

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2009-038**

September 13, 2010

**EDMONTON POLICE SERVICE**

Case File Number F4446

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

**Summary:** The Applicant made an access request to the Edmonton Police Service (the “EPS”) under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) for the entire EPS case file related to the investigation of a motor vehicle accident involving the Applicant.

In response to the access request, the EPS provided the Applicant with a portion of the records. At the time of the inquiry 43 pages of records remained at issue.

The Adjudicator found that the EPS properly withheld some of the records pursuant to section 4(1)(l)(ii) (a record made from information in the Office of the Registrar of Motor Vehicle Services), section 17 (disclosure harmful to personal privacy) and section 21(1)(b) (intergovernmental relations). The Adjudicator ordered that the EPS disclose the remaining records or portions of the records to the Applicant.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(h), 1(n)(i)-(ix), 3(a), 4(1)(a), 4(1)(l)(ii), 4(3), 17, 17(1), 17(2), 17(2)(a), 17(4), 17(4)(b), 17(4)(g), 17(4)(g)(i), 17(4)(g)(ii), 17(5), 17(5)(c), 17(5)(e), 17(5)(f), 17(5)(g), 17(5)(h), 20, 20(1)(a), 20(1)(j), 20(1)(k), 20(1)(m), 21, 21(1), 21(1)(b), 21(3), 21(4), 71(2), 72, 72(2)(c); *Personal Information Protection Act*, S.A. 2003, c.P-6.5, s.1(k)

**Regulations Cited: AB: *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/1995, ss. 6(3) and 6(4)**

**Authorities Cited: AB: FOIP Orders:** 96-004, 96-019, 96-020, 97-007, 97-009, 99-028, 2000-005, 2000-019, 2001-037, F2003-004, F2004-018, F2004-022, F2007-003, F2009-027; **PIPA Orders:** P2007-004

## **I. BACKGROUND**

[para 1] On January 29, 2008, the Applicant made an access request to the EPS under the FOIP Act. The Applicant requested the entire case file related to the investigation of a motor vehicle accident involving the Applicant.

[para 2] On March 3, 2008, the EPS responded to the Applicant's access request and provided the Applicant 84 pages of records, some of which had been severed pursuant to sections 4(1)(a), 17(1), 17(4)(b), 17(4)(g)(i), 17(4)(g)(ii) and 21(1)(b). The EPS also informed the Applicant that an additional 8 pages of records and 12 photographs were also responsive to the request and could be obtained upon payment of a fee. The additional responsive records consisted of a "Detailed Table of Measurements Report" and a "Co-efficient of Roadway Friction Report". On that same day, the EPS provided the Applicant with a copy of these two reports and an additional report identified as the "Vehicle Mechanical Inspection Report".

[para 3] On March 4, 2008, the EPS informed the Applicant that it made an error when severing the file. The EPS stated that pages 34-36 and 55 were not severed pursuant to section 21(1)(b), but rather pursuant to sections 20(1)(a), 20(1)(j), 20(1)(k) and 20(1)(m).

[para 4] On March 25, 2008, the Applicant requested a review of the EPS's decision. Mediation was authorized but did not resolve the issues.

[para 5] On June 6, 2008, the Applicant requested that the Commissioner conduct an inquiry into the matter.

[para 6] During the inquiry, the EPS submitted an initial submission and a copy of the records. The copy of the records were submitted *in camera*. The EPS did not submit a rebuttal. The Applicant submitted an initial and a rebuttal submission.

[para 7] In the Applicant's rebuttal submission, the Applicant argued that an additional 8 pages of records should be the subject of this review. The Applicant argued that 92 pages of records, and not 84 pages, were at issue in this inquiry. After a review of the Applicant's submission, the access request and request for review, I agreed with the Applicant. On February 1, 2010, I wrote to the EPS requesting a copy of the additional 8 pages of records and provided the EPS with opportunity to provide a further submission regarding those pages. I also requested that the EPS provide a better copy of several records already at issue and further information regarding the content of several records.

[para 8] On February 12, 2010, I received the EPS's response to my request for further information. On March 3, 2010, the Applicant provided a submission in response to the EPS's submission.

