ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2020-17

July 20, 2020

EDMONTON POLICE SERVICE

Case File Number 008124

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Summary: The Applicant made an access request to the Edmonton Police Service (the Public Body) seeking records it obtained from an RCMP file. The Applicant wanted to use the information to lay an information under the *Criminal Code*. The Public Body withheld all responsive records in their entirety under section 21(1)(b) (disclosure harmful to intergovernmental relations) of the *Freedom of Information and Protection of Privacy Act* (the Act). After later releasing portions of the records to the Applicant, it continued to withhold some information under section 17(1) of the Act in addition to section 21(1)(b).

The Adjudicator found that section 21(1)(b) did not apply to the records at issue. The information in the records was collected by the RCMP acting as a provincial police service under the *Police Act*. As a provincial police service, the RCMP are considered a representative of the Government of Alberta, and not an entity under section 21(1) with which the Government of Alberta has relations.

The Adjudicator found that the Public Body properly applied section 17(1) to information that is personal information. In reaching this finding the Adjudicator concluded that the exemption to a presumption against disclosure under section 17(4)(b) (in order to continue an investigation) does not include investigating by private individuals. The words "an investigation" refer to investigations mentioned in the definition of "law enforcement" in section 1(h)(ii) of the Act.

The Adjudicator also concluded that "a fair of determination of an applicant's rights" under section 17(5)(c) does not include laying an information under the *Criminal Code*. Laying an information does not determine an applicant's rights, and so is not captured under section 17(5)(c).

The Adjudicator found that some information withheld under section 17(1) was not personal information, and ordered the Public Body to disclose it to Applicant.

Statutes Cited:

FED: *Criminal Code*, RSC 1985, c C-46, ss. 504, 507.1, 788(1), 795

AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(i); 1(i)(x)(B); 1(h); 1(n); 17(1); 17(4)(a), (b), (f), and (g); 17(5)(a) through (i); 21(1); 72; *Police Act*, RSA 2000, c P-17, ss. 1(l); 1(n); 21(1); *Water Act*, RSA 2000, c W-3

Authorities Cited: AB: Orders 97-002, 2001-037, F2004-018, F2008-027, F2009-027, F2011-009, F2013-07, F2013-39, F2013-40, F2014-15, F2016-21

Cases Cited: *Edmonton (City) Police Service* v. *Alberta (Information and Privacy Commissioner*), 2020 ABQB 10

I. BACKGROUND

[para 1] In August 2016, an incident took place on the Applicant's property, between him and two other individuals. The RCMP looked into the incident, and subsequently informed the Applicant that the two individuals accused him of assault, but declined to press charges. According to the Applicant, the accusation against him is deceitful, and the RCMP failed to investigate three crimes on his property: breaking and entering, trespass by night, and theft.

[para 2] In the days following the incident, the Applicant discovered a screwdriver and gas can on his drive way. Later, in April 2017, the Applicant discovered a bullet hole in the side of his house. The Applicant then had a conversation with a detective (the Detective) at the Edmonton Police Service (the Public Body), about the matter. The Applicant believes that one of the individuals from the August 2016 incident is someone from his past, who may have reason to be hostile to him. He believes that both individuals are responsible for the crimes on his property.

[para 3] The Applicant informed the Detective that the RCMP had a file on the matter, and provided the file number. In response to the Applicant's information, the Detective conducted a threat assessment. As part of conducting the threat assessment, she contacted the RCMP about the file, and, after making a request for information via the Canadian Police Information Centre (CPIC), obtained three pages of records from it. The Detective concluded that there was no evidence that the Applicant was being targeted by anyone or

that the individual from the August 2016 incident was the same person he dealt with in the past. The Detective informed the Applicant of her findings.

[para 4] The Applicant notes that the Detective did not come to his property to inspect the bullet hole, or report it to the RCMP. The Public Body explained that investigating the bullet hole is outside of the Detective's jurisdiction.

[para 5] On or around July 25, 2017, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25 (the Act), to the Public Body seeking the file obtained from the RCMP. The RCMP's file number was the search term. The Applicant sought the information to use in laying a private information in court, to pursue prosecution on his own.

