

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2004-028**

October 4, 2005

**CITY OF CALGARY**

Review Number 2951

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant submitted a request for information to the City of Calgary (the “Public Body”), under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to severance agreements for all management employees and all employment-related benefits for commissioners and executive officers of the Public Body from January 1, 1999 to July 31, 2001. The Applicant was not satisfied with the response of the Public Body. The Applicant asked that the response be reviewed by our office and that review resulted in an inquiry and the issuance of Order F2003-002.

In Order F2003-002 the Public Body was directed to release four agreements regarding the payment of supplementary pensions to four employees and perform additional searches. The Public Body was also ordered to sever personal information of the employees from the records. The Applicant was not satisfied with the results of the subsequent search and requested a further review. When mediation failed, an oral private inquiry was held.

Prior to the commencement of the oral inquiry, the Adjudicator consented to the request of the Public Body and the Applicant to remove (from the list of issues) section 10(1) of the Act (requiring a Public Body to make every reasonable effort to assist an Applicant and to respond in an open, accurate and complete manner with the focus on the adequacy of the search). The Public Body agreed to commence a new search for records. The remaining issue was whether or not section 17 of the Act (disclosure of third party personal information) applies to the records/information at issue. The Adjudicator found

that section 17 of the Act applies to the records/information at issue and confirmed the decision of the Public Body to refuse access to the Applicant.

**Statute Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 10(1), 17, 30, and 71(2).

**Authorities Cited: AB:** Orders 97-002, 97-011, 99-028, 2000-028, 2001-020 and F2003-002.

## **I. BACKGROUND**

[para 1] In 2001, the Applicant made a request to the City of Calgary (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to severance agreements for all management employees and all employment-related benefits for commissioners and executive officers of the Public Body from January 1, 1999 to July 31, 2001.

[para 2] The response of the Public Body to the access request resulted in the Applicant’s requesting a review by this Office. The matter proceeded to inquiry and culminated in Order F2003-002.

[para 3] In Order F2003-002, I ordered the Public Body to release four agreements regarding the payment of supplementary pensions to four employees. The Public Body was ordered to sever the name, retirement date and signature of the employees in the four agreements, as I found that was personal information, the disclosure of which was an unreasonable invasion of the third parties’ personal privacy.

[para 4] In Order F2003-002, I also ordered the Public Body to perform a further search for responsive records.

[para 5] During this search, the Public Body identified 63 records as being responsive to the Applicant’s request for information. The records contained personal information about third parties, and all the third parties were notified pursuant to section 30 of the Act.

[para 6] The Public Body disclosed 35 of the 63 responsive records to the Applicant. Those records did not involve third parties.

[para 7] Subsequently, the Public Body withheld five records under section 17(4)(g) of the Act and released the remaining 23 records, with severing under section 17(4)(g) of the Act, to the Applicant.

[para 8] The Applicant was not satisfied with the severed records and the search effort made by the Public Body. The Applicant requested another review by this Office.

Mediation failed and the matter was set down for an oral private inquiry. Two of the third parties, as Affected Parties, participated in the inquiry.

## **II. RECORDS AT ISSUE**

[para 9] Of the 63 records identified by the Public Body as being responsive, five of the records were withheld, and the remaining 58 records were released to the Applicant in whole or in part. Of all the severed records, the Applicant focused his submissions on the severing of the record identified as number 000018, entitled “Severance-Commissioners”. The record is a table summarizing the severance payments charged to the Corporate Costs Program (1998-2002) and was prepared on June 26, 2003. The record concerns those officials of the Public Body that received supplementary pension benefits. I note that although the Applicant focused his submissions on the information withheld from record number 000018, I reviewed all of the records at issue.

## **III. ISSUES**

[para 10] There are two issues in this inquiry:

A. Did the Public Body meet its duty to the Applicant as provided in section 10(1) of the Act? In this case, the Adjudicator will also consider whether the Public Body conducted an adequate search for responsive records.

