

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

DECISION F2010-D-003

November 30, 2010

CALGARY POLICE SERVICE

Case File Number F5206

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access to information to the Calgary Police Service under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Public Body identified responsive records, but withheld some information under section 17(1) of the FOIP Act (information harmful to personal privacy).

The Applicant requested records containing character references about her that were publicly available, including on the internet. As none of the records identified by the Public Body met these requirements, and because the Applicant had clarified in her submissions that she had not requested the records identified by the Public Body, the Adjudicator determined that the records were not responsive to the Applicant's access request. Because the records were not responsive to the Applicant's access request, the Adjudicator concluded that there would be no benefit from conducting an inquiry in relation to the Public Body's decision to withhold information from them under section 17. She therefore decided not to conduct an inquiry under section 70 of the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 70, 72

I. BACKGROUND

[para 1] On September 10, 2009, the Applicant made the following request to the Calgary Police Service (the Public Body) for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act):

My character reference in detail.

I cannot imagine what information is shown on the internet computer. I am absent a computer so unable to find this information.

I have lost all friends because unpleasant facial contact and little or no communication. I have been constantly disturbed and have no understanding as to why this situation exists.

The Applicant indicated that the time period for the request was between 1987 and 2009.

[para 2] The Public Body located 26 pages of records it considered to be responsive to the access request, and provided those records to the Applicant, but with some information severed under section 17(1) (information harmful to personal privacy) of the FOIP Act.

[para 3] The Applicant requested review by the Commissioner of the Public Body's response to her access request. She questioned why information had been redacted from the records.

[para 4] The Commissioner authorized mediation to resolve the issues. Mediation was unsuccessful, and the Applicant requested that the Commissioner conduct an inquiry. She provided the following explanation for requesting an inquiry:

I wish the inquiry to address the blacked out information...

It is important for me to know what has been written about my character. It appears to be negative from the treatment that I receive from the Calgary Police, business associates and friends. I need to find out this information so that I can address and correct what factual errors exist.

[para 5] On March 31, 2010, the Commissioner agreed to hold an inquiry. A notice of inquiry sent to the parties identifies the following issue for inquiry:

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

[para 6] The parties exchanged initial submissions. The Public Body made initial submissions but not rebuttal submissions. In her rebuttal submissions, the Applicant clarified her position in the following way:

September 10, 2009, I requested information on what information was available on the internet about me, my personal character reference – possibly dating back to 1987 – 2009.

I received 26 pages of police records on October 13, 2009. But this was not the information that I requested. I filled out a form on September 10, 2009 requesting my character reference in detail and was on the internet. This request seems to be passed over without notice, whether intentionally or not, it was ignored. I am wondering why my personal privacy has been released on the internet to the public. [My emphasis]

Who is responsible for the lies released to the public on the internet? This information is very important to me, I have lived a quiet lifetime with no records of damaging anyone...

[para 7] As the Applicant has clarified that she did not request the records the Public Body identified as responsive, and has confirmed that she is seeking references to her character that are publicly available, addressing the issue stated in the notice of inquiry would not serve to resolve the issues between the parties. Instead, I have decided to address the issue of whether the Applicant requested the information the Public Body has identified as responsive, and, if she is not seeking access to this information, whether it is appropriate to conduct an inquiry into a decision to withhold information from records in those circumstances.

II. ISSUE

Issue A: Do the records identified by the Public Body as responsive to the Applicant's request for access contain the information the Applicant requested?

III. DISCUSSION OF ISSUE

[para 8] A literal interpretation of the Applicant's access request and her reasons for making the request would be that she is not seeking records from the Public Body, but rather, its assistance in determining whether there are unflattering references about her character on the internet. Her reason for believing that such information may have been published on the internet is her perception that the reaction to her of the public, as well as personal associates, has changed.

[para 9] In her submissions, the Applicant indicates that she wants to know why members of the Public Body have not assisted her in her complaints regarding her former caretaker, whom she believes has broken into both her former and current apartments and removed valuable items. She notes that she cannot phone the police about these issues, as they make her feel as if she is unreliable and they look at her with unpleasant expressions. Because, the police have not arrested her former caretaker in response to her complaints, the Applicant reasons that her character has been slandered publicly, including on the internet.

