ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-20

May 26, 2016

EDMONTON POLICE SERVICE

Case File Number F7451

Office URL: www.oipc.ab.ca

Summary: The Applicant association made an access request to the Edmonton Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act*. It requested a copy of a disciplinary decision. To describe the decision to which it referred, the Applicant submitted a copy of an Edmonton Journal newspaper article in which the substance of the conduct giving rise to the disciplinary decision and the identity of the police member who was disciplined were discussed.

The Public Body provided a copy of the decision to the Applicant, but severed the name of the constable whose conduct was the subject of the disciplinary proceeding from the records under section 17 (disclosure harmful to personal privacy), her badge number, and some details about her volunteer and employment history. The Applicant requested review by the Commissioner of the Public Body's application of section 17.

The Adjudicator determined that the name of the EPS member who was the subject of the disciplinary decision was linked to the disciplinary decision, both by the newspaper article, which was available online, and by the Public Body's response to the access request, which had the effect of confirming that the EPS member named in the access request was the EPS member who was the subject of the disciplinary decision. She decided that it would be an absurd result if the Applicant were to be denied access to the name and badge number of the EPS member when this information was inferable from information in the public domain that the Applicant submitted to the Public Body and

from the Public Body's response. However, the Adjudicator confirmed the decision of the Public Body to sever details about the EPS member's employment and volunteer history.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 12, 17, 72; Police Service Regulation, Alberta Regulation 356/90 s. 16

Authorities Cited: AB: Orders F2004-026, F2008-017, F2009-044, F2013-05, **ON:** MO-3052, MO-3025-I, PO-2489, PO-2751, MO-1329, PO-2380

Cases Cited: *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246; *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110; *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420

I. BACKGROUND

[para 1] The Applicant association made an access request to the Edmonton Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act*. It requested a copy of a disciplinary decision. To describe the decision to which it referred, the Applicant submitted a copy of an Edmonton Journal newspaper article in which the substance of the conduct giving rise to the disciplinary decision and the identity of the police member who was disciplined were discussed.

[para 2] The Public Body provided a copy of the decision to the Applicant, but severed the name of the constable whose conduct was the subject of the disciplinary proceeding from the records under section 17 (disclosure harmful to personal privacy), her badge number, and some details about her volunteer and employment history. The Applicant requested review by the Commissioner of the Public Body's application of section 17.

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

II. INFORMATION AT ISSUE

[para 4] The information severed from the disciplinary decision that is the subject of the access request is at issue.

III. ISSUES

Issue A: Did the Public Body comply with section 12 of the FOIP Act (contents of a response)?

Issue B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information to which the Public Body applied this provision?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body comply with section 12 of the FOIP Act (contents of a response)?

[para 5] Section 12 of the FOIP Act sets out a Public Body's obligations as to what a response under the Act must contain. It states, in part:

> *12(1) In a response under section 11, the applicant must be told*
>
> *(a) whether access to the record or part of it is granted or refused,*
>
> *(b) if access to the record or part of it is granted, where, when and how access will be given, and*
>
> *(c) if access to the record or to part of it is refused,*
>
> *(i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
>
> *(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
>
> *(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

[para 6] The Public Body stated the following in its response to the Applicant:

> Your request for access to information pursuant to the Alberta FOIPP Act was received by the Edmonton Police Service (EPS) FOIPP Unit, via e-mail, on 2013 June 14. You have requested a copy of an EPS Disciplinary Decision dated 2007 May 14.
>
> Please find enclosed a Disciplinary Decision issued on 2007 May 14, consisting thirteen (13) pages, which is responsive to your request. Information has been redacted from these records pursuant to section17(1), and 17(4) of the FOIPP Act:
>
> *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. 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 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.

Under section 65 of the FOIPP Act, you may ask the Information and Privacy Commissioner to review this matter. You have 60 days from the receipt of this notice to request a review by writing the Information and Privacy Commissioner at 410, 9925 - 109 Street, Edmonton, Alberta, TSK 2J8.

[para 7] The Applicant states in its rebuttal submissions that the statutory provisions cited in this case do not provide an adequate indication of the reasons for which access was refused.

