



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order F10-07

**VANCOUVER POLICE DEPARTMENT**

Jay Fedorak, Adjudicator

March 3, 2010

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**Summary:** An applicant requested his personal information in the custody of the VPD. The VPD responded by releasing copies of three police occurrence reports involving the applicant, but withholding some information under ss. 15(1)(a), (f) and (l) on the grounds that disclosure could harm a law enforcement matter and the security of courthouses. It also withheld information provided in confidence by the RCMP under s. 16(1)(b) and information that could reasonably be expected to threaten the safety or mental or physical health of others under s. 19(1)(a). As well, it withheld the personal information of third parties collected as part of the investigations on the three files under s. 22(1). The VPD was authorized to refuse to disclose information under ss. 15(1), 16(1) and 19(1). The VPD was required to withhold information under s. 22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(a), (f) and (l), 16(1)(b), 19(1)(a), 22(3)(b).

**Authorities Considered:** **B.C.:** Order F08-09, [2008] B.C.I.P.C.D. No. 15; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 00-18, [2000] B.C.I.P.C.D. No. 21; Order No. 58-1995, [1995] B.C.I.P.C.D. No. 31; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order F05-24, [2005] B.C.I.P.C.D. No. 32; Order 01-01, [2001] B.C.I.P.C.D. No. 1; Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 00-28, [2000] B.C.I.P.C.D. No. 31. **Ont.:** Order M-794, [1996] O.I.P.C. No. 233; Order M-826, [1996] O.I.P.C. No. 308; Order M-1004, [1997] O.I.P.C. No. 253.

## 1.0 INTRODUCTION

[1] The applicant requested access to all information about himself with the Vancouver Police Department (“VPD”) and received in response a set of records with some information severed under s. 22(3)(b) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The applicant requested a review of the VPD’s decision by the Office of the Information and Privacy Commissioner (“OIPC”) and mediation led to the disclosure of more information. The VPD continued to withhold information, relying on ss. 15(1)(a), (f) and (l), 19(1)(a) and (b), 16(1)(b) and 22(3)(b), and the applicant asked that the OIPC review the VPD’s revised decision.

[2] The matter did not settle in mediation and so an inquiry under Part 5 of FIPPA took place. The OIPC invited and received representations from the applicant and the VPD. At its request, the OIPC also invited and received submission from the Ministry of Attorney General (“Ministry”), as it argued that the interests of the Ministry and its staff were involved. It also said that there was some overlap in the information in dispute in this case and in an earlier matter (see below).

## 2.0 ISSUES

[3] The issues before me are whether the public body:

1. is required to refuse access under s. 22(3)(b) of FIPPA;<sup>1</sup> and
2. is authorized to refuse access under ss. 15(1)(a), (f) & (l), 16(1)(b) and 19(1) of FIPPA.

[4] Section 57 of FIPPA sets out the burden of proof in an inquiry. Under s. 57(1), the VPD has the burden respecting ss. 15, 16 and 19, while under s. 57(2) the applicant has the burden of showing that disclosure of third-party personal information would not be an unreasonable invasion of third-party privacy.

[5] The applicant has raised the issue of correcting his personal information under s. 29 of FIPPA. There is no reference in the Notice of Inquiry or Portfolio Officer’s Fact Report to the applicant having formally asked to correct his personal information. Therefore, this issue is not properly before me in this inquiry and I am not prepared to consider it here. The applicant is welcome, however, to make a s. 29 request to the VPD. If he is dissatisfied with the response, he can make a new complaint to the OIPC.

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<sup>1</sup> The Notice of Inquiry also identified s. 22(2)(f) as being at issue in the inquiry. Nevertheless, the VPD did not address this provision in its submission and has not applied it to any information in the records at issue. I also see no basis in the material before me to address this provision in this order.