[para 9] I note that in the EPS's February 12, 2010 response, the EPS erroneously provided this Office with a copy of records 48 and 61 instead of records 47 and 62. This Office wrote to the EPS requesting that the EPS provide a copy of records 47 and 62 which the EPS subsequently provided.

[para 10] I also identified six potential Affected Parties and sent them each an invitation to participate in this inquiry. Although one of the six potential Affected Parties informed this Office that she would like to participate in the inquiry, she did not provide a submission to this Office.

## **II. RECORDS AT ISSUE**

[para 11] The records at issue consist of 92 pages from an EPS case file related to the investigation of a motor vehicle accident involving the Applicant. Of those pages, 49 pages were disclosed to the Applicant. There are 43 pages of records that remain at issue:

13, 15, 17, 22, 24, 26, 29, 30, 31, 32, 34, 35, 37, 38, 41, 44, 45, 48, 49, 50, 51, 52, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 74, 79, 80, 81, 82, 88

[para 12] I note that pages 4-12, 21, 23, 25, 27 and 47 are no longer at issue in this inquiry as the EPS has either fully disclosed those records to the Applicant as part of its submissions or, in the case of record 47, has indicated in its February 12, 2010 submission that this record is longer at issue and is disclosable to the Applicant.

## **III. ISSUES**

[para 13] There were four issues outlined in the inquiry notice:

- A) Are the records excluded from the application of the FOIP Act by section 4(1)(a) of the FOIP Act?
- B) Does section 17(1) of the FOIP Act (disclosure harmful to personal privacy) apply to the records/information?
- C) Did the Public Body properly apply section 20 of the FOIP Act (law enforcement) to the records/information?
- D) Did the Public Body properly apply section 21 of the FOIP Act (intergovernmental relations) to the records/information?

[para 14] In addition, in its initial submission, the EPS stated that section 4(1)(l)(ii) applied to record 64. As section 4(1)(l)(ii) is a jurisdictional provision, I have added this section as an issue in this inquiry.

#### **IV. DISCUSSION**

##### **A. Are the records excluded from the application of the FOIP Act by section 4(1)(a) of the FOIP Act?**

[para 15] Section 4(1)(a) reads:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

*(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;*

[para 16] Section 4(3) defines the term "judicial administration record":

*4(3) In this section, "judicial administration record" means a record containing information relating to a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta or to a master of the Court of Queen's Bench of Alberta or a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, and includes*

*(a) the scheduling of judges and trials,  
(b) the content of judicial training programs,  
(c) statistics of judicial activity prepared by or for a judge, and  
(d) any record of the Judicial Council established under Part 6 of the Judicature Act.*

[para 17] The EPS states that section 4(1)(a) applies to record 82. The EPS states that record 82 is a judicial administration record because it consists of a printout from the Justice Online Information Network. The EPS states that this network is a computer system operated by the Alberta Justice and Attorney General.

[para 18] After a review of all of the submissions and the evidence before me, I find that record 82 does not fulfill the criteria of a judicial administration record under section 4(1)(a) and section 4(3). The EPS states that the record is a printout from the "Justice Online Information Network". However, the EPS has not provided any further

information or evidence as to how record 82 fulfills the criteria under sections 4(1)(a) and 4(3).

[para 19] Section 4(3) states that a judicial administration record must contain information “relating to a judge of the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta or to a master of the Court of Queen’s Bench of Alberta or a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act”. Section 4(3) then provides four examples of the types of information that fulfill the criteria.

[para 20] Record 82 contains information regarding the driver who was charged with an offence. The record contains the driver’s name, address, date of birth, driver’s license number and conviction history. The purpose of this record clearly appears to provide information regarding an accused. I do not find that it fulfills the requirement of “relating to” a judge, master or a sitting or presiding justice of the peace. I also do not find that the record fulfills any of the subsections listed in section 4(3). It does not refer to scheduling of judges and trials, it does not contain information regarding judicial training programs nor does it consist of a Judicial Council record. In addition, there is no evidence before me that record 82 is a statistic of judicial activity prepared “by or for a judge”. Prior orders of this Office which have addressed other subsections within section 4 have interpreted the word “for” within the phrase “by or for” to mean “on behalf of” rather than “destined to” (Orders 96-020, 97-007). I find no reason to deviate from that interpretation in regard to section 4(3).

