ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2019-02

February 26, 2019

ALBERTA EDUCATION

Case File Number 003108

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Education (the Public Body). He requested a list of Twitter users / accounts that had been blocked for each Twitter account operated or authorized by the Public Body.

The Public Body provided responsive records, but applied section 17(1) (disclosure harmful to personal privacy) to sever the names of some blocked Twitter accounts.

The Applicant requested review by the Commissioner of the Public Body's severing decisions.

The Adjudicator determined that there was insufficient evidence to establish that the names of blocked Twitter accounts had a personal dimension. As a result, she found that section 17(1) did not require the Public Body to withhold this information from the requestor. She directed the Public Body to give the Applicant access to the severed information.

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

Authorities Cited: AB: Orders F2006-025, P2007-002, F2013-51, F2018-36

Cases Cited: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII)

I. BACKGROUND

[para 1] On April 12, 2016, the Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Education (the Public Body). He requested a list of Twitter users / accounts that had been blocked for each Twitter account operated or authorized by the Public Body.

[para 2] The Public Body provided responsive records, but applied section 17(1) (disclosure harmful to personal privacy) to sever the names of some blocked Twitter accounts.

[para 3] The Applicant requested review by the Commissioner of the Public Body's severing decisions.

[para 4] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested an inquiry.

II. RECORDS AT ISSUE

[para 5] The names of some blocked Twitter accounts are at issue.

III. ISSUE

Does section 17(1) of the FOIP Act (disclosure harmful to personal privacy) apply to the information severed from the records?

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

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> *(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> > *[…]*
> >
> > *(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body […]*

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

[…]

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party[…]

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 7] Section 17 does not say that a public body is never allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2)

(not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 8] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 9] 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 the conclusion is reached that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

[para 10] 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 11] However, it is important to note that section 17(1) is restricted in its application to personal information. Before a public body may apply section 17(1), it must first determine whether the information in question is personal information or that it is likely to be so. In this case, I must consider whether the information to which the Public Body has applied section 17(1) is personal information.

[para 12] 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 13] In Order F2013-51, the Director of Adjudication reviewed cases of this office addressing the circumstances when information referring to an individual is personal information and when it is not. She said:

> From the severing conducted by the Public Body, it appears that it may have relied on section 17 to withhold information about its employees or those of University of Calgary employees acting in the course of their duties. For example, the Public Body withheld records such as the University of Calgary's representative's first name and the business phone and fax number at which she could be contacted, contained in records 3-1, 3-2, and 3-3.
>
> As well, the Public Body has severed information, partly in reliance on section 17, that may be properly characterized as 'work product'. For example, it has severed the questions asked by an investigator, in addition to the answers of those interviewed. It has also withheld what is possibly a line of inquiry which the investigator means to follow (the note severed from record 1-151). While some of the questions and notes may reveal the personal information of witnesses, it does not appear that it is always the case that they do, and it appears possible that the Public Body withheld information on the basis that it may reveal something about the investigator performing duties on its behalf, rather than personal information about third parties.
>
> The Public Body has also withheld notes of an interview by the Public Body's investigator of the University of Calgary's legal counsel, in part in reliance on section 17. Information about the legal counsel's participation in the events surrounding the Applicant's complaint to the University is not her personal information unless it has a personal aspect, which was not shown.
>
> As well, it may be that some of the information of persons interviewed in the third volume relating to the Applicant's 'retaliation' complaint, which was withheld in reliance on section 17, may be information about events in which these persons participated in a representative rather than a personal capacity. Again, to be personal in such a context, information must be shown to have a personal dimension.
>
> In Order F2009-026, the Adjudicator said:
>
> > If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of "third party" under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

> The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.
>
> In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

In that case, the Adjudicator found that information solely about an employee acting as a representative of a public body was information about the public body, and not information about the employee as an identifiable individual. In *Mount Royal University v. Carter*, 2011 ABQB 28 (CanLII) Wilson J. denied judicial review of Order F2009-026.