B. Does section 17 of the Act apply to the records/information?

## **IV. DISCUSSION OF THE ISSUES**

**ISSUE A: Did the Public Body meet its duty to the Applicant as provided in section 10(1) of the Act? In this case the Adjudicator will also consider whether the Public Body conducted an adequate search for responsive records.**

[para 11] Prior to commencing the oral inquiry, the Public Body requested an opportunity to enter into negotiations with the Applicant regarding the adequacy of the search issue. The Applicant agreed and I delayed the start of the inquiry.

[para 12] After meeting with the Public Body, the Applicant agreed to withdraw this issue. In return, the Public Body agreed to conduct a new search for records based on a new access request from the Applicant. With the consent of both parties, the issue was withdrawn. Therefore, I do not need to consider this issue any further.

**ISSUE B: Does section 17 of the Act apply to the records/information?**

**Is the information “personal information” of a third party?**

[para 13] The Public Body noted that section 1(n) of the Act defines personal information as recorded information about an identifiable individual and includes a name, business address or an identifying number, symbol or other particular assigned to an individual. The Public Body also argued that the records contained information about an individual’s financial and employment history.

[para 14] The Public Body referenced Order F2003-002 and noted that it specified that the name of each third party, the retirement date of each third party, the signature of each third party, as well as the supplementary pension benefits formula and other clauses relating to the administration of the pension benefit, is the personal information of the third parties. The Public Body concluded that, as the year of retirement, employment number and the precise severance sums are financial and employment history, the severing of record number 000018 meets the criteria for the application of sections 17(4)(d) and (g) of the Act.

[para 15] The two Third Parties in attendance strongly expressed concerns that their decisions with respect to the direction of their pensions was personal information and therefore must not be disclosed. The Applicant responded by assuring the Affected Parties that he did not want that specific and detailed information regarding their pension planning and would not object to the personal information being severed. The Applicant again expressed that he was only interested in obtaining information regarding the precise sums paid to the third parties. The third parties also took exception to their retirement documentation being referenced as “severance” documents. They wanted it to be clear that their retirement was strictly voluntary and the Public Body noted their concern.

[para 16] I have closely reviewed the records, considered the submissions of all present at the hearing, and I find that the individual identifiers such as names of the Third Parties, their employment numbers as well and their year of retirement referenced in the records at issue are within the definition of personal information as defined in section 1(n) of the Act.

**Would the disclosure of the personal information be an unreasonable invasion of a third party's personal privacy, as provided by section 17(1) of the Act or section 17(4) of the Act?**

[para 17] Section 17(1) of the Act states that the head of a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. Section 17(1) reads:

17(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 18] The Applicant did not dispute that, where applicable, section 17(1) of the Act should apply. The Applicant however argued that the exceptions to section 17(1) of the Act, found in sections 17(2)(e) and 17(2)(h) of the Act, apply.

[para 19] The Applicant referenced Order 2001-020, where the decision of a public body to disclose severance agreements for several management employees, including the precise sums paid to each employee, was upheld. Order 2001-020 found that the disclosure of the third party's name, signature, employee number, the date employment with the City ended and the retirement date would be an unreasonable invasion of a third parties' personal information. As in Order 2001-020 the Third Parties precise sums of the severance payments were disclosed to the Applicant. I agree with the Public Body disclosing the precise sums and I agree with the Public Body refusing to disclose the payment dates because, given the context of the information provided, doing so would aid in identifying the recipients.

[para 20] The Applicant noted that in my previous Order F2003-002, I accepted the supplementary pension benefits formula and other clauses which related to the administration of the pension benefits as information regarding the discretionary benefit under section 17(2) of the Act. However, in this case, I find that sections 17(2)(e) and 17(2)(h) of the Act do not apply to the personal information the Public Body withheld as it is not a part of a discretionary benefits formula nor is it information about employment responsibilities.

**Is disclosure of the personal information presumed to be an unreasonable invasion of a third party's personal privacy, as provided by section 17(4) of the Act?**

[para 21] The Public Body relied on the application of sections 17(4)(d) and 17(4)(g) of the Act in refusing to disclose information severed from the records. The sections read:

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

[para 22] Section 17(4) of the Act specifies circumstances where there is a presumption that disclosure of personal information is an unreasonable invasion of a third party's personal privacy. The Public Body argued that, in keeping with Order F2003-002 and sections 17(4)(d) and (g) of the Act, personal information was severed and withheld as the records relate to employment history and consist of third party identifiers.

