

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-027

March 21, 2001

CALGARY POLICE SERVICE

Review Number 1788

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Summary: The Applicant sent an access request under the *Freedom of Information and Protection of Privacy Act* to the Calgary Police Service requesting the Applicant's personal information. The Calgary Police Service responded to the request by providing the Applicant with 48 of 50 pages of records responsive to the request. The Calgary Police Service withheld the two pages of records under sections 16, 17(3) and 19. These two pages consist of a computer printout and a copy of a threat assessment conducted by the Calgary Police Service. The Commissioner upheld the Calgary Police Service's decision to withhold these two records from the Applicant under sections 16, 19(1)(c) and 19(1)(d).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c.F-18.5, ss. 1(1)(n)(i), 1(1)(n)(vii), 16(1), 16(4)(b), 16(4)(g), 16(5)(c), 17(3), 19(1)(a), 19(1)(c), 19(1)(d), 66, 67, 68; *Police Act*, S.A. 1988, c. P-12.01.

Authorities Cited: AB: Orders 96-019, 96-020, 99-010, 99-028, 2000-004.

I. BACKGROUND

[para 1.] On October 1, 1999, the Applicant sent an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Calgary Police Service (“the Public Body”). The Applicant was a former police officer with the Public Body. The access request asked for copies of information regarding the Applicant, including the Applicant’s personal information.

[para 2.] On October 5, 1999, the Public Body wrote to the Applicant requesting that the Applicant clarify the effective date of the request and the type of records the Applicant was requesting.

[para 3.] On October 6, 1999, the Applicant revised the access request limiting the effective date of the request from 1972 to the date the request was made. The Applicant also stated that he did not want to receive copies of the police reports he filed while he was a police officer.

[para 4.] On October 14, 1999, the Public Body wrote to the Applicant once again requesting that the Applicant provide further information regarding the type of records requested.

[para 5.] On October 26, 1999, the Applicant revised the request, limiting the request to 15 specific areas within the Public Body.

[para 6.] On November 19, 1999, the Public Body responded to the request by providing the Applicant with 48 of 50 pages of records responsive to the request. The Public Body withheld the two pages under sections 16, 17(3) and 19.

[para 7.] On December 20, 1999, the Applicant requested a review of the Public Body’s decision. Mediation was unsuccessful and the matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 8.] There are two pages of records at issue. Record 1 is a computer printout that describes some of the background information used in a threat assessment. Record 2 consists of a threat assessment which was conducted by the Public Body. In this Order, I will refer to each record by page number and will refer to both pages collectively as the “records”.

III. ISSUES

[para 9.] There are five issues in this inquiry:

- (A) Did the Public Body properly apply section 19(1)(d) to the records?

- (B) Did the Public Body properly apply section 19(1)(c) to the records?
- (C) Does section 16 apply to the records?
- (D) Did the Public Body properly apply section 17(3) to the records?
- (E) Did the Public Body properly apply section 19(1)(a) to the records?

IV. DISCUSSION

(A) Did the Public Body properly apply section 19(1)(d) to the records?

[para 10.] The Public Body applied section 19(1)(d) to the records. The Public Body states that the disclosure of the information could reasonably be expected to reveal the identity of a confidential source of law enforcement information.

[para 11.] Section 19(1)(d) reads as follows:

19(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(d) reveal the identity of a confidential source of law enforcement information

[para 12.] Pursuant to section 67, the burden of proof for section 19(1)(d) rests with the Public Body.

[para 13.] In Orders 96-019, 96-020 and 99-010, I stated that three criteria must be fulfilled under section 19(1)(d). There must be (i) law enforcement information, (ii) a confidential source of law enforcement information, and (iii) information that could reasonably be expected to reveal the identity of that confidential source.

(1) Is there law enforcement information?

[para 14.] Section 1(1)(h)(i) defines the term “law enforcement” as follows:

1(1) In this Act,

(h) “law enforcement” means

(i) policing, including criminal intelligence operations

[para 15.] The Act does not define the term “policing”. Similarly, none of the secondary sources I accessed defined this term. However, many secondary sources

define the word “police”. For example, the *Canadian Law Dictionary* defines the term “police” as “*a force of people charged with the maintenance of public order, detection and prevention of crime*”. Similarly, the *Canadian Oxford Dictionary* defines “police” as “*a civil force responsible for enforcing the law, maintaining public order*”.

