ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2004-032

February 22, 2005

CALGARY POLICE SERVICE

Review Number 2901

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Summary: The Applicant requested access under the *Freedom of Information and Protection of Privacy Act* (the "Act") to information regarding a complaint filed with the Calgary Police Service (the "Public Body") including case notes, witness statements and a chapter from a procedure manual of the Public Body. The Public Body released the responsive records but severed excerpts from the specified chapter relying on sections 18 (individual health or safety, or public safety) and 20 (law enforcement).

The Adjudicator found that the Public Body had not provided evidence to fulfill the "harms" tests necessary for the application of section 18 and 20. The Adjudicator also found that there was nothing on the face of the records to support an expectation that harm would result from disclosure, and ordered the records released.

Statutes Cited: CANADA: *Controlled Drugs and Substances Act,* S.C.1996, c.19 s. 11, *Criminal Code* R.S.C. 1985,c.C-46 s. 488; **AB:** *Freedom of Information and Protection of Privacy Act,* R.S.A. 2000, c. F-25, ss. 18, 20(1)(c), 20(1)(k), 20(1)(m) and 71(1).

Authorities Cited: AB: Orders 96-003, 99-009, 99-010, 2000-027, and 2001-027**.**

I. BACKGROUND

[para 1] The Applicant requested access to all information regarding a complaint filed with the Calgary Police Service (the "Public Body") including case notes and witness statements. The Applicant further requested a specific chapter from the Public Body's "Policy and Procedure Manual" (the "Manual") dated September 2000-December 2000.

[para 2] There were 31 responsive records that were subsequently released to the Applicant. The Public Body severed excerpts from the specified chapter of the Manual relying of sections 18 and 20 of the *Freedom of Information and Protection of Privacy Act* (the "Act").

[para 3] The Applicant requested that this office review the decision of the Public Body to withhold portions of requested chapter of the Manual. Mediation was authorized but was not successful and the matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 4] The records at issue are the severed portions of the relevant chapter found in the Public Body's "Policy and Procedure Manual".

III. ISSUES

[para 5] There are two issues in this inquiry:

A. Did the Public Body properly apply section 18 of the Act (individual health or safety, or public safety) to the records/information?

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

IV. DISCUSSION OF THE ISSUES

[para 6] The Applicant did not make a submission in this inquiry. However, the Public Body has the burden of proof for the issues set out in the Notice of Inquiry. Therefore, the Applicant's failure to offer any arguments does not preclude me from considering the issues and the decisions made by the Public Body.

Issue A: Did the Public Body properly apply section 18 of the Act (individual health or safety, or public safety) to the records/information?

[para 6] Section 18(1) of the Act states:

> **18(1)** The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
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> (a) threaten anyone else's safety or mental or physical health, or
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> (b) interfere with public safety.

[para 7] In Order 99-009, the Commissioner stated that to determine whether there is a threat to a person's safety or mental or physical health, a public body must look at the same type of criteria as the "harms" test referred to in Order 96-003. The criteria are as follows:

1. there must be a causal connection between the disclosure and the anticipated harm;

2. the harm must constitute "damage" or "detriment" and not mere inconvenience;

3. there must be a reasonable expectation that the harm will occur.

[para 8] I reproduce the Public Body's submission regarding section 18 in its entirety:

> 3.1.1 Pursuant to section 18(1) of the Act, the CPS may refuse to disclose information if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health or if the disclosure could reasonably be expected to interfere with public safety.
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> 3.1.2 The CPS submits that the information that has been severed, if released, could pose a significant threat to CPS officer safety as well as that of the general public. Particular details relating to the execution of a warrant exist for the purposes of law enforcement. If they were released they would not only render those purposes useless [sic]. Further, this policy information is put in place to operate as a mechanism to protect the safety and well being of the general public. Release of this information would defeat that purpose.

[para 9] It should be unnecessary for me to state, particularly to the Public Body in question, that argument alone is insufficient to discharge its burden of proof. However, the Public Body's submission in this instance relies solely on the general and unsubstantiated statements found in paragraph 3.1.2 of its submission that release of the records would pose a significant threat. The Public Body offered no evidence to support this position.

[para 11] In addition, there is nothing on the face of the records that constitutes a self-evident explanation as to how and why harm would result from disclosure. Some of the severed information itself is a recital of the requirements found at section 488 of the *Criminal Code* and section 11 of the *Controlled Drugs and Substances Act.* The remainder of the information is of a general nature. I therefore find that there is insufficient evidence to fulfill the "harms" test and that section 18 is not applicable to the records/information.

[para 12] Finally, I must add that section 18 is a discretionary exception. Even if there existed sufficient evidence to make a proper determination that the section 18 exception applied, the Public Body could still nevertheless exercise its discretion to disclose the information. In exercising its discretion not to disclose, a public body must

show that it considered the objects and purposes of the Act, and did not exercise its discretion for an irrelevant or improper purpose: Order 2001-027. As there is no reference in the Public Body's submission to such a consideration ever being made, it is clear that this requirement has also not been met.

