

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-36

October 3, 2013

**CALGARY ROMAN CATHOLIC
SEPARATE SCHOOL DISTRICT #1**

Case File Number F6346

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access to the Calgary Roman Catholic Separate School District #1 (the Public Body) on May 24, 2012. The Applicant requested any personal information about himself that the Public Body had in its custody or control.

The Public Body located records containing responsive information but withheld the identification number of another employee and the name of a trade union from the records under section 17 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The Applicant requested that the Commissioner review the Public Body's response.

The Adjudicator confirmed the decision of the Public Body to withhold the information it had severed under section 17. She also noted that the information was non-responsive in any event.

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 for access to the Calgary Roman Catholic Separate School District #1 (the Public Body) on May 24, 2012. The Applicant requested any personal information about himself that the Public Body had in its custody or control.

[para 2] The Public Body responded to the Applicant's access request on June 20, 2012. It provided records, but withheld the identification number of another employee and the name of a trade union from the records under section 17 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The Applicant requested that the Commissioner review the Public Body's response.

[para 3] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry. The parties exchanged submissions.

II. INFORMATION AT ISSUE

[para 4] Information severed from record 2 is at issue.

III. ISSUE

Issue A: Does section 17 of the Act (disclosure harmful to personal privacy) require the Public Body to sever the information it did from the records at issue?

IV. DISCUSSION OF ISSUE

Issue A: Does section 17 of the Act (disclosure harmful to personal privacy) require the Public Body to sever the information it did from the records at issue?

[para 5] The Public Body withheld the identification number of an employee (not the Applicant) that was contained in record 2. It also severed the name of a trade union to which another employee belonged from this record.

[para 6] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It 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

(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 7] 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 8] 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 any other relevant circumstances must be considered.

[para 9] 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). [my emphasis]

[para 10] Section 17(1) requires a public body to withhold information only once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and, having engaged in this process, the head concludes that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

[para 11] Once the decision is made that a presumption set out in section 17(4) applies to information, then it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information. If the decision is made that it would be an unreasonable invasion of personal privacy to disclose the personal information of a third party, the Public Body must then consider whether it is possible to sever the personally identifying information from the record and to provide the remainder to the Applicant, as required by section 6(2) of the FOIP Act.

[para 12] As noted above, the Public Body withheld another employee's identification number, and the name of a union to which another employee belonged. I find that this information is subject to the presumption created by section 17(4)(g), as the information appears with the names of the other employees in the context of other information about them.

[para 13] In this case, I find that the information is about the other employees as individuals, rather than as representatives of the Public Body. The identification number is unique to one employee, while the name of the trade union refers to the individual affiliation of the other employee.

[para 14] I am unable to identify any factors under section 17(5) weighing in favor of disclosure that would apply to the information the Public Body severed. As a result, I

find that the presumption created by section 17(4)(g) is not outweighed. I therefore find that section 17(1) requires the Public Body to sever the information it withheld from the records.

[para 15] I also note that the Public Body severed the information about the other employees and provided the remaining information to the Applicant. I therefore find that the Public Body met its duty under section 6(2) of the FOIP Act.

[para 16] Finally, I note that the information severed from the records is not responsive to the Applicant's access request. The Applicant requested his personal information from the Public Body. The severed information is about other employees and does not relate to the Applicant in any way, and therefore cannot be considered his personal information. Had the Public Body decided that this information need not be produced as it was not responsive, I would have confirmed that decision.

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 sever information under section 17(1) of the Act.

Teresa Cunningham
Adjudicator