

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2012-18

July 23, 2012

CALGARY POLICE SERVICE

Case File Number F5803

Office URL: www.oipc.ab.ca

Summary: On April 11, 2011, the Applicant requested a copy of a file relating to an investigation into allegations of wrongdoing by her deceased son. The Calgary Police Service (“the Public Body”) responded to the Applicant’s request, initially, by providing the Applicant with portions of a related file, and eventually by providing the Applicant with portions of the file requested. Both files had been severed in part pursuant to section 17 of the *Freedom of Information and Protection of Privacy Act* (“the Act”).

The Applicant requested a review of the Public Body’s response to her access request, stating that the allegations had been made public by her son’s accuser in a blog posted on the internet. The Public Body argued that disclosing the information in the records to the Applicant would be an unreasonable invasion of the personal privacy of the third parties involved, including the Applicant’s son.

The Adjudicator found that the Applicant was not the personal representative of her deceased son. Therefore, her son’s information was third party information. The Adjudicator found that the information severed by the Public Body was personal information of the Applicant’s son and other third parties. Further, the Adjudicator found that the disclosure of the information at issue would be an unreasonable invasion of the third party’s personal privacy pursuant to section 17 of the Act. Finally, the Adjudicator found that similar information being publically available on a blog is not a factor that weighed in favour of disclosure because the blog did not contain the same information as the requested records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 40, 72, and 84.

Authorities Cited: AB: Orders 98-004.

I. BACKGROUND

[para 1] The Applicant is the mother of a deceased individual who was accused of criminal activities. As the result of the accusation, the Calgary Police Service (“the Public Body”), opened file #11090487 (“the criminal file”).

[para 2] Following her son’s death, the Applicant requested a copy of Calgary Police File #11090487 pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”). On May 5, 2011, the Public Body responded, by providing the Applicant with portions of Calgary Police File # 11091038 (which related to her son’s death) but nothing from the criminal file which the Applicant had requested.

[para 3] On May 24, 2011, the Applicant requested that the Office of the Information and Privacy Commissioner (“this office”) review the Public Body’s response to her request. A portfolio officer was appointed to attempt to resolve the issues between the parties.

[para 4] On September 8, 2011, the Public Body responded to the Applicant’s request a second time and refused to confirm or deny the existence of the criminal file. On October 25, 2011, the Applicant requested an inquiry.

[para 5] On December 20, 2011, the Public Body revised its response to the Applicant. The Public Body provided the Applicant with a small portion of the criminal file and severed the remainder of the information pursuant to section 17 of the Act.

[para 6] The Notice of Inquiry for this matter was sent to the parties April 16, 2012. I received initial submissions from both the Applicant and the Public Body.

II. INFORMATION AT ISSUE

[para 7] The information at issue consists of the severed portions of Calgary Police files #11091038 and #11090487.

III. ISSUE

[para 8] A Notice of Inquiry dated April 16, 2012 states that the issue in this inquiry is:

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

IV. DISCUSSION OF ISSUES

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

i. *Did the records contain the personal information of a third party?*

[para 9] Personal information is defined in section 1(n) of the Act as follows:

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 10] The records at issue contain the name, age, sex, marital status, family status, criminal history, opinions, and personal views of various third parties. Along with personal information of the various third parties, the records that the Applicant requested contain the personal information of her son, who was deceased at the time she made the request.

[para 11] Section 84(1)(a) of the Act allows an applicant to exercise the rights of a deceased under the Act if the Applicant is the deceased's personal representative and the right being exercised relates to the administration of the deceased's estate. Section 84(1)(a) of the Act states:

84(1) Any right or power conferred on an individual by this Act may be exercised

(a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate...

[para 12] The Applicant seems to make the request not as her son's personal representative, but on her own behalf. However, she did provide the Public Body with a copy of her son's last will and testament, which names her as an alternative executrix. If the Applicant were to make the assertion that she was acting as her son's personal representative (which I do not believe to be the case), this evidence would not be enough to establish this claim. A Grant of Probate or Letters of Administration would need to be provided to establish that she was acting as her son's personal representative (Order 98-004 at para 30-31).

