

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-08

March 13, 2013

**CALGARY AND AREA
CHILD AND FAMILY SERVICES AUTHORITY**

Case File Number F5908

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to the Public Body pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”) requesting information that the Public Body had regarding an investigation it conducted involving himself and his wife. He made the request for both his personal information and that of his minor children. The Public Body responded but severed information pursuant to sections 17 and 27 of the Act.

The Adjudicator found, with the exception of information that was provided by the Applicant, the Public Body properly applied section 17 of the Act to the information at issue. The Adjudicator also stated that section 27 of the Act applied to information that would reveal the identity of the individual who reported the child in need pursuant to section 126.1 of the *Child, Youth, and Family Enhancement Act* (“the CYFEA”).

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 27, 59, 72, and 84; *Child, Youth, and Family Enhancement Act* R.S.A. 2000, c. C-12 ss. 1, 4, and 126.1.

Authorities Cited: **AB:** Orders F2009-033, F2010-028, and F2012-24.

I. BACKGROUND

[para 1] The Applicant made an access request to the Calgary and Area Child and Family Services Authority (“the Public Body”) pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”). In his request he stated:

[the Public Body] investigated me and my wife and found nothing wrong with our parenting. We would like to see the records approx. 1-2 years ago.

[para 2] The Public Body confirmed with the Applicant that he was not making a joint request but that the Applicant was requesting his own personal information and information about his children.

[para 3] The Public Body responded to the Applicant's request, providing him with 45 pages of responsive records. However, information from the records had been severed by the Public Body pursuant to sections 17 and 27 of the Act.

[para 4] The Applicant asked this Office to review the Public Body's response to his access request. Mediation was authorized but did not resolve the issues between the parties and so an inquiry was requested. Both the Applicant and Public Body provided initial and rebuttal submissions in support of their positions.

II. INFORMATION AT ISSUE

[para 5] The information at issue in this inquiry is the severed portions of the 45 pages of responsive records provided to the Applicant by the Public Body in response to his access request.

III. ISSUES

[para 6] The Notice of Inquiry dated June 8, 2012 lists the issues for this inquiry as follows:

1. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information/records?
2. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information/records?

[para 7] As the Applicant made the request for both his own information and that of his children, presumably as their guardian, as a preliminary issue, I will also address the rights conferred by section 84 of the Act on the Applicant and his children.

IV. DISCUSSION OF ISSUES

Preliminary Issue: Can the Applicant make a request on behalf of his minor children?

[para 8] Section 84(1)(e) of the Act allows a guardian to make an access request on behalf of a guardian's minor children. Section 84 of the Act states:

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

...

(e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor...

[para 9] In Order F2009-033, the Adjudicator stated that the effect of section 84(1)(e) of the Act on access requests as follows:

...it is proper for the Public Body to determine if the disclosure of the minor children's personal information in each individual record to the guardian would be an unreasonable invasion of the minor children's personal privacy. If the Public Body determines that it would be, then the minor children are treated as third parties and their information is subject to section 17 of the Act.

(Order F2009-033 at para 19)

[para 10] The Applicant requested his information and his minor children's information regarding an investigation the Public Body had conducted. The Public Body was investigating allegations that the Applicant had used inappropriate disciplinary techniques on his minor children.

[para 11] Not surprisingly given the context of the investigation, the Public Body severed some of the minor children's personal information pursuant to section 17 of the Act. The Public Body did not submit that it first determined that disclosing the minor children's information on some pages (such as notes of interviews with case workers) would be an unreasonable invasion of their personal privacy before treating the minor children as third parties and applying section 17 of the Act. However, I believe that I can infer that the Public Body went through this process by the fact that section 17 of the Act was applied to information. As well, based on my review of the records, I believe the disclosure of the information in the records would be an unreasonable invasion of the minor children's personal privacy, and that it was appropriate for the Public Body to treat the minor children as third parties and to subject their personal information to a section 17 analysis.

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

[para 12] Section 17 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.

a. Do the records contain personal information?

[para 13] Therefore, in order for section 17 of the Act to have been properly applied, the information severed pursuant to section 17 of the Act must have been personal information. Personal information is defined in 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 14] I have reviewed the information that was severed from the records and find that it was all information about identifiable individuals and is, therefore, personal information as defined in the Act.

b. Is there a presumption that disclosure would be an unreasonable invasion of a third party's personal privacy?

[para 15] Sections 17(2) and 17(3) of the Act list circumstances in which the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. None of the circumstances listed are applicable in this inquiry.

[para 16] Section 17(4) of the Act lists circumstances in which the disclosure of a third party's personal information is presumed to be an unreasonable invasion of the third party's personal privacy. The Public Body submits that section 17(4)(g) of the Act applies to the third party personal information in the records and creates a presumption that disclosing the information would be an unreasonable invasion of the third parties' personal privacy. Section 17(4)(g) of the Act 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 17] I agree with the Public Body that section 17(4)(g)(i) of the Act applies to the information that was severed from the records at issue.

c. Do any section 17(5) factors apply?

[para 18] Although section 17(4)(g) of the Act creates a presumption that the disclosure of the information would be an unreasonable invasion of a third party's personal privacy, the Public Body must still examine the factors listed in section 17(5) of the Act to determine if the disclosure of the information would be an unreasonable invasion of the third party's personal privacy. 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 19] The Public Body submits that it considered section 17(5)(e) (third parties will be exposed to financial or other harm) and section 17(5)(f) (information has been supplied in confidence), "...as well as additional factors that could reveal the identity of third parties..." and found that these factors weighed in favour of withholding the personal information of third parties.

