ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-60

July 13, 2017

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F8347

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Summary: An individual made an access request to Alberta Justice and Solicitor General (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for "a complete list of personnel, their titles and the organizational structure of the Civil Forfeiture Office."

The Public Body located responsive records, but withheld information under sections 18 and 20 of the Act. The Applicant requested a review of the Public Body's response.

The Adjudicator determined information identifying the undisclosed Civil Forfeiture office (CFO) employees was properly withheld in the records at issue under section 18(1)(a) (threaten the safety or health of an individual). This includes the names, email addresses and direct phone lines of those employees.

The Adjudicator determined that the remaining information at issue could not be withheld under any exception applied by the Public Body, as disclosure would not threaten the safety or health of an individual (section 18(1)(a)), facilitate the commission of an unlawful act (section 20(1)(k)) or harm the security of property or a system (section 20(1)(m)). The remaining information consisted of the organization structure of the CFO, including the number of employees and position titles. The Adjudicator found that the Public Body failed to provide evidence "well beyond" or "considerably above" a mere possibility of harm, which is the evidentiary standard set by the Supreme Court of Canada wherever the phrase "could reasonably be expected to" appears in access-to-information legislation. (See paras. 28 and 29)

Specifically, the Adjudicator found that the scenarios outlined by the Public Body, of consequences that could result from the disclosure of the information in the records at issue (other than employee names, email addresses and phone numbers), did not meet the evidentiary standard to find that the exceptions apply.

The Adjudicator provided an Addendum to this Order to the Public Body, which contains a discussion of the submissions made by the Public Body *in camera*.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 18, 20, 71, 72, *Health Information Act*, R.S.A. 2000, c.H-5, s.11, **BC**: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, C. 165, ss. 15, 19.

Authorities Cited: AB: Orders F20014-029, F2013-51, H2002-001, **BC:** Order F14-22.

Cases Cited: *British Columbia (Ministry of Justice) v. Maddock*, 2015 BCSC 746, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII).

I. BACKGROUND

[para 1] An individual made an access request, dated May 30, 2014, to Alberta Justice and Solicitor General (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for "a complete list of personnel, their titles and the organizational structure of the Civil Forfeiture Office."

[para 2] By letter dated July 2, 2014, the Public Body responded to the Applicant's request. It had located 2 pages of responsive records, and withheld some information under sections 18(1)(a) (disclosure harmful to individual or public safety) and 20(1)(k) and (m) (disclosure harmful to law enforcement).

[para 3] The Applicant requested a review of the response from the Public Body. The Commissioner authorized an investigation; this was not successful and the matter proceeded to an inquiry.

II. RECORDS AT ISSUE

[para 4] The records at issue consist of the 2 pages of withheld records, described by the Public Body as business card information and the CFO organization chart as of May 2014.

III. ISSUES

[para 5] The issues as set out in the Notice of Inquiry, dated April 12, 2016, are as follows:

1. Did the Public Body properly apply section 18 of the Act (disclosure harmful to individual or public safety) to the information in the records?

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

IV. DISCUSSION OF ISSUES

Preliminary issue – Expert evidence

[para 6] A similar access request was the subject of Order F14-22 of the British Columbia Office of the Information and Privacy Commissioner (BC OIPC). In that case an access request had been made for a complete list of the personnel and titles of the Civil Forfeiture Office within BC Ministry of Justice, as well as the organization structure of that office. The exceptions to access applied in that case and the submissions made by the BC public body are similar to the case at hand; further, the Public Body has referred extensively to that BC case. That case was also subject to a judicial review by the BC Supreme Court, and upheld by that Court. For these reasons, I have carefully considered the BC Order, and subsequent judicial review decision.

[para 7] The information in the BC case was withheld under sections 15(1)(f) and 19(1)(a) of the BC *Freedom of Information and Protection of Privacy Act* (BC FOIP Act). Section 19(1)(a) of the BC FOIP Act is equivalent to section 18(1)(a) of the Alberta FOIP Act, which was applied by the Public Body to withhold the information at issue in this inquiry. Section 15(1)(f) does not have an equivalent in the Alberta FOIP Act; it applies where the disclosure of information could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

[para 8] I will consider the BC adjudicator's reasons regarding the application of section 19(1)(a) under the discussion of the Public Body's application of section 18(1)(a) (the Alberta equivalent). However, before I move on to that discussion, I will briefly review the discussion in the BC case of the adjudicator's decision to reject "expert opinion evidence" provided by the BC public body.

