

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-09

March 13, 2013

CALGARY POLICE SERVICE

Case File Number F5898

Office URL: www.oipc.ab.ca

Summary: The Applicant requested a copy of his personal information in the possession of the Calgary Police Service (the Public Body) pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body responded to the Applicant's request but severed information from the responsive records pursuant to sections 17 and 20(1) of the Act.

The Adjudicator found that the Public Body properly applied section 17 of the Act to much of the information it severed, with the exception of licence plate numbers, information about a corrections officer acting in his official capacity and some information about a dispute the Applicant was having with his neighbour. With regard to some of the information, the Adjudicator found that the Public Body did not properly weigh the section 17(5) factors. The Adjudicator noted that the information that the Public Body had already disclosed identified the neighbour as a third party and found that the Public Body inconsistently severed other information. Therefore, the Adjudicator ordered the Public Body to reconsider its decision regarding severing.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 20, and 72; *Personal Information Protection Act*, R.S.A. 2000 c. P-6.5, s. 1.

Cases Cited: AB: *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, leave to appeal refused [2011] S.C.C.A. No. 260 (QL).

Orders Cited: AB: Orders F2006-006, F2008-031, F2009-004, F2009-016, F2009-043, and F2012-24.

I. BACKGROUND

[para 1] On May 30, 2011, the Applicant wrote to the Calgary Police Service (the Public Body or CPS) requesting his personal information dating back to 2001. In response, the Public Body provided the Applicant with 50 pages of responsive records. Portions of the records had been severed pursuant to sections 17 and 20(1) of the *Freedom of Information and Protection of Privacy Act* (the Act).

[para 2] The Applicant requested that the Office of the Information and Privacy Commissioner (this Office) review the Public Body's response to his access request as he felt that so much information was severed that he could not understand what was being said about him.

[para 3] The former Information and Privacy Commissioner authorized a Portfolio Officer to investigate and attempt to mediate a resolution between the parties. This was unsuccessful and the Applicant requested an inquiry. Both the Applicant and Public Body made written submissions for the inquiry.

II. INFORMATION AT ISSUE

[para 4] The information at issue is the severed portions of the 50 pages the Public Body disclosed to the Applicant in response to his access request.

III. ISSUES

[para 5] The Notice of Inquiry, dated June 8, 2012, was sent to the parties and listed the issues in this inquiry as follows:

1. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information/record(s)?
2. Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information/record(s)?

IV. DISCUSSION OF ISSUES

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

- a. *Is the information at issue personal information?*

[para 6] 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 7] For the most part, the information severed by the Public Body was personal information of third parties, including third parties' names, addresses, telephone numbers, race, age, sex, marital status, criminal history, and opinions of and about the third parties.

[para 8] The Public Body severed information throughout the records about offences alleged to have been committed against certain victims, which were being investigated by the Public Body. From the information on the file, the third parties who committed the offences were never identified and these offences were committed years ago, so the third parties will not likely ever be identified; therefore, this information is not about an identifiable individual and is not personal information. The information ought to be disclosed to the Applicant. However, where the offences or charges are associated with the name of an "accused", that information is the personal information of an identifiable individual because it is the criminal history of the accused.

[para 9] As well, on pages 5 and 6, the Public Body severed a licence plate number of a vehicle that had been broken into. In the case of *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)* 2011 ABCA 94 (at para 50-51), the Alberta Court of Appeal found that licence plate numbers were not personal information within the definition of "personal information" found in the *Personal Information Protection Act* ("PIPA"), which states:

1(k) "personal information" means information about an identifiable individual;

[para 10] The reasoning of the Court of Appeal was that a licence plate number is information about the vehicle and not about an individual. In this instance, the licence plate alone does not identify the owner of the vehicle to which it was attached. Therefore, I find that the licence plate is not personal information of a third party and ought to be disclosed to the Applicant.

