ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2009-003

March 12, 2009

ALBERTA SENIORS AND COMMUNITY SUPPORTS

Case File Number F4228

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Summary: The Applicant requested made a request for access to records from Alberta Seniors and Community Supports (the Public Body) relating to complaints, responses and recommendations filed under the *Protection for Persons in Care Act* R.S.A. 2000, c. P-29, in relation to the Chinook Health region from 2005/6 to August 3, 2007. The Applicant requested that the names of the facilities be provided, but indicated that the names of complainants could be removed.

The Public Body indentified responsive records, but severed the personal information of individuals named in the records under section 17 (disclosure harmful to personal privacy) of the Act. The Public Body also severed the names of facilities from the records on the basis that the names of the facilities would enable the Applicant to identify the individuals whose personal information had been severed under the same section. The Public Body also applied section 20(1)(d) (confidential source of law enforcement information) to the information it severed from the records. The Applicant requested review of the decision to sever the names of the facilities from the records.

The Adjudicator found that section 17 did not require, and that section 20 did not authorize, the Public Body to withhold the names of the facilities, as disclosing the names of the facilities would not enable the Applicant to obtain the personal information of individuals or informants. She ordered the Public Body to disclose the names of the facilities.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 17, 20, 72; *Protection for Persons in Care Act* R.S.A. 2000, c. P-29; *Personal Information Protection Act* S.A. 2003, c. P-6.5, s. 1(k)

Authorities Cited: AB: Orders 96-019, 96-021, P2007-004,

Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22

I. BACKGROUND

[para 1] The Applicant, a newspaper, made a request to the Public Body for access to records relating to complaints, responses and recommendations filed under the *Protection for Persons in Care Act* R.S.A. 2000, c. P-29, in relation to the Chinook Health region from 2005/6 to August 3, 2007. The Applicant requested that the names of the facilities be provided, but indicated that the names of complainants could be removed.

[para 2] The Public Body located responsive records, but severed some information under sections 17 and 20, including the names of facilities. The Applicant requested review of the Public Body's decision to sever information, in particular, the names of the facilities.

[para 3] The Commissioner ordered mediation to resolve the dispute. As mediation was unsuccessful, the matter was scheduled for a written inquiry. Both parties supplied initial submissions.

II. RECORDS AT ISSUE

[para 4] There are fifty numbered pages or records at issue.

III. ISSUES

Issue A: Does section 17(1) (unreasonable invasion of personal privacy) of the Act apply to the records / information?

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

IV. DISCUSSION OF ISSUES

Issue A: Does section 17(1) (unreasonable invasion of personal privacy) of the Act apply to the records / information?

[para 5] Section 1(1)(n) defines personal information under the Act:

> *(n) "personal information" means recorded information about an identifiable individual, including*

(i) the individual's name, home or business address or home or business telephone number,
(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
(iii) the individual's age, sex, marital status or family status,
(iv) an identifying number, symbol or other particular assigned to the individual,
(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,
(vi) information about the individual's health and health care history, including information about a physical or mental disability,
(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
(viii) anyone else's opinions about the individual, and
(ix) the individual's personal views or opinions, except if they are about someone else;

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

[para 6] Section 17 states in part:

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…

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

(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…

(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 7] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 8] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. Unless section 17(3) applies, to determine whether disclosure would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5). It is important to note that section 17(5) is not an exhaustive list and that any other relevant circumstances must be considered.

[para 9] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said:

> In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. 16(5), and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4). In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s. 16(4) is (sic) met, the presumption is that disclosure will be an unreasonable invasion of personal

privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

[para 10] If it would be an unreasonable invasion of personal privacy to disclose personal information under section 17, then a public body must then consider whether it is possible to sever the personal information from the record under section 6. Section 6 of the Act states, in part:

> *6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.*
>
> *(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record…*

For example, it may be possible to sever the name of an individual from a record, if it would be an unreasonable invasion of personal privacy to disclose the personal information of the individual, and provide the remaining information to an applicant. Sometimes, even if the name of an individual is severed, portions of the remaining information may still enable an applicant or the public to identify the individual. It then becomes necessary to determine whether these portions can also be severed.

Do the records contain personal information?

[para 11] As noted above, personal information is defined under the FOIP Act as "recorded information about an identifiable individual". I find that the names of the persons against whom complaints were made, the complaints about them, and the investigation and outcomes are personal information about these persons falling under section 17(4)(g). I also find that the names of the reporters and the facts they reported is their personal information falling under section 17(4)(g). I find that the names of witnesses in the context of what they witnessed is personal information falling under section 17(4)(g). I also find that the names of the victims, in the context of the reports of alleged abuse, is personal information falling under section 17(4)(g). As a result, I find that all the information in the records is subject to the presumption in section 17(4)(g).

[para 12] As I have found that the names of the persons complained against, reporters, witnesses and victims in the context of the complaints, the investigation, and investigation outcomes, are personal information about these individuals falling under section 17(4)(g), I must consider whether the factors set out in section 17(5) weigh in favor of finding that it would constitute an unreasonable invasion of personal privacy to disclose this personal information. In addition, when associated with the names and other personally identifying information of individuals, the names of the facilities constitutes personal information, as the names would reveal recorded information about the location of where alleged offences committed by identifiable individuals took place, information

about where individuals reside, and, indirectly, information about the care needs of some individuals.

Would disclosing the personal information constitute an unreasonable invasion of personal privacy?

[para 13] I find that none of the factors set out in section 17(5) apply and therefore, the presumption in section 17(4)(g) is not rebutted. Consequently, disclosing the personal information in the records would constitute an unreasonable invasion of personal privacy.