[para 6] The access request came to the attention of the Detective, who informed the Applicant that it would be more appropriate if he made the request to the RCMP. The Applicant made a request to the RCMP but was not satisfied with the Response. On or around January 3, 2018, the Detective forwarded the access request to the Public Body's FOIPP office.

[para 7] The Public Body identified the three pages of information it received from the RCMP as responsive records.

[para 8] On January 11, 2018, the Public Body responded to the access request. The Public Body withheld all three pages in their entirety under section 21(1)(b) of the Act.

[para 9] The Applicant sought a review of the response to the access request from this office. Investigation and mediation were authorized to resolve the matter, but did not do so. The matter then proceed to inquiry.

[para 10] During the inquiry, the Public Body learned that the RCMP had provided the Applicant with copies of the records, with some redactions. The Public Body then provided the Applicant with copies of the records, making the same redactions as the RCMP, relying on section 17(1) of the Act to withhold the redacted information. Despite releasing portions of the records, the Public Body maintains its position that it properly withheld the records in their entirety under section 21(1)(b). I understand the Public Body to be asserting that section 21(1)(b) still applies to information that is now also redacted under section 17(1).

Identification of Affected Third Party

[para 11] The RCMP was identified as a third party affected by this inquiry and invited to make their own submissions, but did not do so.

II. RECORDS AT ISSUE

[para 12] The records at issue are three pages that the RCMP provided to the Public Body. A review of the records shows that the information they contain was collected by the RCMP, operating near Redwater, Alberta.

III. ISSUES

[para 13] The Notice of Inquiry listed the following issue:

ISSUE A: Did the Public Body properly apply section 21(1)(b) to information in the records?

[para 14] In the course of the inquiry, the Public Body raised the issue of the application of section 17(1) of the Act. Accordingly, I added the following issue to this inquiry:

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

IV. DISCUSSION OF ISSUES

ISSUE A: Did the Public Body properly apply section 21(1)(b) to information in the records?

[para 15] Section 21(1) states as follows.

> *21(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> > *(a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:*
> >
> > > *(i) the Government of Canada or a province or territory of Canada,*
> >
> > > *(ii) a local government body,*
> >
> > > *(iii) an aboriginal organization that exercises government functions, including*
> > >
> > > > *(A) the council of a band as defined in the Indian Act (Canada), and*
> > >
> > > > *(B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada,*

(iv) the government of a foreign state, or

(v) an international organization of states,

or

(b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.

(2) The head of a public body may disclose information referred to in subsection (1)(a) only with the consent of the Minister in consultation with the Executive Council.

(3) The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local government body or organization that supplies the information, or its agency.

(4) This section does not apply to information that has been in existence in a record for 15 years or more.

[para 16] There are four criteria under section 21(1)(b) (see Order 2001-037):

a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies;

b) the information must be supplied explicitly or implicitly in confidence;

c) the disclosure of the information must reasonably be expected to reveal the information; and

d) the information must have been in existence in a record for less than 15 years.

I consider them below.

(a) the information must be supplied by a government, local government body or an organization listed in clause (a) or its agencies

[para 17] The Public Body submits that the RCMP is a local government body or an agency of a government mentioned in section 21(1)(a).

[para 18] The Act defines "local government body" in section 1(i). Subsection 1(i)(x)(B), includes a police service as defined in the *Police Act*, RSA 2000, c P-17 (the *Police Act*) in that definition. Section 1(i)(x)(B) of the Act is reproduced below.

(i) "local government body" means

(x) any

(A) commission,

(B) police service, or

(C) policing committee,

as defined in the Police Act,

[para 19] The *Police Act* defines "police service" in section 1(l).

(l) "police service" means

(i) a regional police service;

(ii) a municipal police service;

(iii) the provincial police service;

(iv) a police service established under an agreement made pursuant to section 5;

[para 20] The term "the provincial police service" mentioned in section 1(l)(iii) above, is defined in section 1(n) of the *Police Act*. It includes the RCMP when it is operating under an agreement with the Province, pursuant to section 21(1) of the *Police Act*. Sections 1(n) and 21(1) of the *Police Act* are below.

