

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2003-010

June 3, 2003

EDMONTON POLICE SERVICE

Review Number 2471

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Summary: The Applicant filed an access request under the *Freedom of Information and Protection of Privacy Act* with the Edmonton Police Service for records relating to a complaint of elder abuse made against him. The Edmonton Police Service released some information and severed the rest, relying upon multiple provisions of the Act, including section 18(1)(a) (disclosure harmful to individual safety). Adjudicator Bell upheld the decision not to disclose all of the severed information in the records under section 18(1)(a) and ordered the Edmonton Police Service not to disclose the information to the Applicant.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, sections 17(1), 17(4)(a), 17(4)(b), 17(5)(f), 18(1)(a), 20(1)(f) and 21(1)(b), 71(1).

Orders Cited: AB: Orders 96-003, 96-004, 99-009.

I. BACKGROUND

[para. 1.] The Applicant filed an access request (the “Request”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”) with the Edmonton Police Service (the “EPS” or the “Public Body”), for records relating to a complaint of elder abuse (the “Complaint”) made against him in January 2001. The Applicant had previously made the same request to the EPS, using a routine disclosure process. The EPS had given him some information, including portions of the EPS intake records relating to the Complaint and notes that an EPS investigator made of his contacts with the Applicant. In processing the Request, the EPS said that it had released what it could under the routine request, and

justified severing the rest of the information in the records under sections 17(1), 17(4)(a), 17(4)(b), 17(4)(g), 17(5)(f), 18(1)(a), 20(1)(f) and 21(1)(b) of the Act. The Applicant requested a review of the EPS decision.

II. RECORDS AT ISSUE

[para. 2.] The records at issue are an EPS investigative file, which contains 91 pages.

III. ISSUES

[para. 3.] There are four issues in this inquiry:

- A. Does section 17 of the Act apply to the records?
- B. Did the Public Body properly apply section 18(1)(a) of the Act to the records?
- C. Did the Public Body properly apply section 20(1)(f) of the Act to the records?
- D. Did the Public Body properly apply section 21(1)(b) to the records?

IV. DISCUSSION OF THE ISSUES

[para. 4.] As the Public Body applied section 18(1)(a) to all of the records it severed, I will consider issue B first.

Issue B. Did the Public Body properly apply section 18(1)(a) to the records?

i. The Law

[para. 5.] Section 18(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...

ii. Summary of the positions of the parties

[para. 6.] The Applicant addressed the issues in this inquiry in a general fashion. The Applicant's basic argument is that the Complaint against him is false, family members are lying about the Applicant's conduct, the EPS officers who investigated the Complaint are lying about the Applicant, the Applicant does not pose a threat to any other person and is entitled to the information in the records, most of which he provided to family members.

[para. 7.] The Public Body provided an *in camera* submission on its application of section 18(1)(a). The submission was based upon information in the severed records, emphasized the circumstances of this case, and argued that the provision was properly applied to protect the Affected Parties, among other persons.

[para. 8.] The Affected Parties each provided an *in camera* submission, in which the Affected Parties discussed their concerns about the consequences of disclosing information in the records to the Applicant.

iii. Discussion of the issue

[para. 9.] Under section 71(1) of the Act, the burden of proving section 18(1)(a) applies to the severed information in the records lies on the Public Body. The standard of proof is on a balance of probabilities. In other words, is it more likely than not that the disclosure of the severed information in the records could reasonably be expected to threaten anyone's safety or mental or physical health?

[para. 10.] In Orders 99-009 and 96-004, Commissioner Clark stated that to determine whether there is a threat to a person's safety or mental or physical health for the purposes of this provision of the Act, a public body must apply the test for harm developed in Order 96-003:

- 1) There is a causal connection between disclosure of the information and the anticipated harm;
- 2) The harm must constitute damage or detriment, not mere inconvenience; and
- 3) There is a reasonable expectation that the harm will occur.