### 3.0 DISCUSSION

[6] **3.1 Background**—The applicant was involved in an earlier inquiry where the Ministry was the public body. The applicant requested records in the hands of the Sheriff Services section of the Court Services branch. That inquiry led to Order F08-09, in which Commissioner Loukidelis found that s. 19(1)(a) applied to the records in dispute in that case. That Order provides some background on the applicant, including this excerpt from the Ministry's submission:

Namely, he has a history of being verbally abusive, reacting with an inappropriate level of anger and frustration, and voicing violent and suicidal thoughts. He has brought weapons to courthouses in the past and he has also threatened staff who he has interacted with. He blames his ex-wife and the court system for many of his perceived troubles.<sup>2</sup>

[7] The Ministry said that the applicant has had limited contact with the court system in the last two years. His appeal of a decision to revoke his Firearms Acquisition Certificate was denied in 2007. He files financial statements with the court as required.

[8] **3.2 Records in Dispute**—The severed records consist of three occurrence reports (also known as police reports): one each from 2004, 2005 and 2006. The first concerns an incident in which the applicant went to a family justice services office and pounded on the door. Staff at the office called the police. The second concerns a custody hearing that the applicant attended. The third relates to an incident in which the applicant appeared at a courthouse and left when told he would have to be searched. The VPD severed witnesses' names and contact information and portions of the narratives from these reports. It is this severed information that is in issue in this inquiry.

[9] **3.3 Harm to Personal Privacy**—The relevant provisions of s. 22 in this case are as follows:

#### **Disclosure harmful to personal privacy**

22(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) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third

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<sup>2</sup> Order F08-09, [2008] B.C.I.P.C.D. No. 15, para. 29.

party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether ...

- (g) the personal information is likely to be inaccurate or unreliable ...
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ...
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation ...

[10] Numerous orders have considered the application of s. 22 and the principles for its application are well established.<sup>3</sup> I have applied those principles here without repeating them.

[11] The three occurrence reports include the names, addresses and telephone numbers of complainants and witnesses, as well as names of individuals that the complainants or witnesses mentioned to the police. The VPD submits that it collected this personal information as part of investigations into possible violations of the criminal code.<sup>4</sup> One investigation related to weapons possession, another related to a suspicious person occurrence and the third related to an incident in a courtroom. The VPD has applied s. 22 only to the names, addresses and telephone numbers of these third parties. It has not applied s. 22 to any information about the applicant.

[12] The applicant's only comment about the application of s. 22 in his submissions was that he thought it to be a relevant consideration that the information might be inaccurate or unreliable, in accordance with s. 22(2)(g). He believes that any information "which came from the Sheriffs" to be false. He wants to have the opportunity to change any information about him that is false.<sup>5</sup>

[13] I find that s. 22(3)(b) applies in this case. The withheld information is clearly the personal information of third parties and it appears in police reports relating to possible violations of the criminal code. There is no reason to conclude that any of the names or addresses of these individuals is incorrect. The applicant believes that information about him might be false but, given that

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<sup>3</sup> See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56, and Order 00-18, [2000] B.C.I.P.C.D. No. 21.

<sup>4</sup> VPD second initial submission, paras. 8, 13. The OIPC permitted the parties to provide two initial submissions in this case, for two reasons. The first was because of problems the applicant had receiving delivery of the VPD's initial submission. The second was that it was late in the inquiry process before the Ministry requested standing in the inquiry as an appropriate person, and the applicant and Ministry had already exchanged initial submissions.

<sup>5</sup> Applicant's second initial submission, p. 1.

none of the information withheld under s. 22(3)(b) is about him, s. 22(2)(g) is not relevant. I am unable to identify any other relevant considerations that weigh in favour of disclosing this information. Therefore, I find that the VPD was correct to withhold this information under s. 22(1).

[14] **3.4 Harm to a law enforcement matter**—The relevant provisions of s. 15 in this case are as follows:

**Disclosure harmful to law enforcement**

- 15(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 a law enforcement matter, ...
  - (f) endanger the life or physical safety of a law enforcement officer or any other person, ...
  - (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[15] The substance of the VPD's submission relating to the application of s. 15 of FIPPA is mostly, and appropriately, *in camera*, particularly in the affidavit evidence of one of its inspectors. The VPD also relies on the submission of the Ministry as an appropriate person, much of which the Ministry also submitted *in camera*. What I am able to say is that the information to which the VPD has applied s. 15(1)(l) relates to security measures at courthouses. The VPD's submission persuades me that disclosure of this information could reasonably be expected to undermine the effectiveness of security measures currently in place at the courthouses. Therefore, I find that s. 15(1)(l) applies.

