

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-018

January 12, 2011

ALBERTA EMPLOYMENT AND IMMIGRATION

Case File Number F5067

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Summary: The Applicant's family member was the victim of a workplace fatality involving a collision between a truck driven by the victim and a truck driven by another driver. Under the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked Alberta Employment and Immigration (the "Public Body") for the cell phone records of the other driver and documentation evidencing the other driver's training and experience. The Public Body withheld information under section 17 (disclosure harmful to personal privacy) and section 20 (disclosure harmful to law enforcement).

The withheld records consisted only of information about the driver's training and experience, and the Adjudicator found that disclosure would be an unreasonable invasion of personal privacy under section 17. The Applicant did not establish, and the Adjudicator did not otherwise find, any relevant circumstances weighing in favour of disclosure. There were only presumptions and relevant circumstances against disclosure. The Adjudicator accordingly confirmed the Public Body's decision to withhold the information. It was unnecessary to decide whether the information could also have been withheld under section 20.

Under section 4(1), the Act applies to all records in the custody or under the control of a public body, and section 6(1) gives an applicant a right of access to such records, subject to any exceptions to disclosure. The Applicant argued that the Public Body also had custody or control of the cell phone records of the other driver, on the basis that they had

been obtained or used by the Public Body in the course of its investigation of the workplace fatality. The Adjudicator found that the Public Body did not have custody or control of any cell phone records. None had actually been provided to the Public Body, and because it had concluded its investigation, the Public Body did not have the ability to obtain possession of any. The Adjudicator accordingly concluded that the Applicant had no right of access to any cell phone records from the Public Body in response to her access request.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h)(ii), 1(n), 1(n)(vii), 2(e), 4(1), 6(1), 6(2), 17, 17(2), 17(4), 17(4)(b), 17(4)(d), 17(4)(g), 17(5), 17(5)(a), 17(5)(c), 17(5)(e), 17(5)(f), 20, 67(1)(a)(ii), 71(2), 72 and 72(2)(b); *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2, ss. 19, 19(1), 19(2) and 41.

Authorities Cited: AB: Orders 97-002, 99-028, 99-032, F2003-014, F2004-015, F2005-016, F2006-014, F2006-024, F2008-006, F2008-012, F2008-025 and F2008-031; *University of Alberta v. Pylypiuk*, 2002 ABQB 22. **ON:** Order MO-2199 (2007). **CAN:** *Gordon v. Canada (Minister of Health)*, 2008 FC 258.

I. BACKGROUND

[para 1] On April 26, 2008, the Applicant's family member was driving a pickup truck on a worksite. The family member was killed when his pickup truck was crushed by a heavy haul truck driven by another individual (the "Driver"). The trucks were both owned by Albion Sands Energy Inc. (the "Employer").

[para 2] Alberta Employment and Immigration (the "Public Body") conducted an investigation of the accident through its Occupational Health and Safety Program. The Public Body subsequently issued a *Workplace Health and Safety Fatality Report* dated October 22, 2008 (the "Fatality Report").

[para 3] The Applicant became aware that a cell phone was found in the heavy haul truck. In a letter dated February 9, 2009, accompanied by a form dated February 10, 2009, she asked the Public Body for the following information under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "FOIP Act"):

- *Telephone records for use (calls and/or text-messages sent or received) of the cellular phone that was found in the cab and belonging to the driver of the heavy hauler involved with the collision...*
- *Documentation evidencing the training and experience of the driver of the heavy hauler at the time of the incident.*

I will refer to the first set of requested information as the "Cell Phone Records" and the second set of requested information as the "Training/Experience Documentation".

[para 4] By letter dated May 27, 2009, the Public Body released some information to the Applicant, but withheld other information under section 17 (disclosure harmful to personal privacy) and section 20 (disclosure harmful to law enforcement).

[para 5] By letter dated July 25, 2009, the Applicant requested a review of the Public Body's response to her 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 October 1, 2009. A written inquiry was set down.

