

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-004

April 21, 2009

CALGARY POLICE SERVICE

Case File Number F4318

Office URL: www.oipc.ab.ca

Summary: In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked the Calgary Police Service (the “Public Body”) for a copy of a police report in relation to an incident where a third party allegedly threatened him, including the name and address of the third party. The Public Body granted partial access, refusing to disclose some of the information under sections 17 and 20 of the Act.

Under section 17, the Public Body withheld the name, address and other personal information of the third party, on the basis that disclosure would be an unreasonable invasion of his personal privacy. The Adjudicator found that the third party’s name and address would enable the Applicant to pursue legal action against the third party, and was therefore relevant to a fair determination of the Applicant’s rights under section 17(5)(c). On the other hand, he found that the relevant circumstance under section 17(5)(e) weighed against disclosure, as the Public Body provided evidence that the Applicant’s real motive for obtaining the third party’s personal information was not for any lawful purpose, but rather to harm the third party. After considering these relevant circumstances and the applicable presumptions against disclosure, the Adjudicator concluded that the Public Body properly withheld the third party’s personal information.

Under section 20(1)(m) of the Act, the Public Body withheld a record of verbal exchanges between its communications officer and the officers who attended the incident involving the Applicant and the third party, on the basis that disclosure could reasonably

be expected to harm the security of the Public Body's communications system used to protect police officers when they are investigating incidents. The Adjudicator found that the record of verbal exchanges was properly withheld because, if the information fell within the public domain, the efficacy of the communications system, and the safety of police officers, would be compromised.

The Adjudicator confirmed the decision of the Public Body to refuse the Applicant access to all of the information that it withheld.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(i), 1(h)(ii), 1(n), 1(n)(i), 1(n)(ii), 1(n)(iii), 1(n)(iv), 1(n)(v), 17, 17(2), 17(2)(b), 17(4), 17(4)(b), 17(4)(g), 17(4)(g)(i), 17(4)(g)(ii), 17(5), 17(5)(c), 17(5)(e), 20, 20(1)(m), 71(1), 71(2), 72 and 72(2)(b).

Authorities Cited: AB: Orders 96-003, 97-002, 98-007, 99-028, F2002-010, F2004-026 and F2004-032.

I. BACKGROUND

[para 1] The Applicant was involved in an altercation with a third party, during which the third party allegedly threatened him. In a request under the *Freedom of Information and Protection of Privacy Act* (the "Act") dated September 27, 2007, which was clarified in subsequent requests dated October 4 and 11, 2007, the Applicant asked the Calgary Police Service (the "Public Body") for a copy of the police report related to the incident, and the name and address of the third party.

[para 2] By letter dated November 9, 2007, the Public Body provided the Applicant with access to six pages of records. However, it withheld the personal information of the third party under section 17 (disclosure harmful to a third party's personal privacy) and withheld other information under section 20 (disclosure harmful to law enforcement). There were also parts of the pages that were blackened out and labelled as non-responsive to the Applicant's access request.

[para 3] By correspondence dated December 17, 2007, the Applicant requested that this Office review the Public Body's decision to refuse access to the information that it withheld. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

[para 4] Only the Public Body made submissions during this inquiry. This Office sent the Notice of Inquiry and other correspondence to the Applicant's last known address, in Ontario, but received no contact from him. In the absence of submissions from the Applicant, I arranged for the relevant parts of his request for inquiry, dated February 8, 2008, to be sent to the Public Body, so that it could respond to his views set out in that document.

II. RECORDS AT ISSUE

[para 5] The records at issue consist of seven lines of information in a police officer's notebook and three lines in a computer printout called an "event chronology".

III. ISSUES

[para 6] The Notice of Inquiry, dated December 3, 2008, set out the following issues:

Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

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

Did the Public Body properly withhold information as non-responsive to the Applicant's access request?

IV. DISCUSSION OF ISSUES

A. Does section 17 of the Act (disclosure harmful to a third party's personal privacy) apply to the records/information?

[para 7] The parts of section 17 of the Act that are relevant to this inquiry are as follows:

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

...

(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,

...

(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,

...

- (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

...

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

...

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

...

[para 8] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an unreasonable invasion of the third party's personal privacy. Having said this, section 71(2) states that if a record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 sets out a mandatory exception to disclosure, I must also independently review the information, and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

[para 9] Section 17 can apply only to the personal information of a third party. Section 1(n) of the Act defines "personal information", in part, as follows:

- 1(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,*
- ...

