ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2006-030

January 16, 2008

EDMONTON POLICE SERVICE

Case File Numbers 3555, 3604

Office URL: www.oipc.ab.ca

Summary: The Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton Police Service (the "Public Body") for any records relating to access of information about his family members by EPS using PROBE and CPIC, and all records relating to those inquiries and the names of the EPS personnel involved.

The Public Body provided a chart indicating certain times when the names of some of the family members of the Applicant were searched, the time, and the name query parameters. Relying on section 17(1) of the Act, it did not release the names of the members of the Public Body who conducted the searches.

The Adjudicator found that there was no basis under section 17 of the Act for withholding the names of these persons.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(n), 17, 17(1), 17(5), 17(5)(a), 17(5)(h), 18, 20, 72.

Authorities Cited: AB: Orders F2003-005; F2004-015; F2004-026, F2006-020.

I. BACKGROUND

[para 1] On October 31, 2005, The Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton Police Service (the "Public Body") for any records relating to access of information about five named members of his family by EPS using PROBE and CPIC, and all records relating to those inquiries and the names of the EPS personnel involved. He provided signed authorizations for these requests from the family members.

[para 2] The Public Body provided charts indicating certain times when the names of two of the family members of the Applicant were searched, the time, and the name query parameters. Relying on section 12(2) of the Act, it refused to confirm or deny whether any additional information responsive to the request relative to any of the family members existed. Relying on section 17(1) of the Act, it did not release the names of the Public Body's employees who conducted the searches that were indicated in the charts (the “querants”).

[para 3] The Applicant was not satisfied with these responses, and asked this Office to review them. The issue relating to the refusal to confirm or deny whether additional information existed was resolved. The matter of the refusal to provide the names of the members conducting the queries remained outstanding, as affirmed in a letter to this office written by the Applicant on November 6, 2006. The two file numbers pertain to the requests made by the Applicant relative to two members of his family.

II. RECORDS AT ISSUE

The records at issue are the parts of the records that indicate the names of the members of the Public Body who conducted the queries.

III. ISSUE

[para 4] The issue in this inquiry is the following:

> Does section 17 of the Act (personal information) apply to the records/information?

IV. DISCUSSION OF THE ISSUE

[para 5] The parts of section 17 relevant to this discussion provide:

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

[para 6] If the names in question are provided, it will be known which members of the Public Body conducted particular queries. It is necessary to first decide whether the information at issue is personal information.

[para 7] In Order F2006-020, the Applicant had conceded that the names of EPS members who had conducted particular CPIC or PROBE queries was their personal information. Adjudicator Bell proceeded on the basis that this was correct and that section 17 applied.

[para 8] However, the Adjudicator rejected the Public Body's contention that section 17 required that the information be withheld (by reference to section 17(5)(h)) because disclosing it could unfairly harm the reputation of the members who conducted the searches. The Adjudicator reviewed cases put forward by the Public Body to support its contention. He distinguished these cases on the basis that in each of them "personal information consisted of a third party name and other information whether in the guise of inflammatory questions, unsubstantiated allegations and complaints that when linked to a third party could lead to an adverse inference being made against the reputation of the person in question". He noted that in the case before him, the only information besides the names was the date, time and name parameters of the search, which in his view could not in itself support an adverse inference. Thus he did not accept that disclosing the names of the members who had conducted particular queries could have the harmful effect postulated by the Public Body, and rejected this as a factor in favour of withholding the information. His conclusion as to the appropriate balancing of the factors under section 17 took into account the fact that the querants were acting in their representative capacities, and could not reasonably have had an expectation of privacy with regard to the searches. Thus the Adjudicator concluded that there was no reason why release of the names of the querants would be an unreasonable invasion of personal privacy, and he ordered that the information be disclosed.

[para 9] My analysis of the issue in this case differs slightly, but comes to the same conclusion.

[para 10] In Order F2004-026, I held that a record of the performance of work duties by an identified public servant may or may not be the personal information "about" that person. Whether it is depends on whether the information has a dimension personal to them that makes it "about" them.

[para 11] In this case, the information that particular members of the Public Body conducted particular queries may or may not have a personal dimension for the members.

[para 12] Where conducting queries is part of the responsibility of an employee, the *very fact* that they conducted them is not, without more, their personal information. In the absence of any associated information suggesting the querants were acting improperly, or of any suggestion from other sources that they were so acting, the information would, in the present context, lack any personal aspect. This is one instance of the common circumstance in which there is no reason to treat the records of the acts of public servants conducting the business of government as "about them". In such circumstances, the information that particular persons conducted particular searches is not properly regarded as the personal information of the individual querants, and section 17 does not apply as a basis for withholding it.

[para 13] This point is similar to Adjudicator Bell's conclusion in Order F2006-020 that disclosure of the names of persons who conducted particular queries in the case before him was distinguishable from cases in which the sought-for disclosure was of names *associated with* information that was likely to have an adverse effect. However, Adjudicator Bell treated the information that certain persons conducted certain queries as nonetheless being personal information of the querants. He followed the line of earlier decisions of this Office holding that disclosure of information relating to people acting in their representative or professional capacities is not an unreasonable invasion of their personal privacy.[1] I prefer the analysis that unless the information is shown to have some personal dimension for the querants, the fact they conducted particular queries is not their personal information.

[para 14] Although I have concluded that the record of the conduct of searches is not, without more, personal information, names are personal information under the Act.[2] I must still perform a section 17 analysis relative to the names of the members. In this case, the fact the individuals were acting in their representative capacities is a factor that favours disclosure of the names. There is no countervailing factor under section 17 that would favour withholding of these names. Thus I find they cannot be withheld in reliance on section 17.