(n) "provincial police service" means the Royal Canadian Mounted Police where an agreement is entered into under section 21(1);

* * *

21(1) The Lieutenant Governor in Council may, from time to time, authorize the Minister on behalf of the Government of Alberta to enter into an agreement with the Government of Canada for the Royal Canadian Mounted Police to provide a provincial police service.

[para 21] While the Public Body did not provide a copy of an agreement respecting policing services provided by the Redwater RCMP under section 21(1) of the *Police Act*, it states that its understanding is that the Redwater RCMP operates under such an agreement. The Public Body submits that as a result, it is a police service under the *Police Act* and consequently a "local government body" as that term is defined in the Act.

[para 22] Further, and in the alternative, the Public Body submits that the Redwater RCMP is an agency of a government. It relies on Order F2004-018 in support of its position. The facts in that Order are substantially similar to those here. In Order F2004-018 the applicant sought records from the same Public Body as here. As here, the Public Body withheld some RCMP records under section 21(1)(b). After considering the

RCMP's role in relation to the federal government, Former Commissioner Work concluded that the RCMP is its agent. (Order F2004-018 at paras. 49-51).[1]

[para 23] However, the manner in which section 21(1)(b) has been interpreted since Order F2004-018 leads me to the conclusion that the Redwater RCMP is neither an agent of the federal government, nor is it a public body listed in clause 21(1)(a) with whom the Government of Alberta has relations.

[para 24] The Adjudicator in Order F2009-027 revisited the issues of the interpretation of section 21(1)(b) of the Act, whether the RCMP is an agent of the federal government, and whether section 21(1) of the Act applies to information provided by the Government of Alberta to another part of the Government of Alberta. She also considered Order F2004-018 specifically. She stated at paras. 41 to 45:

> In Order F2008-027, I determined that section 21(1)(b) applies to protect "intergovernmental" relations of the Government of Alberta, as opposed to "intragovermental" relations, or intergovernmental relations of an entity other than the Government of Alberta. I said:
>
> > For the reasons set out below, I find that the purpose of section 21 is to enable public bodies to withhold information harmful to the intergovernmental relations of the Government of Alberta with other governments and that clause (b) also serves this purpose. In my view, clause (b) presumes harm to the intergovernmental relations of the Government of Alberta if information supplied in confidence by an entity listed in clause (a) to a public body representing the Government of Alberta, is disclosed. I also find that the Government of Alberta, or an entity representing the Government of Alberta, cannot supply information for the purposes of clause (b) because it is not an entity listed in clause (a). In determining the purpose of section 21, I have considered standard drafting conventions, the heading, and the language and context of the provision
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> In this case, the information in the records at issue was created by RCMP officers, acting as police officers within the meaning of section 1(k)(ii) of the *Police Act*, employed by a police service as defined under section 1(l)(iv) of the *Police Act*. The authority to collect and exchange this information is provided by the *Police Act* and not by federal legislation. Further, under section 2 of the *Police Act*, a police service acts under the direction of either the Solicitor General and Public Safety or the Minister of Justice and Attorney General when carrying out official duties. Consequently, the exchange of information between an RCMP detachment and the Minister of Justice and Attorney General under the *Police Act* is intragovernmental in nature, rather than intergovernmental. I find that when the RCMP supplied information to the Public Body, it acted as an entity representing the Government of Alberta, and acted under the direction of the Government of Alberta.

[1] In his reasons, Former Commissioner Work relied on section 5 of the *Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10*, and section 5 of the *Department of Public Safety and Emergency Preparedness Act, S.C. 2005, c.10* in reaching his conclusion that the RCMP is an agency of the federal government. Those sections remain substantially the same today.

The question remains whether section 21(1)(b) encompasses information supplied by a representative of the Government of Alberta, as I have found the RCMP detachment to be. As discussed in Order F2008-027, the use of the phrase "a government, local government body, or organization *listed* in clause (a)" as opposed to a more general phrase such as "a government, local government body referred to in clause (a)," or simply "a government, local government body, or organization in clause (a)," means that a specific list in clause (a) is being referred to in clause (b). I interpret subclauses (i) – (v) in section 21(1)(a) as creating a list of entities belonging to a single, identifiable class: those entities with whom the Government of Alberta's relations are to be protected from harm. The Government of Alberta is not included in the list in subclauses (i) – (v), presumably because there is no need to protect the Government of Alberta's relations with itself.