[para 10] The Public Body withheld seven lines of information in the notebook of one of the two police officers who investigated the altercation between the Applicant and the third party. The lines consist of the third party's name, date of birth, driver's licence number, address, skin colour, hair colour, height and weight. All of this is the third party's personal information under sections 1(n)(i) (name and address), 1(n)(ii) (skin colour), 1(n)(iii) (date of birth), 1(n)(iv) (driver's licence number) and 1(n)(v) (hair colour, height and weight).

[para 11] Section 17(2) of the Act enumerates situations where disclosure of a third party's personal information is not an unreasonable invasion of personal privacy. In his request for review and request for an inquiry, the Applicant raised section 17(2)(b), under which disclosure is not an unreasonable invasion of personal privacy if there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party. The Applicant stated that the third party threatened him and subsequently stalked him, and that he needed to know the name of the third party and other information in the police notebook so that he could file a restraining order and possibly pursue other legal action against the third party.

[para 12] In order to establish that disclosure of a third party's personal information is not an unreasonable invasion of personal privacy under section 17(2)(b), an applicant must prove that there are, indeed, compelling circumstances affecting health or safety, and that there is a causal connection between disclosing the personal information of the third party and the compelling circumstances affecting health or safety; an applicant must show that release of the information requested is likely to have a direct bearing on a compelling health or safety matter (Order 98-007 at para. 47).

[para 13] In the absence of further representations from the Applicant, I find that section 17(2)(b) of the Act does not apply in this inquiry. The alleged threat made against the Applicant by the third party, and the Applicant's interest in obtaining a restraining order or pursuing other legal action against the third party, is not sufficient for me to find that there are compelling circumstances affecting the Applicant's health or safety. An applicant must do more than simply say that compelling circumstances exist (Order 98-007 at para. 48). Moreover, there must be circumstances existing at the present time that are affecting an individual's health or safety, as section 17(2)(b) is intended to capture only immediate circumstances affecting health or safety in order to justify disclosing personal information (Order 97-002 at para. 102). Although the Applicant alleged that the third party threatened to gouge his eyes out at the time of the

altercation and later stalked him, the Applicant provided no evidence of any current threat to his health or safety, or a threat at the time of his access request. The Public Body states that the allegations of threats and stalking were investigated but found not to be substantiated.

[para 14] Section 17(4) of the Act enumerates situations where disclosure of a third party's personal information is presumed to be an unreasonable invasion of personal privacy. The Public Body submits that the presumptions against disclosure under section 17(4)(b) (law enforcement record) and 17(4)(g) (name plus personal information) apply in this inquiry. I agree.

[para 15] First, "law enforcement" is defined in the Act as, among other things, "policing" under section 1(h)(i), and "a police ... investigation ... that leads or could lead to a penalty or sanction" under section 1(h)(ii). Both of these definitions are met here. The information in the police notebook is concerning the Public Body's policing generally, as well as its investigation of a possible offence that may have been committed at the time of the altercation between the Applicant and the third party. As the third party's personal information is an identifiable part of a law enforcement record, and disclosure of the information is not necessary to dispose of the law enforcement matter or to continue the investigation that was undertaken by the Public Body, the presumption against disclosure under section 17(4)(b) applies.

[para 16] Second, the third party's name appears with other personal information about him (e.g., his date of birth, driver's licence number, etc.), and disclosure of the name itself would reveal personal information about the third party (e.g., the fact that he was involved in a matter investigated by police). Accordingly, the presumptions against disclosure under sections 17(4)(g)(i) and 17(4)(g)(ii) apply.

[para 17] In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy – even where there are presumptions against disclosure under section 17(4) – all of the relevant circumstances must be considered under section 17(5) of the Act. Because the Applicant stated that he wished to obtain a restraining order or pursue other legal action against the third party, I considered whether the third party's personal information was relevant to a fair determination of the Applicant's rights under section 17(5)(c). I find that this is a relevant circumstance.

[para 18] The desire to know the name of an individual in order to take civil action against him or her has been found to engage section 17(5)(c) (Order F2002-010 at para. 51). I find that the test that has been established under section 17(5)(c) is met in this inquiry, as the Applicant's right to obtain a restraining order or pursue other legal action against the third party is drawn from the concepts of law, as opposed to a non-legal right based solely on moral or ethical grounds; the right is related to a proceeding that the Applicant was contemplating, not one that had already been completed; the personal information of the third party has some bearing on or is significant to the determination of the right in question; and the personal information is required in order to prepare for a

proceeding or to ensure an impartial hearing (Order 99-028 at para. 32; Order F2002-010 at para. 50).