[para 9] In the BC case, the public body provided an affidavit from its strategic lead of Corporate Security and Risk; the public body argued that the strategic lead was an "expert on security in the context of the justice community in British Columbia" and that his affidavit "is the type of expert evidence relating to s. 19 [*sic*] should be accorded deference" (at para. 13). The adjudicator reviewed the law regarding expert evidence and how it applied in that case. She concluded that the evidence did not meet the "necessity" test as laid out in the case law, as the opinions were not necessary for her to understand the evidence before her. She concluded that the strategic lead's opinions did not qualify as expert evidence; however, she recognized his knowledge in the area and considered the evidence he provided, in her analysis.

[para 10] Upon judicial review, the BC Supreme Court found that the adjudicator acted reasonably in not accepting the evidence as expert evidence (*British Columbia (Ministry of Justice) v. Maddock,* 2015 BCSC 746 (*Maddock*)).

[para 11] The present case, the Public Body has provided me with an affidavit from a Corporate Security Advisor (the Advisor). He describes his qualifications in his affidavit:

> I am a Certified Protection Professional (CPP) through the American Society of Industrial Security (ASIS) and am qualified to conduct risk assessments from a security perspective. In addition to obtaining my certification, I have also attended a one day threat assessment working group facilitated by the Calgary Police Service.
>
> I believe my knowledge gleaned through police and security liaison, with partners whom, I believe are credible and their information is truthful, plus my experience protecting Government staff and information and my experience dealing with groups targeting organizational members and information, and my Certification as Certified Protection Professional provides the framework for my discussion with regards to determining the risk that would be placed on Civil Forfeiture staff it their names and positions were provided on an organizational chart.

[para 12] Neither the Advisor nor the Public Body has explained specifically how the CPP designation relates to the issues in this inquiry.

[para 13] The Public Body has further stated:

> The Public Body's Corporate Security Advisor conducts threat and risk assessments with regards to Human Induced threats against staff and Judiciary on a daily basis. Working in collaboration with external Police partners, he develops risk assessments and subsequent safety planning, risk mitigation and case management strategies with a view to protecting staff. The Public Body's Corporate Security Advisor is a Certified Protection Professional (CPP) through the American Society of Industrial Security (ASIS) and is fully qualified and has the specific expertise to conduct risk assessments from a security perspective. (Initial submission, at para. 32)

[para 14] The Public Body stated that "[i]t would be improper to substitute a different view [from the security expert's view] without supporting evidence. There is no such supporting evidence in this case." (Exchanged initial submission, at para 17). It is not entirely clear what the Public Body means by this, as section 71(1) of the Act clearly places the burden of proof on the Public Body to show that an exception to access applies to the withheld information. The Applicant is not obliged to provide evidence that the Public Body misapplied the exception(s).

[para 15] In any event, the Public Body did not refer to its security expert's evidence as "expert opinion evidence", nor did it argue that his opinions meet the test for "expert opinion evidence" set out in the case law. As such, I assume that the Public Body did not intend that I accept the security advisor's opinions as "expert opinion evidence" in this case.

[para 16] That said, the Advisor has provided helpful information on the types of risks and/or harms that may result from the disclosure of the records at issue. I will therefore carefully consider this evidence, as well as the other evidence and arguments submitted by the Public Body.

In camera submissions

[para 17] The Public Body provided extensive *in camera* submissions for this inquiry. In this Order I will quote directly from only the exchanged submissions from the Public Body, and discuss the evidence provided *in camera* in only general terms. Some of my reasons may reveal

the detailed arguments provided by the Public Body *in camera*; I will discuss those reasons in an Addendum to this Order, which will be provided only to the Public Body. Should this Order be judicially reviewed, this Office will provide the Court with a copy of the Addendum.

