages of the records at issue is 114.

III. ISSUES

Issue A: Does section 17 of the Act (personal information) apply to the records/information?

Issue B: Did the Public Body properly apply section 20 of the Act (law enforcement) to the records/information?

Issue C: Did the Public Body properly refuse to correct the applicant's information, as authorized by section 36 of the Act?

IV. DISCUSSION OF THE ISSUES

Issue A: Does section 17 of the Act (personal information) apply to the records/information?

[para 9] Section 17(1) of the Act is a mandatory exception to disclosure. A public body must refuse to disclose the personal information of a third party if disclosure would be an unreasonable invasion of the third party's privacy. A public body must first determine if the records contain personal information of a third party. Once this is determined, a public body must make a decision about whether the disclosure would be an unreasonable invasion of the third party's privacy. The Applicant then has a burden to demonstrate that disclosure would not constitute an unreasonable invasion of the third party's privacy.

[para 10] The Public Body says that the information it severed in the records was third party personal information. From my review, I find that much, although not all, of the information severed in the records at issue was personal information about third parties. Their names, addresses, what part they were alleged to have played in an incident, and what they had to say about the incident are recorded. Sometimes their occupation and place of work is recorded, sometimes their vehicle make and licence plate number, sometimes a description of them physically, sometimes their religious affiliation or ethnic origin. All of this is personal information as described in section 1(n) of the Act.

[para 11] Section 17(2) of the Act sets out a number of circumstances where disclosure of personal information would not constitute an unreasonable invasion of a third party's privacy. The Applicant did not offer any evidence that any of these circumstances would apply to the records at issue. In addition, there is nothing on the face of the records that would cause me to conclude that any of the circumstances apply.

[para 12] Section 17(4) sets out circumstances that raise a presumption that the disclosure would be an unreasonable invasion of a third party's privacy. The Public Body relied on the following subsections of section 17(4) for their decisions not to disclose different portions of the third party personal information:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

…

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

…

(d) the personal information relates to employment or educational history,

…

(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,

or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

[para 13] On the face of the records, it is evident that most of the third party personal information in the records meets the criteria for one or more of the presumptions. The personal information is contained in law enforcement records. The records describe third parties' involvement in police investigations. Therefore, the presumption set out in section 17(4)(b) is met.

[para 14] Much of the third party personal information consists of people's names appearing with other personal information about them. That meets the criteria of section 17(4)(g)(i). In a few instances the information sets out the person's racial or ethnic origin, meeting the criteria of section 17(4)(h). Therefore, the third party personal information is presumed to be an unreasonable invasion of the third parties' personal privacy.

[para 15] The Public Body must also consider all relevant circumstances, including those set out in section 17(5) of the Act, which states:

17(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

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 16] The Public Body argued that the third parties provided the information to the police in confidence [section 17(5)(f)]. It stated, without specific evidence, that when third parties provide information to the police in an investigation, they expect and have the assurance, whether explicit or implicit, that the police will hold their identities and information in confidence. The Public Body stated that the expectation and assurance applies until the point where criminal charges are laid and the subject of the inquiry is by law entitled to the information. In this case, the Public Body argued that point had not been reached. The Public Body did not present any specific evidence, other than the records themselves, and did not point to where information in those records proved their assertions.

[para 17] I question the blanket assertion that the information was supplied in confidence, throughout 23 incidents over 15 years, without specific evidence on whether any of the information had ever been disclosed in the course of disposing of a law enforcement matter. However, I accept the evidence of the Affected Party that the information in their particular case was supplied in confidence, and that they may be unfairly exposed to harm if it was released [section 17(5)(e)].

[para 18] The Applicant did not make a submission and challenge the Public Body's position. He was advised of his onus to prove that disclosure of third party personal information to him would not be an unreasonable invasion of the third parties' privacy. He did not try to do so. In the materials from him that I had before me, he complained about many things. I can only decide on those matters within my jurisdiction under the Act. He says that people, including police officers, have said things about him that are not true, and these things are in the police records. As a result, when he has contact with the police, they react to him with anger once they check the information in their computer. While that is unfortunate, if true, it is not enough evidence in these circumstances for me to find that the disclosure of the third parties' personal information would not be an unreasonable invasion of their privacy. There is nothing obvious in the records themselves to help the Applicant meet his onus.

[para 19] In my view, the record shows that there were good reasons under section 17 of the Act not to disclose the bulk of the third party information that was severed. Legal presumptions applied that would make the release an unreasonable invasion of the

third parties' privacy. The Applicant says that he wants to use the information to sue the government for wasting taxpayer dollars. That does not convince me to consider disclosure under section 17(5) of the Act. At least some of the information was provided in confidence, and in the case of the Affected party there is some reason to believe they may be unfairly exposed to harm.

