

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2011-005

June 6, 2011

CALGARY POLICE SERVICE

Case File Number F5466

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to the Calgary Police Service (the Public Body) for access to notes, reports, and other records relating to a police investigation into a complaint he had made.

The Public Body located responsive records, but severed the information of third parties contained in the records under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Adjudicator confirmed the decision of the Public Body to withhold the personal information of third parties from the records at issue. In confirming the decision, the Adjudicator noted that the Applicant did not take issue with the Public Body's severing, but rather sought further explanation regarding decisions it had made. She noted that the right of access under section 6 does not include a right to obtain answers from a public body regarding decisions it has made outside the FOIP Act and with which an applicant does not agree, unless that information is already recorded in some way and is within the custody or control of the public body.

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

Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22

I. BACKGROUND

[para 1] The Applicant made a request to the Calgary Police Service (the Public Body) for access to notes, reports, and other records relating to a police investigation into a complaint he had made.

[para 2] The Public Body located responsive records, but severed the information of third parties contained in the records under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

[para 3] The Applicant requested that the Commissioner review the Public Body's response to him.

[para 4] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. INFORMATION AT ISSUE

[para 5] Information severed from notes, reports and records relating to a police investigation is at issue.

III. ISSUE

Issue A: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records?

IV. DISCUSSION OF ISSUE

Issue A: Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records?

[para 6] The Public Body withheld names and other information that would serve to identify third party individuals from the records at issue.

[para 7] Section 1(n) defines personal information under the 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;*

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

[para 8] I find that the information severed by the Public Body is personal information, as it is about third parties as identifiable individuals.

[para 9] Section 17 states in part:

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...

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if...

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation...

...

(g) the personal information consists of the third party's name when (i) it appears with other personal information about the third party, or (ii) the disclosure of the name itself would reveal personal information about the third party...

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

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

- (b) *the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) *the personal information is relevant to a fair determination of the applicant's rights,*
- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
- (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, and*
- (i) *the personal information was originally provided by the applicant.*

[para 10] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 11] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application applies). Section 17(5) is not an exhaustive list and other relevant circumstances must be considered.

[para 12] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said:

In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. 16(5) and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4). In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s. 16(4) is (sic) met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

Section 17 requires a public body to withhold information when the information would be harmful to the personal privacy of an identifiable individual.

[para 13] The Public Body argues that the personal information severed is information falling under section 17(4)(b) and (g). I agree with the Public Body that the personal information it severed is contained in a law enforcement record and consists of

the names of individuals in the context of other personal information about them. I therefore find that the personal information severed by the Public Body is subject to a presumption that it would be an unreasonable invasion of the personal privacy of third parties to disclose it. I will therefore consider whether any factors under section 17(5) apply so as to rebut, or conversely, to strengthen, this presumption.

[para 14] The Applicant did not address the FOIP Act in his submissions, or the Public Body's severing of personal information. Rather, he confined his submissions to objecting to decisions made by the Public Body in relation to a complaint he had made outside the FOIP Act.

[para 15] The Public Body argues the following in relation to section 17(5):

The Public Body states that the Applicant has not provided any relevant circumstances that should be applied pursuant to section 17(5) in respect of the records at issue that would weigh in favour of disclosing the third party personal information redacted from the records at issue.

I agree that there do not appear to be any relevant circumstances that would weigh in favor of disclosing the personal information of third parties, and that the Applicant has not drawn my attention to any.

[para 16] In the Applicant's request for an inquiry, I note that he states the following:

We have no interest in knowing any personal information about the said 3 persons. From the rest of the records, what we are mainly looking forward to knowing is why the CPS did not pursue the investigation, instead unilaterally stopped the investigation halfway without even asking us questions regarding numerous false statements... and closed the case.

The Applicant is not seeking the personal information of the third parties severed from the records but rather, the Public Body's reasons for not investigating his complaint further. However, I note that on page 6 of the records that the Applicant received in response to his access request, the Public Body's notes of April 28, 2010 set out the reasons for discontinuing the investigation. The Applicant may not agree with those reasons; however, that is not a matter that can be addressed under the FOIP Act. Under section 6 of the FOIP Act, an applicant is given a right of access to the records in the custody or control of a public body. The right of access under section 6 does not include a right to obtain answers from a public body regarding decisions it has made outside the FOIP Act and with which an applicant does not agree, unless that information is already recorded in some way and is within the custody or control of the public body. That is not the case in this inquiry.

V. ORDER

[para 17] I make this Order under section 72 of the Act.

[para 18] I confirm the decision of the Public Body to withhold the personal information of third parties from the records.

Teresa Cunningham
Adjudicator