[para 11] Pages 21 and 22 of the responsive records are a police report about an incident that occurred when the Applicant was in the course of his employment as a corrections officer. The Public Body severed the name of another corrections officer mentioned in the record. Although the other corrections officer's name is his personal information, the correction officer was in the course of his employment when giving his statement to the police. The statement, therefore, would be work product of the other corrections officer, and not personal information. As such, the Public Body did not sever the statement except for the parts which related to the personal information of the accused and the other corrections officer's name. For reasons which I will set out below, because the other corrections officer was in the course of his employment when making the witness statement about an event that also happened in the course of his employment, I find that the disclosure of the other corrections officer's name would not be an unreasonable invasion of his personal privacy under section 17(1) of the Act.

[para 12] As well, the Public Body was in my view correct to disclose information relating to the criminal activity of an accused from pages 21 and 22. The Public Body had severed the name of the accused and the identity of the accused was not discoverable from the records based on information that was disclosed. At the same time, however, the Public Body severed some information that consisted of opinions about the accused as well as information about the gathering and storage of physical evidence. Although this information consists of opinions about the accused or the accused's criminal history, because the name of the accused was severed, I do not think the additional severed information is information about an identifiable person and, therefore, it is not personal information. It may be that the Public Body severed information that it felt might make the accused identifiable to the Applicant. However, the Public Body made no submissions to this effect, and it is not obvious from examining the information that was disclosed and the information that was severed. Therefore, I find that the Public Body ought to disclose the severed information in pages 21 and 22, with the exception of the accused's name.

[para 13] I turn to information consisting of a third party's opinion about the Applicant. According to the definition of personal information found in section 1(n) of the Act, this is the Applicant's personal information. Although the substance of the opinion is the personal information of the Applicant, disclosing the opinion would likely identify the person who gave the opinion. Therefore because disclosing the opinion would reveal the identity of the individual that provided the opinion, it is also that individual's personal information (see Orders F2006-006 at para 115, F2008-031 at para 100 and F2009-043 at para 40). As a result, I will have to examine if the Public Body

properly decided to withhold the Applicant's personal information from him that consists of an opinion about him, given that it is also the personal information of the individual who gave the opinion.

- b. *Would the disclosure of the information at issue be an unreasonable invasion of a third party's privacy?*

[para 14] Much of the information that was severed by the Public Body was severed pursuant to section 17 of the Act, which prohibits Public Body's from disclosing a third party's personal information where it would be an unreasonable invasion of the third party's personal privacy. 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 15] 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 the circumstances in section 17(2) of the Act are applicable in this inquiry.

[para 16] Sections 17(4) of the Act lists circumstances in which the disclosure of a third party's personal information would be presumed to be an unreasonable invasion of the third party's personal privacy. The subsections of section 17(4) of the Act that are 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

...

(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,

[para 17] The Public Body argues that all of the personal information was an identifiable part of a law enforcement record. “Law enforcement” is defined in section 1(h) for the Act as follows:

1(h) “law enforcement” means

...

(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 18] The responsive records are police files which contain information gathered by the police in the course of investigating complaints reported to the Public Body. Nine separate incidents were investigated. Although I am not certain if any of the incidents resulted in a penalty or sanction, all of the incidents could have led to criminal charges and penalties. Therefore, I find that Public Body was performing a law enforcement function when it recorded the information in the responsive records, and the information at issue was an identifiable part of law enforcement record. As a result, there is a presumption that disclosing any third party’s personal information to the Applicant would be an unreasonable invasion of the third party’s personal privacy.

[para 19] Given my finding regarding section 17(4)(b) of the Act, I will not comment extensively on the applicability of section 17(4)(g) of the Act, though I do note that section 17(4)(g) of the Act applies to much of the personal information that was severed from the responsive records, as often a third party’s name was accompanied by other personal information about the third party such as their family status, age, gender, employment history, and criminal history.

c. Are there any section 17(5) factors that weigh in favour of disclosure?

[para 20] In situations in which by operation of section 17(4) of the Act, presumptions arise that disclosing third party personal information would be an unreasonable invasion of a third party’s personal privacy, a public body must still weigh the factors listed in section 17(5) of the Act, to determine if the information ought to be disclosed or not.

