ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-008

September 29, 2010

EDMONTON POLICE SERVICE

Case File Number F4823

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Edmonton Police Service (the "Public Body") for the portion of its training manual on officer safety. The Public Body released some of the information, withholding the rest under sections 20(1)(j), 20(1)(k) and 20(1)(m) of the Act (disclosure harmful to law enforcement).

The records at issue revealed the techniques, strategies and procedures used by police in their interactions with suspects and other member of the public. The information dealt with matters such as stopping vehicles, searching buildings, arresting suspects, using handcuffs, and officer positioning. The Adjudicator agreed with the Public Body that release of the information could enable individuals to discern vulnerabilities in police actions and gain a tactical advantage, which would detrimentally affect the police's ability to control and apprehend suspects, and enable individuals to evade or flee police, commit crimes, or threaten the safety of police members.

The Adjudicator therefore found that the Public Body properly withheld almost all of the information, on the basis that disclosure could reasonably be expected to facilitate the escape from custody of an individual who is being lawfully detained under section 20(1)(j) and/or facilitate the commission of an unlawful act or hamper the control of crime under section 20(1)(k). The Adjudicator confirmed the Public Body's decision not to disclose the information.

The Adjudicator noted that a small amount of information that the Public Body withheld did not fall under section 20(1)(j), 20(1)(k) or 20(1)(m). However, he found that the information would be worthless to the Applicant, and that the Public Body could therefore be said to have reasonably severed it under section 6(2) of the Act. The Adjudicator therefore concluded that the information was reasonably withheld and he did not order its disclosure.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 6(2), 17, 17(5)(a), 20, 20(1), 20(1)(a), 20(1)(j), 20(1)(k), 20(1)(m), 32, 32(1)(b), 71(1), 72 and 72(2)(b); *Police Act*, R.S.A. 2000, c. P-17, s. 44. **ON:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 14.

Authorities Cited: AB: Orders 96-003, 96-019, F2002-024, F2004-024, F2004-026, F2005-009, F2007-005, F2007-013 and F2009-004; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515. **ON:** *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

I. BACKGROUND

[para 1] In a letter dated December 9, 2008, the Criminal Trial Lawyers' Association (the "Applicant") made an access request to the Edmonton Police Service (the "Public Body" or "EPS") under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant asked for "copies of the 'training section's training manual' referred to in Part 8-A-1 of the EPS Policy Manual".

[para 2] By letter dated February 4, 2009, the Public Body gave the Applicant access to some of the requested information, withholding the remainder under sections 20(1)(a), 20(1)(j), 20(1)(k) and 20(1)(m) of the Act (disclosure harmful to law enforcement).

[para 3] By letter dated February 24, 2009, the Applicant requested a review of the Public Body's response to its access request. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry by letter dated May 25, 2009. A written inquiry was set down.

II. RECORDS AT ISSUE

[para 4] The Public Body submitted a copy of Part 8, Chapter A of its Training Manual, being the chapter on "Officer Safety", which is comprised of 56 pages printed on September 19, 2007. The records at issue consist of the information that the Public Body withheld on all but eight of those pages.

[para 5] As for the information that is not at issue, because it was already disclosed to the Applicant, this includes all of the table of contents, the first section entitled

"General", the second section entitled "Officer/Violator Contacts" (regarding traffic violations), and the last section entitled "Handling of Property – Precaution" (regarding disposal of needles and sharps). The Public Body also disclosed most of the headings throughout the records, as well as many part pages.

III. ISSUE

[para 6] The Notice of Inquiry, dated February 26, 2010, set out the issue of whether the Public Body properly applied sections 20(1)(a), 20(1)(j), 20(1)(k) and 20(1)(m) of the Act to the records/information (disclosure harmful to law enforcement).

IV. DISCUSSION OF ISSUE

Did the Public Body properly apply sections 20(1)(a), 20(1)(j), 20(1)(k) and 20(1)(m) of the Act to the records/information (disclosure harmful to law enforcement)?