[para 8] The Public Body argues that citing the provision on which it relies to sever information is sufficient to meet its obligations under section 12. It cites *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246 as authority for this position.

[para 9] In Order F2004-026, former Commissioner Work decided that section 12 does not require detailed reasons for refusing access in addition to the provision on which a public body has relied in every case. He said:

The Applicant says that naming a section number is not enough and that a reason or explanation must also be given.

I do not accept this complaint. In my view, the language of section 12 does not imply that a reason must in every case be given *in addition to* the naming (or quoting or summarizing) of a particular statutory exception. There are some circumstances in which both parts of the requirement in subsection (i) can be fulfilled by naming the section number (or describing the provision). While in some circumstances more in the way of an explanation may be called for, in others there would be nothing more that could usefully be said by way of providing a reason than what the provision creating the exception says. I accept that this was so in this case.

However, I do read into section 12(1)(c)(i) the requirement that in a response, responsive records that are being withheld be described or classified insofar as this is possible without revealing information that is to be or may be excepted, and that the reasons be tied to particular records so described or classified.

[para 10] Former Commissioner Work decided that in some cases citing the provision on which a public body relies to sever information also serves to provide the public body's reasons.

[para 11] Since the Public Body provided its submissions, the Alberta Court of Appeal heard and decided *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, and the inquiry now has the benefit of the Court of Appeal's interpretation of section 12. Speaking for the Court, Slatter J.A. stated:

The City redacted certain documents in order to protect the privacy interests of third parties as required by s. 17 of the *FOIPP Act*. The adjudicator directed the City to provide further details about how the decision to limit document production was made. The City argues that the

provisions of s. 17 are mandatory, and that it was unreasonable for the adjudicator to require any further explanation.

Where a document mentioned a complaint against Ms. McCloskey, the City redacted the entire document excepting for the complaint itself. The City advised the adjudicator that in some cases information was redacted to protect the rights of third parties, and in other cases it was redacted as being non-responsive to the request for "personal information". It was not unreasonable for the adjudicator to ask for further particulars about the justification for various decisions not to disclose.

The Commissioner has the duty to resolve disputes about the production of documents. The Commissioner cannot fairly exercise its obligation to review the decisions of public bodies without knowing the basis on which production is made or refused. Section 17 is a very lengthy section, with many different provisions in it. Further, where there are different reasons for refusing disclosure of different parts of the document, the adjudicator is entitled to know which is relied on before making a decision. Indeed, the public body might well complain if its decision on disclosure was overturned based on a misapprehension of the basis for its decision.

The City took the view that the adjudicator had ruled that the City must provide a detailed explanation of why it applied s. 17 when it first responded to the request. The adjudicator does not appear to have gone that far, as she just requested a further explanation to assist in her processing of the file. The Commissioner notes that when a public body refuses disclosure, s. 12(1)(c)(i) requires it to explain "the reasons for the refusal and the provision of this Act on which the refusal is based". Exactly how much detail is required in such an initial explanation is not clear; s. 12(1)(c)(ii) does contemplate the citizen contacting a named employee if further information is required, which suggests that only a summary explanation is required. Since the adjudicator did not invoke s. 12(1), nothing further need be said on this issue at this time.

[para 12] The Court of Appeal held the view that when section 17 is being applied, it may be necessary for a public body to refer to the particular provisions of section 17 that have led to the decision to refuse access. The Court of Appeal did not consider it necessary in every case for a public body to provide detailed reasons; only that it provide sufficient information so that its reasons for severing could be accurately inferred.

[para 13] In this case, the Public Body has cited the specific provisions of section 17 that led it to believe that it is required to refuse access to the information it severed in this case. From the provisions it cited, I conclude that it considered the information to be contained in a law enforcement file, to reveal something about the police member's activities as a volunteer, and to contain personal information about the police member. Further, it considered the information to be subject to a presumption that it would be an unreasonable invasion of a third party's personal privacy to disclose the information. In my view, the Public Body's response meets the requirements of section 12 as set out in previous decisions of this office, and in *Edmonton (City).*

Issue B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information to which the Public Body applied this provision?

