

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2004-029

January 31, 2006

EDMONTON POLICE SERVICE

Review Numbers 2781 & 2782

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

Summary: The Edmonton Police Service denied the Applicant's request for access to records on the basis of section 18(1)(a) (harm to an individual) of the Act. It claimed that all the records should be withheld and gave evidence to show the likelihood of harm to third parties. The Adjudicator found that only in rare cases would records in their entirety be excepted from disclosure after a line by line analysis of the information, but on the basis of extensive and clear evidence this was such a case.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, s. 10(1), 18(1)(a), and 72.

Orders Cited: **AB:** Orders 96-003, 99-009 F2003-006, 2001-010, F2003-010, F2004-032; **BC:** Orders 01-01, 01-15, 03-08; **ON:** Orders PO-2101, PO-2113.

I. BACKGROUND

[para 1] The Applicant made three access requests under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25 (the "Act") to the Edmonton Police Service (the "Public Body"). In one of his requests he referenced a "case file" number and a "docket" number and in another request an "information package" about a specific detective.

[para 2] The Applicant previously made a complaint to the Public Body against two of the police officers who were involved in an investigation that led to charges

against him. He also requested disclosure of the police internal investigation file that dealt with that complaint. While incarcerated, the Applicant was again investigated and charged with a crime. One of the police officers who conducted that investigation was later the subject of an internal police investigation, for unrelated matters. The Applicant requested disclosure of the internal investigation file about that officer, who had subsequently retired from the police service.

[para 3] The Applicant requested that this office review the decisions of the Public Body to refuse him access to the requested records. The Applicant's concerns were not satisfied in the mediation process with this office and two of his review files proceeded to inquiry. The review files related to the adequacy of the Public Body's response to his requests (#2781) and the question of the denial of access to the records (#2782).

[para 4] The Public Body provided an initial submission, one part of which was provided *in camera*. This included the records at issue. The Public Body also submitted a letter *in camera*. The Applicant did not make a submission. Towards the end of the process he wrote this office a one page letter, raising a number of points and complaining about the submissions process. I have considered his letter as a submission. It does address the question of what material should be disclosed to him. I have also considered his numerous writings that are contained in the records.

II. RECORDS AT ISSUE

[para 5] The records at issue for this inquiry are two police internal investigation files: one relating to the two police officers who investigated the Applicant resulting in his conviction and incarceration on criminal charges; and the other relating to the police officer involved in investigating the subsequent charges.

[para 6] It is evident that the Public Body attempted to determine the extent of the Applicant's request for information and, through its involvement in the mediation process, considered that the records related to the "case file," the "docket number" letter, and request for an "information package" about a named detective, were not part of the Applicant's request. However, I take it from reading the Applicant's requests in the context of the records before me that these portions of his request were for records related to the criminal charges against him that resulted in conviction and incarceration. Therefore, I consider the records at issue to include those records. The Notice of Inquiry from this office included reference to those records. This inquiry decision shall apply to those records as well as the complaint investigation files.

III. ISSUES

Issue A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?

Issue B: Did the Public Body properly apply section 18 of the Act (individual health or safety, or public safety) to the records/information?

IV. DISCUSSION OF THE ISSUES

Issue A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?

[para 7] Section 10(1) of the Act states:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 8] The Applicant made three requests to the Public Body. Dates on the letters are not consistent with the dates the Public Body received them or with the fact that one of the requests is in response to the Public Body's request for clarification subsequent to the date of the letter. Regardless, it is evident that the Applicant made requests, the Public Body attempted to get clarification of the requests, and the Applicant made an effort to provide that clarification.

[para 9] The Public Body responded in a timely way to the requests. Its attempts to clarify the requests were timely and reasonable. The Public Body waived a fee without the Applicant's request to do so.

[para 10] There is no evidence that suggests that the Public Body did not meet its duty to assist the Applicant. The Applicant did not argue that the duty was not met. Refusal to disclose records to an Applicant where the Public Body believes that an exception to disclosure exists, does not constitute a failure to meet its duty. I find that the Public Body met its duty to assist the Applicant in this case.

Issue B: Did the Public Body properly apply section 18 of the Act (individual health or safety, or public safety) to the records/information?

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 11] The Public Body decided against disclosing any records to the Applicant, on the basis of section 18. The Public Body's whole argument on the point was presented to me *in camera*. From my review of those submissions I find they were properly made *in camera*. I am therefore limited in expressing the contents of those submissions. However, given my decision on disclosure I will make some reference to the information therein, as well as information in the records.

[para 12] The burden of proving that section 18(1)(a) applies to 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 information in the records could reasonably be expected to threaten anyone's safety or mental or physical health?

[para 13] 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 show evidence for the criteria of the "harm" test referred to in Order 96-003:

- there must be a causal connection between the disclosure and the anticipated harm;
- the harm must constitute "damage" or "detriment" and not mere inconvenience;
- there must be a reasonable expectation that the harm will occur.

