



OFFICE OF THE
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Order F18-05

VICTORIA POLICE DEPARTMENT

Amanda Swanek
Adjudicator

February 6, 2018

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Summary: An Applicant requested a police file from the Victoria Police Department (Public Body) relating to an incident between the Applicant and two named employees of the Office of the Information and Privacy Commissioner for British Columbia (BC OIPC). The Public Body provided access to the records, with information withheld citing section 22 (disclosure harmful to personal privacy). The Applicant requested a review of the Public Body's decision. As the records at issue involve personal information of BC OIPC employees, the Acting Information and Privacy Commissioner for BC delegated the matter to an adjudicator from the Office of the Information and Privacy Commissioner of Alberta.

In the course of the inquiry, the Public Body released additional information to the Applicant. The adjudicator found that the Public Body properly applied section 22(1) to the remaining information that was withheld in the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, C. 165, ss. 22, 58, Schedule 1

Authorities Considered: BC: Orders 01-37, 01-53, F12-08, F14-47, F15-03, F15-30, F16-19, F17-05, F17-27

Cases Considered: *R v. Quesnelle*, 2014 SCC 46 (CanLII)

INTRODUCTION

[1] The Applicant made an access request to the Victoria Police Department (the Public Body) under British Columbia's *Freedom of Information and Protection of Privacy Act* (FIPPA) for the police file relating to an incident between the Applicant and two named employees of the Office of the Information and Privacy Commissioner for British Columbia (BC OIPC).

[2] The Public Body responded to the request, providing access to the file (11 pages) with some information withheld citing section 22(3)(b) of FIPPA (disclosure harmful to personal privacy).

[3] The Applicant requested a review of the Public Body's decision. By letter dated July 31, 2017, the Applicant was informed that

[t]he records that are at issue in this file involve the personal information of an OIPC employee. In order to ensure a fair and unbiased review of the matter, OIPC is delegating its authorities to adjudicate this request for review to an outside Adjudicator from the Office of the Information and Privacy Commissioner of Alberta, Amanda Swanek.

[4] The Acting Commissioner for British Columbia provided me with the delegation under FIPPA to dispose of the Applicant's request for review, by letter also dated July 31, 2017.

[5] By letter dated August 21, 2017, I informed the parties that the most expeditious course of action was to conduct an inquiry into the matter. I also informed the parties that as 55 business days had elapsed since the Applicant's request for review (received by the BC Office on May 31, 2017) and the date of my letter, it would not be possible to complete the inquiry within the 90 business days allotted under section 56(6) of FIPPA. I therefore requested the consent of the parties to extend the file deadline; neither party objected.

[6] On September 19, 2017, I issued the Notice of Inquiry to the parties. On September 27, 2017, the Public Body provided a new copy of the records at issue to the Applicant and to me, with additional information disclosed; some information continues to be withheld citing section 22(3).

[7] The records at issue consist of eleven pages of records, with information severed from pages 1, 2 and 6.

ISSUE

[8] The issue for this inquiry is whether the Public Body is required by section 22(1) of the Act to refuse access to the information.

DISCUSSION

[9] Section 22(1) of the Act is a mandatory provision; it requires public bodies to refuse access to personal information if the disclosure of that information would be an unreasonable invasion of a third party's personal privacy. Because of the mandatory nature of section 22(1), I will consider all of the provisions in this section, regardless of whether either party expressly raised them. This is consistent with past BC Orders (see Order F17-05 at para. 18 and F17-27 at para. 21).

[10] The approach to section 22(1) has been set out in numerous past Orders. Order F15-03 states it as follows:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that 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." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.

See also Orders 01-53 at para. 22, F12-08 at para. 12, and F17-05 at para. 10. This is a logical approach to the reviewing of this exception and is the approach I will adopt for this Order.

Is the information personal information under FIPPA?

[11] The first step in the analysis is to determine whether the information at issue is personal information. Personal information is defined in Schedule 1 as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[12] Initially, the Public Body had withheld business contact information of two third parties appearing in the records. However, in its most recent release of the records at issue, the Public Body disclosed that information to the Applicant.

[13] The withheld information consists of the birthdates of two third parties, the home address and home phone number of one third party, and the ethnicity of

that third party (pages 1 and 2). Some information from the “Narrative” portion on pages 5 and 6 that was initially withheld by the Public Body has been disclosed to the Applicant in the new copy of records. The information from this portion of the records that continues to be withheld is characterized by the Public Body in its submission as “information provided by the Third Party to the police investigator in relation to their personal and private feelings about the encounter that occurred with the Applicant...” (initial submission, at para. 12). Some of this information can also be characterized as the third parties’ opinion of the Applicant, which is the personal information of both the third party and the Applicant (see Orders F14-47, at para. 14, and F16-19, at para. 23).

[14] All of the information described above is personal information of the third parties. The Applicant’s personal information (third parties’ opinions about him) is inextricably intertwined with that of the third parties such that the Applicant’s personal information cannot be disclosed to him without also disclosing the information of the third parties. Further, none of the information of the third parties can be rendered unidentifiable because their names in the records have been disclosed (the third parties had been named by the Applicant in his access request).

Section 22(4)

[15] The second step in the analysis of section 22 is to determine whether any factors in sections 22(4) apply; this section sets out circumstances in which disclosure is *not* an unreasonable invasion of privacy.

[16] The Public Body noted the possible application of section 22(4)(a), which states that the disclosure of personal information is not an unreasonable invasion of privacy if the third party has consented to the disclosure. In its exchanged submission, the Public Body specifically noted this provision, and also noted that it had received correspondence from a third party whose information is severed. Specifically, the Public Body noted the third party wrote a letter to the Public Body; it provided that letter to me *in camera* because providing the letter in the exchanged submission would have disclosed the third party’s personal information to the Applicant. I can say only that section 22(4)(a) does not apply to the third party’s personal information in this case.