1. Did the Public Body properly apply section 18 of the Act (disclosure harmful to individual or public safety) to the information in the records?

[para 18] The Public Body applied section 18(1)(a) to the withheld information in the responsive records. This provision states:

> *18(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to*
>
> *(a) threaten anyone else's safety or mental or physical health*
>
> *...*

[para 19] The disclosure of one of the records at issue would reveal the names and business contact information of CFO employees. "Business contact" information in this case includes the name of the Public Body division within which the CFO falls, the position title for each employee, a phone number, email address, and PO box mailing address.

[para 20] The email address reveals the name of each employee. The Public Body has not told me whether the phone number is a direct line to each employee; however, the numbers are different from the "Main Information" phone number for the CFO office provided on the GOA online directory. As such, I presume that the phone number is a direct number for each employee (especially as the email addresses are particular to each employee), and therefore provides an opportunity to directly contact each employee. While a phone number alone does not disclose a name, voicemail will often identify the individual to whom that number belongs. Therefore, the names, email addresses, and direct phone lines appearing on page 1 of the records at issue would all identify the CFO employees if disclosed.

[para 21] The Public Body division name and position titles do not identify an individual employee. The PO box mailing address is a general mailing address that is not particular to any employee, nor does it reveal the physical location of any employee.

[para 22] Disclosure of the second page of the records at issue would reveal the organizational structure of the CFO, including the number of employees in that area and position titles. In the latter case, no individuals can be identified (other than the Director, whose name is already disclosed on the Government of Alberta online directory).

[para 23] It is not clear how the disclosure of the second page of records could threaten the safety, or physical or mental health of an individual. Nothing in the Public Body's submissions addresses how the safety or health of an individual could be threatened by the disclosure of information that does not identify an individual. The same can be said for the information on the first page of records that does not identify an individual employee (i.e. the Public Body division

name, position title, and PO box mailing address). I provide more detailed reasons for this finding in the Addendum to his Order.

[para 24] As I find that there is no basis for the application of section 18(1)(a) to information that does not identify an individual employee, I will consider the application of section 18(1)(a) only to the information in the first record that identifies individual employees – the names, phone numbers, and email addresses.

[para 25] In Order H2002-001, former Commissioner Work considered what must be established in order for section 11(1)(a)(ii) of the *Health Information Act*, which is similar to section 18 of the FOIP Act, to be applicable. He reviewed previous orders of this office addressing what is necessary to establish a reasonable expectation of harm under section 18 of the FOIP Act and adopted the following approach:

> In Order 2001-010, the Commissioner said there must be evidence of a direct and specific threat to a person, and a specific harm flowing from the disclosure of information or the record. In Order 96-004, the Commissioner said detailed evidence must be provided to show the threat and disclosure of the information are connected and there is a probability that the threat will occur if the information is disclosed.

[para 26] This analysis has been followed with respect to section 18(1)(a) of the FOIP Act. In Order F2013-51, the Director of Adjudication reviewed past orders of this office regarding the application of section 18. She summed up those orders as follows (at paras 20-21):

> These cases establish that section 18 of the FOIP Act applies to harm that would result from disclosure of information in the records at issue, but not to harm that would result from factors unrelated to disclosure of information in the records at issue. Further, a public body applying section 18 of the FOIP Act must provide evidence to support its position that harm may reasonably be expected to result from the disclosure of information (as must a custodian applying section 11(1)(a) of the HIA).
>
> Following the approach adopted by the former Commissioner in Order 96-004, and in subsequent cases considering either section 18 of the FOIP Act or section 11 of the HIA, the onus is on the Public Body to provide evidence regarding a threat or harm to the mental or physical health or safety of individuals, to establish that disclosure of the information and the threat are connected, and to prove that there is a reasonable expectation that the threat or harm will take place if the information is disclosed.

[para 27] In Order F2004-029, the adjudicator also stated that "being difficult, challenging, or troublesome, having intense feelings about injustice, being persistent, and to some extent, using offensive language, do not necessarily bring section 18 into play" (at para. 23).