[para 6] The Employer was notified as a party affected by the request for review under section 67(1)(a)(ii) of the Act, and it provided submissions in the inquiry. This office also sent correspondence to an address located on the internet and believed to be the Driver's, but no response was received.

II. RECORDS AT ISSUE

[para 7] The Public Body submitted three pages *in camera*, which it considered partly responsive to the Applicant's access request. The records at issue consist of a few lines of information that the Public Body withheld on pages 1 and 2.

[para 8] Notations on the records indicate that the Public Body withheld all of page 1 under section 17 and 20 of the Act. However, I find that only two lines of information are responsive to the Applicant's access request, and in particular, to her request for the Training/Experience Documentation. The Public Body notes that most of page 2 is not responsive to the Applicant's access request, and I agree. The records at issue consist only of three lines of information at the bottom of that page, which again correspond to the request for the Training/Experience Documentation. Finally, all of the information on page 3 was either disclosed to the Applicant or is not responsive to her access request. Therefore, none of the information on page 3 is at issue.

[para 9] The result of the foregoing is that there are no records at issue, or records otherwise submitted in this inquiry, that correspond to the Applicant's request for the Cell Phone Records. However, she argues that there are Cell Phone Records in the custody or under the control of the Public Body, which is one of the issues discussed in this Order below.

III. ISSUES

[para 10] The Notice of Inquiry, dated July 28, 2010, set out the following issues, although I have placed them in a different sequence for the purpose of discussion:

Does section 17 of the Act (disclosure harmful to 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?

Are the records in the custody or under the control of the Public Body under section 4(1) of the Act?

[para 11] In her rebuttal submissions, the Applicant requested information from the Employer. I have no jurisdiction to address this, as the request for review that proceeded to this inquiry was only in relation to the Applicant's access request to the Public Body.

IV. DISCUSSION OF ISSUES

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

[para 12] Section 17 of the Act reads, in part, 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

[various circumstances, none of which exist here]

...

(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,

...

(d) the personal information relates to employment or educational history,

...

(g) the personal information consists of the third party's name when

*(i) it appears with other personal information about the third party,
or*

(ii) *the disclosure of the name itself would reveal personal information about the third party,*

...

(5) *In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

(a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

...

(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,*

(f) *the personal information has been supplied in confidence,*

...

[para 13] 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 present argument and evidence to show how disclosure would be an unreasonable invasion of the third party's personal privacy. If a record does contain personal information about a third party, section 71(2) states that it is then 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 – and section 2(e) provides for independent reviews of the decisions of public bodies – I must also independently review the information in the records at issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

1. Do the records consist of the personal information of a third party?

[para 14] “Personal information” is defined as “recorded information about an identifiable individual” under section 1(n) of the Act, and it expressly includes an individual's educational and employment history under section 1(n)(vii). The Training/Experience Documentation is the Driver's personal information, as it consists of information about the educational program completed by the Driver, dates of that education, and periods of employment.

[para 15] The Applicant argues that the name of the Driver may be removed from the records at issue, so that the Driver is not identified. However, when determining whether information is about an identifiable individual, one must look at the information in the context of the record as a whole, and consider whether the information, even

without personal identifiers, is nonetheless about an identifiable individual on the basis that it can be combined with other information from other sources to render the individual identifiable [Order F2006-014 at para. 31, citing Ontario Order MO-2199 (2007) at para. 23]. Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information [Order F2008-025 at footnote 1, citing *Gordon v. Canada (Minister of Health)* at para. 34].

[para 16] Here, I find that even if the name of the Driver were withheld from the Applicant, the Driver would remain identifiable. The Driver was involved in an incident known to a wide range of people, such as other workers on the site where the collision occurred, journalists who appear to have reported on the story (the Applicant notes that a newspaper contacted the Public Body at one point), and perhaps acquaintances of the victim of the accident, who was related to the Applicant. I believe that the Driver could easily be identified using information available from other sources. Therefore, the information about the Driver's training and experience is the Driver's personal information, even without a name attached.