In Order F2011-014, the Adjudicator concluded that the name and signature of a Commissioner for Oaths acting in that capacity was not personal information, as it was not information about the Commissioner for Oaths acting in her personal capacity. She said:

> Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.
>
> However, individuals do not always act on their own behalf. Sometimes individuals may act on behalf of others, as an employee does when carrying out work duties for an employer. In other cases, an individual may hold a statutory office, and the actions of the individual may fulfill the functions of that statutory office. In such circumstances, information generated in performance of these roles may not necessarily be about the individual who performs them, but about the public body for whom the individual acts, or about the fulfillment of a statutory function.

I find that the names and other information about employees of the Public Body and the University of Calgary acting in the course of their duties, as representatives of their employers, cannot be withheld as personal information, unless the information is at the same time that of an individual acting in the individual's personal capacity.

[para 14] From the foregoing, I conclude that information is not personal information within the terms of the FOIP Act, unless the information has a personal dimension and can be said to be "about an identifiable individual". Were it otherwise, a public body would be required to withhold information from an applicant simply because the information contains names, including the names of a public body's employees. Such an outcome would undermine a purpose of the FOIP Act, which is to create a right of access to public records in the custody or control of the executive branch of government.

[para 15] I note that in *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII), the Alberta Court of Appeal, in confirming Order F2013-53, stated:

> In addition to both statutes relating to the same subject of "privacy", both the definitions in the *FOIPP Act* and the *Personal Information Protection Act* contain the same root: "information

> about an identifiable individual". The *FOIPP Act* goes on to say that, while "personal information" means "information about an identifiable individual", it specifically "includes" some described categories of information. Describing a term as "meaning" something general, but then "including" some specific items is a well-known device used in statutory drafting. The core meaning is intended to be general. The specific items that are "included" are there to remove doubt about whether those items are covered by the general definition, and they can also provide some insight into what the Legislature intended by the general definition: *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403 at para. 68.
>
> In general terms, there is some universality to the conclusion in *Leon's Furniture* that personal information has to be essentially "about a person", and not "about an object", even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act.* It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a "personal dimension", it might sometimes properly be characterized as "personal information". In this case, the essence of the request was for complaints and opinions expressed about Ms. McCloskey. The adjudicator's conclusion (at paras. 49-51) that this type of request was "personal", relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law.

[para 16] The Alberta Court of Appeal considered that for information to be "personal information" it must be found to be "about a person", as opposed to "about a thing". If information has a personal dimension, it may be about an individual and be "personal information", but if it lacks a personal dimension, it may be "about an object".

[para 17] In Order F2018-36, I found that there was inadequate evidence to support a public body's decision that user names and images associated with user names were personal information. I said:

> Records 152 – 171, 237, and 249 – 268 are online comments made regarding "The Squad". The Public Body severed all user names and images associated with user names from the records under section 17(1).
>
> From my review of the records, I note that some user names are aliases, and that some of the severed images are pictures of animals or cartoon characters. It is therefore not clearly the case that these user names and images could be reasonably associated with an identifiable individual.
>
> I also note that the comments were posted in a public forum. It is therefore unclear whether those who posted the comments did so with expectations of privacy.
>
> As it is not clearly the case that the information the Public Body severed from records 152 – 171, 237, and 249 – 268 is personal information, or that it would be an unreasonable invasion of personal privacy to disclose it, if it is, I will direct the Public Body to review the information again, and to gather evidence if necessary, in order to decide whether the information is personal information, and whether it can reasonably be withheld under section 17(1).

In the foregoing case, the user names and images appeared with the opinions of the users. The opinion would be personal information if the user name and image served to identify the user as an individual. However, where it would not be possible to identify the name of the individual from the user name and image, the user name, image, and opinion would not be the personal information of users.