[para 28] I agree with the above analyses. Further, the Supreme Court of Canada has clearly enunciated the test to be used in access-to-information legislation wherever the phrase "could reasonably be expected to" is found (such as in section 18(1)(a)). In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII), the Court stated:

> Given that the statutory tests are expressed in identical language in provincial and federal access to information statutes, it is preferable to have only one further elaboration of that language; *Merck Frosst*, at para. 195:
>
> > I am not persuaded that we should change the way this test has been expressed by the Federal Courts for such an extended period of time. Such a change would also affect other provisions because similar language to that in s. 20(1)(c) is employed in several other exemptions under the Act, including those relating to federal-provincial affairs (s. 14), international affairs and defence (s. 15), law enforcement and investigations (s. 16), safety of individuals (s. 17), and economic interests of Canada (s. 18). In addition, as the respondent points out, the "reasonable expectation of probable harm" test has been followed with respect to a number of similarly worded provincial access to information statutes. Accordingly, the legislative interpretation of this expression is of importance both to the application of many exemptions in the federal Act and to similarly worded provisions in various provincial statutes. [Emphasis added.]
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> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at para. 40.

[para 29] The Supreme Court of Canada has made it clear that there is one evidentiary standard to be used wherever the phrase "could reasonably be expected to" appears in access-to-information legislation, regardless of the seriousness of the harm alleged. The Public Body must provide sufficient evidence to show that the likelihood of any of the above scenarios is "considerably above" a mere possibility.

[para 30] The Public Body has provided a brief description of the CFO, from the Alberta Justice and Solicitor General's website:

- The *Victims Restitution and Compensation Payment Act* allows the Civil Forfeiture Office to ask the court to restrain, and later forfeit, property.
- If the court finds that the property was obtained by crime or used to commit crime, then the court can direct the proceeds to compensate victims, reimburse expenses and/or be forfeited to the Civil Forfeiture Fund.
- The Civil Forfeiture Office has to prove, based on a balance of probabilities, that the property was:
    - acquired by illegal means, or
    - used to carry out an illegal activity that was likely to cause bodily harm or illegal gain.
- Together with police, civil forfeiture can target dangerous property for removal from communities, including vehicles used to commit crime or homes used to grow marijuana. Civil

forfeiture is particularly useful in combatting organized crime because it strikes at the financial core of the organization. Civil forfeiture can also directly compensate victims.

- As of January 1, 2015, Alberta's Civil Forfeiture Office has
    - opened over 800 files referred from police agencies
    - obtained court orders for the forfeiture of more than $12.7 million (net)
    - obtained orders to sell more than 230 vehicles that were used to commit crime, with the proceeds being forfeited, and
    - obtained orders for the sale of over 30 residential homes used for marijuana grow operations, with the proceeds being forfeited
- Some of the cases handled by the Civil Forfeiture Office involved:
    - a truck used to transport chemicals to make ecstasy at an illegal super lab in B.C.
    - vehicles found with small children onboard while family members were running dial-a-dope operations
    - luxury vehicles found with handguns or drugs in sophisticated hidden compartments, and
    - a truck used in a violent road rage incident by a person with a history of similar behavior (Initial submission, at para. 8)

[para 31] The Public Body states that, unlike similar offices in other provinces, the CFO in Alberta deals only with "Federal offences with criminals that are involved in serious offences under the *Criminal Code* and *Controlled Drugs and substances Act* offences" (initial submission, at para. 19). It states that the CFO director (whose name has been disclosed to the public) makes all decisions as to whether to pursue civil forfeiture and directs the litigation.

[para 32] The Public Body argues that disclosing the names of CFO employees "would make the staff vulnerable by allowing the criminal elements surrounding the CFO to threaten, harass and commit violent acts against the employees of the CFO" and that "[i]ndividuals whose property has been seized are motivated to get their property back and may resort to illegal methods" (initial submission, at paras. 21 and 24).

[para 33] The threats to safety, or physical or mental health, of CFO employees alleged by the Public Body include violence perpetrated by "criminal elements", presumably made possible by disclosing the employees' names. Much of the Public Body's submissions also refer to the possibility of phishing-type schemes targeting CFO employees:

> …if a criminal element is provided an opportunity to identify CEO staff, they will use similar tactics of organized crime to gather intelligence from the internet and social media to determine if there are any vulnerabilities associated with a Government staff. (Initial submission at para. 26)

[para 34] Although the Public Body has not specified how this type of conduct could threaten the safety or health of CFO employees, possibly "criminal elements" could use information gathered from various sources to intimidate, coerce, bribe, etc. CFO employees. This could presumably lead to significant mental stress so as to affect the employees' mental health.