I find that the Government of Alberta it is not a government listed in clause (a) for the purposes of section 21(1)(b). As a result, information supplied by RCMP acting as agent for the Solicitor General or the Minister of Justice and Attorney General is not subject to section 21(1)(b).

In making this finding, I arrive at a conclusion that is different than that of the Commissioner in Order F2004-018. In Order F2004-018, the Commissioner adopted the reasoning of the former Information and Privacy Commissioner of British Columbia in Order 02-19 and found that information supplied by the RCMP to the Edmonton Police Service fell under section 21(1)(b). In Order 02-19, the former Information and Privacy Commissioner of British Columbia said:

> The provincial *Police Act* contemplates some provincial role, through the Canada-British Columbia agreement, in the RCMP's policing of the province. It could not seriously be suggested, however, that the *Police Act*, or any agreement under it, somehow makes the RCMP a provincial body or agency. The constitutionality of any attempt by British Columbia to do this would be, at its best, questionable. See, for example, *Attorney General (Quebec)*, above, and *Scowby et al.* v. *Glendinning* 1986 CanLII 30 (S.C.C.), (1986), 32 D.L.R. (4th) 161 (S.C.C.). Constitutional issues aside, I do not see any attempt on the part of British Columbia, through the *Police Act*, to turn the RCMP into a provincial agency. See, also, *Re Ombudsman for Saskatchewan* (1974), 1974 CanLII 924 (SK QB), 46 D.L.R. (3d) 452 (Sask. Q.B.), where Bayda J. (as he then was) held that the RCMP was not a provincial government agency for the purposes of the Saskatchewan *Ombudsman Act*.

In determining that information supplied by the RCMP was information supplied in confidence by an agency of the federal government, the former British Columbia commissioner held that British Columbia's Police Act did not "turn the RCMP into a provincial agency." However, this case was decided before *Société des Acadiens*, which is clear that the RCMP act under the direction of the province when they act under provincial legislation. I draw from this case that while the RCMP maintains its status as a federal institution, and is in one sense an "agency" of the Government of Canada, the more important point to be drawn from the case is that when it is acting under provincial legislation as the provincial police service, it is policing for and under the control of the province. Thus the transfers of information between the RCMP detachment and the Public Body, are intra-governmental. Had the Commissioner had the benefit of *Société des Acadiens* when Order F2004-018 was decided, in which the Supreme Court of Canada

found that an RCMP officer acting under provincial policing legislation acts as "institution of the legislature or government", the outcome may have been different.

[para 25] I agree with the Adjudicator in Order F2009-027. In this case, according to the Public Body, the RCMP also were acting under the authority of the *Police Act*, as a police service. Consequently, the disclosure of information from the RCMP to the Public Body was intragovernmental rather than intergovernmental in nature. It is not captured under section 21(1)(b).

[para 26] In reaching this conclusion, I have considered Order F2011-009. In that Order, the Adjudicator considered information placed on CPIC by police forces from other provinces. [2] The Adjudicator found at para. 34 that to the extent the RCMP operates CPIC, it is acting as an agency of the Government of Canada. The Adjudicator also made clear that the RCMP does not supply information to the Government of Alberta by merely operating CPIC. Rather, the Adjudicator found that information in CPIC was supplied by the various extra-provincial law enforcement agencies which had placed the information on CPIC. (Order F2011-009 at paras. 35 to 37.)

[para 27] In this case, the information in CPIC was placed there by the RCMP. However, unlike in Order F2011-009 it was acting as a provincial police service in Alberta when it did this. Accordingly, the information was placed there by an entity representing the Government of Alberta, and as such was not supplied by an entity listed in clause 21(1)(a). The result is that the Government of Alberta was the one supplying the information to the Public Body.[3]

[para 28] In respect of the above, I find that the Public Body incorrectly applied section 21(1)(b) to the records at issue.

[para 29] In light of this finding, I do not need to consider the other criteria in the test under section 21(1)(b).