[para 13] As well, on the basis of the evidence and argument before me, including the Applicant's submission that "[she] just wants the facts as they were presented...pertaining to this matter...", I cannot find that the Applicant's request related to the administration of her son's estate. Therefore, I find that the Applicant was acting on her own behalf when she made the access request to the Public Body.

[para 14] As a result of this finding, the Applicant's son's personal information contained in the records must be treated as a third party's personal information.

ii. Would the disclosure of the personal information be an unreasonable invasion of a third party's personal privacy?

[para 15] Section 17 of the Act governs and restricts the disclosure of a third party's personal information. 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 16] Section 17(2) of the Act lists circumstances in which the disclosure of a third party's personal information would not be an unreasonable invasion of the third party's personal privacy. None of these circumstances are applicable in this matter.

[para 17] Section 17(4) of the Act is a list of circumstances in which the disclosure of a third party's personal information is presumed to be an unreasonable invasion of his or

her personal privacy. The portions of section 17(4) of the Act relevant to this inquiry state:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(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,

...

[para 18] Law enforcement is defined in section 1(h)(ii) as follows:

1(h)(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...

[para 19] The information contained in the criminal file (file #11090487) requested by the Applicant includes notes made by Calgary Police Service members and interviews relating to the allegations made against the Applicant's son. If the allegations were true, the result could have been a criminal conviction. I find that the information in the criminal file is, therefore, an identifiable part of a law enforcement record. The disclosure requested was not necessary to dispose of a law enforcement matter or to continue an investigation. The investigation which could have led to criminal charges became moot when the Applicant's son died. Therefore, I find that there is a presumption that the disclosure of the personal information of the Applicant's son as well as of the third parties' in the criminal file (file #11090487) would be an unreasonable invasion of their personal privacy pursuant to section 17(4)(b) of the Act.

[para 20] The Applicant's son's death was not a criminal matter involving an offence. However, the file relating to his death (file#11091038) contains the Applicant's son's personal information as well as other third parties' personal information.

[para 21] In its initial response to the Applicant when the Public Body disclosed portions of the file relating to the Applicant's son's death (file #11091038), the Public Body considered section 40 of the Act which states:

40(1) A public body may disclose personal information only
...
(cc) to the surviving spouse or adult interdependent partner or a relative of a deceased individual if, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy,
...

[para 22] Relying on this section, the Public Body released most of the Applicant's son's personal information in file #11091038 to the Applicant but severed the bulk of the information in the records because it contained the personal information of other third parties.

[para 23] The personal information of third parties in file #11091038 includes information about their medical history, employment history, and information that consists of third parties' names with other personal information about the third parties. Therefore, I find that there is a presumption that disclosure of the third parties' personal information contained in the file relating to the Applicant's son's death (file #11091038) would be an unreasonable invasion of their personal privacy pursuant to sections 17(4)(a), 17(4)(d) and 17(4)(g)(ii) of the Act.

iii. Are there any section 17(5) factors weighing in favour of disclosure?

[para 24] Although there is a presumption that the disclosure of the third parties' personal information would be an unreasonable invasion of their personal privacy, the Public Body must still weigh the factors in section 17(5) of the Act to determine if disclosure of the information would constitute an unreasonable invasion of the third parties' personal information. Section 17(5) of the Act states:

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

(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 25] The Public Body made submissions in this regard and found that there were no factors weighing in favour of disclosure. I agree. The disclosure would not be desirable for subjecting the activities of the government or a public body to public scrutiny (section 17(5)(a)), nor would it promote public health or safety (section 17(5)(b)). I decided above that the Applicant is making this request on her own behalf and not as the legal representative of her son; therefore, she has no rights which the information would help to fairly determine (section 17(5)(c)). Section 17(5)(d) (assisting in the claims of aboriginal people) is also not applicable.