[para 21] I find that record 82 does not fulfill the criteria under section 4(1)(a). As such, I find that record 82 is not excluded from the application of the FOIP Act.

**B. Are the records excluded from the application of the FOIP Act by section 4(1)(l)(ii) of the FOIP Act?**

[para 22] Section 4(1)(l)(ii) reads:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

...

*(l) a record made from information*

...

*(ii) in the office of the Registrar of Motor Vehicle Services,*

[para 23] The EPS states that section 4(1)(l)(ii) applies to record 64. The EPS states that this record was retrieved from the Alberta Motor Vehicle Registry database through the CPIC system and that it is a record made from information in the office of the Registrar of Motor Vehicles.

[para 24] I find that record 64 meets the criteria under section 4(1)(l)(ii) and is excluded from the application of the FOIP Act. Consequently, I have no jurisdiction over the record. The Applicant cannot obtain access to record 64 under the FOIP Act.

**C. Does section 17(1) of the FOIP Act (disclosure harmful to personal privacy) apply to the records/information?**

[para 25] Section 17 is a mandatory (“must”) section of the FOIP Act. If section 17 applies, a public body must refuse to disclose the information. There are two criteria that must be fulfilled under section 17:

- (a) the information must be personal information of a third party; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party’s personal privacy.

[para 26] The EPS applied section 17 to the following records:

13, 15, 17, 22, 24, 26, 29, 30, 31, 34, 35, 37, 38, 41, 44, 45, 48, 49, 50, 51, 52, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 74, 79, 80, 81, 88

[para 27] Upon review of the records I found that records 32 and 82 also contain personal information of a third party. As section 17 is a mandatory section in this inquiry, I have also considered whether section 17 applies to those records.

[para 28] However, as I have found that record 64 is excluded from the application of the FOIP Act by section 4(1)(l)(ii), I will not address whether section 17 applies to that record.

**1. Is the information personal information of a third party?**

[para 29] Personal information is defined under section 1(n) of the FOIP Act. Section 1(n) reads:

*I In this 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;*

[para 30] I find that the majority of the information severed from the records at issue consist of personal information of third parties including:

- the driver's name, contact information, driver's licence number, signature, birthdate, witness statement, conviction history
- other witnesses' names, contact information, statements, employment information
- family members' names, contact information, physical description, employment information
- EPS police officers' names, signatures, ORI numbers
- Applicant's physicians' names
- names and contact information of Insurance Adjusters
- tow operators' names, ID tag information, employment information

[para 31] I also find that a description of the driver's car, the serial number as well as EPS documents such as the "collision vehicle examination", the "tow report", the "seized vehicle checklist" and the "vehicle mechanical check" also consist of a third party's personal information. Although this information relates to the driver's vehicle, I find that in the context of this inquiry, it is also the third party driver's personal information.

[para 32] In Order P2007-004, the Adjudicator addressed whether information regarding property, in that case a residence, is personal information about an individual under section 1(k) of the *Personal Information Protection Act* (“PIPA”). Section 1(k) of PIPA, which is similar to section 1(n) of the FOIP Act, defines “personal information” as “information about an identifiable individual”. The Adjudicator held that information regarding property could be personal information about an individual if it conveys something about the individual. She stated that:

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 33] In the present case, the description of the car following the collision and the other EPS documents not only provide information regarding the details of the collision but may also provide information regarding the nature and extent of the driver’s liability for the collision. Therefore, this information is the driver’s personal information.