[para 14] 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. The harm must be genuine and conceivable.

[para 15] In Order 96-003 the Commissioner also made clear that police internal investigation files are not generally protected from disclosure. In Order 2001-010 he emphasized that records must be considered on a line by line basis for the application of section 18, and that non-controversial information already in the possession of the Applicant, including non-controversial personal information of the Applicant, should be released.

[para 16] I have considered the application of these decisions to the facts before me. I have considered other Orders decided by the Commissioners in Alberta, British Columbia and Ontario about the application of section 18, or sections with substantially similar wording.

[para 17] Section 18 was the only section relied on by the Public Body in this case to support its decision to not disclose any information to the Applicant. My review of the records indicates that much of the information that was not originally provided by the Applicant could have been excepted from disclosure under other sections, primarily section 17 (personal information of third parties). I warn public bodies that it will be a very rare case where section 18 will apply to except from disclosure all information requested, and public bodies should therefore consider the application of the Act's exceptions to disclosure thoroughly in each case.

[para 18] The evidence before me is extensive, unequivocal and uncontroverted. Much of it is from the Applicant: his submissions to this office and his many notations on documents he supplied the Public Body. His evidence is consistent with the evidence brought by the Public Body in support of its position. A critical piece of evidence is from a psychiatrist and speaks directly and extensively to the points at issue. The evidence is consistent over a period of approximately six years.

[para 19] The Applicant has been convicted of serious violent crime. This occurred after he failed to comply with provisions of court orders that were made in response to previous violence and were designed to prevent that crime. His conviction includes other specific conditions prohibiting contact with his victim. He was charged with breaching those specific conditions. The evidence supports that the Applicant has either refused or is unable to take responsibility for his behaviour.

[para 20] It is evident that the Applicant blames many people in the criminal justice system with whom he has had contact, as well as his victim. He has made threats of violence towards them – the record is replete with explicit threats; some threats are slightly veiled. It is evident in the records that the Applicant seeks information to further blame based on that information. New names that are revealed to him attract new blame.

[para 21] He has obtained extensive information about his case. Some of it is from the police investigation of the events leading to his charges. At least two-thirds of one of the investigation files he seeks contain records about his case that he has obtained from various sources in the justice system and written notes on and forwarded to the Public Body.

[para 22] The Applicant has been diagnosed with a serious mental illness. Many of the features of the illness in his case as described by a professional go directly to the likelihood of harm occurring to third parties. Treatment has been strongly recommended. However, there is no evidence treatment has been sought, or succeeded. To the contrary, evidence throughout the timeframe of the records before me indicates the problem persists.

[para 23] I have been cautious to read the evidence for not just labels of behaviour but for specific behaviours. I have considered that being difficult, challenging, or troublesome, having intense feelings about injustice, being persistent, and to some extent, using offensive language, do not necessarily bring section 18 into play.

[para 24] I have also considered whether the Public Body was being unjustifiably cautious. I have considered that the threat of harm need not be to a specific individual and need not be based on an individual's subjective fear.

[para 25] I have considered severing the records; whether severing could be done to sufficiently protect named persons and those who could be identified through a mosaic of information, and whether severing would leave the records meaningful to the Applicant. I have considered that others within the justice system, although unnamed and perhaps never having had contact with the Applicant, may be affected. I find that, although line by line analysis of the records is necessary, the result in this rare case is that severing could not be done in a way that would afford the protection required by section 18 and still provide meaningful information to the Applicant.

[para 26] I have considered whether to direct the Public Body to provide back to the Applicant copies of the documents that he provided that are now on its files. That is a

considerable volume of information, annotated throughout, with the threats and blaming mentioned above. None of the information in the documents, given the Applicant's perspective, is non-controversial. I see a real possibility of harm resulting from the disclosure of these documents, thus prompting a new review by the Applicant. Any disclosure is likely to incite further response.

[para 27] I have considered the purposes of the Act, and that exceptions to disclosure are to be applied narrowly. The Applicant pursued his complaint against the two investigating officers through the Law Enforcement Review Board, which is tasked with hearing appeals from citizens and police members about the outcomes of complaints against the police.

[para 28] Having given very careful consideration to all of the circumstances, I find that the Public Body was correct in applying section 18 and that it exercised its discretion properly when it refused access to the information requested. Disclosure of the information/records could reasonably be expected to threaten the safety of those persons mentioned in the records.

V. ORDER

[para 29] I make this Order under section 72 of the Act.

[para 30] I find that the Public Body met its duty to assist the Applicant.

[para 31] I find that the Public Body properly applied section 18 of the Act to the information/records. I confirm the Public Body's decision to withhold the records.

Dave Bell
Adjudicator