

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2003-006

April 9, 2003

**CALGARY POLICE SERVICE
LAW ENFORCEMENT REVIEW BOARD**

Review Numbers 2361 and 2362

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* to the Calgary Police Service and to the Law Enforcement Review Board for access to two unsworn affidavits.

The Calgary Police Service withheld the records under section 17 [previously section 16], section 18(1)(a) [previously section 17(1)(a)], section 20(1)(c) [previously section 19(1)(c)], section 20(1)(d) [previously section 19(1)(d)] and section 27(2) [previously section 26(2)]. The Law Enforcement Review Board withheld the records under section 17 [previously section 16], section 18(1)(a) [previously section 17(1)(a)], section 20(1)(n) [previously section 19(1)(k)] and section 27(2) [previously section 26(2)].

The Adjudicator found that the Calgary Police Service and the Law Enforcement Review Board properly applied section 18(1)(a) [previously section 17(1)(a)] to the records. The Adjudicator upheld the decision of the Calgary Police Service and the Law Enforcement Review Board not to disclose the information to the Applicant.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 17 [previously s. 16], 18(1)(a) [previously s. 17(1)(a)], 20(1)(c) [previously s. 19(1)(c)], 20(1)(d) [previously s. 19(1)(d)], 20(1)(n) [previously s. 19(1)(k)], 27(2) [previously s. 26(2)].

Authorities Cited: AB: Orders 96-003; 99-009.

I. BACKGROUND

[para 1] On December 10, 2001, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Law Enforcement Review Board (the “LERB”) for access to two unsworn affidavits. On December 17, 2001, the Applicant made another access request for the same records to the Calgary Police Service (the “CPS”).

[para 2] On January 14, 2001, the LERB responded to the access request denying the Applicant access to the records. On January 16, 2003, the Calgary Police Service responded to the access request also denying access to the records.

[para 3] On January 30, 2002, the Applicant requested a review of the decisions of the LERB and the CPS. Mediation was authorized but was unsuccessful in resolving the issues. Both matters were set down as one written inquiry.

[para 4] The CPS sent this Office an initial submission and a rebuttal. The LERB, the Applicant and the Affected Parties each submitted an initial submission but did not submit a rebuttal. I accepted, *in camera*, the Affected Parties’ initial submissions, a portion of the LERB’s initial submission and a portion of the CPS’s initial submission.

II. RECORDS AT ISSUE

[para 5] The records consist of a four-page unsworn affidavit of the Applicant’s son and a nine-page unsworn affidavit of the son’s stepfather.

III. PRELIMINARY ISSUE

[para 6] On October 29, 2002, I received a letter from the Applicant requesting that his son not be included as an Affected Party in this inquiry. The Applicant stated that his son should not be considered an Affected Party, as there was no evidence that his son authored one of the affidavits or was aware of the contents of the document.

[para 7] On that same date, I replied to the Applicant’s letter, denying the Applicant’s request. I informed the Applicant that during the inquiry, I would have to determine whether either or both of the Public Bodies must release the son’s personal information to the Applicant. As such, it would be inappropriate not to allow the Applicant’s son to participate fully in the proceedings.

IV. ISSUES

[para 8] The LERB and the CPS both claimed section 18(1)(a) [previously section 17(1)(a)], section 17 [previously section 16] and section 27(2) [previously section 26(2)] as their authority to withhold the records. In addition, the LERB applied section 20(1)(n)

[previously section 19(1)(k)] and the CPS applied section 20(1)(c) [previously section 19(1)(c)] and section 20(1)(d) [previously section 19(1)(d)] to the records.

[para 9] The issues in this inquiry are as follows:

A) Did the LERB and the CPS properly apply section 18(1)(a) [previously section 17(1)(a)] of the Act [individual health or safety] to the records/ information?

B) Does section 17 [previously section 16] of the Act [personal information] apply to the records/ information?

C) Did the CPS properly apply section 20(1)(c) [previously section 19(1)(c)] and section 20(1)(d) [previously section 19(1)(d)] of the Act [law enforcement] to the records/information?

D) Did the LERB properly apply section 20(1)(n) [previously section 19(1)(k)] of the Act [law enforcement] to the records/ information?

E) Does section 27(2) [previously section 26(2)] of the Act [privileged information of a person other than the public body] apply to the records/ information?

[para 10] I note that the Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Although this did not result in substantive changes to the Act, various sections of the Act have been renumbered. Consequently, all section numbers referred to in this Order reflect the new numbering as well as the previous numbering.