[para 26] The Public Body concedes, and I agree, that section 17(5)(e) (disclosure may subject a third party unfairly to financial or other harm), section 17(5)(f) (information supplied in confidence), section 17(5)(g) (information that is likely inaccurate), and section 17(5)(i) (information supplied by the Applicant) do not apply to the information in the records at issue.

[para 27] The bulk of information in the criminal file is information about unproven accusations against the Applicant's son. Given that the Applicant's son died shortly after the Public Body began its investigation of these accusations, the Applicant's son was not able to reply to the accusations. Therefore, the information in the file was not tested in any way. The allegations against the Applicant's son were also contained in the file

relating to his death. As there is no way to prove the allegations against the Applicant's son were true or false and as the Applicant's son did not have the opportunity to respond to the accusations, I find that the disclosure of the information relating to the accusations may unfairly harm the reputation of the Applicant's son, a third party. Therefore, section 17(5)(h) of the Act applies and weighs in favour of withholding the information from the Applicant.

[para 28] The Applicant argues that a relevant factor weighing in favour of disclosing the third parties' personal information is that one of the third parties has blogged about the details of the accusations made against the Applicant's son. The Applicant seems to believe that the information in the blog is the same or similar information as was severed from the request records. Since this information is publicly available, the Applicant says she is, "...left wondering how this remains a private matter."

[para 29] I take the Applicant's submissions to possibly mean first that she does not believe that there is a personal privacy issue in so far as the author of the blog is concerned or that the author of the blog has waived her privacy interests in the information found in the blog, and second that since some of the events to which the information in the files relates have already been discussed on the internet they are no longer private and should not be protected by the Act.

[para 30] As to the privacy of the author of the blog, although the Applicant did provide a web address and printout from the blog, as the Public Body rightly points out, the Applicant has not established that the author of the blog was one of the third parties whose personal information is in the records at issue. As well, the person who allegedly authored the blog chose not to use her last name to maintain some degree of anonymity. Therefore, it cannot be argued that she waived any privacy interests she might have in the information.

[para 31] As to the public discussion of the accusations against the son, I would not find the public knowledge of the blog author's version of some of these matters to be a factor weighing in favour of disclosure of the information in the records at issue.

[para 32] The information in the blog and the information in the records requested is not the same information. The blog is one person's account of certain events and not police notes, interviews and statements of various third parties. Although the public availability of information is a factor that may sometimes be relevant under section 17(5) of the Act, it must at a minimum be the same information. I do not find that the existence of the blog weighs in favour of disclosing the personal information that was severed from the records requested.

[para 33] Finally, section 40(1)(cc) of the Act (quoted above) allows the head of a public body to disclose personal information of a deceased individual to a relative of the deceased if, in the public body's opinion, it is not an unreasonable invasion of the deceased's personal privacy. The Public Body determined that it was not an unreasonable invasion of the Applicant's son's personal privacy to disclose his personal

information in the file relating to his death (file #11091038) to the Applicant. However, the Public Body determined that it would be an unreasonable invasion of the Applicant's son's personal privacy to disclose his personal information found in the criminal file. Given my findings above, I agree with the Public Body that disclosing the Applicant's son's personal information would be an unreasonable invasion of his personal privacy (as well as the personal privacy of the other third parties). Therefore, I find that the Public Body properly applied section 40(1)(cc) of the Act.

[para 34] Having read all of the arguments and evidence put before me, I find that there are no factors weighing in favour of disclosing the records requested by the Applicant. I find that the Public Body correctly severed the information in the records requested by the Applicant.

V. ORDER

[para 35] I make this Order under section 72 of the Act.

[para 36] I find that the Public Body properly applied section 17 of the Act to the records when it responded to the Applicant's access request.

Keri H. Ridley
Adjudicator