[para 23] The Public Body again referenced Order F2003-002, where I specified that an employee's date of retirement and name is personal information and that releasing this type of personal information would allow an applicant to determine the identities of the third parties, thereby meeting the requirements of section 17(4)(g) of the Act. The Applicant did not take issue with this determination.

[para 24] The submissions of the Public Body and the Applicant focused on the information withheld from the "Severance-Commissioners" table (record number 000018), the year of retirement and the precise sums paid. The Public Body noted that the Applicant raised no other issues regarding the personal information severed and withheld from the records and that was the case for this portion of the inquiry. I, however, will review all the remaining severed records.

[para 25] In Order F2003-002, I accepted that the reference to "employment history" in section 17(4)(d) of the Act was a broad, general phrase that covers information pertaining to an individual's work record. Using the same interpretation, I find that in these circumstances both section 17(4)(d) of the Act and section 17(4)(g)(i) of the Act apply to each Third Party's employee number and the year of retirement. Section 17(4)(g)(i) and (ii) apply to each Third Party's name and year of payment.

**What relevant circumstances are to be considered, as provided by section 17(5) of the Act?**

[para 26] When applying section 17(4) of the Act, a public body must also take into consideration relevant circumstances, as provided by section 17(5) of the Act (see Order 2000-028). Section 17(5) of the Act reads:

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 27] The circumstances focused upon by the Applicant are that disclosure would be desirable for subjecting the Public Body to public scrutiny (section 17(5)(a) of the Act) and that the disclosure of the personal information is relevant to a fair determination of his rights (section 17(5)(c) of the Act).

[para 28] The Public Body addressed the question of public scrutiny under section 17(5)(a) of the Act. The Public Body referred to Order F2003-002, in which I applied a three-part test: it is not sufficient for one person to decide that public scrutiny is necessary; that the concern of the Applicant must be about an action of more than one person within the Public Body; and, if the Public Body has previously disclosed a substantial amount of information, the release of further personal information would likely not be desirable. The Public Body noted that in Order F2003-002, I concluded that the personal information at issue did not meet the requirements of section 17(5)(a) of the Act.

[para 29] The Public Body reviewed the possible application of section 17(5)(c) of the Act and maintains that the records at issue are not related to the determination of the

Applicant's rights. In Order F2003-002, I noted that for section 17(5)(c) of the Act to apply, the right in question would have to be a legal right drawn from concepts of common law or statute law and related to an existing or contemplated proceeding, the information sought should have some bearing on or be significant to the determination of the right in question, and the information is required in order to prepare for a proceeding or to ensure an impartial hearing. The Public Body is not aware of the Applicant's purpose in making the request and therefore the Public Body concludes that section 17(5)(c) of the Act does not appear to be relevant.

[para 30] The Public Body believes that the Applicant, pursuant to section 71(2) of the Act, bears the onus of proving that the releasing of the information will not result in an unreasonable invasion of privacy. Section 71(2) of the Act reads:

71(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 31] The Public Body argued that the Applicant did not provide any evidence that would satisfy the onus imposed by section 71(2) of the Act. As a result the Public Body believes that the information should be withheld. I find, contrary to the suggestion of the Applicant, that sections 17(5)(a) and (c) of the Act do not apply to these circumstances as the Applicant did not provide any evidence that disclosure is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny or is disclosure relevant to a fair determination of his rights: see Orders 97-002 and 99-028.

[para 32] I have factored into my decision that the Third Parties objected to the release of their personal information (see Order 97-011), which weighs in favour of not disclosing the personal information. I find that allowing the disclosure of the information sought by the Applicant is presumed to be an unreasonable invasion of a third party's personal privacy under sections 17(4)(d) and (g) of the Act. Therefore, I confirm the Public Body's decision not to disclose the Third Parties' personal information to the Applicant.



## **V. ORDER**

[para 33] I make this Order under section 72 of the Act.

[para 34] I find that section 17 of the Act applies to the records/information. I order the Public Body to refuse to give the Applicant access to the personal information withheld from the records.

Dave Bell  
Adjudicator