[para 19] While I find that the circumstance under section 17(5)(c) of the Act is relevant in this inquiry, I limit its relevance to the name and address of the third party. Only these would enable the Applicant to commence a legal action against the third party and serve him with the associated legal papers.

[para 20] The Public Body submits that the circumstance under section 17(5)(e) of the Act is relevant, on the basis that the third party would be exposed unfairly to harm if his personal information were disclosed to the Applicant. One of the police officers who attended the scene to investigate the altercation between the Applicant and the third party swore an affidavit in which he states that, based on the incident that occurred, he believes that providing the third party's contact information to the Applicant would jeopardize the third party's safety and security. The police officer indicates that both parties directed verbal abuse at one another, that they worked together and had a history of conflict, and that he does not believe that the Applicant requires the third party's contact information "for any lawful purpose". I take this to imply that the Public Body does not really believe that the Applicant wants the third party's personal information in order to obtain a restraining order, but rather that he wants it to commit some sort of unlawful act against the third party, such as through harassment, misuse of his personal information or other mischief. The Applicant's use of the third party's information for an unlawful purpose would constitute unfair harm to the third party.

[para 21] The police officer who attended the incident between the Applicant and the third party saw them personally, heard their respective accounts firsthand, and is therefore in a position to characterize what took place and express views on the motivation of the Applicant to obtain the third party's personal information. While the police officer's beliefs about the Applicant certainly do not amount to facts, I have no submissions from the Applicant disputing the police officer's characterization of the matter and the police officer's belief regarding the Applicant's motives. As a result, I find that the third party would be exposed unfairly to harm, under section 17(5)(e), if his personal information were disclosed to the Applicant.

[para 22] While I find that the circumstance under section 17(5)(e) of the Act is relevant in this inquiry, I limit its relevance to the name, address, date of birth and driver's licence number of the third party, as only these risk enabling the Applicant to expose the third party to some sort of harm, either by locating him or misusing his personal information. I do not believe that disclosure of the third party's skin colour, hair colour, height and weight would enable the Applicant to cause him harm.

[para 23] It is not inconsistent for me to find that the relevant circumstances under both sections 17(5)(c) and 17(5)(e) exist in this inquiry. On one hand, the third party's name and address is relevant to a fair determination of the Applicant's rights, so that he may initiate a legal proceeding. On the other hand, knowledge of the third party's personal information would enable the Applicant to cause him unfair harm, such as

through harassment or mischief. Initiating a legal proceeding and causing the third party unfair harm are not mutually exclusive outcomes.

[para 24] The list of relevant circumstances under section 17(5) of the Act is not exhaustive, but I do not find that there are any other relevant circumstances apart from those just discussed. None have been drawn to my attention.

[para 25] On consideration of all of the foregoing, I find that the relevant circumstance in favour of disclosing the third party's name and address under section 17(5)(c) (fair determination of an applicant's rights) does not outweigh the relevant circumstance against disclosing them under section 17(5)(e) (unfair harm to a third party), and does not outweigh the presumptions against disclosure under section 17(4)(b) (law enforcement record) and section 17(4)(g) (name plus personal information). The potential for unfair harm to the third party would give rise to an unreasonable invasion of his personal privacy if his name and address were disclosed to the Applicant, even though the Applicant may require the information to initiate a legal proceeding. In balancing the interest of the Applicant to commence a civil action with the interest of the third party to be free from harm, I find that the interest of the third party prevails. I also point out that, although the Applicant was unable to obtain the third party's contact information from the Public Body, he was not necessarily precluded from pursuing legal recourse against the third party. He possibly could have obtained the third party's contact information elsewhere, or served him with legal papers at their apparently mutual place of work.

[para 26] As there are no factors weighing in favour of disclosing the remaining personal information of the third party – being his date of birth, driver's licence number, skin colour, hair colour, height and weight – and there are presumptions against disclosure under section 17(4)(b) (law enforcement record) and section 17(4)(g) (name plus personal information), I find that disclosure of these remaining items of information would be an unreasonable invasion of the third party's personal privacy.

[para 27] I conclude that section 17 of the Act applies to the information that the Public Body withheld under that section. The Public Body was therefore required to withhold it.

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

[para 28] The Public Body specifically relied on section 20(1)(m) of the Act to withhold some of the information in the records at issue. It reads as follows:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system

[para 29] Under section 71(1) of the Act, it is up to the Public Body to prove that the Applicant has no right of access to the information that it withheld under section 20. Here, the Public Body refused to disclose three lines in a computer printout called an “event chronology”. The severed information consists of a record of verbal exchanges between a communications officer of the Public Body and the officers who attended the incident involving the Applicant and the third party. The Public Body withheld the information on the basis that disclosure would harm the security of the Public Body’s communications system under section 20(1)(m).