[para 14] 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

> *[…]*
>
> *(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[…]*

(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 15] 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 16] 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 17] Section 17(1) requires a public body to withhold information once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and, having engaged in this process, the head of the public body concludes that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

[para 18] Once the decision is made that a presumption set out in section 17(4) applies to information, 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.

[para 19] Section 1(n) of the FOIP Act defines "personal information". It states:

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 20] The Public Body severed the name, badge number, and information about the EPS member's employment and volunteer history from the records, in addition to the name of her supervisor.

[para 21] I note that in Order F2013-05, the Adjudicator stated that a badge number is not personal information when it is associated with an officer who acts in the course of his or her duties:

> The Ontario Information and Privacy Commissioner's office has issued orders regarding whether an officer's badge number is personal information under Ontario's *Freedom of Information and Protection of Privacy Act*. In Order MO-2252, the adjudicator made the following comments:
>
> > It is well known that police officers are required to produce their badge number as a matter of course at the outset of any search, raid, interview or similar activity. It should be noted that previous orders of this office have described the badge numbers of police officers as basic professional information (see Order MO-2050). In fact, as is noted by the Police in their representations, police badge numbers are routinely disclosed in the context of other police records such as tickets, occurrence reports and police officers' notes. In my opinion, a police officer's badge number is a tool of accountability. It assists members of the public in identifying a police officer as an individual with special powers and authority. It is also an essential tool in the public complaints

> process particularly in those cases where the names of the police officers are not available to the members of the public with whom the police interact.
>
> I agree that where information about an officer, such as name and/or badge number, appears in the context of that officer performing his or her duties that section 17 does not apply. As the badge number of an officer on page 19 appears in the context of that officer's job duties, section 17 cannot be applied to withhold it.

Previous orders have held that where a badge number would serve to identify a police officer in circumstances where the officer is not acting in a representative capacity, the badge number is personal information. (See orders F2008-017 and F2009-044).

[para 22] In the case before me, there is a personal dimension to the badge number, given that it appears in a disciplinary decision addressing the EPS member's conduct. However, as the name of the EPS member is associated with the disciplinary decision, it follows that her badge number can easily be learned, given that they are "routinely disclosed" as explained in Order F2013-05, and are worn in public.

[para 23] The Public Body also severed the name of the EPS member's supervisor on the basis that that this name is the personal information of the EPS member. The supervisor had provided information about the EPS member for the hearing. The opinion appears to be based on having been the EPS member's supervisor and was given for that reason. I am unable to identify a personal dimension to this information, in the sense that I find that the supervisor presented his opinion in an official, rather than private capacity. Moreover, I am unable to find that the supervisor's name is information about the EPS member, or would serve to identify her. I find that this information is not personal information.

[para 24] With the exception of the information about the supervisor, which I find is not personal information, I find that the severed information is the personal information of the EPS member within the terms of section 1(n). The next question to decide is whether this personal information is subject to a presumption under section 17(4).

[para 25] The Public Body argues that the personal information is subject to the presumptions under sections 17(4) (b), (d), and (g). I agree with the Public Body that the severed information falls within section 17(4)(b), (d), and (g) when considered in the context of the information about the disciplinary hearing that was provided to the Applicant. Absent that context, the information falls within the terms of sections 17(4)(d) and (g).

[para 26] I turn now to the question of whether the presumption created by section 17(4) is outweighed by any relevant factors under section 17(5).

[para 27] The Public Body argues that consideration of the factors under section 17(5) requires the information it severed to be withheld from the Applicant:

> Further, the events described in the Decision were not referred to the Attorney General for the purpose of investigating a federal or a provincial office. In the *CPS Decision,* the Court of

Queen's Bench held that, insofar as complaints are not referred by the Chief of Police to the Minister of Justice and Attorney General because they may constitute a federal or a provincial office, there is no added public scrutiny that is desirable.

CPS Decision, supra at para 101[TAB 3]

It is also relevant that the personal information at issue relates to a disciplinary decision regarding the actions of one individual member of the EPS.

Additionally, as noted at page 11of the Decision, the misconduct at issue was an isolated incident and has been expunged from the Member's disciplinary file. The activities of the EPS at large were not under scrutiny at the hearing, nor has the Applicant alleged any impropriety on behalf of the EPS.