V. DISCUSSION: Did the LERB and the CPS properly apply section 18(1)(a) [previously section 17(1)(a)] of the Act [individual health or safety] to the records/ information?

[para 11] Section 18(1)(a) [previously section 17(1)(a)] reads:

18(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

[para 12] In Order 99-009, the Commissioner stated that in order to determine whether there is a threat to a person's safety or mental or physical health, the Public Body must look at the same type of criteria as the harm test referred to in Order 96-003:

(a) there must be a causal connection between the disclosure and the anticipated harm;

(b) the harm must constitute “damage” or “detriment” and not mere inconvenience; and

(c) there must be a reasonable expectation that the harm will occur.

[para 13] Consequently, for section 18(1)(a) [previously section 17(1)(a)] to apply, the Public Body must show that there is a threat, that the threat and the disclosure of the information are connected, and that there is a reasonable expectation that the threat will occur if the information is disclosed.

[para 14] After a review of the records and the submissions of all the parties, I find that the LERB and the CPS properly withheld the records under section 18(1)(a) [previously section 17(1)(a)]. I find that these public bodies have shown that there is a threat to the safety or mental or physical health of the Affected Parties, that the threat and the disclosure are connected, and that there is a reasonable expectation that the threat will occur if the information is disclosed. In coming to this decision, I took into account the fact that both of the Affected Parties strongly objected to the disclosure of the records and provided compelling in camera submissions in support of their position.

[para 15] In addition, I took into account the Applicant’s conduct during this inquiry. As part of his submission, the Applicant attached an “Exhibit C” which contained partially nude pictures of his former wife, which the Applicant stated were evidence of his former wife’s alleged previous relationship.

[para 16] I find that this action by the Applicant strongly supports the Public Bodies’ positions to withhold the records under section 18(1)(a) [previously section 17(1)(a)]. In this regard I agree with the statement made by the CPS as part of its rebuttal submission:

It is evident from Exhibit “C” of [the Applicant’s] Brief that the disclosure of the two affidavits would reasonably be expected to be used by [the Applicant] in order to threaten the affected parties’ safety, and mental or physical health. Therefore the CPS strongly urges the Privacy Commissioner to dismiss [the Applicant’s] review of the CPS decision not to disclose the affidavits of the affected parties, based on [the Applicant’s] apparent disregard of the personal privacy of the affected parties and his intentional attempt to cause humiliation, stress and mental suffering to the affected parties.

[para 17] I find that by including these pictures in his submission, the Applicant provided direct evidence about the lengths to which he is prepared to go to humiliate his former wife and cause distress to the Affected Parties. I find that this action is particularly disturbing given the fact that the Applicant was fully aware that his son was an Affected Party in this inquiry and, as such, would receive a copy of the Applicant’s submission.

[para 18] I find that the LERB and the CPS properly applied section 18(1)(a) [previously section 17(1)(a)] of the Act to the records. I also find that the LERB and the CPS properly exercised their discretion according to the criteria previously outlined in Order 96-017. I uphold the decision of the LERB and the CPS not to disclose the records to the Applicant.

[para 19] In addition, as I have found that the CPS and the LERB properly applied section 18(1)(a) [previously section 17(1)(a)] to the records, I do not have to determine whether section 17 [previously section 16] applies to the records, whether the CPS properly applied section 20(1)(c) [previously section 19(1)(c)] and section 20(1)(d) [previously section 19(1)(d)] to the records, whether the LERB properly applied section 20(1)(n) [previously section 19(1)(k)] to the records, or whether section 27(2) [previously section 26(2)] applies to the records.

VI. ORDER

[para 20] I make the following Order under section 72 [previously section 68]:

[para 21] I find that the LERB and the CPS properly applied section 18(1)(a) [previously section 17(1)(a)] of the Act to the records and properly exercised their discretion in this regard. As such, I uphold the decision of the LERB and the CPS not to disclose the records to the Applicant.

[para 22] In addition, as I have found that the CPS and the LERB properly applied section 18(1)(a) [previously section 17(1)(a)] to the records, I do not have to determine whether section 17 [previously section 16] applies to the records, whether the CPS properly applied section 20(1)(c) [previously section 19(1)(c)] and section 20(1)(d) [previously section 19(1)(d)] to the records, whether the LERB properly applied section 20(1)(n) [previously section 19(1)(k)] to the records, or whether section 27(2) [previously section 26(2)] applies to the records.

Dave Bell
Adjudicator