**2. Would the disclosure of the personal information be an unreasonable invasion of a third party’s personal privacy?**

[para 34] 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.*

**Section 17(2)(a)**

[para 35] Section 17(2) lists a number of circumstances where a disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy. I find that section 17(2)(a) is relevant in this inquiry:

*17(2) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if*

*(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*

[para 36] Sections 6(3) and 6(4) of the *Freedom of Information and Protection of Privacy Regulation* Alta. Reg. 200/1995 read as follows:

*6(3) The consent or request of a third party under section 17(2)(a) of the Act must meet the requirements of subsection (4),(5) or (6).*



*(4) For the purposes of this section, a consent in writing is valid if it is signed by the person who is giving the consent.*

[para 37] The names, addresses and phone numbers of two witnesses appear on record 79. The EPS has received a signed written authorization of one of these individuals, consenting to the release of his personal information to the Applicant. As such, I find that the personal information of this individual within record 79 fulfills the requirements of section 17(2)(a). I find that the disclosure of this information would not be an unreasonable invasion of this third party's personal privacy. Furthermore, as there are no mandatory exceptions that apply to this information and the EPS has not applied a discretionary exception to this information, I intend to order the EPS to disclose this information to the Applicant.

#### **Section 17(4)**

[para 38] Section 17(4) lists a number of circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of third party's personal privacy. I find that sections 17(4)(b) and (g) are relevant in this inquiry.

#### Section 17(4)(b) – Law Enforcement

[para 39] Section 17(4)(b) reads:

*17(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,*

[para 40] Section 1(h) defines "law enforcement":

*1 In this Act,*

...

*(h) "law enforcement" means*

*(i) policing, including criminal intelligence operations,*

*(ii) a police security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

*(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 41] In Order 96-019, the former Commissioner defined “investigation” as “to follow up step by step by patient inquiry or observation; to trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry.” In Order 2000-019, the former Commissioner held that “law enforcement” should encompass the notion of a violation of “law”, that is a statute or regulation.

[para 42] After a review of the submissions and records at issue, I find that section 17(4)(b) applies to the third party personal information that remains at issue. I find that this personal information is an identifiable part of a law enforcement record.

#### Section 17(4)(g)(i) – Third Party’s Name

[para 43] Section 17(4)(g)(i) reads:

*17(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, ...*

[para 44] I find that much of the third party personal information that remains at issue under section 17 consists of third parties’ names along with other personal information about those individuals. I find that section 17(4)(g)(i) applies to this information except for the personal information on the following records as they do not contain a third party’s name: 32, 49, 50, 51, 63, 65, 66, 69, 72.

#### **Section 17(5)**

[para 45] In determining whether the disclosure of personal information would constitute an unreasonable invasion under section 17(1), a public body must consider the relevant circumstances under section 17(5).

#### Names, titles, business contact information and other information relating to individuals acting in a formal representative capacity

[para 46] Prior orders of this Office have held that the disclosure of personal information relating to individuals acting in a formal representative capacity such as

names, titles and business contact information, is not an unreasonable invasion of personal privacy (For example see: Orders 2000-005, F2003-004, F2004-022). I find that the following personal information consists of information relating to individuals acting in a formal representative capacity:

- a) Physicians' names - records 35 and 38
- b) EPS personnel's names, registration numbers, signatures, business contact information - records 48, 68, 80, 82
- c) Insurance adjuster names, signatures, employer, business contact information - records 41, 79 and 81
- d) Tow operator's name, employer, signature - records 70 and 74
- e) Tow drivers' names, signatures, and employer and driver number - record 59
- f) PSVSL employee's name and signature - record 59
- g) Name of EPS victim services unit advocate - record 52

[para 47] I find that the nature of this information is a relevant circumstance that weighs in favour of disclosure.

Section 17(5)(c) – Personal information relevant to a fair determination of the Applicant's rights

[para 48] The Applicant states that section 17(5)(c) is a relevant circumstance in this inquiry. Section 17(5)(c) 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 of the relevant circumstances, including whether*

...

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

[para 49] If section 17(5)(c) is a relevant circumstance, it weighs in favour of disclosing a third party's personal information.

[para 50] In Order 99-028, the Commissioner held that in order for a third party's personal information to be relevant to a fair determination of an applicant's rights, four criteria must be met:

(a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;

(b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;

(c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

(d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[para 51] I find these criteria are met in regard to the majority of third party information at issue. I find that section 17(5)(c) applies to the names, contact information and other identifying information of the driver and the witnesses. I also find that this relevant circumstance applies to the description of the driver's car as well as other reports such as the "collision vehicle examination", the "tow report", the "seized vehicle checklist" and the "vehicle mechanical check". I am satisfied that the right of the Applicant to bring a lawsuit for damages is a legal right, that the proceeding is existing and that the personal information has some bearing on or is significant to the determination of the right in question. I also find that the personal information mentioned above is required to prepare for the proceeding.