To the extent that any public scrutiny of the actions of the EPS is relevant, any need for public scrutiny was accomplished through the release of the severed Decision. Any additional public scrutiny, ten years following the events described in the records, is not desirable.
CPS Decision, *supra* at para 94 (TAB 3]

It is also relevant that the discipline hearing was open. As stated in Order F2008-009, "where a hearing was open, information has already been disclosed, which may mean that further public scrutiny is not warranted."

Finally, had there been any further need for public scrutiny, which is denied, the EPS has released sufficient information. The release of the severed personal information would further no purpose.

Sections 17(5)(e) and 17(5)(h)

The EPS submits that sections 17(5)(e) and 17(5)(h) weigh against the disclosure of the withheld personal information of the Member in the Responsive Records.

Section 17(5)(e) applies where the third party will be exposed unfairly to financial or other harm. The focus of section 17(5)(e) is whether there is unfair exposure to harm and it is up to the public body to decide that issue, based on a consideration of the circumstances.

Order F2013-0l, *supra* at paras 50·52 [TAB 13]

In Order F2008-020, the Adjudicator held that it could be surmised that the members involved would suffer some degree of stress if their personal information was disclosed, and that psychological harm would result.

Order F2008-020, *supra* at para 68 [TAB 4]

There is no limitation on the kinds of harm that a public body can consider under this section. In this case, the EPS determined that disclosing the name, badge number, healthcare history, employment history and volunteer history of the Member would create an unfair exposure to harm to the Member's reputation. The EPS also concluded that disclosure of the names of the Member's supervisors would achieve the same harm.

Order 98-007: Alberta Family and Social Services (May 6, 1998) at paras 34-35 [TAB 17]

EPS acknowledges that there are some circumstances where personal information of officers may be disclosed. However, "when contemplating disclosure in view of unfair damage to reputation - and unfair harm by extension - one should consider the nature of the allegations

raised, the type of records at issue, and the position occupied by the individual whose conduct was being questioned" in making such a decision.

Order F2008-009, *supra* at para 78 [TAB 16]

As noted earlier, the Presiding Officer who issued the Decision concluded that the misconduct constituted an isolated incident. The Presiding Officer also found that the Member "did in fact act on the spur of the moment" and based on everything said, the “behaviour was truly aberrational.”

Furthermore, the misconduct was characterized in the Decision as "somewhat minor" and did not relate to safety or harm to any individuals.

When considering the isolated and "somewhat minor" nature of the misconduct at issue, along with the fact it occurred more than ten years ago, EPS submits that disclosure of the severed personal information would result in an unfair damage to the reputation of the member.

Similarly to section 17(5)(e), in determining whether a disclosure of personal information constitutes an unreasonable invasion or a third party's personal privacy, section 17(5)(h) of the *FOIPP Act* requires consideration of whether "the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant".

In considering s. 17(5)(e), it is worth recalling McMahon J's observations regarding reputation in the *CPS Decision:*

> To paraphrase the colourful words of Binnie, J. in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 CanLII), [2008] 2 S.C.R. 420, at para. 2: A person's reputation is not to be treated as “unavoidable roadkill" on the highway to access to information.[1]

CPS Decision, supra at para 75[TAB 3]

The EPS submits that section 17(5)(h) applies because the disclosure would unfairly damage the Member's reputation.

[para 28] The Applicant argues:

[The EPS member] is still with the Edmonton Police Service and has been twice promoted. According to an LERB decision, *Criminal Trial Lawyers' Association v. Alkarout*, 2014 CanLII10793 (AB LERB) [TAB 4] at paragraph 13, [the EPS member] was a detective in EPS Professional Standards Branch (which investigates complaints against police officers) as of

[1] In *WIC Radio Ltd. v. Simpson*, [2008] 2 SCR 420, Binnie J. stated:

> The Court’s task is not to prefer one over the other by ordering a “hierarchy” of rights (*Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835), but to attempt a reconciliation. An individual’s reputation is not to be treated as regrettable but unavoidable road kill on the highway of public controversy, but nor should an overly solicitous regard for personal reputation be permitted to “chill” freewheeling debate on matters of public interest. As it was put by counsel for the intervener Media Coalition, “No one will really notice if some [media] are silenced; others speaking on safer and more mundane subjects will fill the gap” (Factum, at para. 14).