[para 20] The Public Body severed certain portions of third party information for which I find that the disclosure would not be an unreasonable invasion of the person's privacy. The information consists of:

- several entries where a person's name is given in a representative capacity, such as the name of a police officer acting as such,
- the third party personal information came from the Applicant and is not an unreasonable invasion of the third party's person's privacy (for example, his description of his child),
- a business location, in a context where I find that the information does not reveal anyone's identity.

[para 21] I find that some other portions of the information severed by the Public Body is not third party personal information, such as:

- certain locations where incidents occurred,
- information that is the Applicant's own personal information.

[para 22] Where I have found that disclosure would not be an unreasonable invasion of a third party's personal privacy or where there is no third party personal information, I intend to order the Public Body to disclose that information to the Applicant, unless section 20 of the Act applies. Along with a copy of this Order, I have provided the Public Body with a list of the specific information to be disclosed.

[para 23] During the course of reviewing the records, I also found several instances in which the Public Body should have severed third party personal information and it did not. The information consists of the third parties' relationship to the Applicant in a context where the information could reveal their identities.

[para 24] The disclosure of this information possibly constitutes a breach of privacy under the Act, because section 17 places a duty on the Public Body to refuse to disclose third party personal information when its disclosure would be an unreasonable invasion of the third parties' privacy. However, now that the Applicant has been given the information, there is little to be gained from requiring the Public Body to provide the Applicant with a new copy of the records with the information severed. The Public Body is reminded that greater care should be exercised in reviewing future records.

Issue B: Did the Public Body properly apply section 20 of the Act (law enforcement) to the records/information?

[para 25] The Public Body argued that some of the severed information in the records should not be released to the Applicant because it would be harmful to law enforcement. Clearly these records were produced for law enforcement as defined by the Act.

[para 26] Most of the severing noted was done under section 17. I need only address those portions of the records that were severed under section 20 exclusively, and those for which I have found that section 17 either was not properly applied or did not apply at all.

[para 27] The Public Body's submissions to me regarding this exception consist mostly of verbatim reproductions or paraphrases of the law. There was a lack of evidence and little in the way of argument to support the use of section 20 by the Public Body.

[para 28] The Public Body made the argument, referred to under section 17 above, that there is a blanket expectation of confidentiality (until criminal charges are laid) for all third parties who provide the police with information. It said that this is an investigative technique worthy of protection under the Act, and that it protects the confidential sources of law enforcement information. It said that information such as codes and methods used in law enforcement and not available to the public ought to be protected. It argued that disclosing the communications systems and codes used by the Public Body "would damage the secure process through which law enforcement records are identified and communicated within the scope of investigation and day to day operations of the CPS."

[para 29] The Public Body did not identify a specific law enforcement matter that might be harmed. It did not specify the nature of the anticipated harm to a specific matter nor establish a causal relationship between disclosure and harm. The Public Body provided me no specific evidence, did not identify examples in the records of severing related to its arguments, made broad assertions that certain harms would occur, and did not explain to me how damage would be done by releasing the information in question.

[para 30] The narratives and incident reports contain a great deal of information about codes, methods and procedures used by this Public Body that it chose to release to the Applicant. The reports are routine. The codes are uninformative. The methods revealed are commonly known. There is only one example, repeated twice (B0003, B0004), and obvious on the face of the records, where I find that the severing properly protected the use of a technique, not readily known to the public, the disclosure of which might harm law enforcement, as provided by section 20(1)(c) of the Act.

[para 31] For an entry in the records at page C022, the Public Body relied on section 20 exclusively. The decision is not reasonable. The information in that case is, however,

properly exempt from disclosure under section 17. For an entry in the records at page B0005, the Public Body relied on section 20 exclusively to protect the four-digit code number for the type of complaint. There is nothing in the Public Body's evidence or argument to convince me that it properly applied section 20 of the Act to this information.

[para 32] In those instances where I have found that section 17 of the Act does not apply, I also find that section 20 does not apply. Therefore, except for the limited information for which I have found that section 20(1)(c) applies, I intend to order the Public Body to release the information.

Issue C: Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?

[para 33] Section 36 of the Act states:

> 36(1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
>
> (2) Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.
>
> (3) If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.