[16] Although s. 15(1)(f) is mentioned in the Notice of Inquiry, the VPD has not indicated in its submissions, or in the records at issue, where it has applied this section. There is information about police officers to which the VPD has applied s. 19(1), on the grounds that disclosure could harm the physical safety of individuals. There is the potential that s. 15(1)(f) could apply to that information as well. Nevertheless, I need not consider it here because, as noted below, I find that s. 19 applies to the same information.

[17] The VPD has also applied s. 15(1)(a) to other information, relating to how it would respond to a potential law enforcement matter. Again, the VPD provided the heart of its submission on this point appropriately *in camera*. The evidence the VPD provides in support of its application satisfies me that disclosure of the information in question could reasonably be expected to harm a law enforcement matter.

[18] Therefore, I find that ss. 15(1)(a) and (l) of FIPPA apply to the information that the VPD has withheld under those sections. It is important to note that, while the applicant does not appear to have committed any crimes since Commissioner Loukidelis made his finding in Order F08-09, he has continued to exhibit a pattern of behaviour that is threatening to various people. According to the evidence before me, his interactions with police and courthouse staff in that time have been confrontational and inflammatory. It would be prudent for the VPD and other law enforcement officials to take certain law enforcement and security precautions, and the disclosure of this information could undermine those precautions.

[19] **3.5 Harm to intergovernmental relations**—The relevant provision of s. 16 in this case is as follows:

**Disclosure harmful to intergovernmental relations or negotiations**

- 16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to ...
- (b) reveal information received in confidence from a government, *council* or organization listed in paragraph (a) or their agencies.

[20] The VPD argues that s. 16(1)(b) applies to communications it received in confidence from the Royal Canadian Mounted Police (“RCMP”), pertaining to the applicant and third-party victims and witnesses. This includes information posted on the Canadian Police Information Centre (“CPIC”) system and information RCMP officers disclosed verbally to VPD officers, who recorded it in the occurrence report. The VPD pointed out that previous orders in Ontario have found that information in the CPIC system is not to be disclosed by any other police organization or agency, unless that body was the one that entered the information in the CPIC system. It also points out that previous orders in British Columbia have confirmed that s. 16(1)(b) applies to information provided by the RCMP to public bodies in British Columbia, including information that the RCMP has inputted into the CPIC system. The VPD said that the CPIC records in this case contain information that the RCMP inputted into the system. In support of its position, the VPD provided a letter from the RCMP confirming that the RCMP had provided in confidence the verbal and CPIC information the VPD had withheld under s. 16(1)(b).<sup>6</sup>

[21] Commissioner Loukidelis has established that the RCMP qualifies as an agency of the government of Canada for the purposes of s. 16(1)(b).<sup>7</sup> The letter

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<sup>6</sup> VPD second initial submission, paras. 15-21; Affidavit 2, Exhibit A; Order No. 58-1995, [1995] B.C.I.P.C.D. No. 31; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order F05-24, [2005] B.C.I.P.C.D. No. 32; Ontario Order M-794, [1996] O.I.P.C. No. 233; Ontario Order M-826, [1996] O.I.P.C. No. 308; Ontario Order M-1004, [1997] O.I.P.C. No. 253.

<sup>7</sup> Order 02-19.

from Sergeant Jeff Hurry of the RCMP of May 28, 2009, persuades me that the RCMP provided the information in issue in confidence.<sup>8</sup> Based on the material before me, I am also satisfied that the VPD has appropriately exercised its discretion in applying this exception. Therefore, I find that the VPD has correctly applied s. 16(1)(b).

[22] **3.6 Threat to Health or Safety**—The relevant provision of s. 19(1) is as follows:

**Disclosure harmful to individual or public safety**

- 19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
- (a) threaten anyone else's safety or mental or physical health.