[para 18] The Public Body has withheld the names of Twitter accounts and the image associated with a Twitter account, where it believes it is possible that the information may reveal the identity and image of an individual who is the account holder. The Public Body is concerned that disclosing the name of blocked Twitter accounts would enable the Applicant to infer that identifiable individuals associated with the Twitter accounts engaged in inappropriate conduct.

[para 19] The Public Body argues:

> Personal information" is defined in section 1(n) of FOIP as 'recorded information about an identifiable individual." The term includes "an identifying number, symbol or other particular assigned to the individual."
>
> Past orders of the OIPC have found that email addresses, user names, and photographs are personal information.
>
> In Alberta OIPC Order F2006-025 [para 62], the Adjudicator, when considering the application of section 19(2), erred towards concluding that information is identifying where there was ambiguity.
>
> > "[para 62] . . . Where there is some ambiguity, I intend to err towards concluding that the information is identifying information."
>
> In Alberta OIPC Order P2007-002 [para 54], which is an Order under Alberta's *Personal Information Protection Act*, the Adjudicator also erred on the side of caution when determining whether information would reveal the identity of individuals.
>
> > "[para 54]... I must err on the side of caution and find the givers are identifiable. If I did otherwise I would be in danger of directing disclosure of information that must be withheld under the Act on a mandatory basis."
>
> A Twitter account may be obtained by an individual in their personal capacity or on behalf of an organization. The Twitter terms of service read,
>
> > You may use the Services only if you agree to form a binding contract with Twitter and are not a person barred from receiving services under the laws of the applicable jurisdiction. In any case, you must be at least 13 years old, or in the case of Periscope 16 years old, to use the Services. If you are accepting these Terms and using the Services on behalf of a company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so and have the authority to bind such entity to these Terms, in which case the words "you" and "your" as used in these Terms shall refer to such entity.
>
> The Twitter terms of service also state, "[Y]ou may need to create an account to use some of our services."
>
> The personal information requested by the applicant is not limited to the name of the Twitter account. The applicant has sought only specific accounts -- namely those that have been "blocked" by the Public Body.
>
> Where this information is about a Twitter account held by an identifiable individual this is also "personal information" as defined in FOIP. Which accounts have been blocked is not publicly available information, hence why the applicant has made their access request.

Where the Public Body was able to discern that the blocked Twitter account was associated with an organization or other entity that was not an individual, those account names were disclosed as they do not constitute "personal information"

The Public Body takes the position that the name of a Twitter account held by an individual in their personal capacity coupled with the fact that they have been "blocked" by the Public Body is personal information, as defined in FOIP. Since section 17(1) of the FOIP Act is a mandatory provision, the Public Body erred on the side of caution in determining which Twitter accounts would reveal personal information about a third party individual.

Unreasonable Disclosure

The question, therefore, is whether the disclosure of the fact that a particular individual has been 'blocked" on Twitter would be an unreasonable invasion of their personal privacy and therefore prohibited by section 17(1).

The Public Body submits that this is an untested area and has erred on the side of protecting privacy in keeping with the mandatory requirement of section 17(1) of the FOIP Act. Previous orders of the OIPC have found that email addresses, user names, and photographs are personal information; the Public Body relies on the same premise when it comes to the blocked Twitter accounts.

Releasing the fact that these personal accounts have been blocked would reveal that these individuals likely behaved in an inappropriate manner.

While most interactions on Twitter are publicly available for others to see, some are not. For example, direct messaging is a Twitter function that allows users to have private conversations that are not accessible by the general public. Therefore, personal Twitter accounts may have been blocked for unacceptable behavior that was done in "private."