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

[para 30] Section 17(1) requires the Public Body to withhold personal information where disclosing it would be an unreasonable invasion of a third party's personal privacy:

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[2] In Order F2011-009, police forces from Vancouver, British Columbia; and York and Barrie, Ontario, placed the information on CPIC. The Adjudicator found that such extra-provincial police forces were agencies of their respective provincial governments.

[3] As described in Order F2009-027 above, section 21(1)(b) does not apply to these circumstances, and so the reasoning in Order F2011-009 (in which law enforcement agencies external to Alberta, and therefore not agencies of the Government of Alberta had supplied the information) does not apply to this case. I also observe that the Adjudicator in Order F2011-009 agreed with the interpretation of section 21(1)(b) given in Order F2008-027 (referred to in Order F2009-027 above) – when the RCMP act as provincial police force, they are agent of the Government of Alberta. (Order F2011-009 at para. 32)

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.

[para 31] "Personal information" is defined in section 1(n) of the 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 32] The Public Body redacted information related to two third party individuals. Much of the information consists of names, telephone numbers, addresses, health information, and opinions that are not about another individual. This information is personal information under section 1(n) of the Act.

[para 33] In some places on the records, the Public Body has redacted information that is not personal information. This information is information about steps taken by the RCMP in performance of their duties, or a factual description of events given by the two third party individuals. Since this information is not personal information, section 17(1) does not apply to it, and it should not have been redacted from the records. I describe this information in **Table A** at the end of this order.

[para 34] I now consider whether the Public Body properly applied section 17(1) to the information that is personal information.

[para 35] Whether or not disclosing personal information results in an unreasonable invasion of personal privacy is informed by sections 17(2) to (5). Sections 17(2) and (3) do not apply in this case. [4]

[para 36] Section 17(4) lists circumstances where disclosure is presumed to be an unreasonable invasion of personal privacy. The Public Body relies on sections 17(4)(a), (b), (f), and (g).

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> > *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*
> >
> > *(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,*
> >
> > *(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*
> >
> > *(g) the personal information consists of the third party's name when*
> >
> > > *(i) it appears with other personal information about the third party, or*
> > >
> > > *(ii) the disclosure of the name itself would reveal personal information about the third party,*

[para 37] I find that section 17(4)(a) does not apply in this case. While the redacted information contains information about an individual's health, which is personal information under section 1(n)(vi), section 17(4)(a) applies to a smaller set of information. The redacted information relates to health generally and is captured under section 1(n)(vi), but does not contain information in-depth or specific enough to constitute history, diagnosis, condition, treatment, or evaluation within the terms of section 17(4)(a). To use a common phrasing, the redacted information is the sort that suggests, on a general level, whether a person feels "okay".

[para 38] I find that section 17(4)(b) applies in this case. The records are the RCMP's notes from an investigation into an incident. The notes detail the steps taken to look into the incident and a decision on whether or not to pursue charges. Such records fall within the ambit of "law enforcement", as policing under section 1(h)(i), and a police investigation under section 1(h)(ii).

> *(h) "law enforcement" means*

[4] Section 17(2) prescribes circumstances where disclosing personal information is not an unreasonable invasion of personal privacy, but none of them are applicable in this case. Section 17(3) does not apply either since it only operates in conjunction with section 17(2).

> *(i) policing, including criminal intelligence operations,*
>
> *(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
>
> *(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 39] In finding that section 17(4)(b) applies, I have considered the Applicant's argument to the contrary. The Applicant's position is that the personal information in the records is necessary to continue an investigation, and is therefore falls within the exception to the presumption against disclosure. The Applicant states that the RCMP and the Public Body failed to properly investigate the incidents brought to their attention and as such, the matters are unresolved. The Applicant also states that disclosing the information will assist the Public Body with an investigation. However, since the Public Body and the RCMP already have the information, and the authority to investigate, disclosure is not necessary for them to continue their investigations. My understanding, therefore, is that the Applicant's argues that disclosing the personal information will enable him to investigate matters personally.

[para 40] In my view, section 17(4)(b) does not contemplate disclosing information to allow a private citizen, such as the Applicant, to continue an investigation.