[para 35] The Advisor's affidavit states:

> Based on my experience and knowledge, as demonstrated as a Certified Protection Professional, I assess the risk to Civil Forfeiture Office staff (all the staff) in the event their names are disclosed is assessed as EXTREME – someone from a criminal element will intimidate, harass or exploit a member of the CFO if their identity is revealed. (Exchanged affidavit, at para. 6)

[para 36] In the BC *Maddock* Order referenced above, the adjudicator rejected the BC public body's arguments that disclosing the names of BC CFO employees could reasonably be expected to threaten their physical or mental safety. She said:

> The Ministry does not actually explain the nature of the feared threats to the safety or physical or mental health of the CFO employees if their identities are disclosed. However, I understand the Ministry to be arguing that they will be similar to what the CFO's legal counsel experiences or what the strategic lead describes other justice system participants have experienced. That being the case, one would expect to see similar evidence of threats to the CFO employees whose identities have not been kept anonymous, namely the former and current director and the assistant deputy director and the program manager. However, the Ministry provided no evidence that they experienced anything of a similar nature.
>
> In order to illustrate his concerns about the threats to CFO staff safety, the director gave four examples of communications which in his opinion were "threatening". He provides detail of what was actually communicated in only two, however. In one, the caller told him directly that the CFO had no right to initiate proceedings against seized cash and that CFO staff had better 'watch out'. In another, an angry caller "intimated" to another CFO staff member "that, as a native person, he was considering attending office to set up a protest." While I agree that telling someone to "watch out" implies a threat to safety or physical wellbeing, I do not agree that the second example regarding a protest does. Also, without detail of what was said in the other two examples, and no explanation of who exactly was on the receiving end of the communication, those examples are not persuasive. Therefore, I am only convinced that the label "threatening" is appropriate to the "watch out" example.
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> Although the director's evidence about what the CFO's legal counsel told him would have been preferable coming from that individual directly, it is useful in understanding the director's opinion that the CFO legal counsel's safety is at risk due to contact with convicted criminals and gang members. However, it is not evident that what legal counsel experiences in his face-to-face dealings in court as part of his prosecutorial role and while serving documents and inspecting properties is relevant or in any way parallels what CFO support staff experience at work. The Ministry provides no evidence to demonstrate any similarity. In fact the Ministry confirms that the administrative forfeiture process requires CFO staff to deal with known criminals by phone, not in person.
>
> Therefore, in my view, the Ministry has failed to provide evidence that demonstrates a clear and rational connection between disclosure of the names of the two support staff and a reasonable expectation of a threat to their safety or mental or physical health. (At paras. 47-50, citations omitted)

[para 37] The Public Body argues that the BC *Maddock* Order is distinguishable from this case for the following reasons:

> - In Maddock, the Ministry did not explain the nature of the feared threats to the safety or physical or mental health of the CEO employees if their identities are disclosed. The evidence put forward in the BC case was simply that staff are in danger because the CEO deals with criminals. The evidence in the present case goes well beyond this. The Director and the Security Advisor have detailed why and how safety is realistically compromised by disclosure. This includes explaining the motivation, ability and opportunity issues associated with anticipating criminal behaviour.
> - The names of two of the employees in the Maddock case were already in the public domain. However, only the name of the Director, is in the public domain in Alberta currently. (Initial submission, at para. 16)

[para 38] Regarding the last point, although there were more employee names publicly available in the *Maddock* Order, the names at issue were those that *were not* in the public domain. The fact that only the Director's name in the Alberta CFO is public seems to be an irrelevant factor.