2. Would disclosure be an unreasonable invasion of personal privacy?

[para 17] Under section 17(2) of the Act, a disclosure of personal information is expressly not an unreasonable invasion of a third party's personal privacy in certain circumstances. I find that none of those circumstances exist in this case. Conversely, I find that there are presumptions against disclosure of the personal information of the Driver in the records at issue.

[para 18] First, the Training/Experience Documentation relates to the employment or educational history of the Driver within the terms of section 17(4)(d).

[para 19] Second, the Public Body explains that it used the records at issue for the purpose of an investigation under section 19 of the *Occupational Health and Safety Act*, which can result in a penalty or sanction under section 41 of that same Act. I find that the Public Body's investigation constitutes "law enforcement" within the meaning of section 1(h)(ii) of the *FOIP Act*. This also means that there is a presumption against disclosure of the Driver's personal information under section 17(4)(b), on the basis that the information is an identifiable part of a law enforcement record (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation).

[para 20] Third, there is a presumption against disclosure of the Driver's personal information under section 17(4)(g), as the Driver's initials appear with other personal information about the Driver in the records at issue (e.g., training and experience), and disclosure of the initials would reveal personal information about the Driver (e.g., involvement in the workplace accident). In my view, the initials in this case are akin to a name, as the initials nonetheless serve to identify the Driver.

[para 21] Even where presumptions against disclosure arise under section 17(4) of the Act, all of the relevant circumstances under section 17(5) must be considered in determining whether a disclosure of personal information would constitute an unreasonable invasion of a third party's personal privacy.

[para 22] This office attempted to notify the Driver about this inquiry by sending correspondence to an address located on the internet. As I am not certain that this was the Driver's actual address or that the correspondence was received, I will take into account the fact that the Driver was unable to consent or object to disclosure of the information in the records at issue (Order F2008-031 at para. 125).

[para 23] Although she does not specifically cite section 17(5)(a), the Applicant raises the possibility that disclosure of the Driver's personal information is desirable for the purpose of subjecting the activities of the Public Body to public scrutiny. She notes that the Fatality Report prepared by the Public Body is in the public domain and constitutes the official findings of the government investigation into the death of her family member. She argues that it is not unreasonable for the specific details of the Driver's training and experience to be disclosed, so that the claims regarding the Driver's competence can be substantiated. The Applicant makes a similar argument regarding the need for disclosure of information about the Driver's possible use of a cell phone at the time of the incident. She also notes that some of the Public Body's evidence used in its official investigation was derived from the internal investigation conducted by the Employer, and she argues that there is a conflict of interest that should preclude acceptance of the results of an employer's internal investigation as sufficient for the purpose of the formal government investigation.

[para 24] For public scrutiny to be a relevant circumstance, there must be evidence that the activities of the Public Body have been called into question, which makes the disclosure of personal information desirable in order to subject the activities of the Public Body to public scrutiny (Order 97-002 at para. 94; Order F2004-015 at para. 88). In determining whether public scrutiny is desirable, I may consider whether more than one person has suggested that public scrutiny is necessary; whether the Applicant's concerns are about the actions of more than one person within the Public Body; and whether the Public Body has not previously disclosed sufficient information or investigated the matter in question (Order 97-002 at paras. 94 and 95; Order F2004-015 at para. 88). However, it is not necessary to meet all three of the foregoing criteria in order to establish that there is a need for public scrutiny (*University of Alberta v. Pylypiuk* at para. 49). What is most important to bear in mind is that the desirability of public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para. 104).

[para 25] I find that the relevant circumstance under section 17(5)(a) does not exist in this inquiry. As explained earlier, the records at issue consist only of the Training/Experience Documentation. I find that the Public Body has already disclosed a sufficient amount of information in this regard. The Fatality Report states that the Driver

was a qualified and experienced operator at the time of the incident, and part of a page released to the Applicant following her access request states that the Driver was adequately qualified, suitably trained and with sufficient knowledge to be deemed competent to operate the heavy haul truck.

