ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-20

July 29, 2015

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7378

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Summary: An applicant made a request to Alberta Justice and Solicitor General (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for copies of all violations issued on Unit 4, the female unit, of the Lethbridge Correctional Centre (LCC), for the time period of February 15, 2012 to March 15, 2013.

The Public Body located 84 pages of responsive records and provided the Applicant with copies of the 84 pages with some information severed under section 17(1) of the Act. One page was provided to the Applicant in its entirety. The Public Body later disclosed another page to the Applicant in its entirety.

The Applicant requested a review of the Public Body's response. She argued that she wanted the information, including details of the incidents leading to the violations, in order to show that a particular Public Body employee (a guard at the LCC) was responsible for issuing a large number of those violations.

The Adjudicator found that the information withheld by the Public Body under section 17(1) was information about an identifiable individual that would be an unreasonable invasion of privacy if disclosed. She therefore upheld the Public Body's decision to withhold that information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 71, 72.

Authorities Cited: AB: Orders 97-002, F2004-015, F2008-012, F2008-031, F2014-16.

I. BACKGROUND

[para 1] An applicant made a request to Alberta Justice and Solicitor General (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for copies of all violations issued on Unit 4, the female unit, of the Lethbridge Correctional Centre (LCC), for the time period of February 15, 2012 to March 15, 2013.

[para 2] By letter dated June 18, 2013, the Public Body responded to the Applicant's request; it located 84 pages of responsive records and provided the Applicant with copies of the 84 pages with some information severed under section 17(1) of the Act. One page was provided to the Applicant in its entirety.

[para 3] The Applicant requested a review of the Public Body's response (Request for Review form, dated July 31, 2013). An investigation was authorized but was not successful and an inquiry was requested by the Applicant (two Request for Inquiry forms, dated July 28, 2014 and August 21, 2014).

[para 4] By letter dated July 21, 2014, the Public Body informed the Applicant that it would provide her with an unredacted copy of one additional page (page 81).

II. RECORDS AT ISSUE

[para 5] The responsive records consist of 84 pages of records; each page is a separate Violation Report form (Report). Two pages of the records (pages 80 and 81) were disclosed in their entirety and are therefore not at issue; the records at issue are comprised of the remaining 82 pages.

III. ISSUE

[para 6] The issue as set out in the Notice of Inquiry, dated April 30, 2015, is as follows:

> Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

IV. DISCUSSION OF ISSUE

Preliminary issue – Applicant's questions to the Public Body

[para 7] In her requests for review and inquiry to this Office, the Applicant has posed several questions to the Public Body, such as how the pages of the responsive records were numbered, and whether any of the records are duplicates (which the Public Body answered by email dated July 8, 2013). In her initial submission, she states that the result she wants from this inquiry is to have her questions and concerns addressed by the Public Body, and to have more information in the records provided to her.

[para 8] Other than the questions noted above, I do not know what else the Applicant has asked of the Public Body. Her remaining concerns appear to be how much information has been severed from the records at issue, which will be addressed in this inquiry.

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

[para 9] The Public Body applied section 17 to information on 1-79 and 82-84.

Is the information personal information?

[para 10] Section 1(n) defines personal information under the Act:

> *1 In this 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;*

[para 11] The Violation Report forms comprising the records at issue include fields for the name of the correctional centre, the date of the violation, the name of the inmate and identifying number, the type of violation, additional comments about the incident leading to the violation, and signature spaces for the relevant inmate, staff member and staff supervisor. The severed information contained in the records consists primarily of:

- names of individual inmates of the Lethbridge Correctional Centre, along with an identifying number, both of which appear at the top of each Report form as well as in the Comments section of some of the pages; and

- the signature of the inmate at the bottom of each Report form.

Additional information in the "Comments" section of the form was withheld on pages 6, 17, 24, 36, 44, 49, 51, 54, 55, 58, 68, 71 and 74. The Public Body's initial submission states only that "it is evident from the records on their face that they contain 'personal information' of a third party or third parties as defined in section 1(n)."

[para 12] I could not determine how some of the information on pages 6, 36, 49, 71 and 74 would identify a particular individual so by letter dated July 2, 2015, I asked the Public Body to tell me how that information is about an identifiable individual such that section 17(1) could apply to that specific information.

[para 13] By letter dated July 9, 2015, the Public Body responded that given the amount of time that has passed (the records are dated 2012 to 2013), the Public Body no longer believed that the information I asked about in my letter would identify a particular individual. Therefore, the Public Body decided to not apply section 17 to that information. With its letter the Public Body provided both me and the Applicant a new copy of the relevant pages of the records, disclosing the information I described in my letter. That information is no longer at issue in this inquiry.

[para 14] The Public Body did not sever the names of Public Body employees located in the records, only inmates. The only information severed in the records that does *not* consist of an inmate name and/or identification number is information in the "Comments" section of page 54, which identifies where in the facility the named inmate was on given dates. As that information could identify that inmate, it is information about an identifiable individual. The rest of the information severed under section 17 consists of inmate names and identification numbers. The Applicant has stated that she is not interested in the names of individual inmates. Presumably, the Applicant is also not interested in the inmate identification numbers; however, as the Applicant did not specify this, I will consider whether the disclosure of the inmate identification numbers and the additional information in the "Comments" section on page 54 would be an unreasonable invasion of their privacy if disclosed.

Would disclosure of the personal information in the records just discussed be an unreasonable invasion of a third party's personal privacy?

[para 15] 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*
>
> *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*

> ...
>
> *(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 16] Section 17 is a mandatory exception; if the information falls within the scope of the exception, it must be withheld.