[para 30] In order to properly apply section 20(1)(m), the Public Body must satisfy the “harm test” that has been articulated in previous orders of this Office. Specifically, there must be a causal connection between the disclosure and the anticipated harm; the harm must constitute damage or detriment and not mere inconvenience; and there must be a reasonable expectation that the harm will occur (Order 96-003 at p. 6 or para. 21; Order F2004-032 at para. 7).

[para 31] The Public Body submits that the information that it severed from the event chronology reflects its officer safety policy. It argues that, if the details of the verbal exchanges that occurred between the communications officer and the attending police officers were revealed, it would undermine the effectiveness of the communications system as an officer safety tool and security system. It submits that disclosure would result in harm to the Public Body generally, as well as to individual police officers. It explains that its radio communications are intended to protect police officers who find themselves in violent situations.

[para 32] The Public Body submitted a copy of the relevant safety procedure, as well as an affidavit sworn by an employee who explains what the information in the event chronology represents. I accepted these documents and accompanying submissions from the Public Body *in camera* because they reveal the information that the Public Body withheld under section 20(1)(m). However, I asked the Public Body to restate, in an open submission that could be provided to the Applicant, its general arguments under section 20 that did not directly or indirectly reveal the information that it wished to withhold. The Public Body did so.

[para 33] I find that there is a causal connection between disclosure of the lines in the event chronology and harm to the Public Body’s communications system. Disclosure of the lines of information would reveal the verbal exchanges between the Public Body’s communications officer and attending police officers, and if the content of those verbal exchanges fell into the public domain, the communications system would not serve its intended purpose. The harm on disclosure is more than a mere inconvenience, as damage to the efficacy of the communications system would require a new system to be formulated as well as compromise the safety of police officers. Finally, there is a reasonable expectation that the harm will occur. If information about the Public Body’s communications system and safety procedures fell into the public domain, the information could eventually come to be known by individuals willing to use it to the

detriment of police officers when interacting with them in violent or confrontational situations.

[para 34] I considered whether disclosure to the particular Applicant in this inquiry was enough to satisfy the harm test, given that he may or may not do anything with the information in the three lines of the event chronology or disclose them to anyone else. I find that there would nonetheless be harm because even a minimal release of information about the Public Body's communications system into the public domain risks compromising the efficacy of the communications system and the safety of police officers.

[para 35] I conclude that the "harm test" has been met and that the information in the event chronology falls under section 20(1)(m) of the Act. However, because section 20 sets out a discretionary exception to disclosure, the Public Body must also show that it properly exercised its discretion when it refused to disclose the three lines in the event chronology.

[para 36] A public body exercising its discretion relative to a particular provision of the Act should consider the Act's general purposes, the purpose of the particular provision on which it is relying, the interests that the provision attempts to balance, and whether withholding the records would meet the purpose of the Act and the provision in the circumstances of the particular case (Order F2004-026 at para. 46). I find that the Public Body has implicitly shown that it considered the foregoing when it refused to disclose the information in the event chronology. The purpose of the Act is to grant access subject to exceptions to disclosure, and the particular objective of section 20(1)(m) in this case is to balance the Applicant's interest in accessing a record in relation to himself, on one hand, with the Public Body's interest in protecting its communications system and police officers, on the other. It was a proper exercise of discretion for the Public Body to apply an exception to disclosure in order to protect the integrity of a communications system designed to ensure police officer safety.

[para 37] I conclude that the Public Body properly withheld the information that it refused to disclose under section 20 of the Act.

C. Did the Public Body properly withhold information as non-responsive to the Applicant's access request?

[para 38] In the set of records that the Public Body disclosed to the Applicant, it blackened out three parts of the police officers' notebooks and labelled them as non-responsive to the access request. These parts are indeed non-responsive, as they relate to entirely separate matters investigated by the police officers before and after their investigation of the incident involving the Applicant. The Public Body therefore properly withheld them.

V. ORDER

[para 39] I make this Order under section 72 of the Act.

[para 40] I find that section 17 of the Act applies to the information that the Public Body withheld under that section, as disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 41] I find that the Public Body properly applied section 20 of the Act to the information that it withheld under that section, as disclosure could reasonably be expected to harm the security of a communications system under section 20(1)(m).

[para 42] I find that the Public Body properly withheld information as non-responsive to the Applicant's access request.

[para 43] Under section 72(2)(b) of the Act, I confirm the decision of the Public Body to refuse the Applicant access to all of the information that it withheld.

Wade Riordan Raaflaub
Adjudicator