[para 26] I further find that the Public Body has sufficiently investigated the matter in question. The Fatality Report prepared by the Public Body concludes that other factors contributed to the workplace accident, such as the Driver's limited visibility of the other truck due to blind spots, heavy radio traffic that prevented the Driver from hearing the victim's radio call that he was approaching, and the vulnerable location at which the victim had stopped his pickup truck resulting in his limited visibility of the heavy haul truck. While the Applicant argues that greater details about the Driver's training/experience should be disclosed, she essentially wants to decide for herself whether the Public Body came to the right conclusions. I find that there is insufficient evidence that the activities of the Public Body have been called into question more generally, so as to warrant public scrutiny. Because the victim of the workplace fatality was the Applicant's family member, she is personally motivated, and she has not shown that there is a broader public interest or public component.

[para 27] Part of a page released to the Applicant following her access request says that there is no indication that the Driver was distracted by personal electronic devices at the time of the incident. I acknowledge that the Applicant is concerned that the Public Body may have investigated only whether the Driver had been talking on the cell phone, and not whether the Driver had been using it to send or receive text messages, instant messages or e-mail. I also see in the Public Body's submissions that others at the accident site reportedly said that the Driver was on the phone at the time. However, no Cell Phone Records are among the records before me in this inquiry. The records withheld by the Public Body do not reveal anything about the Driver's use of the cell phone, so there is no information up for disclosure in this inquiry that would serve the purpose of public scrutiny in this way.

[para 28] As for the Applicant's argument that the Public Body should not have relied on the internal investigation by the Employer, I do not find that public scrutiny is desirable on this basis. The Public Body notes that its officers are authorized, under section 19 of the *Occupational Health and Safety Act*, to make any inquiries necessary to determine the cause of a workplace accident and request information from any person who has information relating to the accident. It follows that the Public Body may rely on the results of the inquiries or the requested information, if it considers it appropriate to do so. The Fatality Report states that the Public Body reviewed and discussed the investigation report produced by the Employer. There is insufficient evidence suggesting that reliance on the internal investigation report was unorthodox, and the Applicant has not persuaded me that the Public Body's investigation of the workplace fatality was possibly flawed as a result of its reliance on the Employer's report.

[para 29] In her request for review, the Applicant wrote that access to the records at issue is necessary "to rule out employer liability". In her submissions, she says that the

employer “could be liable for the negligence of the employee”. I therefore considered whether disclosure of the Driver’s personal information was relevant to a fair determination of the Applicant’s rights under section 17(5)(c).

[para 30] In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right 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 that is either existing or contemplated, not one that has already been completed; (c) the personal information to which the applicant is seeking access 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 (Order 99-028 at para. 32; Order F2008-012 at para. 55).

[para 31] I find that the relevant circumstance under section 17(5)(c) does not exist in this inquiry. The Applicant only briefly alludes to the possibility of employer liability, and she does not indicate that any proceedings are in existence or are actually being contemplated. She also does not indicate that she was making her access request, or is participating in this inquiry, on behalf of the estate of her family member, or that she has personal standing in any outside proceeding. The Applicant received a copy of section 17 of the Act with the Notice of Inquiry, and she was made aware that she had the burden, under section 71(2), of proving that disclosure of the Driver’s personal information would not be an unreasonable invasion of personal privacy. If she believed that disclosure of the Driver’s personal information was relevant to a fair determination of her rights, or the rights of her family member’s estate, she did not say so.

[para 32] No other relevant circumstances in favour of disclosure of the Driver’s personal information, as contained in the records at issue, have been drawn to my attention, and I see none.