> May 25th, 2010, almost three years after having been found guilty and punished in a disciplinary hearing. According to her Linked In profile **[**TAB 5], she was, at least by November 2014, promoted to a staff sergeant within the EPS and is presently a police officer with the EPS.
>
> So, she is still directly involved in policing and is in a high ranking supervisory position. In his disciplinary decision, found at Exhibit C to the Affidavit of [the FOIP Coordinator], [the EPS Superintendent] made the following comments about the conduct of then [Constable] [the EPS member]:
>
> > Furthermore, her conduct was so manifestly outside of the normal and accepted police practices that, not unexpectedly, there is no specific policy prohibiting it. (page 4)
> >
> > Otherwise, will it be possible to obtain needed search warrants, will it be possible to effectively and efficiently advance investigations, will it be possible to bring criminals to justice at the earliest possible opportunity, and finally, will it be possible to protect society from harm in a quick and complete way? Or, to put it in a somewhat different way, there is no need whatever to create situations where investigations might be harmed and where tough cross-examinations in court might do worse to the outcome of a trial. I am afraid that, somewhat minor as Constable [withheld] misconduct was, it did nevertheless raise all of the issues just discussed.
> >
> > The following are some of the most aggravating factors:
> > …
> > > e. The nature of her misconduct harms the trust that citizens and other justice systems partners are entitled to place in the Service. This is significant misconduct of the type that can damage a police officer's credibility and reliability when testifying at a criminal trial or a civil trial […]

Section 17(5)(a)

[para 29] The Public Body argues that section 17(5)(a) is not engaged in this case and that "there is no basis or evidence to support that the activities of EPS require further scrutiny in this circumstance." It also notes that the information it provided to the Applicant is sufficient to satisfy any requirement for public scrutiny.

[para 30] Although the Applicant does not refer to section 17(5)(a), it refers to the fact that the EPS member was twice promoted despite the disciplinary decision and that she is still involved in policing. I understand the Applicant to suggest that the EPS member should not have been promoted or continue to be involved in policing because of the conduct giving rise to the disciplinary decision. If so, then it appears that the Applicant is arguing that the Public Body's decision to promote the EPS member should be subject to public scrutiny and that disclosing the severed information is necessary for that purpose.

[para 31] I agree with the Public Body that section 17(5)(a) does not require any further disclosure of information from the disciplinary decision. If it is at all engaged by the Public Body's decisions in relation to the EPS member, then the need for public scrutiny and debate is satisfied by the information already available to the public. The disciplinary decision was discussed in the Edmonton Journal and remains on www.canada.com, enabling the public to debate the issues the Applicant raises.

Sections 17(5)(e) and (h)

[para 32] Although the Public Body argues that sections 17(5)(e) and (h) are engaged in this case, I am unable to find that these provisions are relevant in this case. As discussed above, the severed information includes the name of the EPS member, which is inferable from the disciplinary decision, her badge number, the date she became an EPS member, and information about her employment and volunteer activities. There is nothing before me to suggest that disclosure of the severed information could subject the EPS member unfairly to financial or other harm within the terms of section 17(5)(e) or damage to reputation within the terms of section 17(5)(h).

[para 33] I acknowledge the Public Body's concerns that disclosing the severed information from the disciplinary decision in 2007 serves to link the EPS member to the information in the disciplinary decision and that doing so could be viewed as needlessly tarnishing the reputation of the EPS member in 2016. However, as will be discussed in greater detail below, the salient details and evidence reviewed in the disciplinary decision have been in the public realm since 2007 on www.canada.com, including the EPS member's name. I am therefore unable to find that disclosing a historic disciplinary decision to the Applicant will have the effect of damaging the EPS member's reputation or subject her to other kinds of harm, when there is no evidence that this information in the disciplinary decision has done so to date, even though the information is available online.

[para 34] In addition, the information in the disciplinary decision that was not published in the Edmonton Journal is primarily evidence regarding the EPS member's good character and excellent service record, and the discipline that was imposed. In my view, disclosing such information is unlikely to damage her reputation. Only the details of the misconduct could be construed as harmful, and these already exist in the public realm.

