

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-31

June 22, 2022

CITY OF EDMONTON

Case File Number 016705

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) from the City of Edmonton (the Public Body) for copies of nuisance complaints made about his dog.

The Public Body located responsive records and provided them to the Applicant. It applied section 4 (records to which this Act applies) to sever information it had obtained from the Land Titles database and it also applied section 17 (disclosure harmful to personal privacy) to sever personally identifying information from the records.

The Adjudicator confirmed the Public Body's severing decisions.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 17, 72

1. BACKGROUND

[para 1] On December 18, 2019, the City of Edmonton (the Public Body) received the Applicant's access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). He requested the following:

A copy of any nuisance complaints made regarding a dog at 7805 - 159 Street, Edmonton.
Including all entrances to the building at 7805 - 159 Street.
Time Frame: January 23 to February 19, 2019

The Public Body conducted a search for responsive records. It provided records to the Applicant, but severed information from them on the basis of sections 4 and 17 of the FOIP Act.

[para 2] The Applicant requested that the Commissioner review the Public Body's severing decisions.

[para 3] 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.

[para 4] Once I reviewed the Public Body's initial submissions and the Applicant's initial and reply submissions, I decided that I did not require any further information from the parties before issuing the order.

II. ISSUES

ISSUE A: Is information exempt from the Act by operation of section 4(1)(l)(v) (record made from information in a Land Titles Office)?

ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

III. DISCUSSION OF ISSUES

ISSUE A: Is information exempt from the Act by operation of section 4(1)(l)(v) (record made from information in a Land Titles Office)?

[para 5] Section 4 of the FOIP Act exempts certain types of records from the application of the FOIP Act. It states in part:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following

[...]

(l) a record made from information

(v) in a Land Titles Office,

[...]

[para 6] If a record is made from information in a Land Titles Office, the record is not subject to the FOIP Act. As a result, a public body is not under an obligation to produce it to an applicant in response to an access request.

[para 7] The information the Public Body did not provide under section 4 is a list of property owners and their addresses. The Public Body argues:

The records described in Tab 1 of the Index of Records contain property owner information that are from a City database called POSSE. POSSE mirrors the property owner information located in another City database known as TACS. For the purposes of collecting property taxes, the TACS database downloads property owner information directly from the Alberta Land Titles Office daily and as it is a direct download from the Alberta Land Titles Office, this information cannot be altered by the City.

[para 8] I understand that the Public Body obtained the information to which it applied section 4 from the Land Titles database. In essence, this information to which it applied section 4 was created “from records in a Land Titles office” within the terms of section 4(1)(l)(v).

[para 9] From my review of the records and the Public Body’s evidence, I am satisfied that section 4(1)(l)(v) applies, and that the FOIP Act does not apply, to the information obtained from the Land Titles database.

ISSUE B: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

[para 10] The Public Body applied section 17(1) to withhold the personal information of individuals that appears in the records.

[para 11] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It states, in part:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

[...]

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

[...]

(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 12] 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 13] 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 14] 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. However, if there are no interests weighing in favor of disclosure, the presumption under section 17(4) cannot be rebutted, and the information must be withheld under section 17(1).

[para 15] 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 16] 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 17] As noted above, information may only be withheld from an applicant under section 17 if the information is personal information.

[para 18] The Public Body argues:

The Applicant, in their initial submission, appears to want information relating to the identity of a particular individual that was involved in a complaint to Animal Care & Control. The Public Body submits that such information would fall within the circumstance listed in section 17(4)(g) of the Act as the release of an individual's name in this matter would reveal personal information about that individual, such that there is a presumption that disclosure of such personal information would result in an unreasonable invasion of personal privacy.

[para 19] Having reviewed the information severed by the Public Body, I agree with the Public Body that the information is personal information, as it conveys information about identifiable individuals falling within the terms of section 1(n). I find that this information is also subject to the presumption set out in section 17(4)(g), as it contains the names of individuals in the context of other information about them.

[para 20] The Applicant argues that he should be able to review the severed information in order to challenge the credibility of people who made complaints about his dog. He argues:

The Animal Care & Control officer told me that I would have to pursue FOIP to get their notes regarding this Posse.

The very same Animal Care & Control officer said that the subsequent complaint regarding our pet was more about the caller's complaint being a nuisance complaint and the complaint was not going to be pursued.

This fact demonstrates the questionability of this person's credibility hence the credibility of their affidavit.

When I alluded to the Master in Chambers that the affidavit could be in question although I did not have evidence yet, the Master in Chambers said there could be grounds for perjury and I have an option to appeal the ruling.

Had I been able to present the documents shrouded in redaction, the legal proceeding most likely would have [been] rejected due to untrue claim(s) and possible perjury.

This entire transaction has been an exercise in malice.

[para 21] From the Applicant's submissions, I understand that he was involved in proceedings resulting from a complaint about his dog. He believes that had he had access to the information in the records during the proceeding, he could have undermined the credibility of a complainant.

[para 22] Section 17(5)(c), cited above, is a factor that weighs in favor of disclosure when it applies. Section 17(5)(c) addresses the situation where the information that is requested is necessary for a fair determination of an applicant's rights. While the Applicant refers to seeking the personal information severed from the records for use in proceedings, I am unable to say that section 17(5)(c) is engaged.

[para 23] The Applicant has not submitted evidence regarding the nature of the proceedings to which he refers, or explained why the personal information in the records would be relevant to them. There is nothing before me to indicate that any of the personal information the Public Body severed could be used to impeach a witness's credibility.

[para 24] I find that there are no factors weighing in favor of disclosure in this case. As a result, the presumption that it would be an unreasonable invasion of personal privacy to disclose the personal information in the records is not rebutted. I must therefore confirm the decision of the Public Body.

IV. ORDER

[para 25] I make this Order under section 72 of the Act.

[para 26] I confirm that the information the Public Body severed under section 4 is information exempt from the application of the FOIP Act.

[para 27] I confirm that the FOIP Act requires the Public Body to withhold the information it severed under section 17(1) from the Applicant.

Teresa Cunningham
Adjudicator
/kh