[para 7] Section 20(1) of the Act reads, in part, 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*
>
> *(a) harm a law enforcement matter,*
> …
>
> *(j) facilitate the escape from custody of an individual who is being lawfully detained,*
>
> *(k) facilitate the commission of an unlawful act or hamper the control of crime,*
> …
>
> *(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system, or*
> …

[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 under section 20. In its submissions, the Public Body states that it is no longer relying on section 20(1)(a) to withhold any information. I will therefore not review the Public Body's application of that section.

1. Information falling under sections 20(1)(j), 20(1)(k) and/or 20(1)(m)

[para 9] In order for the information at issue to fall under section 20(1)(j), 20(1)(k) or 20(1)(m) of the Act, the Public Body must show that disclosure of the information could reasonably be expected to cause one of the harms set out in those

sections – namely the escape from custody of an individual who is being lawfully detained, the commission of an unlawful act or the hampering of the control of crime, or harm to the security of any property or system. In particular, the Public Body must satisfy the "harm test" that has been articulated in previous orders of this Office, in that there must be a clear cause and effect relationship between disclosure of the withheld information and the harm alleged; the harm that would be caused by the disclosure must constitute damage or detriment and not simply hindrance or minimal interference; and the likelihood of the harm must be genuine and conceivable (Order 96-003 at p. 6 or para. 21; Order F2005-009 at para. 32; Order F2009-004 at para. 30).

[para 10] The harm test must be applied on a record-by-record basis (Order F2002-024 at para. 36). In order for the test to be met, explicit and sufficient evidence must be presented to show a reasonable expectation of probable harm; the evidence must demonstrate a probability of harm from disclosure and not just a well-intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue (Order 96-003 at p. 6 or para. 20; Order F2002-024 at para. 35). The harm test – specifically in relation to law enforcement matters under section 20 of the Act – and the requirement for an evidentiary foundation for assertions of harm were upheld in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 (at paras. 6, 59 and 60).

[para 11] In support of its decision to withhold the records at issue, the Public Body cites Order F2007-005 (at para. 25), in which some of the information contained in a training video of a police canine unit was found to fall under section 20(1)(k) because, if the information were disclosed to the public at large, the canine unit could become less effective in apprehending suspects, thereby hampering the control of crime. The Public Body also cites Order F2009-004 (at para. 33), in which information regarding verbal exchanges between a police service's communications officer and police officers attending a scene was found to fall under section 20(1)(m) because, if information about the police service'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 12] The Public Body cites an Ontario case, in which the court said that exemptions to disclosure in relation to law enforcement are to be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.) at para. 13, discussing section 14 of Ontario's *Freedom of Information and Protection of Privacy Act*]. The Public Body also notes that the general threshold that must be reached in order to satisfy the harm test will vary depending on the context of the harm; for example, where there are threats to personal safety, the threshold will be lower than with harm to a law enforcement matter under section 20(1)(a) (Order 96-003 at p. 6 or para. 19). Although section 20(1) of Alberta's Act does not expressly set out an exception to disclosure based on harm to a police officer's safety, I agree with the Public

Body that the protection of police officers is implicitly contemplated by the section. A police officer may be harmed, for instance, by an individual's escape from custody referred to in section 20(1)(j), or through the commission of an unlawful act referred to in section 20(1)(k). Physical harm to a police officer, or a threat to his or her personal safety, would hamper the control of crime under section 20(1)(k).

[para 13] The Applicant submits that it cannot conceive of how section 20(1)(j), 20(1)(k) or 20(1)(m) apply to the records at issue, without any explanation and evidence from the Public Body.

[para 14] As for its argument and evidence, the Public Body provided an affidavit sworn by its Acting Sergeant in charge of Control Tactics in the Officer Safety Unit, in which he says the following:

- The Training Manual depicts and explains techniques, strategies and procedures used by EPS members in their interactions with member of the public.
- Individuals who view the Training Manual can discern certain vulnerabilities in the techniques, strategies and procedures that EPS members use when dealing with suspects and other individuals.
- EPS members, along with members of other law enforcement agencies, rely on the confidential nature of the Training Manual in order to ensure the safety of police members and the integrity of the training and safety systems.
- The EPS places significant reliance on the techniques, strategies and procedures set out in the Training Manual for the maintenance of police member safety, the protection of police vehicles and property, criminal activity detection, deterrence of crime, and suspect apprehension.
- If the information withheld in the Training Manual were made public, the EPS would be significantly challenged in controlling and apprehending suspects and in fulfilling its mandate of protecting the public and its police members.
- If the general public were to become aware of the specific techniques, strategies and procedures employed by the EPS and depicted in the Training Manual, this knowledge could cause a subject to evade police members, take countermeasures, or take actions that would threaten the safety of police members, which would hinder or compromise the ability of police members to effectively use the techniques, strategies and procedures,
- If an individual being lawfully detained knew certain information severed in the Training Manual, this could permit the individual to evade detention, take countermeasures to end his or her detention, or take actions that would threaten the safety of police members.
- If certain information redacted from the Training Manual were known to an individual detained by police members, this information could enable the individual to flee from custody or take actions that threaten the safety of police members, either of which could constitute an unlawful act.
- Some of the information withheld in the Training Manual could be used by an individual to evade detection, flee from custody or cause harm to police members, all of which would hamper the EPS' ability to control crime by

detrimentally affected EPS members' ability to detain and arrest suspects in a timely and safe manner.

- Release of the redacted information in the Training Manual would provide easily accessible information to suspects and others hoping to gain tactical advantage over the lawful actions of EPS members.

[para 15] The table of contents of Part 8, Chapter A of the Training Manual, various headings in the records and certain background information, all of which were disclosed to the Applicant, indicate the nature of the techniques, strategies and procedures to which the Acting Sergeant refers in his affidavit. The nature of the information is as follows (I have placed the table of contents along the first line of indented bullets, the headings along the second line of indented bullets, and the background information in square brackets):

- Vehicle Stopping Procedures
  - Stopping Location
  - One-Person "Unknown Risk" Vehicle Stop
  - Two-Person "Unknown Risk" Vehicle Stop
  - Problem Vehicles
  - Motorcycles
  - High-Risk Stops
  - Vehicle Clearing
- Preventive Techniques
  - Police Weapon Disarming
  - Techniques [and defensive tactics]
- Building Searches
  - [Ability of subjects to hide and lie in wait]
  - Principles of Movement [key considerations to keep in mind during a search]
- Physical Conflict Control
  - Use of Handcuffs
  - Use of Verbal Direction
- General Arrest Procedure
  - [Maintaining control during an arrest]
  - How to Position the Subject
  - Cuff as Quickly as Possible
  - How Tight Should Handcuffs Be?
  - Double-Lock
- Position and Control
  - [Categories of positioning between two people to show relative advantage]
  - Carrying Handcuffs
  - Stop and Frisk (Cursory Search)
  - Handcuffing Phase
  - Search Phase
  - Searching Principles

- Hand-cuffing an Uncooperative Subject
- Uncuffing
- Handcuffing to Fixed Objects
- Hobble Leg Restraints

[para 16] The Public Body also made *in camera* submissions accompanied by an *in camera* affidavit of its Acting Sergeant. I accepted the material *in camera* on the basis that parts of it reveal the contents of the records at issue, and the remaining parts are adequately repeated or summarized in the Public Body's open submission and affidavit that were exchanged with the Applicant. In the *in camera* material, the Public Body and its Acting Sergeant provide examples of how disclosure of specific information in the records at issue would enable an individual, in specific situations, to discern vulnerabilities in the techniques, strategies and procedures used by police members, thereby permitting the individual to evade police, lie in wait, flee or escape custody, take countermeasures, use a weapon, commit unlawful acts, hamper the control of crime, or cause harm to police members.

[para 17] With respect to the harm test, the Public Body submits that there is a clear cause and effect relationship between disclosure of the records at issue and the harms alleged, in that making the law enforcement techniques, strategies and procedures publicly available would enable suspects to use countermeasures against police in order to escape from custody, commit unlawful acts or hamper the control of crime. The Public Body says that the harm that would be caused by the disclosure of the records at issue would constitute damage or detriment and not simply hindrance or minimal interference, as there would be a threat to the personal safety of police officers and an impaired ability to protect the public from criminal activities. Finally, it argues that the likelihood of harm is genuine and conceivable, as the records at issue would be highly valued and sought after by individuals desiring to evade police or otherwise defeat police action.