Use of the information in proceedings

[para 35] The Applicant argues that it is important to disclose the severed information in the event that a person charged with a criminal offence or civil litigation involving the EPS member needs the information to cross examine the EPS member. I am unable to agree that this is a relevant factor as there does not appear to be any reason why the EPS member could not be cross-examined regarding circumstances giving rise to the disciplinary hearing on the information that is already available to the Applicant and the public.

Absurdity as a factor under section 17(5)

[para 36] As discussed above, the Public Body has severed the name of an officer, her badge number, and information about employment and volunteer history. However, it otherwise provided the content of the 2007 disciplinary decision in response to the

Applicant's request for the disciplinary decision reported in the Edmonton Journal. The Edmonton Journal article included the name of the EPS member who was the subject of discipline.

[para 37] In my view, despite the fact that the Public Body severed the EPS member's name from the disciplinary decision, the Public Body essentially disclosed the Complainant's name to the Applicant when it responded to the access request and provided the disciplinary decision. The Applicant submitted the name of the police member and the specific disciplinary decision it was seeking when it made the access request; the only way in which the disciplinary decision could be responsive to the Applicant's access request is if the EPS member concerned is the same one that the Applicant named in its access request and the disciplinary decision is the same one it requested.

[para 38] Severing the name of the EPS member from the decision serves only to inconvenience the reader in this case, as there is only one EPS member who could be the subject of the decision, given the terms of the access request. In addition, the content of the disciplinary decision coincides with facts in the Edmonton Journal article such that the content that was disclosed even without the name also serves to identify the EPS member.

[para 39] The Public Body acknowledges in its submissions that "it is evident and clear what the nature of the severed information is in this case." I agree that the severed information is inferable from what it publicly known and what has been disclosed. The name of the EPS member can be inferred from the subject matter of the decision, the Edmonton Journal article, and from the Public Body's response. Because badge numbers are worn in public, the badge number can be learned, once the EPS member's name is known. However, in my view, this circumstance does not support severing the name and badge number, but rather, the opposite.

[para 40] In my view, a factor that may be considered under section 17(5) is whether severing personal information would result in absurdity.

[para 41] In Order MO-3052, an adjudicator with the Ontario Office of the Information and Privacy Commissioner described the "absurd result principle" as a factor that may be relevant when determining whether it would be an unreasonable invasion of personal privacy to disclose personal information to an applicant. The adjudicator stated:

> […] According to the absurd result principle, whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.
>
> One of the grounds upon which the absurd result principle has been applied in previous orders is where the information is clearly within the requester's knowledge.

[para 42] In Ontario Order MO-3025-I, this principle was found to be relevant and to weigh in favour of disclosing personal information. In that case, the Adjudicator said:

> In my view, however, the absurd result principle is relevant in the circumstances of this appeal. Although the appellant did not specifically address this point during my inquiry into the appeal, the circumstances raise the possible application of the "absurd result" principle. According to the absurd result principle, whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption. One of the grounds upon which the absurd result principle has been applied in previous orders is where the information is clearly within the requester's knowledge.

PO-2489, para 41; PO-2751, para 52; MO-1329, para 36; PO-2380, para. 111 are also examples of orders applying this principle.

[para 43] In the case before me, the newspaper article which the Applicant submitted with his access request contains the name of the EPS member, the substance of the complaint giving rise to the disciplinary hearing, the evidence heard by the presiding officer, and the EPS member's submissions for the hearing.

[para 44] The Public Body has severed the name of an EPS member from information in the public realm to which the name of the EPS member is permanently linked. By responding to the Applicant's access request, the Public Body confirmed the identity of the EPS member. Moreover, the identity of the EPS member and the subject matter of the disciplinary hearing itself had already been made public in 2007. I take notice that the Edmonton Journal article in which the information heard in the hearing was disseminated continues to exist online. As a result, the Public Body's severing of the personally identifying information of the EPS member from the record serves no purpose. When severing serves no purpose, doing so undermines the principle purpose of access legislation, by which an applicant is entitled to access, unless the public interest is better served by withholding the information.