[para 41] The Applicant's argument is that the exception to the presumption applies because he intends to continue the investigation using the information, and to lay an information. However, section 17(4)(b) creates a presumption against disclosure of third party personal information that is an identifiable part of a "law enforcement record." It also references "law enforcement matters." The section is particular to law enforcement. This includes its reference to "an investigation." In light of the emphasis on law enforcement in the section, the term "an investigation" refers to an investigation that is itself a matter of law enforcement. The scope of law enforcement investigations is clearly set out in the definition of "law enforcement" in section 1(h)(ii). They are limited to police, security, and administrative investigations, and do not include investigations conducted by a private citizen.

[para 42] I have noted that where a private citizen lays an information it can potentially result in a proceeding that could lead to a penalty or sanction within the terms of section 1(h)(iii). This arguably brings a disclosure that permits the laying of an information within the exception to the presumption contemplated by section 17(4)(b).

[para 43] Justice Renke reviewed "laying an information" in Alberta in *Edmonton (City) Police Service* v. *Alberta (Information and Privacy Commissioner*), 2020 ABQB 10 (*EPS*) at paras. 189 to 195. The primary point germane to the discussion here is that whether done by a private a citizen or the Police, laying an information commences

criminal proceedings.[5] From there it follows that sanctions and penalties under the Criminal Code, RSC 1985, c C-46 (the *Criminal Code*) may result.

[para 44] However, despite that laying an information *results* in a proceeding as defined in section 1(h)(iii), I do not find that the exception to the presumption against disclosure under section 17(4)(b) applies to disclosure that would permit laying an information. This is because under section 17(4)(b), the record in question must necessarily be part of an existing law enforcement record, and *the* law enforcement matter that is referred to in the latter part of the section (as the matter to be disposed of or investigated) is that same law enforcement matter.[6]

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[5] Sections 504 and 788(1) of the *Criminal Code* provide for laying an information for indictable offenses and summary convictions:

504 Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

(a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

(i) is or is believed to be, or

(ii) resides or is believed to reside,

within the territorial jurisdiction of the justice;

(b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or

(d) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

* * *

788 (1) Proceedings under this Part shall be commenced by laying an information in Form 2.

[6] See Order F2014-45 at para 29, which states: "It seems unlikely that the second part of section 17(4)(b) is intended to allow an Applicant to access law enforcement records to dispose of, or continue, his or her own investigation. Additionally, the provision states that the information must be necessary to dispose of *the* law enforcement matter, or to continue an investigation. In other words, section 17(4)(b) applies to records that are part of a law enforcement matter that has already been undertaken; it does not apply to records that *may become* part of a law enforcement matter in the future. The second part of clause (b) states that the presumption against disclosure does not apply if the disclosure is necessary to further *the* law enforcement matter – this applies to the law enforcement matter that is already underway. The Public Body created (or compiled) the records for its investigation; the Applicant cannot claim that section 17(4)(b) does not apply because disclosure is necessary for him to dispose of his own law enforcement matter (if he had one).

[para 45] In this case, the records in question were records of the RCMP investigation, which fell within the definition of "law enforcement" by reference to sections 1(h)(i) and possibly 1(h)(ii). In contrast, the laying of an information by the Applicant would commence a proceeding, which would be a different "law enforcement" matter, falling under section 1(h)(iii). Thus, even if the records in question were necessary for the purposes of laying an information, they would not be necessary for the purpose of continuing or disposing of the RCMP investigation, which had concluded. Accordingly, I find that the exception to the presumption has not been established and that the presumption under section 17(4)(b) is operative in the present case.

[para 46] None of the redacted information consists of character references, personnel evaluations, or personal recommendations under section 17(4)(f). Similarly, none of the information consists of personal evaluations as that term has been defined in other orders. See, for example, Order 97-002. I find that section 17(4)(f) does not apply.

[para 47] The redacted information includes the individuals' names along with other personal information, including telephone numbers, addresses, health information, and opinions that are not about another individual. The presumption against disclosure under section 17(4)(g)(i) also applies.

