

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-024

February 23, 2011

TOWN OF BRUDERHEIM

Case File Number F5265

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”), the Applicant made a request to the Town of Bruderheim (“the Public Body”) for a letter written by a named individual which, in the Applicant’s words, “... casts a shadow over [the Applicant’s] good name, and that of our Mayor, among others.”

The Public Body located a record responsive to the Applicant’s request, but withheld it in its entirety pursuant to section 17 of the Act, stating that disclosing the record would be an unreasonable invasion of the writer’s personal privacy. The Applicant asked the Office of the Information and Privacy Commissioner (“this office”) to review the Public Body’s response, arguing that she was only interested in her personal information (the writer’s opinion about her) in the record.

The Adjudicator found that to the extent the record contained the Applicant’s personal information (which she could not ascertain), the Public Body was correct in withholding the entire record from the Applicant pursuant to section 17 of the Act, as disclosing the record would be an unreasonable invasion of the writer’s personal privacy.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 6, 17, 30(4)(c), and 72.

Authorities Cited: AB: Orders 96-020, F2006-006, F2008-031, and F2009-043.

I. BACKGROUND

[para 1] Pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”), on December 23, 2009, the Applicant requested, “...a copy of the recent letter from [the writer of the letter], sent to the Town of Bruderheim, that casts a shadow over [the Applicant’s] good name, and that of our Mayor, among others.”

[para 2] On February 2, 2010, the Town of Bruderheim (“the Public Body”) responded to the Applicant’s request, indicating it had located a record but denying her access to the information requested pursuant to section 17(1) and 17(4)(g) of the Act.

[para 3] On February 6, 2010, the Applicant requested that this office review the Public Body’s response to her request.

[para 4] On March 24, 2010 the Public Body wrote to the writer of the letter (“the writer”) pursuant to section 30(4)(c) of the Act and asked for his consent to disclose the letter to the Applicant. The writer responded on March 25, 2010. His response did not expressly address the issue raised by the Public Body in its letter to him of March 24, 2010, but instead dealt with what appear to be long-standing issues between the writer and the Public Body.

[para 5] After receiving the writer’s letter of March 25, 2010, on March 26, 2010, the Public Body informed the writer and the Applicant that it had decided to not disclose the requested letter to the Applicant, and noted that the Applicant had already requested a review of the Public Body’s response to her request from the Office of the Information and Privacy Commissioner (“this office”).

[para 6] The Commissioner authorized a portfolio officer to investigate and attempt to resolve the issues between the parties but this was unsuccessful and the Applicant requested an inquiry.

[para 7] The Applicant did not provide initial submissions but stated that she would be relying on the information attached to the Notice of Inquiry. The Public Body did submit an initial submission, and both the Applicant and Public Body submitted rebuttal submissions.

II. INFORMATION AT ISSUE

[para 8] The information at issue is a letter sent to the Public Body by the writer, as described in the background section of this Order.

III. ISSUES

[para 9] The Notice of Inquiry dated September 22, 2010 lists the issue in this inquiry as follows:

Issue A:

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

IV. DISCUSSION OF ISSUES

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

Third Party personal information:

[para 10] Personal Information is defined by section 1(n) of the Act which states:

1(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual’s age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(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 11] The requested record contains personal information of the writer of the letter (his name, address, and opinions) and of other third parties (their names, and opinions about them).

[para 12] Section 17(1) of the Act states:

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.

[para 13] Section 17(4) of the Act lists several circumstances that give rise to a presumption that there is an unreasonable invasion of a third party's personal privacy. The Public Body applied section 17(4)(g) of the Act which states:

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, or

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

...

[para 14] The Public Body examined the factors in section 17(5) of the Act and determined that the following factors weighed in favour of withholding the entirety of the letter from the Applicant:

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 the relevant circumstances, including whether

...

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

(g) the personal information is likely to be inaccurate or unreliable,

...

[para 15] For the most part, I agree with the reasoning of the Public Body. I agree that section 17(4)(g) creates a presumption that it would be an unreasonable invasion of the personal privacy of the writer of the letter as well as of any identifiable third parties who

are mentioned or discussed in the letter to disclose the information in the letter. In Order 96-020 the former Commissioner stated:

In determining whether section 16(2)(g) [now section 17(4)(g)] applies, I have looked at each document, as well as individual pages within a document. If a third party's name appeared in the document, and the other personal information consisted of handwriting, or information, the context of which identified that third party throughout the document, I determined that section 16(2)(g) was properly applied to that document, even if the third party's name did not appear on each page of the document. This contextual approach to determining whether there is personal information is consistent with Order 96-010 and Order 96-019.