[para 45] The Public Body's FOIP Coordinator states:

> From my review of the Responsive Records, I believe they contain personal information of the Member. The personal information that has been redacted includes the Member's name, the names of the Member's past supervisors, the Member's badge number, employment history, healthcare history and volunteer history. The Responsive Records also contain the perspectives, interpretations and observations provided by the Member regarding the events at issue in the Decision.

[para 46] From the severing that was done, it appears that the Public Body severed the EPS member's name and badge number on the basis that this information is about her and would serve to identify her as the subject of the disciplinary hearing if this information were not already known to the Applicant. The Public Body also severed the date the EPS member began employment as a member, information about her volunteer work, and employment history, on the basis that this information has a personal dimension. Although the Public Body refers to the "responsive records" as containing

perspectives, interpretations and observations, it did not sever such information, but only information that would associate the EPS member with this kind of information.

[para 47] If it were the case that the EPS member's name was not known to the Applicant, or to anyone reading the Edmonton Journal article, the badge number could be considered personal information, as it would serve to identify the EPS member. However, as the name of the EPS member is publicly linked to the Edmonton Journal article and to the information that has been disclosed, I am unable to say that disclosing the badge number would serve to identify the EPS member. Instead, the EPS member's *name* identifies the EPS member. Her badge number, a number issued to EPS members, which they wear in public and may give out to the public to establish their professional identities as police officers, can be discovered by knowing who she is.

[para 48] With regard to the information about the EPS member's volunteer work and employment history, I find that the absurd result principle does not apply. This information was not made public in the Edmonton Journal and therefore it would not be *confirmed* by the Public Body's response to the Applicant.

The Public Interest

[para 49] I note that section 16 of the Police Service Regulation in force at the time of the disciplinary hearing stated:

> *16 Where a hearing or a portion of a hearing is to be conducted under Part 5 of the Act,*
>
> > *(a) in the case of a complaint referred to in section 45 of the Act, the chief of police shall direct that the hearing be conducted in public or private whichever he determines to be in the public interest, and*
> >
> > *(b) in the case of a complaint referred to in section 46 of the Act, the person who is to preside over the hearing shall direct that the hearing be conducted in public or private whichever he determines to be in the public interest.*

[para 50] The Public Body acknowledges that the disciplinary hearing in this case was held in public. As a result, it can be inferred that the Chief of Police determined that it was in the public interest to conduct the hearing in public. That the Edmonton Journal article reports on what was said at the hearing confirms the public nature of the hearing.

[para 51] I conclude that in 2007 a decision was made that it would be in the public interest to hold the hearing in public. Such a decision entails finding that it would be in the public interest for the public to know the circumstances grounding the complaint and to hear the evidence for itself. The disciplinary decision in this case summarizes all the evidence that was presented at the public hearing in that case and determines the outcome of the public hearing.

[para 52] I do not intend to second guess the 2007 decision of the police chief to make the information about the disciplinary decision public. If it served the public

interest to disclose the details of the hearing in 2007, I do not see why the details of that same hearing do not continue to serve the same interest that was identified at the time.

[para 53] I take notice that there is a briefing note from the Public Body to the Edmonton Police Commission dated March 30, 2010, which describes the manner in which the Public Body treated disciplinary decisions between 2007 and 2010. It states:

> In approximately 2007 the Edmonton Police Service (EPS) started making most disciplinary decisions available to the public by posting them on its external internet website. Unless there are overriding privacy considerations, the entire disciplinary decisions are posted including the police officers' names, charges and outcome whether or not charges were proven. The Hearing Officer writes his decisions with a view to addressing any privacy concerns by using witness initials etc. and decisions written by other presiding officers are vetted by the FOIPP Unit prior to release to the public.
>
> The *Police Act* does not require the posting of this information. The reasons that the EPS Executive decided to post the decisions, including when charges are not proven, were for transparency and education.[2]

[para 54] I do not know whether the disciplinary decision in question was posted on the EPS website or not. However, I note that the purpose of opening disciplinary hearings to the public and to publish disciplinary decisions was to serve the public interest in promoting transparency and education. In my view, these interests would continue to be served by disclosing the personal information of the EPS member in the disciplinary decision.