[para 33] The Public Body submits that there are relevant circumstances weighing against disclosure of the Driver’s personal information. First, it suggests that the Driver will be exposed unfairly to financial or other harm under section 17(5)(e), because the Driver may be subjected to unwanted contact from the Applicant, or may be subject to civil liability. However, I see no evidence that the Applicant or anyone else will contact the Driver in such a way as to cause harm. I also do not believe – even assuming that there were a lawsuit against the Driver – that a civil action necessarily means that the person being sued suffers harm that is unfair. I therefore find that the relevant circumstance under section 17(5)(e) does not exist in this inquiry.

[para 34] Second, the Public Body submits that the Driver’s personal information was supplied in confidence under section 17(5)(f). The context in which third party personal information is given during an investigation can make it reasonable to conclude that such information was supplied in confidence (Order F2003-014 at para. 18). Here, I find that the context establishes that the Driver’s personal information was supplied in confidence, which is a relevant circumstance weighing against disclosure.

[para 35] As I have found presumptions and relevant circumstances against disclosure of the Driver's personal information, but no relevant circumstances in favour of disclosure, I conclude that disclosure of the records at issue would be an unreasonable invasion of the Driver's personal privacy under section 17 of the Act.

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

[para 36] Because I have concluded that the records at issue are subject to the mandatory exception to disclosure under section 17 of the Act, it is not necessary for me to decide whether the Public Body might also have had the authority to withhold that same information in reliance on the discretionary exception to disclosure under section 20.

C. Are the records in the custody or under the control of the Public Body under section 4(1) of the Act?

[para 37] The records in question in this part of the Order are the Cell Phone Records requested by the Applicant. Both sections 4(1) and 6(1) of the Act are provisions dealing with records in the custody or under the control of a public body. The relevant parts read as follows:

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:

[various information and records, none of which exist here]

...

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

...

[para 38] Section 4(1) states that the Act applies to all records in the custody or under the control of a public body. There are exclusions for certain types of records, but there is no suggestion here that the Cell Phone Records fall under an exclusion. Rather, the issue to be decided in this inquiry is whether they are in the custody or under the control of the Public Body. If so, the Applicant has a right of access to them under section 6(1), subject to any exceptions to disclosure under section 6(2).

[para 39] In a letter dated May 11, 2010, the Public Body wrote:

Please be advised that the Public body has no records related to cellular telephone use other than the information that was already disclosed to the Applicant in response to the access request and has never held such records in our custody.

[para 40] The Applicant questions the above assertion as follows:

[I]f the Public Body, representing Employment and Immigration – and by extension OHS [Occupational Health and Safety] – has never been in possession of the requested cellular phone records, how was it possible that OHS determined that cellular activity had not occurred during the time of the incident?

The Applicant believes that the Employer must possess or have access to Cell Phone Records, which she says should be furnished to the Public Body and provided to her.

[para 41] The Public Body explains that it obtained and still has a copy of the internal investigation report prepared by the Employer. The Public Body used that report to make its own finding that the Driver was not using a cell phone at the time of the incident. However, the Public Body says that it did not ever obtain copies of any records of calls or text messages sent or received from the Driver's cell phone, so no Cell Phone Records are on the Public Body's own investigation file. The Public Body accordingly submits that it has neither custody nor control of any Cell Phone Records. It says that such records would be in the custody or control of the Driver and/or the Employer.

[para 42] Previous orders of this Office have set out ten non-exhaustive criteria, or questions, to consider in determining whether a public body has custody or control of records (Order 99-032 at para. 63; Order F2006-024 at paras. 21 to 45). They are as follows:

- Were the records created by an officer or employee of the Public Body?
- What use did the creator intend to make of the records?
- Does the Public Body have possession of the records either because they have been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
- If the Public Body does not have possession of the records, are they being held by an officer or employee of the Public Body for the purposes of his or her duties as an officer or employee?
- Does the Public Body have a right to possess the records?
- Does the content of the records relate to the Public Body's mandate and functions?
- Does the Public Body have the authority to regulate the use of the records?
- To what extent have the records been relied upon by the Public Body?

- How closely are the records integrated with other records held by the Public Body?
- Does the Public Body have the authority to dispose of the records?