[para 15] I take an additional step in this case, to consider the possibility that a suggestion of impropriety might be made. In a case such as this one, it is conceivable the

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[1] See, for example, Order F2003-005, which held that where the personal information at issue is a record of the activities of staff of public bodies in the course of performing their duties, this aspect of the information is a relevant circumstance under section 17(5) that weighs in favour of disclosure of the information.

[2] Definition section 1(n) provides that "personal information" means recorded information about an identifiable individual, including their name.

Applicant or others could, on obtaining the information, raise the suggestion that the queries or some of them were unauthorized or improper. The Applicant's rebuttal submission contains some references to the possibility of impropriety relative to these and other queries. However, he makes no specific suggestion that the queries were or likely were unauthorized or conducted for an improper purpose. I cannot predict whether any such suggestion will or will not be made by the Applicant or others.

[para 16] If the act of the public servant is alleged to be wrongful, the record of the act potentially has a personal dimension for the individual querant, and thus may be their personal information.

[para 17] In my view, the recognition that this could happen in this case is not a basis for concluding that disclosure of this information would be an unreasonable invasion of personal privacy under section 17.

[para 18] The Public Body argues that disclosure of the information has the potential to *unfairly* harm the reputation of the members, as described in section 17(5)(h). The unfair harm postulated by the Public Body in its submission is that the names could be published in newspapers together with unsubstantiated inferences or allegations that the searches were improper, before the appropriateness of the queries is determined. It says this has happened in some cases in the past relative to queries that were later shown to be proper. An unfounded suggestion or allegation of impropriety could conceivably unfairly harm the reputation of the querants, at least until it was shown to be unfounded. However, that would be the result of the allegations or their publication in the media, and not of disclosure of the simple fact that particular persons conducted the queries. Thus, in my view, section 17(5)(h) cannot be relied on as a factor for withholding this information under section 17.

[para 19] Another possibility is that a suggestion of impropriety would be made which has some credible foundation. The fact particular persons conducted certain queries improperly could have disciplinary or other negative consequences for them.

[para 20] However, the idea that this could be a possible outcome does not, in my view, constitute a reason for withholding the information under section 17. If it were to come about, the key factor under section 17 that would come into play would, in my view, be section 17(5)(a) – that disclosure would be desirable for subjecting the activities of the public body to public scrutiny.[3] The need for public scrutiny of a credible allegation of impropriety in this context would outweigh any considerations of personal privacy of the querants.

[para 21] I do not accept the Public Body's suggestion that there can be adequate scrutiny of the question of whether searches were conducted properly without identifying the individual members who conducted them, or that section 17(5)(a) does not apply

[3] Section 17(5)(h) might still come into play on the basis that even a credible allegation could ultimately be determined to be unfounded, but assuming a credible allegation, section 17(5)(a) would, in my view, still be determinative.

where the focus is on the employees of the Public Body rather than on the Public Body as a whole. In a preliminary ruling relative to Case File Number 3341, in which the EPS was also the respondent[4], and which involved searches of the same data bases as in this case, I said that the Public Body acts through its individual employees, so that if an individual employee breaches the Act in the course of his or her employment, the Public Body breaches the Act. I noted that my role includes examining the Public Body's information management practices and the extent to which these are effective to prevent breaches of the Act by its employees. I also said that my duty in relation to the question of whether searches were done with proper authority was to try to determine if the Act was breached and how it was breached, and to make this finding on the basis of all the available, relevant, evidence, which included examining what the individual employees of the Public Body did. On this account, I made a preliminary order that the individual querants be called as witnesses. This reasoning would also apply in the present situation should the need for scrutiny of the manner of conducting searches arise. As the evidence of the individuals who conducted the searches would be relevant to such an inquiry as a whole, it would not be possible, not do I see why it should be desirable, to withhold the names of the querants.

[para 22] As well, knowing the names of the querants could assist an Applicant in trying to understand the reason for a query by reference to his or her knowledge about the querant or earlier contact they had with that person, and thus to decide whether there is a basis for asking for further scrutiny of the queries.

[para 23] Further relative to section 17(5)(a), I do not accept the Body's argument that the section cannot apply where only one person has decided public scrutiny is necessary. In Order F2004-015, I said that this factor is less significant where the activity that has been called into question, though arising from a specific event and known only to those immediately involved, is such that it would be of concern to a broader community had its attention been brought to the matter. If an allegation of impropriety that has a credible basis were to be made in this case, this reasoning would apply.

[para 24] Thus, I conclude as follows.

[para 25] If no allegation of impropriety is made and the information that particular individuals conducted particular queries has no personal dimension, section 17 does not apply to that information. Section 17 applies to the names alone, but there is no basis under section 17 in this case to withhold the names unassociated with any personal information.

[para 26] The possibility that the information as to which individuals conducted particular searches could ultimately be characterized or used in a way that makes it personal to these individuals is not a reason for withholding the information under section 17. The fact that unfounded allegations of impropriety could subsequently be made is not a reason to withhold the fact that public servants performed their duties. Should

[4] This ruling was provided to the Public Body in a letter dated August 11, 2006, addressed to the Public Body's legal counsel in that case.

allegations be made that do have some foundation, the need for public scrutiny would outweigh any need for privacy. Thus I find there is no proper basis under section 17 for withholding this information from the Applicant.

[para 27] I note finally that there may be situations in which it is important to withhold the name of a police officer where disclosure involves a risk to safety or harm to law enforcement. Sections 18 and 20 of the Act provide the necessary protection for such cases. No suggestion was made in this case that these provisions apply.

V. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I order the Public Body to disclose to the Applicant the names of the members of the Public Body who conducted the queries in this case.

[para 30] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied therewith.

Frank Work, Q.C.
Information and Privacy Commissioner