[para 39] The Advisor's *in camera* affidavit provided by the Public Body gives the two examples of occurrences to support its claim that disclosing the information at issue would threaten the safety or health of the CFO employees:

- a known criminal attempted to find the location of the CFO office
- an accused found the home address of a law enforcement agent through the use of the agent's name and publicly available databases

[para 40] In its *in camera* submission, the Public Body also provided an example of a threat made to a member of the Alberta "CFO team", who publicly appeared on behalf of the CFO. Another example was provided where another province's CFO employee was approached and threatened by an accused during a face-to-face encounter that seems to have occurred in the normal course of that employee's duties.

[para 41] The adjudicator in the *Maddock* Order addressed the applicability of threats made to public body employees in the course of face-to-face encounters that occur in the normal course of the employees' duties. She said "it is not evident that what legal counsel experiences in his face-to-face dealings in court as part of his prosecutorial role and while serving documents and inspecting properties is relevant or in any way parallels what CFO support staff experience at work."

[para 42] I agree with the BC adjudicator that threats made to public body employees who deal directly with individuals is not necessarily indicative of whether CFO employees who do *not* directly deal with individuals would receive threats.

[para 43] That said, the Public Body has argued that I cannot require the Public Body to produce evidence of past threats to safety or health of the undisclosed CFO employees in order to find that future threats are reasonably likely. I agree with this as well; the fact that something

hasn't yet happened does not *necessarily* mean that it will not happen tomorrow. Similarly, the fact that the threats that have been made in the past were not made to the undisclosed CFO employees does not necessarily mean that similar threats would not be made to those employees in the future. This is especially so in this case, where the CFO employee names have not been made public in the past (other than the Director), and so the possible harm from disclosure can only be hypothetical.

[para 44] I have noted that I find the *Maddock* Order to be instructive. However, I must make my own finding of fact on the arguments, evidence and facts before me; these are different than what the BC adjudicator had before her. For the following reasons, I find that the Public Body has provided sufficient evidence to conclude that it properly applied section 18(1)(a) to the employee names, email addresses, and direct phone numbers withheld on page 1 of the records at issue. The types of scenarios outlined in the Public Body's submissions are those that clearly fall within the realm of possibility; in my view, they also fall "considerably above" a mere possibility. Since much of the Public Body's submissions were made *in camera*, I can reveal only general reasons for my finding.

[para 45] The individuals that the CFO deals with are accused of, or have been convicted of, serious offences under the *Criminal Code* or *Controlled Drugs and Substances Act*. This makes the likelihood of a threat to safety or health higher than it would be in relation to other public body employees that may deal with a very small percentage of such individuals.

[para 46] The Public Body argues that many of the individuals the CFO deals with are members of organized crime. Individuals involved in organized crime will generally have more resources available in which to pursue their seized property, including targeting CFO employees. Property confiscated by the CFO may not be merely the proceeds of crime, but may also be the means by which crimes were committed. This could be an additional motive for individuals to attempt to regain that property – to continue with their 'business'. This may be especially so in the case of organized crime, since other members of an organized criminal unit can continue to carry on their business even when some members have been incarcerated.

[para 47] The Public Body provided information, *in camera*, about the position responsibilities of the undisclosed CFO employees. From this information I gather that these employees would have knowledge that could likely be of value to an individual attempting to regain seized property. This does not appear to have been the case in the *Maddock* Order, based on the BC adjudicator's description of the position titles that had been disclosed in that case.

[para 48] Another distinction with the *Maddock* Order is that the BC adjudicator indicated that BC civil forfeiture employees deal with "known criminals by phone" but not in person. In this case, the Public Body has told me that the undisclosed CFO employees do not directly deal with individuals whose property is seized at all. Even contact with "service providers" is made using general email addresses, rather than email addresses that identify the employee.

[para 49] There is no one particular argument in the Public Body's submissions that convinces me that section 18(1)(a) applies to the information that identifies the undisclosed CFO employees. However, the case law cited above states that the evidentiary standard is between

'probable' and 'merely possible'. The totality of the Public Body's arguments satisfy me that the risk of harm in this case is "considerably above" a mere possibility. In this case, it is not clear what kind of evidence would be more convincing, short of evidence of actual past harm, which it clearly higher than the evidentiary burden set out in case law.