[para 16.] After taking these definitions into account, it is my opinion that the term “policing” should be defined as those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime, or the enforcement of law.

[para 17.] After a review of the records and the submissions of the parties, I find that the information that was supplied to the Public Body by the complainant(s) constitutes law enforcement information as defined in section 1(1)(h)(i). The information supplied to the Public Body is “policing” information. In my view, the information that was supplied to the Public Body was accepted and reviewed by the Public Body under the authority of the *Police Act*, S.A. 1988, c.P-12.01 and relates to the maintenance of public order, detection and prevention of crime, or the enforcement of law.

(2) Is there a “confidential source” of law enforcement information?

[para 18.] In Order 99-010, I defined a “source” as “a place, person, or thing from which something originates”. In Order 96-019, I said that a confidential source is someone who supplied law enforcement information to a public body on the implicit or explicit assurance that his or her identity will remain secret.

[para 19.] After a review of the records and the submissions of the parties, I agree with the Public Body that the law enforcement information was supplied to the Public Body by a confidential source. The nature and context of the information and the two sworn affidavits of the Public Body provided *in camera* show that the information was supplied by a confidential source.

(3) Could the information reasonably be expected to reveal the identity of a confidential source of law enforcement information?

[para 20.] In Orders 96-019 and 96-020, I said that in order to fulfill the third criteria under section 19(1)(d), the information did not, in and of itself, have to be law enforcement information, it must only reasonably be expected to “reveal” this type of information. In addition, in Order 96-019, I said that, in certain situations, the facts discussed, observations made, the circumstances in which information is given, as well as the nature and content of the information could also reasonably be expected to identify a confidential source of law enforcement information.

[para 21.] After a review of the records and the submissions of the parties, I find that the disclosure of the computer entry date on Record 1 and the information on Record 2 (except for the last paragraph and the names and titles of the police officers listed on that record) could reasonably be expected to “reveal” the identity of a confidential source.

This information contains the name(s) of the confidential source(s), and also other information which, if disclosed, would reveal the identity of the confidential source(s). In addition, I find that the Public Body exercised its discretion properly under section 19(1)(d) in regard to this information. I am satisfied that the Public Body considered the objects and purposes of the Act and did not exercise its discretion for an improper or irrelevant purpose. Therefore, I uphold the Public Body's decision to withhold this information from the Applicant.

[para 22.] Conversely, I do not find that the disclosure of the remainder of Record 1 (all of the information on Record 1 except for the computer entry date) or the remainder of Record 2 (the last paragraph and the names and titles of the police officers on Record 2) would reveal the identity of a confidential source. However, the Public Body applied sections 17(3), 19(1)(a) and 19(1)(c) to Record 1 and sections 16, 17(3), 19(1)(a) and 19(1)(c) to Record 2. As such, I will subsequently consider that information under those sections.

(B) Did the Public Body properly apply section 19(1)(c) to the records?

[para 23.] In its submission, the Public Body stated that the disclosure of the information in the records could reasonably be expected to harm the effectiveness of its investigative techniques. Although the Public Body did not specifically refer to section number 19(1)(c) in its submission, given the content of its submission, I will address the application of this section to the records.

[para 24.] Section 19(1)(c) reads as follows:

19(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement

[para 25.] Pursuant to section 67, the burden of proof for section 19(1)(c) rests with the Public Body.

[para 26.] In Order 99-010, I said that section 19(1)(c) permits a public body to refuse disclosure of information that could harm the effectiveness of investigative techniques used in law enforcement. The harms test contained in this exception precludes the refusal of basic information about well-known investigative techniques. The focus in this exception is on the refusal of information on investigative techniques and procedures that relate directly to their continued effectiveness.

[para 27.] After a review of the records, I find that the Public Body properly applied section 19(1)(c) to the remainder of Record 1 and to the last paragraph on Record 2. In my view, the disclosure of this information would harm the investigative techniques and procedures the Public Body uses or is likely to use in law enforcement. In addition, I

find that the Public Body properly exercised its discretion under this section. I am satisfied that the Public Body considered the objects and purposes of the Act and did not exercise its discretion for an improper or irrelevant purpose. Therefore, I uphold the Public Body's decision to withhold this information.