[para 43] For the sake of analysis, I will assume that Cell Phone Records still exist somewhere. However, on consideration of the various criteria for determining custody and control, I conclude that they are not in the custody or under the control of the Public Body.

[para 44] The Cell Phone Records were not created by an officer or employee of the Public Body; the creator of the Cell Phone Records (whether characterized as a cell phone company, the Driver or the Employer) did not create them with the intention that the Public Body would have custody or control of them; the Public Body does not have possession of the Cell Phone Records; they are not being held by an officer or employee of the Public Body for the purposes of his or her duties; and they are not integrated with other records held by the Public Body. I also find that the Public Body has no authority to regulate the use of the Cell Phone Records, or to dispose of them.

[para 45] Section 19(2) of the *Occupational Health and Safety Act* states that every person present at a workplace accident when it occurred or who has information relating to the accident shall, on the request of an officer of the Public Body, provide to the officer any information respecting the accident that the officer requests. Although this gave the Public Body a right, at one time, to possess the Cell Phone Records, it submits that it no longer has that right. The Public Body explains that its officer made the determination not to request any Cell Phone Records, and that the ability to do so under the legislation ended once the Public Body completed its investigation, published the Fatality Report, and decided that there was no contravention of the *Occupational Health and Safety Act* that would warrant recommending legal proceedings.

[para 46] The Public Body has satisfied me that it no longer has the right to bring any Cell Phone Records into its possession. Section 19(1) gives an officer of the Public Body the authority to investigate an accident “to determine the cause of the accident and the circumstances relating to the accident”. Once those determinations have been made, as here, the Public Body presumably has no ability to request further information.

[para 47] Cell Phone Records are or were in the possession of the Employer and used for the purpose of its internal investigation into the workplace fatality. Because the Public Body relied on the investigation report prepared by the Employer, I find that it indirectly relied on the Cell Phone Records. I also find that the Cell Phone Records relate to the Public Body’s mandate and functions with respect to investigating workplace fatalities. However, in my view, these findings are outweighed by the other criteria suggesting that it does not have custody or control of any Cell Phone Records. I therefore conclude that Cell Phone Records are not in the custody or under the control of the Public Body within the terms of section 4(1) of the Act, and that the Applicant therefore has no right of access to any such records under section 6(1).

[para 48] The Applicant suggests that additional evidence of the Driver's training and experience should also be provided to her. To the extent that she is arguing that the Public Body has custody or control of additional Training/Experience Documentation, I find that it does not, for the same reasons set out above in relation to the Cell Phone Records. The Public Body may have previously had the ability to obtain more than the Training/Experience Documentation that is found in the records at issue, but the Public Body chose not to do so, and no longer can.

[para 49] If Training/Experience Documentation cannot be provided to her, the Applicant asks that she at least be advised what minimum criteria are in place to be used as a benchmark to measure the credentials of the Driver. However, a public body is not required under the Act to answer questions about how matters arising from records were dealt or not dealt with (Order F2008-006 at para. 58). In other words, the Public Body in this case is not required to explain benchmarks in relation to the Driver's competence, other than by providing responsive records, if it has any and chooses to disclose them. Here, the Public Body indicates that it does not have any information about benchmarks or standards in relation the Driver's competence. The Applicant has now asked the Employer for records and answers to her questions, but as stated earlier, her requests to the Employer are outside the scope of this inquiry.

V. ORDER

[para 50] I make this Order under section 72 of the Act.

[para 51] I find that section 17 of the Act applies to all of the records at issue, being the Training/Experience Documentation, as disclosure would be an unreasonable invasion of a third party's personal privacy. Under section 72(2)(b), I confirm the decision of the Public Body to refuse the Applicant access to the information that it has withheld.

[para 52] I find that there are no other responsive records, namely Cell Phone Records, in the custody or under the control of the Public Body under section 4(1) of the Act. The Applicant therefore has no right of access, under section 6(1), to any such records from the Public Body in response to her access request.

Wade Riordan Raaflaub
Adjudicator