[para 48] Section 17(5) lists factors to consider when determining whether disclosure is an unreasonable invasion of personal privacy. The list in section 17(5) is not exhaustive. When considering whether to disclose personal information, a public body must also consider other relevant circumstances. The Public Body considered each factor enumerated in section 17(5):

> *(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 49] The Public Body argues that sections 17(5)(a), (b), (d), and (i) are irrelevant to this matter. I agree and do not consider them further.

[para 50] The Applicant did not directly mention section 17(5)(c) in his submissions, but argues that by withholding information, the Public Body denies him access to the criminal justice system. The Public Body counters that there is no right to access the criminal justice system, and that the Applicant does not have a right to "lay his own private information in court."

[para 51] While there is no general right to access the criminal justice system, it appears that, at least in Alberta[7], an individual has the right to lay their own information in court. As stated by Justice Renke in *EPS* at para. 192, "The Criminal Code provisions do not fix responsibility for laying an information on particular actors. As s. 504 provides, "any one" may lay an information. That includes individuals who are not police officers or Crown prosecutors."

[para 52] In my view, the personal information in the records is not relevant to a fair determination of the Applicant's rights. Four criteria must be fulfilled for section 17(5)(c) to apply:

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

[para 53] As discussed, the *Criminal Code* provides a legal right to lay a private information. Criterion (a) above is satisfied. However, I do not find that (b), or (c) are satisfied.

[para 54] With regard to (b), it might be true to say that laying the information could potentially give rise to a proceeding, so that the right to lay the information "relates to" a

[7] Justice Renke noted that Alberta, unlike other some other provinces, does not have legislation that mandates Crown review of decisions to lay charges. *EPS*, at. paras. 208 to 211.

contemplated proceeding, However, it must be remembered that the information at issue must be relevant *to the determination* of the applicant's rights. The only right in question is the Applicant's right to lay a private information, which remains unabridged whether or not the Public Body discloses the information. The possible results of laying an information are set in section 507.1 of the *Criminal Code*. The provision concerns whether the accused will be compelled to appear by issuing a summons or a warrant for the accused's arrest.

> ***Referral when private prosecution***
>
> *507.1 (1) A justice who receives an information laid under section 504, other than an information referred to in subsection 507(1), shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information.*
>
> ***Summons or warrant***
>
> *(2) A judge or designated justice to whom an information is referred under subsection (1) and who considers that a case for doing so is made out shall issue either a summons or warrant for the arrest of the accused to compel him or her to attend before a justice to answer to a charge of the offence charged in the information.* [8]

While the Applicant has a right to lay the information, he has no right that such steps be taken. Further, even if a proceeding ensued, it would not be one that determined the Applicant's rights. The Applicant has no right that someone else be convicted of an offence.

[para 55] A similar result was reached in Order F2016-21. In that Order, the applicant argued that section 17(5)(c) applied to information that he wanted to use in order to compel Alberta Environment and Parks (AEP) to prevent his neighbours from carrying out illegal ditching under the *Water Act*, RSA 2000, c W-3 (the *Water Act*). While the applicant had the right to make a complaint to AEP, the Adjudicator found that the applicant did not have the right to enforce the *Water Act*; that was the exclusive right of AEP. In the absence of any argument from the applicant that any information was necessary to determine his rights, the Adjudicator concluded that section 17(5)(c) did not apply. See Order F2016-21 at paras. 44 and 45.

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[8] Since section 507.1 appears in part XVI of the *Criminal Code*, by virtue of section 795 of the *Criminal Code* the above provisions also apply for an information laid under section 788(1). Section 795 states,

> *795 The provisions of Parts XVI and XVIII with respect to compelling the appearance of an accused before a justice, and the provisions of Parts XVIII.1, XX and XX.1, in so far as they are not inconsistent with this Part, apply, with any necessary modifications, to proceedings under this Part.*

[para 56] The same reasoning applies to (c) above: the information the Applicant seeks does not bear on or have significance to the *determination of* any right of the Applicant.

[para 57] Since I have found that (b) and (c) above are not satisfied, I do not need to consider (d) above.

[para 58] The Public Body argues that section 17(5)(e) weighs heavily in favour of withholding the information. According to the Public Body, the Applicant is seeking the information to locate and contact several individuals. The Public Body postulates that the Applicant wants to make the third parties feel concerned, uncomfortable, and violated. The Applicant states that he does not have the ability to do so, and argues that the Public Body is "fear mongering."