[para 18] On my consideration of the submissions and affidavits provided by the Public Body, and my own review of the records at issue, I find that the harm test has been met, and that disclosure of almost all of the information withheld by the Public Body could reasonably be expected to facilitate the escape from custody of an individual who is being lawfully detained, facilitate the commission of an unlawful act and/or hamper the control of crime. The information therefore falls under either or both of sections 20(1)(j) and 20(1)(k) of the Act. I do not need to consider whether any of this information also falls under section 20(1)(m).

[para 19] In my summary by way of the bullets above, I provide the nature of the information in relation to essentially all of the information that the Public Body withheld from the Applicant. I reviewed each item of withheld information and find that the Public Body has presented sufficient argument and evidence to demonstrate a reasonable expectation of harm under sections 20(1)(j) and/or (20)(1)(k) if the information were disclosed.

[para 20] The Applicant says that the Public Body reveals training information when it suits it purpose, without any reluctance or any of the concerns that it raises in this inquiry. The Applicant cites court cases where employees of the Public Body have been witnesses or defendants and have publicly disclosed information about police training and safety, and the related policies and procedures. For instance, employees have revealed information about use of force and control, and defensive tactics, to diffuse a volatile or potentially volatile situation; subduing and handcuffing an aggressive member of the public; positioning one police officer to ensure the safety of another; delivering a head stun; using a Taser gun; and taking control of a suspect at certain locations of a house.

[para 21] The Applicant also submitted a copy of a "use of force review" tendered as an exhibit in a matter before the Law Enforcement Review Board, in which a Sergeant of the Public Body describes approaches used by police officers to respond to a suspect, depending on the suspect's behaviour and the police officer's risk assessment. The Applicant says further that information about police use of force is already available on the internet, and that experts are willing to explain police training and policy for a fee; however, the Applicant did not actually submit any of this information that is apparently publicly available.

[para 22] The Applicant goes on to argue that there has been no evidence of harm caused in the past as a result of disclosure of the foregoing type of information. In response, the Public Body submits that the limited disclosure about police policies and procedure during various criminal or civil proceedings does not negate its concern that harm will result if the records at issue in this inquiry were disclosed in their entirety. The Public Body says that the minimal release of information regarding a handful of specific techniques or scenarios does not mean that further and more extensive information should be released on an access request. It argues that the fact that information similar to some of that contained in the records at issue has been available to the public at one time, as a result of the Public Body's participation in the justice system, does not mean that the Public Body has improperly withheld the records at issue under section 20(1).

[para 23] The Applicant's submissions regarding prior release of information about the Public Body's policies and training procedures does not alter my finding that disclosure of the records at issue would result in the harms contemplated by sections 20(1)(j) and 20(1)(k). The information severed in the Training Manual is far more detailed than the information that the Applicant has pointed out in the court decisions that it has cited. Harm on disclosure of the records at issue is therefore more likely. The use of force review submitted by the Applicant contains detailed information, but the information is not the same as the information that was withheld in the Training Manual. The use of force review explains some of the principles, objectives, considerations and options when police interact with a suspect, whereas the Training Manual reveals the actual techniques and strategies to be used. The use of force review explains the force that was used by particular police officers against a particular suspect in a particular situation, whereas the Training Manual sets out the range of responses to be used, ideally, in a variety of contexts.

[para 24] I conclude that almost all of the information withheld by the Public Body falls under section 20(1)(j) and/or section 20(1)(k) of the Act. A small amount of the information does not fall under either of these two sections, or under section 20(1)(m). I discuss this information later in this Order.

2. The Public Body's exercise of its discretion not to disclose

[para 25] 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).

[para 26] An affidavit sworn by a Disclosure Analyst in the Public Body's Freedom of Information and Protection of Privacy Unit indicates that, in deciding whether or not to disclose the records at issue, the Public Body considered the impact that disclosure would have on the ability to effectively train police officers to deal with law enforcement matters, ensure the safety of police members, prevent the escape of individuals from custody, and prevent unlawful acts and control crime. The affidavit says that the Public Body considered the objectives and purposes of the Act, including the Applicant's general right of access, and attempted to strike a balance by disclosing some of the requested information so as to permit a general review of the officer safety training policies, techniques and procedures of the Public Body.