The Public Nature of the Information

[para 55] In Order F2009-010, I noted that the public availability of information was a factor that could be considered under section 17(5) when relevant. I believe this factor to be relevant in this case. In that decision I said:

> The issue of whether information is publicly available is relevant for the purposes of section 40(1)(bb), which states that a public body *may* disclose personal information that is available to the public. However, this provision does not state that a public body must automatically disclose personal information available to the public. Further, this provision refers to the general authority of public bodies to disclose information, as opposed to the decisions they must make in relation to access requests. When making a determination as to whether personal information may be disclosed to an applicant who has made an access request under the FOIP Act, the head of a public body must consider and apply the provisions of section 17 and follow the processes set out in sections 30 and 31 of the FOIP Act. The public availability of personal information may reduce or negate an individual's expectation of privacy in that information in some cases, such as when the information is both widely reported and available; however, it will not have that effect in every case. Public availability of information is therefore a factor that may be weighed under section 17(5); whether the presumptions under section 17(4) are rebutted will depend on the extent to which the information is readily available to members of the public, and the existence or absence of other factors under section 17(5).

[2] "Report to the Edmonton Police Commission: Posting Disciplinary Hearings on Website" http://www.edmontonpolicecommission.com/wp-content/uploads/2014/01/6.2_Posting_Disciplinary_Hearings_on_the_Website.pdf

[para 56] As discussed above, the details of the hearing were disseminated and discussed in the Edmonton Journal. Not only was the hearing open to the public, but the media reported on the hearing. In my view, expectations of privacy cannot reasonably be maintained in such circumstances.

[para 57] I find that in this case, the public availability of information about the hearing in the media is a factor weighing strongly in favor of disclosure of the information severed from the disciplinary decision.

[para 58] However, my finding that the public availability factor applies does not extend to the personal details about the EPS member's employment and volunteer history where the Public Body severed this information.

Conclusion

[para 59] I find the following to be relevant under section 17(5):

1. That the EPS member's identity is permanently and publicly linked to the content of the disciplinary decision and that severing her name from the records serves no purpose,
2. That the badge number can easily be obtained, given that the EPS member's name is known,
3. That the Chief of Police decided that it served the public interest to hold the hearing in public,
4. That the details of the disciplinary hearing were open to the public, reported in the media, and published on the internet,
5. That the specific details about the EPS member's employment and volunteer history were not made public and that the presumption created by section 17(4) is not outweighed in relation to this information

[para 60] I find that the first four factors weigh strongly in favor of disclosing the name and badge number of the EPS member where these appear in the disciplinary decision and that these factors outweigh the presumption created by section 17(4). I therefore find that the Public Body is not required to withhold the names or the badge number of the EPS member. However, I find that the presumption is not outweighed in relation to the details about the EPS member's personal and employment history that were severed.

[para 61] I acknowledge that knowing something, and being in possession of a record that documents the thing that is known, is not quite the same thing. Conceivably, a record could be used in a way, or for purposes, that a simple assertion of a fact by the applicant of could not. Here, however, there is already existing and reliable documentary evidence of the very thing in the form of newspaper reports and discussions of what took place at the hearing. If this information were to be juxtaposed with the severed disciplinary record, the result would be effectively the same as being in possession of the unsevered record.

[para 62] This raises the obvious question of why the Applicant is asking for a record when the information just described is already available to him. I am unable to answer this question on the submissions and evidence before me. However, since the FOIP Act makes access to information the default position, subject only to the application of exceptions, and since the relevant factors weigh strongly against the idea that there would be an unreasonable invasion of privacy in disclosing the EPS member's name and badge number in this case, the Applicant's access right must prevail in relation to this information.

V. ORDER

[para 63] I make this Order under section 72 of the Act.

[para 64] I order the Public Body to disclose the name and badge number of the EPS member.

[para 65] I order the Public Body to disclose the name of the EPS member's supervisor where this information appears in the records.

[para 66] I confirm that the Public Body is required to sever the details of the EPS member's employment and volunteer history as it did.

[para 67] I further order the Public Body to notify me within fifty days of receiving this Order that is has complied with this Order.

_____

Teresa Cunningham
Adjudicator