[para 21] 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 22] Some of the information in the records was provided by the Applicant himself (section 17(5)(i) of the Act). The Public Body states that all the information provided by the Applicant was disclosed to him. I do not believe that this is entirely correct. The Public Body did sever names of third parties in the summary of statements provided to it by the Applicant. I find that it is likely that the third party names (including an accused's name) were given to the Public Body by the Applicant. This factor, therefore, would weigh in favour of disclosure. However, given the information that was disclosed by the Public Body to the Applicant already, disclosing the name of the accused on pages 21 and 22 to the Applicant would result in the disclosure of far more personal information to the Applicant than simply a third party's name (such as the accused's criminal history). Therefore, this factor does not weigh in favour of disclosure.

[para 23] The Public Body states that none of the information in the records at issue was supplied in confidence. As the Public Body collected the information, it would be in the best position to make this determination. Therefore, I accept its evidence and find that section 17(5)(f) (information supplied in confidence) of the Act does not apply as a factor weighing in favour of withholding any of the information.

d. Other relevant section 17(5) factors:

[para 24] Beyond the enumerated factors listed in section 17(5) of the Act, there are other related factors that must be taken into consideration. For instance, as I mentioned above, the Public Body severed the name of a corrections officer acting in the course of his employment from pages 21 and 22. Several previous orders issued by this Office have determined that the disclosure of personal information of a third party acting in his or her official capacity would not be an unreasonable invasion of the third party's personal privacy. In Order F2009-016 the Adjudicator stated:

Where personal information of third parties exists as a consequence of their activities as staff performing their duties, or as a function of their employment, this is a relevant circumstance weighing in favour of disclosure under section 17(5) of the Act (Order F2003-005 at para. 96; Order F2004-015 at para. 96).

(Order F2009-016 at para 17)

[para 25] Given this well-established reasoning, I find that the disclosure of the corrections officer's name on pages 21 and 22 of the responsive records would not be an unreasonable invasion of his personal privacy.

[para 26] Weighing all the relevant section 17(5) factors (subject to the exception applied above to information of the corrections officer) I find that the Public Body properly severed third parties' personal information in accordance with section 17 of the Act for the most part. However, I do have some issues with how the Public Body appears to have weighed the section 17(5) factors and severed some information found on pages 23-26, 29-35, and 36-39 of the responsive records.

[para 27] Pages 23-26, 29-35, and 36-39 of the responsive records are three separate police files dealing with a dispute between the Applicant and his neighbours. I have reviewed the information that the Public Body severed from the responsive records. It appears that the Public Body severed information that it felt would identify third parties, such as their names, the Applicant's neighbours' personal views, and the Applicant's neighbours' opinions about the Applicant.

[para 28] Keeping the section 17(5) factors in mind, I think that the Public Body was correct in severing information that was purely the personal information of the third parties. This information includes third party names, addresses, job statuses, personal views or opinions (which are not opinions about the Applicant), and the Public Body's opinions and views about third parties' conduct. As well, there is a description of a third party found on page 24 in the eighth paragraph which would identify the third party (though it does not use the third party's name), which was severed. The Public Body also severed information which was a CPS officer's advice to third parties. In some cases this advice is information about third parties' criminal history and in other cases it could reveal information about a third party's marital or family status. As I found above, there is a presumption that the disclosure of a third party's personal information would be an

unreasonable invasion of a third party's personal privacy. I do not believe that there are any section 17(5) factors that would weigh strongly enough in favour of disclosure to rebut this presumption. Therefore, I find that all of this information was properly severed by the Public Body.

[para 29] In Order F2012-24 issued by this Office recently, the Public Body severed some information that was similar to information that it had already disclosed. The Adjudicator stated:

...the information 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 30] I believe that the Public Body in this inquiry also inconsistently severed information. Information already disclosed by the Public Body clearly identifies that the third party who complained to the Public Body about the Applicant is one of the Applicant's neighbours with whom the Applicant was involved in an ongoing dispute about the shared cost of a project.

[para 31] In Order F2012-24 the Adjudicator found that there are circumstances in which it is preferable to allow a public body to perform its duty under section 17(5) to take all relevant factors into account, rather than for the adjudicator to make the decision themselves at first instance. She stated:

The primary reason for this is that all the factors that the Public Body says in its submission that it applied in this case by reference to section 17(5) were factors that weighed against disclosure, whereas I believe that there are two significant factors, which I will discuss below, that apply in favour of disclosure of the information that has not yet been disclosed.¹ In my view, a decision that applies factors with this relative degree of significance should be made at first instance by the body that has the primary duty under the Act to make it. In effect, the Public Body has not yet met its duty to make a decision on the basis of all relevant considerations.