[para 28.] However, I do not find that the Public Body properly applied section 19(1)(c) to the names and titles of the police officers on Record 2. In my view, the disclosure of this information would not harm the effectiveness of the investigative techniques and procedures currently used, or likely to be used, in law enforcement. However, the Public Body applied sections 16, 17(3) and 19(1)(a) to this information, and, as such, I will subsequently consider that information under those sections.

(C) Does section 16 apply to the records?

[para 29.] In order for section 16 to apply to the information two criteria must be fulfilled:

- (a) the information must be “personal information” of a third party; and
- (b) the disclosure of the personal information must be an unreasonable invasion of a third party's personal privacy.

[para 30.] Pursuant to section 67, the burden of proof for section 16 is two-fold. The Public Body must first prove that section 16 does, in fact, apply to the records. The Applicant must then prove that the disclosure would not be an unreasonable invasion of the third party's personal privacy.

(1) Are the police officers' names and titles “personal information” of a third party?

[para 31.] Personal information is defined in section 1(1)(n) of the Act. The relevant portions read:

1(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,

...

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given

[para 32.] I find that the names and titles of the police officers fulfill the definition of personal information under section 1(1)(n)(i) and (vii) respectively.

(2) Would the disclosure of the police officers' names and titles be an unreasonable invasion of a third party's personal privacy as provided by section 16(1) or section 16(4)?

(a) Section 16(1) and 16(4)

[para 33.] Section 16(1) of the Act states that the head of a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. Section 16(4) lists a number of circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[para 34.] The Public Body states that sections 16(1), 16(4)(b) and 16(4)(g) apply to this information. These sections read as follows:

16(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.

...

16(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(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,

...

(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 35.] After a careful review of the records and the submissions of the parties, it is my opinion that the names and titles of the police officers fulfill section 16(4)(g).

[para 36.] In order to fulfill section 16(4)(g), the personal information must consist of the third party's name along with other personal information of the third party, or the disclosure of the name itself must reveal personal information about the third party. I find that the names and titles of the police officers fulfill both of these criteria. Having made this finding, I do not find it necessary to decide whether the personal information also fulfills the criteria of section 16(4)(b).

(b) Section 16(5)

[para 37.] In determining whether there is an unreasonable invasion under section 16(1) or 16(4), a public body must consider the relevant circumstances, including those set out in section 16(5) of the Act.

[para 38.] The Applicant argues that the disclosure of the information in the records is necessary to conduct a proper investigation and to lay a possible public mischief charge against the complainant(s). In essence, the Applicant argues that the disclosure would be relevant to a fair determination of the Applicant's rights under section 16(5)(c).

[para 39.] The Public Body states that the disclosure is not relevant to a fair determination of the Applicant's rights under section 16(5)(c) as no criminal proceedings or investigation arose out of the circumstances.

[para 40.] Sections 16(5)(c) reads as follows:

16(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

...

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

[para 41.] In Orders 99-028 and 2000-004, the Commissioner stated that in order for section 16(5)(c) to be a relevant circumstance, all four of the following criteria must be fulfilled:

- (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.

[para 42.] After carefully reviewing the records and submissions, it is my opinion that section 16(5)(c) is not a relevant circumstance in this inquiry as the four criteria outlined in Orders 99-028 and 2000-004 are not fulfilled. Although the Applicant argues that the information on Record 2 is necessary to lay a mischief charge against the complainant(s), there is insufficient evidence before me that the names and titles of the police officers are related to an existing or contemplated proceeding. There is also insufficient evidence that this information will have a bearing on or is significant to the determination of the right, or that this information is required in order to prepare for the proceeding or to ensure an impartial hearing. In order to apply section 16(5)(c) as a relevant circumstance, evidence regarding the applicability of this section must be placed before me. The Applicant has not done that. I cannot simply assume that these four criteria are fulfilled.

[para 43.] In addition, the Applicant alleges that the Public Body's failure to fulfill the requirements under the *Police Act* is a relevant circumstance in this inquiry. The Applicant states that the Public Body failed to give the Applicant a written response as required by the *Police Act*, and that it failed to conduct a proper investigation under that Act.

