

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2004-009

June 8, 2005

ALBERTA INFRASTRUCTURE AND TRANSPORTATION

Review Number 2820

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

Summary: The Applicant made an access request to Alberta Infrastructure and Transportation (formerly Alberta Transportation) (the “Public Body”) for his file with the Driver Fitness and Monitoring Branch. The Public Body disclosed most of the file to the Applicant but refused to disclose a complaint letter from a Third Party, citing section 17 (third party personal information) and section 20 (law enforcement).

The Adjudicator found that the record was properly withheld under section 17 and confirmed the Public Body’s decision not to disclose the record to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 6, 17, 17(1), 17(4)(g), 17(5), 17(5)(b), 17(5)(c), 17(5)(e), 17(5)(f), 20, 20(1), 20(1)(c), 20(1)(d), 71,72; *Traffic Safety Act* R.S.A 2000 c. T-6 s. 59.

Authorities Cited: AB: Orders 96-020, 2001-027.

I. BACKGROUND

[para 1] The Applicant made a request to Alberta Infrastructure and Transportation (formerly Alberta Transportation), (the “Public Body”) for a copy of his Driver Fitness and Monitoring file, including records up to July 10, 2003. The request was made under the *Freedom of Information and Protection of Privacy Act* R.S.A. 2000, c.F-25 (the “Act”).

[para 2] In responding to the Applicant's request, the Public Body identified nine records related to the request and disclosed six of them. Two of the records were not disclosed because they were identified by the Public Body as not subject to the Act. They are not at issue in this inquiry. The Public Body cited sections 17(4)(g) (disclosure harmful to personal privacy of a third party) and 20(1)(c) and (d) (disclosure harmful to law enforcement) as its authority to refuse disclosure of the record that remains at issue in this inquiry.

[para 3] This office received a request from the Applicant to review the decision of the Public Body to refuse to disclose the record at issue. Mediation was authorized but was unsuccessful.

[para 4] The Notice of Inquiry was sent to the Applicant, the Public Body, as well as a third party (the "Third Party"). The Public Body made a submission which was circulated to the other parties, as well as an in camera submission. No submissions were received from the Applicant or the Third Party.

II. RECORD AT ISSUE

[para 5] The record consists of a one-page letter written by the Third Party addressed to the Driver Fitness and Monitoring Branch of Alberta Transportation regarding concerns about the driving ability of the Applicant.

III. ISSUES

[para 6] There are two issues identified in this inquiry:

- A. Does Section 17 of the Act (personal information) apply to the record?
- B. Did the Public Body properly apply section 20 of the Act (Law Enforcement) to the record?

IV. DISCUSSION OF THE ISSUES

[para 7] The Driver Fitness and Monitoring Branch of Alberta Transportation operates under the authority of the *Traffic Safety Act* R.S.A. 2000 c. T-6 ("*Traffic Safety Act*"). The Driver Fitness and Monitoring Branch is responsible for reviewing driving privileges of individuals and assessing their ability to safely operate motor vehicles. The Branch is responsible for the consistent application of national medical standards, traffic safety legislation with respect to the suspension of driving privileges and reinstatement conditions.

[para 8] For instance, the *Traffic Safety Act* provides for the establishment of a medical review committee by the relevant Minister which would act as an advisory

committee to the Minister respecting any matters concerning the health of persons that may have a bearing on the operation of motor vehicles, and any physical conditions that may constitute a hazard to the general public with respect to the operation of motor vehicles (section 59).

[para 9] The legislative regime gives a great deal of authority and discretion to the Registrar of Motor Vehicles to ensure the safe operation of motor vehicles in the province.

[para 10] The Public Body provided an excerpt from its website entitled “Reporting Concerns about Driver Fitness.” It advises that complaints regarding drivers who are a risk can be reported to the Driver Fitness and Monitoring Branch. They ask for as much detail as possible from the complainant and request that the complaint be signed and that the complainant’s telephone number be included. Further the website states that when a complaint is received by the staff of the Driver Fitness and Monitoring Branch, the complaint and the history of the driver will be reviewed. No steps would be taken to require a medical or physical exam, or place conditions or restrictions on a license or suspension of driving privileges unless the Driver Fitness and Monitoring Branch has “reasonable and probable grounds to believe that the person is a safety risk to himself or to the motoring public”.

[para 11] I would note that there is nothing in the information provided by the Public Body guaranteeing confidentiality to the complainant. However, in its submission the Public Body states:

A complainant may request confidentiality when submitting a concern to Driver Fitness and Monitoring. Driver Fitness and Monitoring records are considered confidential and access to the Driver Fitness and Monitoring area including the records is restricted. Driver Fitness and Monitoring would not disclose a letter of concern without consent.

[para 12] In the record at issue, the initial letter of complaint, the Third Party clearly indicated that the Third Party wanted to remain anonymous.

[para 13] Further, it is clear that the Public Body contacted the Third Party to try to obtain its consent to the release of the record. The Public Body’s in-camera submission shows that the Public Body contacted the Third Party and asked whether the Third Party would consent to the disclosure of the record at issue, with the Third Party’s personal information severed.