[para 52] The EPS states that section 17(5)(c) does not apply to the information because the Applicant could obtain the information pursuant to an application under the Alberta Rules of Court. Although I agree that this argument has some weight, I do not agree that is sufficient to prevent the application of section 17(5)(c) to the personal information at issue. The FOIP process and the discovery process under the Rules of Court operate independently. Simply because certain personal information could arguably be obtained under the Rules of Court does not mean that an applicant's ability to obtain that information under the FOIP Act is limited. In Order 97-009, the former Commissioner addressed a similar argument:

This Act provides in section 3(a) that "This Act is in addition to [my emphasis] and does not replace existing procedures for access to information or records." I was not referred to any authority, either in the Rules of Court or elsewhere, that would restrict an applicant to obtaining information only in the discovery process under the Rules of Court when the applicant has commenced that process in the court.

In my view, the Freedom of Information and Protection of Privacy Act, which is a substantive body of legislation, operates independently of the Rules of Court, which is a regulation. The Rules of Court do not prevent an applicant from making an application for information under the Act, nor does the Act prevent an

applicant from making an application for information when the applicant has used the discovery process under the Rules of Court to get that same information. Furthermore, the Rules of Court do not affect my jurisdiction to apply the Act where there is an issue of whether information in the custody or control of a public body is subject to a privilege to which the Rules of Court may also apply.

[para 53] However, I find that the body of the witness statements within records 22, 24 and 26 do not fulfill the criteria under section 17(5)(c). Although this personal information would arguably have some bearing on the determination of the legal right, I do not find that disclosure of this information is required in order to prepare for the proceeding. By providing the Applicant with the names of the witnesses, the Applicant already has the information the Applicant requires to contact the witnesses and obtain the consent of these individuals to obtain the statements, obtain these statements from these witnesses directly, or speak with the witnesses to obtain further information.

[para 54] I also note that it is important to keep in mind that if the EPS discloses a witness statement without consent, the EPS could unknowingly and unfairly expose a witness to financial or other harm (section 17(5)(e)). If, for example, a bystander is involved in, or connected to, the collision, those individuals could, arguably, in some cases, provide information in a written statement that would expose them to civil liability. Whether this exposure results in unfair financial or other harm is an issue that must be addressed on a case-by-case basis.

[para 55] I also find that section 17(5)(c) does not apply to the EPS ORI numbers on records 65, 66, 69 and 72 and the picture on the ID card found within records 70 and 74 as this information has no bearing on nor is it significant to the determination of the right in question. It is also not required to prepare for the proceeding or to ensure an impartial hearing.

[para 56] I also find that section 17(5)(c) does not apply to record 62, the storage fees on record 71, or to the Applicant's children's names and other personal information such as contact information found within records 17, 34, 35, 37, 38, 41, 44 and 45. I find that this information has no bearing on, nor is it significant to, a determination of the right in question.

#### Sections 17(5)(e), 17(5)(f), 17(5)(g) and 17(5)(h)

[para 57] The Applicant also referred to sections 17(5)(e), 17(5)(f), 17(5)(g), 17(5)(h). These sections read as follows:

*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 of the relevant circumstances, including whether*

...

- (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,...*

[para 58] The Applicant states that because the EPS has not identified these factors as weighing against disclosure, they must weigh in favour of disclosure.

[para 59] As previously mentioned, I have found that section 17(5)(e) could arguably apply to the body of a witness statement and thereby weigh in favour of withholding that information.

[para 60] In regard to sections 17(5)(f), 17(5)(g) and 17(5)(h), if the criteria under these sections were fulfilled, they would weigh in favour of withholding the information. The Applicant has stated that the converse must also be true. That is, if the EPS does not apply these factors in support of withholding the information that they must weigh in favour of disclosure. I question whether the Applicant's interpretation and application of these sections is appropriate. However, in any event, I find that there is insufficient information and evidence before me as to whether these sections apply in this inquiry. In order to apply these sections as a relevant circumstance, further information and evidence is required. I cannot simply assume that the criteria under these sections are fulfilled or not fulfilled. Given the lack of information and evidence before me, I do not find that they are relevant circumstances in this inquiry.