Having regard to the factors set out in section 17(5), disclosure of the fact that a personal Twitter account may have been blocked for unacceptable behavior may:

- have been the result of activity in a Direct Message and therefore provided to the Public Body in confidence

- lead to speculation about the character of the individual, thus unfairly damaging their reputation

Summary

The Public Body therefore submits:

- a Twitter account held by an individual in their personal capacity is personally identifying, in the same way that an email or username is

- the fact that a personal Twitter account has been blocked by the Public Body is personal information about a third party

- a Twitter account may have been blocked by the Public Body as the result of some inappropriate or unacceptable behavior by the account-holder

- disclosure of the fact that a personal Twitter account has been blocked by the Public Body would reveal that the blocked individual had likely acted in an unacceptable or inappropriate manner

- the disclosure of that personal information would be an unreasonable invasion of that third party's personal privacy

- the Public Body must therefore withhold that personal information from disclosure to the applicant, pursuant to section 17(1) of FOIP

- This Inquiry has raised novel issues relating to privacy implications in the contemporary social media context. While the Public Body has erred on the side of protecting privacy, the Public Body looks to the IPC for guidance on this very multifaceted matter. If the IPC rules that blocked Twitter accounts are not personal information, then the Public Body would look to the IPC for guidance on the differences between email addresses and the blocked Twitter accounts.

[para 20] From its submissions, I understand that the Public Body is seeking guidance as to whether Twitter accounts constitute personal information, and whether, if they do, information about them must be withheld under section 17. The Public Body takes the position that the name of a Twitter account and an accompanying image are personal information. It therefore reasons that the fact that it blocked a Twitter account is likely to reveal personal information about inappropriate conduct on the part of an identifiable individual.

[para 21] As discussed above, the first question a public body must answer before applying section 17(1) is whether the information in question is personal information. That is, it must determine whether the information is likely to be about an identifiable individual or is not.

[para 22] A Twitter account name is the name of an account, rather than the name of an individual. While some individuals may use their names as the name of their Twitter account, others do not. In addition, organizations and "bots" may also use Twitter accounts. I note that a July 11, 2018 article in the New York Times reports:

> Twitter will begin removing tens of millions of suspicious accounts from users' followers on Thursday, signaling a major new effort to restore trust on the popular but embattled platform.
>
> The reform takes aim at a pervasive form of social media fraud. Many users have inflated their followers on Twitter or other services with automated or fake accounts, buying the appearance of social influence to bolster their political activism, business endeavors or entertainment careers.
>
> Twitter's decision will have an immediate impact: Beginning on Thursday, many users, including those who have bought fake followers and any others who are followed by suspicious accounts, will see their follower numbers fall. While Twitter declined to provide an exact number of affected users, the company said it would strip tens of millions of questionable accounts from users' followers. The move would reduce the total combined follower count on Twitter by about 6 percent — a substantial drop.[1]

[para 23] I note too, that an article in *Vox* describes the prevalence of fake and automated Twitter accounts:

[1] Nicholas Confessore and Gabriel J.X. Dance, "Battling Fake Accounts, Twitter to Slash Millions of Followers," *New York Times* July 11, 2018

> In April, Pew found that automated accounts on Twitter were responsible for 66 percent of tweeted links to news sites. Those aren't necessarily the bots Twitter is after: Automation remains okay to use under many circumstances. But the "malicious" are being targeted. Gadde said Wednesday that the new accounts being deleted from follower accounts aren't necessarily bot accounts: "In most cases, these accounts were created by real people but we cannot confirm that the original person who opened the account still has control and access to it." Weeding out these accounts might discourage the practice of buying fake followers.
>
> Twitter has acknowledged it contributed to the spread of fake news during the 2016 U.S. presidential election, and is trying not to have a repeat showing. It's verifying midterm congressional candidate accounts, it launched an Ads Transparency Center, and now come the new culls.
> […]
>
> The Washington Post notes that Twitter suspended more than 70 million accounts in May and June. Twitter also said recently that it's challenging "more than 9.9 million potentially spammy or automated accounts per week." [my emphasis] ("Challenged" doesn't necessarily mean "suspended," but users are prompted to verify a phone or email address to continue using the account.)[2]

[para 24] From the foregoing, I understand that millions of Twitter accounts may be automated or fake. As a result, the name of a Twitter account cannot be said to have a personal dimension necessarily, even though an account may have the appearance of being associated with an identifiable individual.