[para 44.] I do not have the jurisdiction to determine whether the Public Body failed to give the Applicant a written response or failed to conduct a proper investigation under the *Police Act*. My jurisdiction to conduct an inquiry is found under the *Freedom of Information and Protection of Privacy Act*. In particular, my power to conduct an inquiry and issue an order is found in sections 66 and 68 of that Act. The *Freedom of Information and Protection of Privacy Act* does not give me the jurisdiction to determine whether the Public Body fulfilled its requirements under the *Police Act*. As such, I find that the Public Body's alleged failure to abide by the *Police Act* is not a relevant circumstance under section 16(5).

[para 45.] Conversely, the Public Body states that, in determining whether disclosing the information in the records would constitute an unreasonable invasion of privacy, the Public Body considered the fact that the records at issue contain evaluative information held in the intelligence section of the Public Body and, as previously mentioned, no criminal proceedings or investigations arose out of the circumstances. I find that this is a relevant circumstance that weighs in favour of withholding the police officers' names and titles.

(3) Applicant's burden of proof

[para 46.] In this inquiry, I have found that the names and titles of the police officers listed on Record 2 fulfill the requirements of section 16(4)(g). In addition, I have found that section 16(5)(c) and the Public Body's alleged failure to fulfill the requirements of the *Police Act* are not relevant circumstances in this inquiry. Furthermore, I have found that the fact that the records contain evaluative information held in the intelligence section of the Public Body and the fact that no criminal proceedings or investigations arose out the circumstances are relevant circumstances weighing in favour of withholding the information. As such, pursuant to section 67(2), the burden of proof now shifts to the Applicant to prove that that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy.

[para 47.] After reviewing the Applicant's submission, including the arguments regarding the relevant circumstances under section 16(5), I find that the Applicant has not met this burden of proof.

(4) Conclusion

[para 48.] I find that the Public Body correctly applied section 16(4)(g) to the names and titles of the police officers listed on record 2, and properly considered the relevant circumstances under section 16(5). Furthermore, I find that the Applicant has not met the burden of proving that the disclosure of this information would not be an unreasonable invasion of a third party's personal privacy. Therefore, I uphold the Public Body's decision to withhold this information from the Applicant.

(D) Did the Public Body properly apply section 17(3) to the records?

[para 49.] The Public Body applied section 17(3) to the records. As I have determined that the Public Body properly withheld the information on Record 1 under sections 19(1)(c) and 19(1)(d) and properly withheld the information on Record 2 under sections 16, 19(1)(c) and 19(1)(d), I do not find it necessary to decide whether the Public Body properly applied section 17(3) to that same information.

(E) Did the Public Body properly apply section 19(1)(a) to the information?

[para 50.] The Public Body applied section 19(1)(a) to the records. As I have determined that the Public Body properly withheld the information on Record 1 under sections 19(1)(c) and 19(1)(d), and properly withheld the information on Record 2 under sections 16, 19(1)(c) and 19(1)(d), I will not address whether the Public Body properly applied section 19(1)(a) to that same information.

V. ORDER

[para 51.] I make the following Order under section 68 of the Act.

[para 52.] I find that the Public Body properly applied and properly exercised its discretion under section 19(1)(d) in regard to the computer entry date listed on Record 1. I also find that the Public Body properly applied and exercised its discretion under section 19(1)(d) in regard to all of the information on Record 2 (except for the last paragraph and the names and titles of the police officers listed on that record). Therefore, I uphold the Public Body's decision to withhold this information from the Applicant.

[para 53.] In addition, I find that the Public Body properly applied and properly exercised its discretion under section 19(1)(c) in regard to the remainder of Record 1 (all of the information on Record 1 except for the computer entry date) and the last paragraph of Record 2. Therefore, I uphold the Public Body's decision to withhold this information from the Applicant.

[para 54.] Furthermore, I find that section 16 applies to the names and titles of the police officers on Record 2. Therefore, I order the Public Body to withhold this information from the Applicant.

[para 55.] Lastly, since I have found that the Public Body properly withheld the information on Record 1 under sections 19(1)(c) and 19(1)(d) and properly withheld the information on Record 2 under sections 16, 19(1)(c) and 19(1)(d), I do not find it necessary to decide whether the Public Body properly applied section 17(3) and 19(1)(a) to that same information.

Robert C. Clark
Information and Privacy Commissioner