[para 27] The foregoing satisfies me that the Public Body considered the Act's general purposes, the purposes of sections 20(1)(j) and 20(1)(k), and the circumstances of this particular case. I conclude that the Public Body properly exercised its discretion not to disclose the information falling under sections 20(1)(j) and 20(1)(k) of the Act.

3. Small amount of information not falling under section 20(1)(j), 20(1)(k) or 20(1)(m)

[para 28] I find that four or five items of information withheld by the Public Body in the Training Manual do not fall under section 20(1)(j), 20(1)(k) or 20(1)(m) of the Act. There are a few sentences that are merely background information and that do not reveal any technique, strategy or procedure used by members of the Public Body. However, I believe that disclosure of this minimal information would provide worthless information to the Applicant, as the information essentially repeats information that has already been disclosed, or adds nothing to the information that has already been disclosed. By way of example, the Public Body withheld the definition of a term found in a heading that was disclosed, but the meaning of this term in the heading is obvious.

[para 29] Where disclosure of information to an applicant would be meaningless or worthless, it may be construed that a public body reasonably severed the information under section 6(2) of the Act (Order 96-019 at para. 47; Order F2007-013

at para. 115). I therefore do not find it necessary to order the Public Body to disclose the four or five items of information that do not actually fall under section 20(1).

4. Applicant's additional arguments under sections 32 and 17(5)(a)

[para 30] In its request for review and submissions, the Applicant raises the possibility that section 32 of the Act (disclosure in the public interest) requires the Public Body to disclose the requested information. The Applicant argues that there is a public interest because there are occasions when a police officer will claim that he or she acted in accordance with EPS policy and training, and the Applicant requires access to the records at issue in order to verify whether this is true in any given matter. The Applicant, which is comprised of a group of criminal trial lawyers, also makes complaints about the conduct of police officers and therefore says that it needs to know whether policies have been breached. It further says that the records at issue should be disclosed to permit constructive criticism of police training, and make deficiencies known to the public so that they may be corrected. Finally, the Applicant says that it makes complaints about policies of the Public Body, as contemplated by section 44 of the *Police Act*.

[para 31] The only possibility in this inquiry is that disclosure of the records at issue may be required under section 32(1)(b), which reads as follows:

> *32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant*
>
> …
>
> *(b) information the disclosure of which is, for any other reason, clearly in the public interest.*

[para 32] For section 32(1)(b) to apply, there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024 at para. 57). My review of the information in the records at issue does not lead me to conclude that any of it should be released on the basis that there is a clear or compelling public interest in disclosure. I therefore find that section 32 does not require the Public Body to disclose the records/information.

[para 33] The Applicant also refers to section 17(5)(a) of the Act, which sets out public scrutiny of the activities of a public body as a relevant circumstance to consider in determining whether disclosure of information would be an unreasonable invasion of a third party's personal privacy. However, section 17(5)(a) is not relevant to this inquiry. First, the Public Body did not withhold any of the records at issue under section 17. Second, it is not otherwise necessary for me to decide whether the section applies, as there is no information that was improperly withheld by the Public Body under section 20, which is anyone's personal information that can be subject to section 17.

V. ORDER

[para 34] I make this Order under section 72 of the Act.

[para 35] I find that the Public Body properly applied section 20(1)(j) and/or 20(1)(k) of the Act to almost all of the records at issue, as disclosure could reasonably be expected to facilitate the escape from custody of an individual who is being lawfully detained, and/or facilitate the commission of an unlawful act or hamper the control of crime. Under section 72(2)(b), I confirm the Public Body's decision to refuse access.

[para 36] I find that a minimal amount of information withheld by the Public Body does not fall under section 20(1)(j), 20(1)(k) or 20(1)(m) of the Act, but that the information would be worthless to the Applicant. I conclude that the Public Body reasonably severed it, and that it is not useful or necessary to order disclosure of this minimal information to the Applicant.

[para 37] I find that section 32 of the Act does not require the Public Body to disclose any of the records at issue, as disclosure is not clearly in the public interest.

Wade Riordan Raaflaub
Adjudicator