[para 17] Section 71(2) states that if a record contains personal information of a third party, it is up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 18] The Applicant stated in her access request that she was not interested in the names of inmates involved in the violations, but she was interested in the names of the security guards (which were provided to her by the Public Body), as well as the details of the violations.

Sections 17(2) and (3)

[para 19] Neither party has argued that section 17(2) or (3) apply to any of the withheld information, and from the face of the records, neither provision appears to apply.

Section 17(4)

[para 20] The Public Body argues that sections 17(4)(a) and (g) apply to the personal information, creating a presumption that disclosing the information would be an unreasonable invasion of personal privacy. I agree that section 17(4)(g) applies to the information in the records.

[para 21] Section 17(4)(a) applies where the personal information creates a presumption against disclosure of personal information that relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. The Public Body's initial submission referred only to page 6 of the records as containing information to which section 17(4)(a) may apply. This information was later disclosed to the Applicant by the Public Body and so is no longer at issue. The Public Body has not argued that this presumption against disclosure applies to any other information withheld in the records; I find that this presumption is not relevant to the information that continues to be withheld.

Section 17(5)

[para 22] The factors giving rise to a presumption that disclosing the personal information is an unreasonable invasion of personal privacy must be weighed against any factors listed in section 17(5), or other relevant factors, that weigh in favour of disclosure.

[para 23] The Applicant's access request and submissions indicate that sections 17(5)(a) and (c) may apply to the personal information in the records at issue, and weigh in favour of disclosure.

Section 17(5)(a)

[para 24] In order for the desirability of public scrutiny to be a relevant factor, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny. (See Order 97-002, at para. 94; Order F2004-015, at para. 88; Order F2014-16, at para. 34.)

[para 25] In Order F2014-16, the Director of Adjudication discussed appropriate factors to consider in determining whether public scrutiny is desirable. She said (at paras. 35-36):

> In determining whether public scrutiny is desirable, I may consider factors such as:
>
> 1. whether more than one person has suggested public scrutiny is necessary;
> 2. whether the applicant's concerns are about the actions of more than one person within the public body; and
> 3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.
>
> (Order 97-002, paras 94 and 95; Order F2004-015, para 88).
>
> It is not necessary to meet all three of the foregoing criteria in order to establish there is a need for public scrutiny. (See *University of Alberta v. Pylypiuk* (cited above) at para 49.) For example, in Order F2006-030, former Commissioner Work said (at para 23) that the first of these factor "is less significant where the activity that has been called into question, though arising from a specific event and known only to those immediately involved, is such that it would be of concern to a broader community had its attention been brought to the matter", commenting that "[i]f an allegation of impropriety that has a credible basis were to be made in this case, this reasoning would apply".

[para 26] In her access request, the Applicant states:

> I need proof of the abusiveness of Lethbridge Correctional Centre (LCC) security guard [Ms. X]. For example, it is my contention that a high percentage of the violations issued on unit four (4), the female unit, are issued by [Ms. X].

[para 27] The Applicant explains in her request that she is trying to determine the percentage of violations issued by a particular guard at the LCC; she also intends to provide this information to the "powers-that-be." The Applicant further explains that the details of the violations are important for her request, "because it is not just the quantity of violations issued by [Ms. X] but also the quality of the violations issued by her that is of note."

[para 28] The personal information severed by the Public Body, other than names of third party inmates, consists of identification numbers and discrete items of information that may serve to identify the relevant inmate. The Public Body has disclosed the names of the Public

Body employees (guards) who signed the Report forms, as well as most of the information in the "Comments" section of the Report form, which details the incident leading to the Violations Report. None of the information severed by the Public Body reveals information about the actions of a Public Body employee, or details of an incident that would shine a light on actions of a Public Body employee. Therefore, the Applicant's purpose of investigating and reporting the percentage of Reports issued by a particular guard is not furthered by the disclosure of the information withheld under section 17(1).

Section 17(5)(c)

[para 29] Section 17(5)(c) is a factor that weighs in favour of disclosing information that is relevant to a fair determination of an applicant's rights. Four criteria must be fulfilled for this section to apply:

> (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
>
> (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
>
> (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. (Order F2008-012 at para. 55, Order F2008-031 at para. 112)

[para 30] I considered the application of this factor because the Applicant has indicated that a particular guard at the LCC has acted in an abusive way toward inmates, by way of the overuse of Violation Reports. The Applicant has also indicated that she intends to make a complaint to whomever has authority to deal with such a matter, and is seeking the requested information as evidence of her allegation. However, I do not know that the Applicant intends to pursue a *legal right*, or if she simply intends to report what she believes is inappropriate behavior. Making a complaint about a Public Body employee is not necessarily the same as pursuing a legal right; I therefore cannot conclude that this factor is relevant in this case.

[para 31] In any event, as I found in the discussion of section 17(5)(a), I do not see how the small amount of information withheld by the Public Body would be relevant to the Applicant's complaint, as the Public Body has disclosed the name of the guard who initiated each Violation Report, as well as most of the details of the incident leading to the Report. Therefore, I find that section 17(5)(c) does not weigh in favour of disclosure.

Weighing factors under section 17

[para 32] I have found that section 17(4)(g) weighs against disclosing the information severed by the Public Body. I cannot find any factors weighing in favour of disclosing that personal information in the records; therefore, I agree with the Public Body's application of section 17(1) to withhold that information.

V. ORDER

[para 33] I make this Order under section 72 of the Act.

[para 34] I find that section 17(1) applies to the remaining information withheld by the Public Body in the records at issue, and that it would be an unreasonable invasion of third parties' privacy to disclose it. Under section 72(2)(b), I confirm the Public Body's decision to refuse access to that information.

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Amanda Swanek
Adjudicator