(Order 96-020 at para 170)

[para 16] Dealing first with the writer of the letter, I note that the Applicant's access request was for a letter written by this person. He would, therefore, be necessarily identifiable as the author of the letter even if his name were severed. Disclosing the letter to the Applicant would also reveal that he expressed the opinions in the letter, which is his personal information (see Orders F2006-006 at para 15, F2008-031 at para 100 and F2009-043 at para 40). Therefore, section 17(4)(g) of the Act applies to the writer's personal information contained in the letter.

[para 17] Section 17(4)(g) of the Act also applies to the personal information of the other third parties in the letter, either who are named, or who would be identifiable by others by reference to the context in which they are found.

[para 18] I agree with the Public Body's argument that section 17(5)(g) of the Act (the information is likely to be inaccurate) may apply to the information in the letter, as it seems to consist of theories of the writer with no evidence to back up the theories. However, as the information the Applicant is truly seeking is an opinion about her (accurate or not) and therefore is her own personal information, I do not believe that this factor weighs in favour of withholding from the Applicant any part of the letter that is her own personal information. However, it would apply to the parts of the letter that consist of the personal information of third parties (other than the writer).

[para 19] I disagree with the Public Body that the information in the letter was supplied by the writer in confidence (section 17(5)(f) of the Act). There is nothing in the letter to suggest this. As well, when the Public Body asked if it was permitted to release the letter, the writer's response gave no indication that the letter was confidential.

[para 20] I conclude that the information should be withheld in this case as disclosing it would be an unreasonable invasion of the personal privacy of the writer and other third parties mentioned in the letter. There is, in my view, no factor that weighs in favour of its disclosure despite the application of section 17(4)(g) and the partial application of section 17(5)(g).

[para 21] In reaching this conclusion, I also took into account that some parts of the letter possibly consist of the Applicant's personal information, which is possibly a circumstance within the terms of section 17(5) that weighs in favour of disclosure of the parts of the information that are at the same time the personal information of the writer of the letter. However, I decided that this factor, if it applies, is not sufficient to outweigh the presumption under section 17(4)(g).

The Applicant's personal information:

[para 22] The Applicant argues that the record requested contains her personal information. She states that this is the only information to which she is interested in gaining access. I will therefore consider whether it would be possible to sever the personal information of others so as to provide to the Applicant only her own personal information.

[para 23] I have reviewed an unsevered copy of the requested record. As I have little contextual background into the issues that the writer was having with various individuals in the letter, and those individuals are not always named, I do not know which part of the letter, if any, is about the Applicant. Her name does not appear in the letter, and there are various parts of the letter, which name various other individuals, that could be said to be casting a shadow over the good name of the Mayor.

[para 24] The information provided by the Applicant, who has never actually seen the letter, but only has second-hand knowledge of it by way of comments made to her by someone who did read the letter, states that the writer suggested an inappropriate relationship between herself and the Mayor. This information does not definitively point to a portion of the letter that is about the Applicant, as the writer of the letter suggests more than one such inappropriate relationship. However, if there is information in the letter that is the author's opinion about the Applicant, and this is information which the intended recipients read and knew was a comment about the Applicant, this would be her personal information. For the purposes of this discussion, I will assume some parts of the letter consist of the Applicant's personal information.

[para 25] In the Applicant's submissions, she refers to section 6 of the Act which states:

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.

[para 26] While it is correct that the Applicant has a right of access to a record containing her own personal information, this right does not extend to information excepted from disclosure under Division 2 of the Act. This includes section 17 of the Act, which I found applies to the information in the requested record in the manner discussed at para 20 above. However, the Applicant may still be given access to

information where a third party's personal information could be severed from the record. Section 6(2) of the Act states:

6(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 27] With respect to the personal information of the third parties mentioned by name, I acknowledge that the names alone or even the entirety of this information could be severed (assuming the Public Body would know which parts of the letter consist of the Applicant's personal information).

[para 28] However, the entire letter consists of the writer's personal information, as it reveals, in its entirety, that he wrote a letter expressing his opinions. Thus any part of the letter that consists of the Applicant's personal information is inextricably intertwined with the personal information of the writer, and cannot be extricated from the latter, nor from that of other third parties, so as to permit disclosure to the Applicant of her own personal information (even assuming the Public body could identify such information).

[para 29] Given this, I conclude that the Public Body properly withheld the entirety of the letter from the Applicant in accordance with the requirements of the Act.

V. ORDER

[para 30] I make this Order under section 72 of the Act.

[para 31] I find that the Public Body properly withheld the records requested from the Applicant pursuant to section 17 of the Act.

Keri H. Ridley
Adjudicator