[23] Numerous orders have dealt with the application of s. 19(1), and the principles for its application are well established.<sup>9</sup> I have applied those principles here without repeating them.

[24] As noted above, Commissioner Loukidelis dealt with a similar request from this applicant to the Ministry in Order F08-09. In response to that request, the Ministry applied s. 19(1) of FIPPA to records relating to why the applicant was searched physically at provincial courthouses and to information about his risk rating. The VPD relies on the submission of the Ministry in this inquiry, which reiterates the arguments it submitted in that previous case. The Ministry also appended copies of its submission and the responsive records from that inquiry, including the information that was severed. I will not repeat details of the Ministry's submissions to Order F08-09 here.<sup>10</sup>

[25] The information that the VPD has withheld under s. 19(1) is substantially similar to the information the Commissioner determined the Ministry had appropriately withheld in Order F08-09. The VPD submits that there is good reason to conclude that the applicant wishes to cause harm to some individuals; that this harm could occur "in an opportunistic or planned manner"; that he is capable of adapting to security techniques; and that he has "a basic understanding of law enforcement tactics and administration".<sup>11</sup> The VPD has provided affidavit evidence, much of it *in camera*, from one of its inspectors in support of the proposition that the applicant poses a threat to the personal safety

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<sup>8</sup> VPD second initial submission, Affidavit 2, Exhibit A.

<sup>9</sup> See for example, Order 01-01, [2001] B.C.I.P.C.D. No. 1; Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 00-28, [2000] B.C.I.P.C.D. No 31.

<sup>10</sup> See Order F08-09, [2008] B.C.I.P.C.D. No. 15, paras. 9-13.

<sup>11</sup> VPD's second initial submission, para. 22.

of others and why it is important for the VPD to withhold details of its planning with respect to strategy and tactics in attempting to diminish that threat.<sup>12</sup>

[26] The Ministry made a submission in support of the VPD's position. It believes that releasing information about the complainants, witnesses and staff would put them in danger of "mental duress and physical harm".<sup>13</sup> It submits further that:

The Applicant has a demonstrated history of angry and disproportionate reactions to interactions with the justice system, and the release of details of the operations of the Ministry and the VPD may inflame the Applicant and put courthouse staff at risk.<sup>14</sup>

[27] The Ministry adds that the employee who conducted a risk assessment of the applicant in 2007 believes that, based on information that he has viewed since then, the risk the applicant poses has not diminished.<sup>15</sup>

[28] The applicant denies that he poses a threat to anyone's safety. He submits that there is no evidence of him harming anyone in the past. He believes that the information about him that the VPD has withheld is false and he would like an opportunity to correct it.<sup>16</sup>

[29] There is sufficient information before me to support the conclusion that it is reasonable to expect that the disclosure of the information at issue could threaten the safety or mental or physical health of certain individuals and undermine the ability of the VPD and the Ministry to protect those individuals from harm. This is consistent with Commissioner Loukidelis's finding in Order F08-09. There is no evidence before me to suggest that this risk has diminished since then.

[30] Therefore, I find that s. 19(1) also applies to the information at issue in this inquiry.

#### **4.0 CONCLUSION**

[31] For reasons given above, under s. 58 of FIPPA, I make the following orders:

1. I require the VPD to withhold the information that it withheld under s. 22(1), and

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<sup>12</sup> VPD's second initial submission, Affidavit 1, paras. 4-5.

<sup>13</sup> Ministry's initial submission, para. 16.

<sup>14</sup> Ministry's initial submission, para. 17.

<sup>15</sup> Ministry's initial submission, para. 18.

<sup>16</sup> Applicant's first initial submission, p. 1; Applicant's second initial submission, p. 1; Applicant's reply submission, p. 1.

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2. I confirm that ss. 15(1), 16(1) and 19(1) authorize the VPD to withhold the information to which it applied those sections.

March 3, 2010

**ORIGINAL SIGNED BY**

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Jay Fedorak  
Adjudicator

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