(Order F2012-24 at para 37)

[para 32] Given my reasoning above, I find that the Public Body ought to release the corrections officer's name found on pages 21 and 22 of the responsive records. I also believe this is a case in which a significant relevant factor has not yet been considered by the Public Body in that the Public Body has inconsistently severed information such that the identity of a third party (the Applicant's neighbour) and some of what the neighbour discussed with the Public Body was disclosed to the Applicant, yet similar information was severed. Therefore I have decided to remit the question of disclosure of the records at issue in this case to the Public Body and ask it to reconsider its decision to sever the information found on pages 23-26, 29-35, and 36-39 of the responsive records.

[para 33] I would also ask that, in reconsidering its severing, the Public Body be mindful of the fact that opinions about the Applicant are the Applicant's own personal information. While this fact must be balanced against the fact that disclosing the opinions would likely identify the individual who gave the opinion, the Public Body should consider that the inconsistent severing may have already revealed the identity of the individual who provided the opinion, thereby shifting the balance between allowing the Applicant access to his own personal information and protecting the personal information of a third party.

2. Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information/record(s)?

[para 34] The Public Body withheld some information on pages 27 and 28 pursuant to section 20(1)(m) of the Act. Section 20(1)(m) of the Act states:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system...

[para 35] The Public Body submits that the information it severed from the responsive records pursuant to section 20(1) was "...part of an electronic record of the verbal

exchange of information between a Communications Officer and a Police Unit dispatched to a call relating to the Applicant...” The Public Body further submits that, “...the redacted information reflects the officer safety policy of the Public Body...” and “...consists of officer safety information redacted in relation to both the Applicant and a third party.”

[para 36] In support of its submission, the Public Body cites Order F2009-004 in which the Adjudicator found the application of section 20(1)(m) of the Act to the same information which is at issue here was proper. The Adjudicator stated:

I find that there is a causal connection between disclosure of the lines in the event chronology and harm to the Public Body’s communications system. Disclosure of the lines of information would reveal the verbal exchanges between the Public Body’s communications officer and attending police officers, and if the content of those verbal exchanges fell into the public domain, the communications system would not serve its intended purpose. The harm on disclosure is more than a mere inconvenience, as damage to the efficacy of the communications system would require a new system to be formulated as well as compromise the safety of police officers. Finally, there is a reasonable expectation that the harm will occur. If information about the Public Body’s communications system and safety procedures fell into the public domain, the information could eventually come to be known by individuals willing to use it to the detriment of police officers when interacting with them in violent or confrontational situations.

I considered whether disclosure to the particular Applicant in this inquiry was enough to satisfy the harm test, given that he may or may not do anything with the information in the three lines of the event chronology or disclose them to anyone else. I find that there would nonetheless be harm because even a minimal release of information about the Public Body’s communications system into the public domain risks compromising the efficacy of the communications system and the safety of police officers.

(Order F2009-004 at para 33 and 34)

[para 37] I agree with the reasoning of the Adjudicator in Order F2009-004 and find that the Public Body properly applied section 20(1)(m) to the responsive records.

V. ORDER

[para 38] I make this Order under section 72 of the Act.

[para 39] I find that the Public Body severed information that was not personal information in contravention of the Act and order the Public Body to release that information in accordance with my findings at paragraphs 8, 10, and 12 of this Order.

[para 40] I find that the Public Body severed information from pages 21 and 22 of the responsive records in contravention of the Act and order the Public Body to release that information in accordance with my finding at paragraphs 12 and 32 of this Order.

[para 41] I order the head of the Public Body to comply with its duty under section 17(5) to consider all relevant circumstances in making the decision to disclose or withhold personal information under section 17, including the relevant circumstances as summarized at paragraphs 30-33.

[para 42] I find that the Public Body properly applied section 20(1)(m) of the Act to particular responsive records.

[para 43] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order that it has complied with the Order.

Keri H. Ridley
Adjudicator