[para 61] I also note that the existence of pending criminal charges against a driver could, arguably be a relevant circumstance weighing against disclosure. However, in this inquiry, at the date of inquiry, the driver had already been convicted on charges pertaining to the collision. As such, the criminal charges were no longer before the Courts.

#### Personal information about the Applicant's children

[para 62] The records contain the names and other personal information of the Applicant's children. After a review of these records I do not find that the disclosure of the names of the children within records 17, 34, 35, 37, 38, 41, 44 and 45 would be an unreasonable invasion of privacy as the disclosed portions of many of these records clearly indicate that the severed portions of various records contain the names of the Applicant's children. The EPS disclosed those portions of the records that refer to the Applicant's "son" and "daughter" but often severed the name of the son and daughter that followed the reference to "son" and "daughter". I also do not find that the disclosure of the phone number listed on record 34 would be an unreasonable invasion of privacy as

the disclosed portion of the record states that this phone number which was provided by the children but is also the Applicant's phone number. I note that earlier orders such as Order 2000-019 have held that an Applicant's prior knowledge of information, such as the identity of a third party, is not a relevant circumstance that weighs in favour of disclosure. However, the rationale for this principle, as discussed in subsequent orders such as F2007-003, that the invasion of privacy can result from further dissemination of the records, does not apply in this case.

[para 63] I find that the other personal information about the Applicant's children must be withheld under section 17. This information includes the children's contact information and employment information which is found within records 35, 37, 38 and 41. The Applicant's children have not provided their consent to disclose this information and they did not provide this Office with a submission in that regard. In addition, both the presumptions against disclosure within section 17(4)(b) and 17(4)(g)(i) apply to this information and there are no relevant circumstances that would apply in favour of disclosure. Although it may seem absurd to withhold this information from the Applicant, I note that in some instances family members may be estranged from each other (although there is no indication of that in this inquiry) or simply do not wish to have that type of information disclosed. I note that I would not have ordered the EPS to withhold this information under section 17 if I had received a representation from the children consenting to the disclosure of this information.

### **3. Conclusion under section 17**

[para 64] I find that section 17 applies to the body of the witness statements within records 22, 24, and 26, the ORI numbers within records 65, 66, 69 and 72 and the picture found within records 70 and 74. I also find that section 17 applies to record 62, the storage fees on record 71 and to the personal information of the Applicant's children (other than the children's names) on records 35, 37, 38 and 41. Disclosure of this information would be an unreasonable invasion of personal privacy as provided by section 17(1) and must not be disclosed. As such, I intend to order the EPS not to disclose this information to the Applicant.

[para 65] I find that section 17 does not apply to the remaining information within the remaining records at issue under section 17:

13, 15, 17, 22, 24, 26, 29, 30, 31, 32, 34, 35, 37, 38, 41, 44, 45, 48, 49, 50, 51, 52, 57, 58, 59, 60, 61, 63, 68, 70, 71, 74, 79, 80, 81, 88

[para 66] After a review of the presumptions under section 17(4) in conjunction with the relevant circumstances under section 17(5), I find that disclosure of this information would not be an unreasonable invasion of personal privacy as provided by section 17. Furthermore, as there are no other mandatory exceptions that apply to the records and the EPS did not apply any other discretionary exceptions to this information, I intend to order the EPS to disclose this information to the Applicant.

[para 67] I also find that section 17 does not apply to the remaining information at issue within records 65, 66, 69, 72 and 82. Disclosure of this information would not be an unreasonable invasion of personal privacy. However, as the EPS applied section 21 to these records, I will address that information under that section.

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

[para 68] The EPS states that the information it withheld pursuant to section 20 has since been disclosed to the Applicant. As such, section 20 is no longer an issue in this inquiry.