[para 14] The Third Party was not prepared to consent and stated that the letter of complaint was written in the interest of public safety alone. The Third Party has serious concerns that the severed copy of the complaint would not satisfy the Applicant and that the issue could come back to haunt the Third Party who wished to remain anonymous.

Issue A: Does section 17 apply to the record?

[para 15] The Public Body relied on the following parts of section 17 in its decision to refuse disclosure:

17(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.

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

(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 16] Under section 1(n) of the Act, "personal information" is defined as recorded information about an identifiable individual including:

(i) the individual's name, home address and phone number,

(ix) the individual's personal views or opinions, except if they are about someone else.

[para 17] Upon reviewing the record, it is clear that it contains personal information about the Third Party, as well as personal information about the Applicant.

[para 18] Section 17 is mandatory -- 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. An unreasonable invasion of a third party's personal privacy is presumed when the personal information consists of a third party's name and it would reveal personal information about the Third Party as set out in section 17(4)(g). I find that this presumption is present in the record as it relates to the Third Party.

[para 19] Nevertheless, under section 17(5), the Public Body must still consider all relevant factors to determine whether release of the personal information would be an unreasonable invasion of the Third Party's personal privacy. In this case, the Public Body specifically considered section 17(5):

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(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; and

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

[para 20] With respect to section 17(5)(b) (promote public health and safety), the Public Body merely asserts a concern that if a complainant's identity or information potentially identifying a complainant were released, it would result in concerns not being brought to the attention of Driver Fitness and Monitoring. In this context, the Public Body would have to offer some evidence that this reduction in reporting would happen, or is likely to happen. In the absence of any evidence, this argument is not persuasive. I find that this factor has little or no relevance in this inquiry.

[para 21] In considering section 17(5)(c) (fair determination of the Applicant's rights), it is important to note that the Public Body takes information of the complaint and then does an independent assessment of the situation. Therefore the complaint letter itself is the trigger for the review, but it alone does not impact on the rights of the Applicant. There is also no evidence in front of me that the Applicant experienced a loss of driving privileges or any other consequence as a result of the complaint. Likewise there is no evidence that there are any potential legal proceedings faced by the Applicant in which his rights may be affected. Therefore, I find this factor is not relevant in this inquiry.

[para 22] The Public Body argued that section 17(5)(e) (the third party would be exposed unfairly to financial or other harm) is relevant in these circumstances. There are no limitations on the kinds of harm that a public body can consider under this section. For example, exposure to civil liability (Order 96-020, para 202; Order 2001-027, para 47) can be considered harm. The Applicant made it clear in his correspondence with the Public Body that his intention was to seek civil remedies against the Third Party. There is no evidence before me that the Third Party made the complaint for any other reason than the safety of the Applicant and the driving public who might encounter him. Therefore I conclude that the Public Body properly considered whether disclosure of the Third Party's personal information would unfairly expose the Third Party to this type of harm. This factor weighs against disclosure of the record.

[para 23] The last factor considered by the Public Body is whether the personal information is supplied in confidence (section 17(5)(f)). This is the most significant factor in this case. As noted in its submissions, the Public Body requires concerns about the actions of drivers be submitted in writing and that the complainant may request confidentiality. The record at issue clearly indicates that the Third Party was requesting confidentiality. This factor weighs against disclosure of the record.

[para 24] As set out in section 71 of the Act, the Applicant has the burden to prove that disclosure of the Third Party's personal information would not be an unreasonable invasion of privacy. The Applicant made no submissions, so he did not afford me the opportunity to hear his views on this matter. Therefore, I find that the requirements of section 17 have been met with regards to the Third Party's personal information.

Disclosure of the Third Party's personal information would be an unreasonable invasion of the Third Party's personal privacy.

[para 25] It is now necessary to consider whether it would be possible to sever the Third Party's personal information from the record and give the Applicant access to the Applicant's personal information in the record. Section 6 of the Act states:

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[para 26] The Public Body considered whether the personal information of the Third Party could be severed from the record. The Public Body concluded that the record could not be severed without the risk that the Applicant could identify the Third Party from the remaining information.

[para 27] However, the Public Body included in its in camera submission a severed version of the record which was sent to the Third Party during mediation to determine if it was possible to give the Applicant some of the information in the record without releasing the Third Party's personal information. The proposed severing was rejected by the Third Party. The Third Party expressed concerns that giving remaining information to the Applicant would still be problematic for the Third Party.

[para 28] The Public Body went on in its in camera submission to discuss how each phrase of information in the suggested severed version of the record may still identify the Third Party. Having reviewed the record, I agree that the remaining information would significantly narrow the focus regarding the author of the record. Therefore, I conclude that severing the record is not feasible in this case. I find that none of the record can be disclosed to the Applicant. Section 17 applies to all of the record.

Issue B: Did the Public Body properly apply section 20 to the record?

[para 29] Having found that section 17 of the Act applies to the record, I do not need to consider whether the Public Body properly applied section 20 to the record.

V. ORDER

[para 30] I make the following Order under section 72 of the Act.

[para 31] I find that section 17 of the Act applies to the record. I confirm the Public Body's decision not to disclose the record to the Applicant.

[para 32] Having found that section 17 of the Act applies to the record, I do not find it necessary to consider whether the Public Body properly applied section 20 to the record.

Dave Bell
Adjudicator