[para 20] The Public Body did not elaborate any further on why it felt these factors applied to the records at issue. I assume, given the nature of the records, that it felt the third parties may be exposed to harm by the Applicant should the personal information be disclosed. While this may be a relevant consideration in many similar access requests dealing with other applicants, from my review of the unsevered records at issue, I do not believe that section 17(5)(e) of the Act weighs in favour of severing the information. There is no indication in the records that any third party feels that the Applicant was dangerous or would harm them, nor do I have any other indications from the materials and submissions before me that this would be so.

[para 21] However, I agree that section 17(5)(f) of the Act applies to the information severed from the records. Confidentiality need not be express in order for section 17(5)(f) to apply. It can be inferred from the context in which the information was given (see Order F2010-028 at para 48). Given the sensitivity of much of the information that was severed, and the nature of the records, I believe that the parties supplied the information

in confidence and that this factor weighs in favour of withholding much of the information that was severed from the records at issue.

[para 22] One exception to this is information that was supplied by the Applicant (section 17(5)(i) of the Act). The Applicant was interviewed by an employee of the Public Body and notes were taken of that conversation. Those notes appear on pages 8, 32 and 33 of the responsive records. I find that the fact that this information was supplied originally by the Applicant weighs in favour of disclosing the information and find that the Public Body ought to disclose the entire contents of the notes taken of the Applicant's interview to the Applicant.

d. Do additional section 17(5) factors apply?

[para 23] In Order F2012-24 issued by this Office, the Adjudicator had issues discerning why the Public Body severed some information that was similar to information that it already disclosed. She stated:

...the information that the Public Body has chosen to disclose is very similar in nature, though often less detailed, than the information that has been withheld...

The Public Body has said that it has disclosed as much information as possible, but it has not explained why it thought that the more summary information was not an unreasonable invasion of the privacy of the third parties whose information was included in the summary, but the more detailed information was such an invasion. It would be of great assistance for me in any review of the decision of the Public Body to have the benefit of its views about this question.

This factor is of heightened importance in this case because the information the Public Body disclosed in its abbreviated form may have led the Applicants to draw inaccurate conclusions regarding their daughter's death which the more detailed and extensive information might permit them to better assess. That information in the records may serve to clarify possible misapprehensions resulting from the Public Body's earlier disclosure is also relevant to the decision to be made under section 17(5) regarding the Applicant's daughter's personal information.

(Order F2012-24 at paras 71-73)

[para 24] I also had difficulty understanding the Public Body's reasoning in severing some information when similar information was disclosed. As there may have been section 17(5) factors that weigh in favour of withholding the information that was severed from the chart regarding the Applicant's minor children found on pages 9-12 of the responsive records, I asked the Public Body to explain its severing. In an *in camera* response, the Public Body explained the apparent inconsistency in a reasonable way and has convinced me that it took appropriate section 17(5) factors into account when considering if it ought to disclose the severed information.

[para 25] Section 59(3)(a) of the Act states:

59(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner must take every reasonable precaution to avoid disclosing and must not disclose

(a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 7(1)...

[para 26] Pursuant to section 59(3)(a) of the Act, I am not able to go into extensive detail regarding the Public Body's *in camera* submission or its reasoning for severing the information in the way that it did, as that would disclose the content of the *in camera* response, and would thereby reveal information which I find that the Public Body properly withheld. However, I can say that the Public Body's reasoning regarding the apparently inconsistent severing took into account who provided the information and any possible privilege that may attach to that information (which will be discussed below).

2. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information/records?

[para 27] Section 27(1) of the Act allows a Public Body to withhold information from an Applicant that is privileged. The portions of section 27 of the Act that are relevant in this inquiry state:

27(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,

...

(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

[para 28] Section 126.1 of the *Child, Youth and Family Enhancement Act* ("the CYFEA") makes privileged the names of individuals or information that would identify individuals who make a report to the director. Section 126.1 of the CYFEA states:

126.1(1) Despite section 126(1), the name of a person who makes a report to the director under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.

(2) Despite subsection (1), the Minister may direct the release of information under subsection (1) that would identify the person.

(3) If there is a conflict or inconsistency between subsection (1) and the Freedom of Information and Protection of Privacy Act, subsection (1) prevails.

[para 29] Section 4 of the CYFEA states:

4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.

[para 30] Section 1(1)(j) of the CYFEA defines director as follows:

1(1)(j) “director” means a person designated by the Minister as a director for the purposes of this Act and the Protection of Sexually Exploited Children Act and without limiting the generality of the foregoing includes a person designated as a director in accordance with an agreement under section 122(2) of this Act;

[para 31] The Public Body submits that it severed information that would identify individuals who reported a child in need of intervention. The Public Body applied section 27 and 17 to this information. The Public Body properly applied section 17 of the Act to all of the information to which it also applied section 27 of the Act. Therefore, I do not have to make any findings regarding its use of section 27 of the Act. However, I confirm that the Public Body was correct in applying section 27 of the Act to protect information that would expose the identity of any individual who reported the child in need, as this information is privileged information pursuant to section 126.1 of the CYFEA (see Order F2009-033 at para 57).

V. ORDER

[para 32] I make this Order under section 72 of the Act.

[para 33] I find that the Public Body properly applied section 17 of the Act to the information at issue with the exception of the information referred to in paragraph 22 of

the Order. I order the Public Body to disclose the information referred to in paragraph 22 to the Applicant.

[para 34] I further order the Public Body to notify me, in writing, that it has complied with the Order, within 50 days of receiving a copy of the Order.

Keri H. Ridley
Adjudicator