**E. Did the Public Body properly apply section 21 of the FOIP Act (intergovernmental relations) to the records/information?**

[para 69] Section 21(1) reads:

*21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*

*(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*

*(i) the Government of Canada or a province or territory of Canada,*

*(ii) a local government body,*

*(iii) an aboriginal organization that exercises government functions, including*

*(A) the council of a band as defined in the Indian Act (Canada) and*

*(B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,*

*(iv) the government of a foreign state, or*

*(v) an international organization of states,*

*or*

*(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.*



[para 70] Sections 21(3) and 21(4) are also relevant:

*21(3) The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local government body or organization that supplies the information, or its agency.*

*21(4) This section does not apply to information that has been in existence in a record for 15 years or more.*

[para 71] The EPS states that it applied section 21(1)(b) to records 64, 65, 66, 69 and 72. The records provided also indicate that the EPS applied section 21(1)(b) to record 82.

[para 72] As I have found that record 64 is excluded from the application of the FOIP Act by section 4(1)(1)(ii), I will not address whether the EPS properly applied section 21(1)(b) to that record. I have also found that section 17 applies to the ORI numbers on records 65, 66, 69 and 72. As such, I will also not address whether the EPS properly applied section 21(1)(b) to that information. The records that therefore remain at issue under section 21(1)(b) are records 65, 66, 69, and 72 (except for the ORI numbers) and record 82.

[para 73] There are four criteria under section 21(1)(b) (see Order 2001-037):

- (a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;
- (b) the information must be supplied explicitly or implicitly in confidence;
- (c) the disclosure of the information must reasonably be expected to reveal the information; and
- (d) the information must have been in existence in a record for less than 15 years

**1. Was the information supplied by a government, local government body or an organization listed in clause (a) or its agencies?**

[para 74] The EPS states that the information within records 65, 66, 69 and 72 was supplied by the RCMP as an agency of the Government of Canada. The EPS did not, however, state whether the information on record 82 was supplied by the RCMP.

[para 75] After a review of the records and the submissions of the parties I find that records 65 and 66 fulfill this criterion. I find that these records were supplied by the RCMP which is a government agency referred to in clause (a) of section 21(1) (Order F2004-018). I note that in Order F2009-027, an Adjudicator of this Office held that the

RCMP is not an agent of the Federal Government for the purposes of sections 21(1)(b) when the RCMP acts as a provincial police service. I do not find that Order F2009-027 applies in this inquiry as the RCMP was not acting as a provincial police force in the present case.

[para 76] However, I do not find that records 69 and 72 fulfill this criterion. The EPS states that the information within those records was originally supplied by the EPS to the RCMP and that the EPS has retrieved that information from the CPIC database. As such, I do not find that the RCMP supplied that information.

[para 77] I also do not find that record 82 was supplied by the RCMP as there is no information or evidence before me that would support that conclusion.

## **2. Was the information supplied explicitly or implicitly in confidence?**

[para 78] The EPS states that the information at issue within records 65, 66, 69 and 72 was supplied in confidence. In support, the EPS refers to section 4.1 of the CPIC Reference Manual which states that “All information contributed to or retrieved from CPIC is supplied in confidence and must be protected against disclosure to unauthorized agencies or individuals”. The EPS states that there is an explicit expectation of confidentiality with respect to the information obtained from the CPIC system and that failure to comply with the terms outlined in the CPIC manual could result in an individual user or a police agency having their access to the CPIC system revoked.

[para 79] The EPS did not, however, address whether record 82 was supplied in confidence under section 21(1)(b).

[para 80] After a review of all of the submissions before me I find that the information that remains at issue within records 65 and 66 fulfill this criterion under section 21(1)(b). I find that the RCMP disclosed this information in confidence to the EPS. However, for reasons previously given, I do not find that records 69 and 72 fulfill this criterion as the information was not supplied by the RCMP to the EPS. I also do not find that record 82 was supplied in confidence. There is no evidence or information before me to support a finding that record 82 was supplied in confidence.

## **3. Would the disclosure of the information reasonably be expected to reveal the information?**

[para 81] I find that the disclosure of the information within records 65 and 66 could reasonably be expected to reveal the information supplied by the RCMP to the EPS. However, I do not find that the information within records 69 and 72 fulfill this criterion. For reasons previously mentioned, I do not find that the RCMP supplied this information to the EPS. As such, I do not find that this criterion is fulfilled. In addition, I do not find that the information within record 82 could reasonably be expected to reveal information supplied by the RCMP to the EPS as there is insufficient information or evidence to support this conclusion.