[para. 11.] The Applicant presents himself as a persistent and reasonable person who has been unfairly accused of abuse. The Applicant's submission focuses upon the troubles that the Complaint and subsequent police investigation have caused him. The Applicant's position is that he is the victim of a biased police investigation and systemic collusion which has spread to the federal Firearms Registry. To support that argument, the Applicant provided me with a copy of a notice of refusal from federal Firearms Officer Richard S. Clarke, dated December 13, 2002, to the Applicant. The letter reads in part:

Your application...signed December 29, 2000 for a Possession Only firearms license for non-restricted firearms under the Firearms Act has been reviewed. The Chief Firearms Officer has determined that you are not eligible to hold a license under the Firearms Act and is refusing to issue a Firearms license.

[para. 12.] The notice states that the Applicant was denied a license on the basis that it was "not desirable in the interests of Public Safety." The letter sets out reasons for the denial, including the following:

On March 6, 2002, I spoke with Detective George Doerksen of the Edmonton Police Service...He felt that you were not emotionally stable and that you had threatened your doctor...

On March 6, 2002 I spoke with [the Applicant's ex-physician identified by Detective Doerksen] who confirmed that you were a patient of his once. He stated that you should in no way have a firearm.

[para. 13.] In his submissions, it is evident that the Applicant is upset that he was denied the license. The Applicant believes that the denial is linked to the Complaint. In his submission, by way of introducing a copy of a letter he subsequently sent to Officer Clarke, he wrote:

This is my letter to Firearms Officer Richard Clarke who is working on an unwarranted investigation of me in collaboration with Detective Doerksen, Constable Harley and Constable Murray and Louise McCloskey, all of EPS, who are lying about me, partly in defence of my complaint against them, and as mentioned in Detective Doerksen's Investigator's Notes, as concerns about me, received by me...in response to my second and formal request for information contained in the false complaint of Elder Abuse against me...by my confused [parent] manipulated by my greedy, selfcentred [sic], abusive, lying, manipulative, mentally unstable [sibling]... [underlining in original]

[para. 14.] The Applicant continued:

Mr. Clarke [was] investigating my emotional and mental stability under the guise of needing proof of that to issue me a 5 year possession only licence for my .22 caliber rifle I have had since my teenage years, when I used it for target practice I accused Mr. Clarke of being an agent of police to discredit me and defend themselves against my complaint against them. [underlining in original]

[para. 15.] The Applicant's evidence indicates that he is appealing the denial of the license.

[para. 16.] As part of his case, the Applicant submitted, *in camera*, audiotapes of conversations between the Applicant and other persons. I listened to those tapes. In them I heard the Applicant utter words that in the circumstances could be interpreted as intimidation, if not veiled threats, to other persons. After reviewing the submissions and the evidence of all of the parties, I am not persuaded by the Applicant's attack on the credibility of the EPS personnel who investigated the complaint and processed the request, and prefer the evidence of the EPS and the Affected Parties.

[para. 17.] I am satisfied that the evidence of the EPS and the Affected Parties establishes a strong causal connection between disclosure of the severed information and the anticipated harm to the safety or mental or physical health of the Affected Parties, and other persons involved in the investigation; the anticipated harm constitutes damage or detriment to those persons, not mere inconvenience; and there is a reasonable expectation that the harm will occur, if the information were disclosed. I am also satisfied that the Public Body properly exercised its discretion to apply the provision after releasing as

much information as it could to the Applicant in the circumstances. Therefore, the Public Body properly applied section 18(1)(a) to the severed information in the records. I intend to uphold the decision and order the Public Body not to release that information.

[para. 18.]. Because I intend to uphold the application of section 18(1)(a) to all of the severed records, I do not need to decide any of the remaining issues.

V. ORDER

[para. 19.] I uphold the decision of the Public Body not to release the severed information in the records to the Applicant under section 18(1)(a) of the Act. I order the Public Body not to release that information to the Applicant.

Dave Bell
Adjudicator