[para 25] The Public Body has withheld user names that it considers might be those of individuals. When I review the information severed by the Public Body, I am unable to say that it is likely to be about an identifiable individual, as it is unknown whether any of the information is, in fact, associated with an identifiable individual. While some names and corresponding pictures could possibly be genuine, others do not appear to be. In addition, some names appear to be the names of organizations and businesses. With regard to the names and photographs that appear to be of individuals, I am unable to find, on the evidence before me, that the accounts with which they are associated are actually being used by these individuals, or that the name of the account and the image associated with it, are about the same individual.

[para 26] Ultimately, it is impossible to tell from the severed information before me whether identifiable individuals are associated with the account names, such that the applicant could learn personal details about any such individuals by obtaining the information. While the Public Body is concerned that disclosure of the accounts that have been blocked would reveal that an individual had acted in an "unacceptable or inappropriate manner", in my view, all that would be revealed in this case is that a Twitter account that may or may not be associated with an identifiable individual was blocked by the Public Body. The records at issue do not indicate the reasons why the account was blocked or tie reasons for blocking the account to an identifiable individual.

[2] Marlee Baldridge, Twitter is weeding out bots and – now – locked accounts. "Most people will see a change of four followers or fewer," *Vox*, July 12, 2018

[para 27] Blocking a Twitter account does not mean that an individual user is blocked. An account may follow the Public Body on Twitter simply by changing the account name and url. (It appears from the list of severed account names, that some Twitter accounts did just that.)

[para 28] As it is not clearly the case that the accounts severed under section 17 are associated with identifiable individuals, and there is no requirement that a Twitter user use his or her own name or image, or be a human being, the fact that the Twitter account was blocked does not necessarily reveal personal information about an identifiable individual.

[para 29] To put it in the terms used by the Alberta Court of Appeal, the evidence before me supports finding that the information severed by the Public Body is "about a Twitter account", rather than "about an identifiable individual".

[para 30] I understand that the Public Body has decided to err on the side of caution, in reliance on Orders F2006-025 and P2007-002. However, in my view, these orders are distinguishable. Order F2006-025 deals with the interpretation of section 19(2) which does not address personal information, but rather the question of whether a person is a participant in a confidential evaluation process. Order P2007-002 is decided under PIPA, which is legislation that does not have the right of access to government documents as a purpose. As a result, I do not believe that these cases are germane to the question of whether information is personal or not under the FOIP Act.

[para 31] It is likely impossible for the Public Body to determine with certainty whether the information it has severed from the blocked account list is personal information, given that it would be unable, in many cases, to contact the Twitter account holders, assuming it had the resources to do so, to find out. However, in order to withhold information under section 17 of the FOIP Act, a public body must consider that it *would be* an unreasonable invasion of a third party's personal privacy to disclose the information. If a public body withholds information from an applicant because it is concerned that it *could possibly be* personal information and could possibly be an invasion of personal privacy to disclose it, it would be applying a lesser standard of certainty than required by section 17.

[para 32] The Public Body raises the issue of email, and asks for guidance on the differences between email addresses and blocked Twitter accounts. In my view, sections 1(n) and 17 of the FOIP Act apply in the same way to email addresses and Twitter accounts. If there is evidence establishing that an email address or a Twitter account is connected to an identifiable individual, and the email address or Twitter account appears in a context that reveals personal information about the individual, then the information is personal information, and the Public Body must consider the provisions of section 17 in deciding whether to disclose the information to a requestor. However, where the email address or Twitter account lacks a personal dimension, or does not clearly have a personal dimension, and no other information would be revealed about an identifiable

individual if the information is disclosed, then section 17 is not applicable to the email address or Twitter account.

IV. ORDER

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

[para 34] I order the Public Body to give the Applicant access to the information it severed from the records.

[para 35] I order the Public Body to inform me that it has complied with this order within 50 days of receiving it.

_____
Teresa Cunningham
Adjudicator