[para 10] The Applicant is concerned that information about her character may be available on the internet to members of the public, such as her friends and associates, and to the police and that this information may be affecting the way people treat her. This concern is made clear in her access request, her request for an inquiry, her initial submissions and her rebuttal submissions for the inquiry.

[para 11] It is unclear why the Public Body identified the records it did as responsive, given the Applicant's apparent belief and concern that the requested information was giving rise to her difficulties and was from the internet, or available in some way to her business associates and friends. In my view, her reasons for requesting the information narrow her request so as to exclude the information the Public Body identified as responsive. The Applicant explained that she sought character references about herself so that she can understand why not only the police, but her business associates and friends, have been, from her perspective, treating her differently. In order for the information to be available to all three categories of persons, the information cannot be located in places accessible only to the Public Body. However, the records the Public Body identified as responsive were not published on the internet, as the Applicant notes, and were not available to the Applicant's business associates or friends. In addition, none of them, strictly speaking, can be interpreted as containing character references about the Applicant.

[para 12] It is likely that the Public Body was attempting to assist the Applicant by providing her with the records it did when it responded to her access request, even though they were not publicly available. Essentially, the Public Body provided all the personal information regarding the Applicant it had in its custody or control, without considering whether it was available on the internet or could be characterized as a "character reference."

[para 13] In responding as it did, the Public Body may have inadvertently implied to the Applicant that the records it identified as responsive were posted on the internet and contained character references regarding the Applicant.

[para 14] Section 70 of the FOIP Act states:

70 The Commissioner may refuse to conduct an inquiry pursuant to section 69 if in the opinion of the Commissioner

(a) *the subject-matter of a request for a review under section 65 has been dealt with in an order or investigation report of the Commissioner, or*

(b) *the circumstances warrant refusing to conduct an inquiry.*

Section 70 affords the Commissioner to decline to conduct an inquiry when the circumstances warrant doing so.

[para 15] Section 72 of the FOIP Act states, in part:

72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.

[para 16] Section 72 states that once an inquiry is completed, the Commissioner must make an order to dispose of the issues. However, in the case before me, if I were to complete an inquiry into the Public Body's severing under section 17, any order I would make would not dispose of the issues, as the records themselves are not in issue, given that the Applicant did not request them. Assuming that I were to order the Public Body to disclose some or all of the information in the records to the Applicant, I would be ordering the disclosure of information the Applicant has not requested, and which would not serve her purposes in requesting the information. In my view, a situation in which an order cannot be made that disposes of issues is a circumstance warranting refusal to conduct an inquiry.

[para 17] At the time the Commissioner decided to hold an inquiry into the issue of whether the Public Body properly applied section 17 to the records, it was not clear that the records were not the subject of the Applicant's access request. However, now that I have the benefit of the Applicant's submissions, it is clear to me that they are not.

[para 18] When the Applicant requested the inquiry she stated:

I am extremely disappointed in the material received as a large amount is blacked out, and I of course do not know what was written.

In isolation, this statement suggests that issue for the Applicant was the decision of the Public Body to withhold information from the records at issue under section 17. However, in the context of her access request and her submissions for the inquiry, I find that it is more likely that the Applicant was objecting to the Public Body's decision to redact information because she thought it might be publicly available information regarding her character.

[para 19] As the redacted information cannot be characterized as a reference about her character that is publicly available, ordering disclosure of the information would not assist her in her stated purpose in obtaining the information, that is, of correcting factual errors regarding her reputation.

[para 20] As making an order would not have the effect of disposing of the issues between the parties, I have decided that I will not make an order regarding the Public Body's application of section 17. Moreover, as the records the Public Body has identified as responsive are not responsive to the Applicant's access request, there would be no benefit from conducting an inquiry in relation to the Public Body's decision to withhold information from them under section 17.

IV. DECISION

[para 21] As the information severed from the records at issue is not the information the Applicant requested, since it is not publicly available and does not contain character references regarding her, there would be no benefit to holding an inquiry into the Public Body's application of section 17 to the records it identified as responsive, or from making an order regarding this information.

[para 22] Under section 70 of the FOIP Act, I decline to conduct an inquiry into the issue set out in the Notice of Inquiry, as the circumstances warrant doing so. I will therefore make no order regarding the information the Public Body severed from the records.

Teresa Cunningham
Adjudicator