[para 59] In order for section 17(5)(e) to apply, there has to be more than the mere possibility of unfair harm (see Orders F2013-39 at para. 38 and F2013-40 at para. 32). The Public Body has not provided any evidence beyond its speculation about the Applicant's motives that there is any substance to a risk of harm. Accordingly, I find that section 17(5)(e) does not apply.

[para 60] The Public Body argues that the information was provided by the two third-party individuals in confidence as contemplated by section 17(5)(f). The Public Body argues that the individuals provided the information in confidence since they provided it as part of an investigation.

[para 61] I do not agree that merely speaking to the RCMP as part of an investigation automatically leads to the conclusion that information is provided in confidence. An individual may want to press charges, and the accused will, at some point, have the right to know who their accuser is. In this case, however, the records indicate that no charges were pursued. Upon review of the records, it seems to me that the two individuals reported an incident to the RCMP, but declined to press charges and otherwise went on with their lives. I infer that they preferred to avoid dealing with the matter any further, and as such provided their personal information in confidence, to that end.

[para 62] Regarding section 17(5)(g), the Public Body states that it does not apply to information such as names and contact information since the information is accurate. I agree with that point. The Public Body argues that this consideration is possibly relevant to the opinion of an RCMP constable about the third party individuals. The Public Body does not elaborate on how any such information is likely to be unreliable or inaccurate. I cannot see from the face of the records any reason to believe it would be. I find that section 17(5)(g) does not apply.

[para 63] The Public Body makes a similar argument regarding section 17(5)(h) as it did for section 17(5)(g). Again, it does not elaborate on how any information may unfairly damage the reputation of the third party individuals and I cannot see from the face of the record how it would. I find that section 17(5)(h) does not apply.

[para 64] Neither party expressly pointed to any further relevant circumstances under section 17(5). I note, however, that in Order F2013-07 the Adjudicator stated (at para 38):

> Even if the power to lay a private information and (possibly) pursue a private prosecution under the *Criminal Code* does not fit within an enumerated factor in section 17(5), the Public Body may still consider, as an additional factor under section 17(5), whether the Applicant has a pressing need for the information (for example, to exercise the ability to lay a private information) that would weigh in favour of disclosure.

I agree that the fact the Applicant wishes to use the information lay an information may be a relevant circumstance in cases such as these. However, the Applicant has not demonstrated a pressing need. While laying an information will assist the Applicant in pursuing his theory about who is responsible for alleged crimes on this property, there is little more than his theory to support the notion that any crimes were committed, or if so, by whom. In my view, something more than theory is required to establish a pressing need.

[para 65] Since there are no considerations under section 17(5) that favour disclosing the redacted information, the presumptions against disclosure under sections 17(4)(b) and 17(4)(g)(i) remain operative against disclosure. Accordingly, I find disclosing the personal information would be an unreasonable invasion of third party privacy under section 17(1).

[para 66] I find that the Public Body properly applied section 17(1) to personal information in the records.

V. ORDER

[para 67] I make this Order under section 72 of the Act.

[para 68] I order the Public Body to disclose to the Applicant the information listed in **Table A**.

[para 69] I order the Public Body to confirm to me in writing that it has complied with this order within 50 days of receiving it.

_____

John Gabriele
Adjudicator

Table A to Order F2020-17

Page and Heading	Description of Information
First Page, under: **Report:**	The sentence beginning on the third line after the word "keys"
	Information redacted from the fifth line between the words "what" and "soc".
First page, under: **2016/8/24** **800hrs**	All words after the name of the individual in the redacted sentence beginning on the first line
First page, under: **9:12hrs**	All words except for the name of the individual and telephone number
First page, under, **13:48 -**	All words in the first bullet point, except for the name of the individual
	All words in the second bullet point
	All words in the ninth bullet point except for names of the individuals
Second page, continuing under: **13:48 -**	All information in all bullet points except for names of individuals
Third page, under: **File is concludable based on the following:**	All words in the first line of the first bullet point.