[17] The Public Body and Applicant did not cite any other factors in section 22(4) as applying in this case; having reviewed the records, I do not see any other circumstances that apply.

Section 22(3)

[18] The third step is to determine whether disclosure is presumed to be an unreasonable invasion of privacy under section 22(3). That provision sets out

circumstances in which disclosure is presumed to be an unreasonable invasion of privacy. The Public Body argues that section 22(3)(b) applies to the information. I will also discuss the possible application of section 22(3)(i).

[19] Sections 22(3)(b) and (i) read as follows:

22(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,

...

(i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations

[20] The Public Body states that the records relate to an investigation into a report of a suspicious person. The records at issue are comprised of the resulting police file; as such, I agree that the personal information was compiled and is identifiable as part of an investigation into a possible violation of the law.

[21] As noted above, the records also note the ethnicity of one of the third parties; therefore, section 22(3)(i) applies to that information.

Section 22(2) and additional factors

[22] The final step is to determine if there are additional factors that weigh in favour of or against disclosure. Section 22(2) sets out relevant circumstances that the head of a public body must consider in determining whether disclosure of the information would be an unreasonable invasion of privacy. Neither the Public Body nor the Applicant made a specific reference to any of the circumstances set out in this provision; I will briefly discuss the possible application of sections 22(2)(a), (c), (e) and (f). I will also discuss the Applicant's position that "there can be no expectation of privacy for anything said to police in support of an allegation of wrong-doing by the Applicant" (response submission, at para. 4).

[23] The portions of section 22 relevant to this inquiry are as follows:

22((2) In determining under subsection (1) or (3) 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 British Columbia or a public body to public scrutiny,

...

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

...

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

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

[24] Regarding section 22(2)(a) and (c), the Applicant is in the best position to argue that these factors apply in this case; he has not made any such argument. I raise the possibility of their application only because of the nature of the records at issue – i.e. that the Applicant was the subject of the third parties' complaint being investigated by the Public Body. Nothing in the Applicant's submissions indicates that there is a need to subject activities of the Public Body to scrutiny, or that the information withheld in the records is relevant to any such activities. Nor has the Applicant made any indication that the withheld information is relevant to a fair determination of his rights.

[25] Similarly, sections 22(2)(e) and (f) might possibly apply given the context of the records at issue. Past Orders of the BC Office have found that "serious mental distress or anguish or harassment" are harms contemplated by section 22(2)(e) (see Order 01-37). Based on the exchanged and *in camera* submissions, disclosing the personal information would likely cause emotional distress; however, I am not satisfied that the withheld information would cause "serious mental distress or anguish" if disclosed.

[26] I also do not have any arguments that would support the finding that the third parties' information was provided in confidence, even though the context of the records suggest that this might be the case. That said, in Order F15-30, the adjudicator cited the Supreme Court of Canada in *R v. Quesnelle*, in which the Court stated (at para. 44):

People provide information to police in order to protect themselves and others. They are entitled to do so with confidence that the police will only disclose it for good reason. The fact that the information is in the hands of the police should not nullify their interest in keeping that information private from other individuals.

Fundamentally, the privacy analysis turns on a normative question of whether we, as a society, should expect that police occurrence reports will be kept private. Given the sensitive nature of the information frequently contained in [police occurrence reports], and the impact that their disclosure can have on the privacy interests of complainants and witnesses, it seems to me that there will generally be a reasonable expectation of privacy in police occurrence reports.

[27] The adjudicator applied the above principle to find that section 22(2)(f) applied to information provided to a police department by a third party in the course of an investigation, even absent specific evidence showing that the information was supplied in confidence (at para. 92).

[28] In this case, the third parties complained about the Applicant to the Public Body, and provided statements in the course of the Public Body's investigation of that complaint. I agree with the adjudicator in Order F15-30, that the Supreme Court decision points to finding that information provided by the third parties to the Public Body was supplied in confidence.

[29] This point also addresses the Applicant's main argument, that there is no reasonable expectation of privacy in information provided to police in support of an allegation of wrong-doing. The Supreme Court has clearly found that individuals are entitled to provide information to police "with confidence that the police will only disclose it for good reason." FIPPA allows for the presumption against disclosure of personal information in police files to be rebutted for good reason – such as where the disclosure is desirable to subject the activities of a public body to scrutiny, or to enable a fair determination of an applicant's rights. The Applicant had an opportunity to provide me with good reasons for the disclosure of the withheld information, but did not.

Conclusion regarding section 22

[30] I have found that the information that the Public Body continues to withhold under section 22 is personal information of third parties. I have also found that there are no factors under section 22(4) that apply such that the disclosure would not be an unreasonable invasion of their privacy.

[31] I found that section 22(3)(b) applies to all of the information withheld in the records, and section 22(3)(i) applies to one item of information on page 2. These factors weigh against disclosure of that information.

[32] I have also found that section 22(2)(f) applies to the information withheld in the records; this provision also weighs against the disclosure of the remaining information withheld in the records at issue.

[33] The Applicant has not provided arguments to persuade me that any factors weigh in favour of disclosure, and I do not see any factors that apply. Therefore, I am upholding the Public Body's decision to withhold the personal information in the records under section 22(1).

CONCLUSION

[34] For the reasons stated above, pursuant to section 58(2) of the Act, I order that the Public Body is required to refuse the Applicant access to the information it withheld under section 22 of the Act.

February 6, 2018

ORIGINAL SIGNED BY

Amanda Swanek, Adjudicator

OIPC File No.: F17-70582