[para 7] I find that the Public Body did not properly apply section 18 of the Act to the records/information.

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

[para 8] The Public Body has argued that disclosure of the records/information may be refused in accordance with sections 20(1) (c), (k) and (m). The Public Body's submission regarding section 20 is reproduced below in its entirety:

> **Section 20(1)(c)**
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> 3.3.1 Section 20(1)(c) states disclosure of a record may be refused if the disclosure could reasonably be expected to harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement.
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> 3.3.2 It is submitted that section 20(1)(c) is relevant as the records at issue contain information such as codes and methods that are used in law enforcement that are not generally known to the public, disclosure of which would reduce their usefulness, effectiveness and success. The CPS has a duty to protect this type of information from being disseminated to the general public.
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> 3.4 **Section 20(1)(k)**
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> 3.4.1 Section 20(1)(k) states disclosure of a record may be refused if the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.
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> 3.4.2. This provision permits a public body to refuse to disclose information that would be of use in committing a crime or that could hamper the control of crime. Examples include information about techniques, tools and instruments used for criminal acts, names of individuals with permits for guns, the location of police officers, and the location of valuable assets belonging to a public body.
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> 3.4.3 It is submitted that section 20(1)(k) is relevant as the records at issue contain information that would be of use in committing a crime or that could hamper the control of crime. The CPS has a duty to protection this type of information from being disseminated to the general public.
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> 3.4.4 **Section 20(1)(m)**
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> 3.4.5 Section 20(1)(m) states that disclosure of a record may be refused if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

> 3.4.6 It is submitted that section 20(1)(m) is relevant as the records contain information that is used in law enforcement, the disclosure of which would reduce its usefulness, effectiveness or success. The communications systems and codes used by the CPS would be harmed in that disclosure 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. The CPS has a duty to protect this type of information from being disseminated to the general public.

[para 9] As the Public Body has refused to release records to the Applicant, in accordance with section 71(1), the Public Body has the burden of proof in this matter.

[para 10] Both sections 20(1)(c) and (m) refer to "harm" either to the effectiveness of an investigative technique or to the security of any property or system. Both sub-sections are subject to the "harms test" that is set out in my discussion dealing with section 18. With regard to what is now section 20(1)(c), I note the index of the Public Body's submission cites Orders 99-010 and 2000-027 and although copies of the orders are included, they appear without any supporting argument. Both Orders state at paragraph 78 and 27 respectively, that:

> The harms test contained in this exception precludes the refusal of basic information about well-known investigative techniques. The focus in this exception is on the refusal of information on investigative techniques and procedures that relate directly to their continued effectiveness.

[para 11] Again, other than making the assertion that investigative techniques and communication systems would be harmed if the records were released, the Public Body has offered no evidence. In the context of section 20(1)(c), the Public Body has provided no evidence on how disclosure would relate directly to the continued effectiveness of investigative techniques and procedures.

[para 12] There is nothing in the records/information itself that would raise a reasonable expectation that the harm contemplated by the Public Body would occur if disclosure was made. I therefore find there is insufficient evidence to fulfill the "harms" test and sections 20(1)(c) and (m) do not apply to the records/information.

[para 13] Similarly, with regard to section 20(1)(k) the Public Body has adduced no evidence but instead at paragraph 3.4.2 has provided examples of types of harmful disclosure which bear no resemblance to the content of the records/information at issue. In the absence of any evidence to support the Public Body's contention, and having thoroughly reviewed the records, I can find nothing that would raise a reasonable expectation that disclosure would facilitate the commission of an unlawful act or hamper the control of crime.

[para 14] All of the exceptions applied to the records by the Public Body in this inquiry contemplate serious consequences if the records are disclosed. Therefore, if I could see anything on the face of the records that would indicate that disclosure of the records could reasonably result in one or more of the contemplated consequences, I would err on the side of finding that the records should be withheld under the provision.

However, after careful examination of the records in their entirety, I am satisfied that there is no reasonable possibility that any of the consequences would occur if the records are disclosed to the Applicant. The records relate to the execution of search warrants and much of the information is either common knowledge or common sense.

[para 15] I find that the Public Body did not properly apply section 20 of the Act to the information/records.

V. ORDER

[para 16] I make the following Order under section 72 of the Act.

[para 17] I find that the Public Body did not properly apply section 18 of the Act to the information/records.

[para 18] I also find that the Public Body did not properly apply section 20 of the Act to the information/records. I order the Public Body to disclose the records to the Applicant.

[para 19] I further order the Public Body to notify me in writing within 50 days of being given a copy of this Order that the Public Body has complied with this Order.

Dave Bell
Adjudicator