[para 50] This finding should be kept to the particular facts of this case. It is not unusual for public body employees to have to deal with difficult, or even violent members of the public, in the normal course of their duties. I do not mean to suggest that the names of those employees also ought to be withheld from the public.

[para 51] As I have found that section 18(1)(a) applies to the employee names, email addresses and direct phone numbers withheld in the records at issue; I do not need to consider the Public Body's application of section 20(1) to that information. However, I have found that section 18(1)(a) does not apply to the remainder of the information withheld from the Applicant. I will therefore consider the application of sections 20(1)(k) and (m) to that information.

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

[para 52] The Public Body applied sections 20(1)(k), and (m) to information in the records at issue. These sections state:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *...*
>
> *(k) facilitate the commission of an unlawful act or hamper the control of crime,*
>
> *...*
>
> *(m) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system*
>
> *...*

[para 53] The test enunciated by the Supreme Court of Canada, cited above, also applies to both sections 20(1)(k) and (m), as both contain the phrase "could reasonably be expected to."

[para 54] The harm contemplated in section 20(1)(k) is facilitating the commission of an unlawful act or hampering the control of crime, and the harm contemplated in section 20(1)(m) is harm to the security of property or systems. In both cases, the Public Body's arguments appear to be that if CFO employees can be targeted by those whose property has been (or may be) seized – either with violence, threats, intimidation, bribery, or similar means – the efficacy of that office would be compromised. The Public Body also states that the disclosure of the records at issue would harm the effectiveness of its current security arrangements.

[para 55] The Public Body has not stated how the disclosure of the records at issue could hamper the control of crime and a cogent argument is not obvious to me. Therefore I assume the Public Body's citation of this exception is regarding the facilitation of an unlawful act. The

Public Body has, again, not specified how disclosure of the records at issue could facilitate the commission of an unlawful act; however, an argument I can glean from its submissions is that the information could lead to bribery, intimidation etc. of CFO employees, which would be unlawful acts.

[para 56] The affidavit evidence provided by the Advisor speaks only to the risks of harm posed by revealing the identity of CFO employees. It does not address how or whether these same risks exist by virtue of disclosing the organizational structure of the CFO, the Public Body division name, position titles, or PO box mailing address.

[para 57] With respect to the disclosure of the CFO organizational structure, I asked the Public Body specifically how the disclosure of the CFO organization structure could lead to risk of harm outlined in sections 20(1)(k) and (m), without employee names associated with the position titles (except the Director, whose name has been publicly disclosed). The Public Body's response was made *in camera*; all I can say in this Order is that the Public Body believes that revealing the number of employees in the CFO could reveal to criminals whether intimidation, threats etc. would be fruitful.

[para 58] I asked a similar question with respect to the information withheld on the first page of the records at issue, other than the information that would identify employees (names, email addresses and direct phone lines). The Public Body responded that the disclosure of the remainder of the information withheld on that page would not itself result in harm, but that harm would result from information that can be inferred from it – namely, the number of CFO employees. This is the same argument made about the disclosure of the CFO organization structure.

[para 59] I find this argument to be far too speculative to meet the evidentiary standard required for both sections 20(1)(k) and (m). The Public Body did not provide any evidence for the supposition that the number of employees in an office could make it more or less of a target; as such, it has not met its burden for evidence that goes "well beyond" or "considerably above" a mere possibility of harm.

[para 60] As I have also found that section 18(1)(a) does not apply to this information, I will order the Public Body to disclose the information on the first page of the records at issue, with the exception of employee names, email addresses and phone numbers. I will also order the Public Body to disclose all of the information on the second page of records.

V. ORDER

[para 61] I make this Order under section 72 of the Act.

[para 62] I find that section 18(1)(a) applies to the names of the Public Body employees that have been withheld on the first page of the records at issue, as well as the email addresses and phone numbers.

[para 63] I find that section 18(1)(a) does not apply to the information in the records at issue other than the information described at paragraph 62. I find that sections 20(1)(k) and (m) also do not apply to the information to which section 18(1)(a) does not apply.

[para 64] I order the Public Body to disclose the records at issue to the Applicant, except the information described at paragraph 62.

[para 65] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Amanda Swanek
Adjudicator