**4. Has the information been in existence in a record for less than 15 years?**

[para 82] I find that records 65, 66, 69, 72 and 82 have been in existence for less than 15 years. The records show that these records are less than 15 years old.

**5. Consent**

[para 83] A public body has the discretion to disclose information under section 21(1)(b), provided that it has the consent of the government, local government body or organization that supplied the information, as required by section 21(3). If consent has not been obtained, section 21(3) precludes disclosure (Order 96-004). In this inquiry, there is no evidence that the RCMP has consented to the disclosure of the remaining information at issue within records 65, 66, 69, 72 or 82.

**6. Conclusion**

[para 84] I find that section 21(1)(b) applies to the information that remains at issue within records 65 and 66. Furthermore, as the EPS has not obtained the consent of the RCMP to disclose that information, pursuant to section 72(2)(c), I intend to order the EPS to refuse the Applicant access to that information.

[para 85] I do not find that section 21(1)(b) applies to the information remaining within records 69, 72 and 82 as all of the criteria under section 21(1)(b) have not been fulfilled in regard to those records.

**V. ORDER**

[para 86] I make the following order under section 72 of the FOIP Act:

**A. Are the records excluded from the application of the FOIP Act by section 4(1)(a) of the FOIP Act?**

[para 87] I find that record 82 is not excluded from the application of the FOIP Act by section 4(1)(a).

**B. Are the records excluded from the application of the FOIP Act by section 4(1)(i)(ii) of the FOIP Act?**

[para 88] I find that record 64 is excluded from the application of the FOIP Act by section 4(1)(i)(ii). Therefore, I have no jurisdiction over the record. The Applicant cannot obtain access to record 64 under the Act.

**C. Does section 17(1) of the FOIP Act (disclosure harmful to personal privacy) apply to the records/information?**

[para 89] I find that section 17 applies to the body of the witness statements within records 22, 24 and 26 and the ORI numbers within records 65, 66, 69 and 72 and the picture found within records 70 and 74. I also find that section 17 applies to record 62, the storage fees on record 71 and to the personal information of the Applicant's children (other than the names) on records 35, 37, 38 and 41. Disclosure of this information would be an unreasonable invasion of personal privacy as provided by section 17(1) and must not be disclosed. As such, I order the EPS not to disclose this information to the Applicant.

[para 90] I find that section 17 does not apply to the remaining information in remaining records at issue under section 17:

13, 15, 17, 22, 24, 26, 29, 30, 31, 32, 34, 35, 37, 38, 41, 44, 45, 48, 49, 50, 51, 52, 57, 58, 59, 60, 61, 63, 68, 70, 71, 74, 79, 80, 81, 88

[para 91] Disclosure of this information would not be an unreasonable invasion of personal privacy as provided by section 17. Furthermore, as there are no other mandatory exceptions that apply to these records and the EPS did not apply any other discretionary exceptions to this information, I order the EPS to disclose this information to the Applicant.

[para 92] I also find that section 17 does not apply to the remaining information within records 65, 66, 69, 72 and 82. However, the EPS applied section 21 to these records. As such, I have addressed those records under that section.

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

[para 93] The EPS has disclosed to the Applicant the information that it previously withheld under section 20. As such it is not necessary for me to decide whether the EPS properly applied section 20 to that information.

**E. Did the Public Body properly apply section 21 of the FOIP Act (intergovernmental relations) to the records/information?**

[para 94] I find that section 21(1)(b) applies to the information remaining at issue within records 65 and 66. Furthermore, as the EPS has not obtained the consent of the RCMP to disclose that information, pursuant to section 72(2)(c), I order the EPS to refuse the Applicant access to that information. I do not find that section 21(1)(b) applies to the remaining information within records 69, 72 and 82. As such, I order the EPS to disclose that information to the Applicant.

[para 95] I further order the EPS to notify me in writing within 50 days of receiving this Order that the EPS has complied with this Order. Along with a copy of this Order, I will provide the EPS with a copy of the records that highlight the portion of the records that must be withheld.

Lisa McAmmond  
Adjudicator