Can the personal information be severed from the records? If so, is the Public Body required to sever the names of the facilities?

[para 14] The Public Body severed the names of facilities, in addition to information such as the names, ages of residents, the names of care providers, job titles, job duties and responsibilities of care providers, any reference to gender (including pronouns), statements made about unnamed individuals, references to "unknown staff members", conversations with unnamed individuals, references to unidentified individuals taking vacation, references to the education of an unidentified individual, birth and death dates of individuals, references to the weight of an individual, and references to the reasons why unnamed individuals were not at work. The Public Body argues that section 17 requires all this information to be severed.

[para 15] Specifically, the Public Body argues that by disclosing the information it withheld, it would be possible to "re-identify" individuals:

> In essence, the theorem provides that by obtaining, or in this case as forming part of ASCS's arguments in this submission, in disclosing innocuous pieces of PI it is possible to re-identify an individual based on statistical regression techniques. In layman's terms, and for example purposes only, ASCS submits that if there are only 10 clients in a facility and ASCS releases information that one of the clients has a respirator, uses a walker, and is female, it would be very easy to identify that individual simply by observing clients in the facility...
>
> Using this approach, ASCS accepts that it may not disclose as much information as it may otherwise, but prefers to take all steps possible to maximize privacy protection. In fact, ASCS acknowledges that some data elements may have been severed which could reasonably be argued may not necessarily result in an individual being identified. However, working without the advantage of 20-20 hindsight, ASCS feels its approach is the correct one.

[para 16] The Applicant clarified that it is not seeking individual names, ages, genders, or any kind of information relating to either staff or patients that would enable it to identify them. Instead, the Applicant seeks only the names of the care facilities and argues that the name of the care facility is not personal information, as it is not about an identifiable individual. The Applicant relies on Order 96-019, in which the former Commissioner said:

> Although "person" can include an "individual", "individual" cannot include a corporation or any entity other than a single human being.

[para 17] As noted above, the Applicant is not seeking the names or identifying personal information of individuals. The Applicant's position is that the names of the facilities alone are not personal information, as the Public Body has severed the identifying information of individuals from the records. The Applicant does not take issue with the way the Public Body severed information, but its decision to sever the names of the facilities where complaints were made.

[para 18] In Order P2007-004, the Adjudicator considered whether information about a place occupied by an individual is personal information about the individual under section 1(k) of the *Personal Information and Protection Act*, which, like the FOIP Act, defines "personal information" as "recorded information about an identifiable individual". She concluded that it can be, provided the information about the residence conveys something about the individual.

> The conclusion I draw from the cases is that information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements.

[para 19] I find that disclosing the names of the facilities would not reveal or convey information about identifiable individuals in this case, given that the Public Body has, for the most part, severed all information by which individuals could possibly be identified, i.e. their names, ages, conditions, relationship to family members, references to walkers, weight, birthdates, and gender.

[para 20] While the Public Body disclosed some references to wheelchairs, fractures, and dementia in relation to unnamed individuals to the Applicant, I find that this information, in conjunction with the name of the facility, would not enable the Applicant or a member of the public to identify individuals, particularly as other information about the individuals, such as gender, has been severed from the records. The existence of a fracture would not necessarily be apparent to an observer, long after the event, nor is the existence of dementia necessarily obvious to an observer. In addition, the fact that an individual uses a wheelchair or a walker does not necessarily reveal the identity of an individual in a facility in which other individuals with similar mobility issues reside. Given that identifying information about the individuals that the Public Body has severed, and given that the investigation reports are written to avoid identifying individuals, I find that disclosing the names of the facilities would not enable the Applicant to associate the information in the records with identifiable individuals

[para 21] As noted above, the Public Body provided an example of a situation where it might be possible to identify an individual if provided the name of a facility as well as other information about the individual. However, I find, given the amount of information about the individuals that has been severed and the generality of the remaining information in the record, that it would not be possible to "re-identify" the individuals named in the records if the names of the facilities are disclosed. The example of the Public Body is that if only 10 clients in a facility and the Public Body released

information that one of the clients has a respirator, uses a walker, and is female, it would be very easy to identify that individual simply by observing clients in the facility. However, in the case before me, the Public Body has severed information such as the gender of clients, whether they use a respirator or a walker, etc. Consequently, releasing the names of the facilities will not enable the Applicant or a member of the public to identify the individuals referred to in the records at issue.

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

[para 22] Section 20(1)(d) creates an exception to the right of access for information that would reveal a confidential source of law enforcement information. It states:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to…*
>
> > *(d) reveal the identity of a confidential source of law enforcement information…*

[para 23] In Order 96-021, the former Commissioner commented at paragraph 202 that for section 20(1)(d) (previously 19(1)(d)) to apply to information, the following must be established:

> For section 19(1)(d) to apply, there must be (i) law enforcement information, (ii) a confidential source of law enforcement information, and (iii) information that could reasonably be expected to reveal the identity of that confidential source.

[para 24] Accepting, for the sake of argument, that the first and second requirements are met, I find that for the reasons set out under Issue A, disclosing the names of the facilities could not reasonably be expected to reveal the identity of confidential sources of law enforcement information. I therefore find that section 20(1)(d) does not authorize the Public Body to withhold the names of the facilities.

V. ORDER

[para 25] I make this Order under section 72 of the Act.

[para 26] I order the head of the Public Body to give access to the Applicant to the names of the facilities in the records.

[para 27] I further order head of the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

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Teresa Cunningham
Adjudicator