[para 34] The Applicant has the initial burden of proof to show that the Public Body has personal information about him and that there is an error or omission in it. The Public Body must either make the correction or show why the correction should not be made. If a correction is refused, the Public Body must make an annotation or link within the records.

[para 35] From reviewing all of the information I have before me from the Applicant, I take it that he wants the Public Body to correct all information about him with which he does not agree, whether it originated from the police or third parties. In my view, this is not a reasonable request.

[para 36] The police recorded how they saw each occurrence and what was reported by the third parties. Different people view the same events differently. In some cases, police and third parties included comments about the Applicant. Just because the Applicant views the events differently than others, this does not constitute an error or omission which can be corrected. In effect, the records reflect the opinions of the police and third parties about what they have seen or experienced. Section 36(2) of the Act states that the Public Body must not correct an opinion. I confirm the Public Body's decision not to correct this type of information.

[para 37] The Applicant also asked that the police computer records be corrected so that he is not labelled as an "accused" in events where he was either not charged with an offence, or was charged but in the end not convicted. He says that when the police check his name on their computer, they become angry with him and I infer from his submissions that he thinks it is at least in part because of the label.

[para 38] The Applicant claims the "accused" label is used wrongly twice in the 114 pages of records released to him. He says it happens once in the five-page 1992 report. He does not say where it occurs the second time. I see from the records that the Applicant is described as the "accused" once in the 1992 report, and more than twice throughout the other records.

[para 39] The Public Body told the Applicant how they use certain terms in their reports. They use the label "accused" when a person is arrested and charged with an offence, regardless of the outcome of the charge. They use the term "suspect" if the person is not charged at the time the report is written. If a person is convicted, the Public Body uses the term "offender." The Public Body told the Applicant that it is "irrelevant" whether the charges were later dropped – his label of "accused" will stay in the reports as they were made at the time.

[para 40] Clearly it is not irrelevant to the Applicant. I hear the Applicant's concern that the police should not pre-judge him on the basis of information in their computer. However, I do not have the jurisdiction to determine whether any interaction the police may have had with the Applicant was appropriate. I can only determine whether there is a factual error or omission in the information held by the Public Body related to the Applicant which must be corrected.

[para 41] Police services develop terms that have, to the police, certain meaning. They need this for consistency, practicality and operational efficiency. The officers' use of the labels is not an opinion. It is an application of the Public Body's classification system to the status of an individual at a certain point in time. While it is arguable that the three-term classification used by the Public Body may lack some level of sensitivity, it is not an incorrect recording of personal information.

[para 42] That being said, the police must at least use their chosen language correctly. Incorrect labelling may have serious impact on an individual. The Applicant's sensitivity to the label is not unreasonable. Where the Public Body has classified the Applicant as the "accused" and he was not in fact charged at the time, it must correct the information. From my reading of the 1992 report and the Applicant's materials, I find that he was not charged with an offence by the police at the time of that incident. The report must be corrected in one place to correct this error.

[para 43] I cannot tell from the balance of the records where the Applicant was labelled "accused" when he was not charged with an offence at the time the report was made. Without clear evidence to the contrary, I must conclude that the other entries are

correct. The Applicant has not met the onus of proving that other corrections should be made.

[para 44] The Public Body's remaining task was to annotate or link the record with the requests for correction, pursuant to section 36(3) of the Act. The requirement is mandatory. There is no evidence from the Public Body or on the face of the records that an annotation has been made to the records. I intend to order the Public Body to complete its duty in this regard.

V. ORDER

[para 45] I make this Order under section 72 of the Act.

[para 46] I find that section 17 of the Act did not apply to all of the records/information severed from the records by the Public Body. I order the Public Body to release the information set out in Appendix "A" to the Applicant.

[para 47] Except for two items, I find that the Public Body did not properly apply section 20 of the Act to the records/information. I order the Public Body to release the information also set out in Appendix "A" to the Applicant.

[para 48] I find that the use of the word "accused" by the Public Body where it occurs in the 1992 report is incorrect. I order the Public Body to correct the error by replacing "accused" with "suspect" in that report.

[para 49] I find that, except for the error noted in the paragraph above, the Public Body properly refused to correct the applicant's personal information, as authorized by section 36 of the Act. I confirm the Public Body's decision not to correct all other personal information.

[para 50] I find that the Public Body failed to annotate or link the corrections requested by the Applicant, as required by section 36(3) of the Act. I order the Public Body to fulfil its duty to appropriately annotate or link this information.

[para 51] I further order the Public Body to notify me, in writing, within 50 days of being given a copy of this Order, that it has complied with this Order.

Dave Bell
Adjudicator