ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2007-003

January 15, 2008

EDMONTON POLICE SERVICE

Case File Number 3717

Office URL: www.oipc.ab.ca

Summary: The Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton Police Service (the "Public Body") for any records relating to the police investigation of a particular incident.

The Public Body responded by refusing to either confirm or deny whether there were any responsive records.

The Adjudicator did not accept that the Public Body properly relied on section 12(2) in the circumstances of this case. She ordered the Public Body to respond to the Applicant's request without relying on the provision.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 12(2), 12(2)(b), 72.

Authorities Cited: AB: Orders 96-008, 96-021, 98-001, 99-017, 99-027, 2001-001; **B.C.:** Order 83-1996.

I. BACKGROUND

[para 1] By letter dated April 10, 2006, the Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton

Police Service (the "Public Body") for any records relating to the investigation of a particular incident. The request specified which police officers were involved in the investigation and the kind of records requested ("the C-1 Report and any records created by the office of the Chief of Police").

[para 2] The Public Body responded on May 18, 2006. It refused to either confirm or deny whether there were any responsive records.

[para 3] The Applicant asked this Office to review the response. A mediator was assigned to try to resolve the matter, but this was not successful, and the matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 4] The issue in this inquiry is whether the Public Body may refuse to confirm or deny the existence of a record. Therefore there are no records at issue, whether or not there were records responsive to the Applicant's request.

III. ISSUE

[para 5] The issue in this inquiry is:

> Did the Public Body properly refuse to confirm or deny the existence of a record, as authorized by section 12(2) of the Act?

IV. DISCUSSION OF THE ISSUE

[para 6] In its submission the Public Body relied on section 12(2)(b) of the Act. The relevant part of section 12 provides:

> *12(1) In a response under section 11, the applicant must be told*
>
> *(a) whether access to the record or part of it is granted or refused,…*
> *(c) if access to the record or to part of it is refused,*
>
> *(i) the reasons for the refusal and the provision of this Act on which the refusal is based,… .*
>
> *(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of*
>
> *(b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.*

[para 7] The access request is for any records the police have relative to the matter. The Public Body refuses to confirm or deny whether it has any such records.

[para 8] The issue in this inquiry is not whether the Applicant is entitled to have access to such records, if any. It is whether he is entitled to know whether any such records exist. The Public Body argues that giving the Applicant information as to whether such records exist would itself be an unreasonable invasion of the personal privacy of the party or parties who were involved in the matters in question.

[para 9] In this case, evidence provided by the Applicant shows that the events relative to which the access request is made were publicly reported in the press when they took place, in 1983. This evidence also shows that the police were reported to have been involved in the matter. The press reports include statements from some of the people involved in the incident. Given the nature of these statements and the content of the media reports, I accept the media reports as evidence that at least some of the key events happened as they were reported, and that police were involved. Revealing whether the records exist would not reveal whether or not these things happened. It would reveal only whether the police made any records relative to their involvement, and whether they kept them if they made them.

[para 10] To support its decision not to confirm or deny the existence of records, the Public Body points to a former decision of this Office (Order 96-008). In that case, the former Commissioner decided that the fact that an Applicant has prior knowledge of a matter and obtaining access to records are distinct ideas. He said:

> In British Columbia, the Information and Privacy Commissioner rejected an argument that the Applicant should receive records because the Applicant knew "the subject of the material as well as the persons connected with this incident." (see British Columbia Order 83-1996). The Commissioner stated that there is a difference between knowing the subject matter or the names of parties and having a right under the legislation to obtain access to the information given by those parties. I also reject the Applicant's argument under section 16(1) and (2)(g) [these sections are now sections 17(1) and 17(4)(g)] on the ground that there is a difference between knowing a third party's personal information and having the right of access to that personal information under the Act.

[para 11] The British Columbia decision rests on a distinction between knowing the names of parties and having a right of access to information given by the third parties. The fuller text of the former B.C. Commissioner's comment is as follows:

> There is a difference between knowing the subject matter or the names of all of those interviewed and having a right under the Act to obtain access to full notes of what they actually said during the course of an investigation.

[para 12] I accept that there will be situations in which providing access to a record will unreasonably invade someone's personal privacy even though the Applicant already knows some of the information or related information.

[para 13] The Alberta decision arguably goes further. In the Alberta case, the information at issue seems to have been a third party's signature on a document and some personal information of that person contained within it; the Applicant apparently claimed to already know both the personal information and who signed the document. The former Commissioner did not regard this knowledge as a reason for ordering disclosure. It may be inferred from this that he rejected the idea that the Applicant's prior knowledge could impact whether disclosure of records would be an unreasonable invasion of privacy. As well, there are a number of other Orders of this Office which hold that "whether an applicant knows a third party's personal information is not a relevant consideration for disclosing that personal information". (See, for example, Order 99-027 at para 175.)

[para 14] However, I do not regard these decisions as bearing on the matter before me. The present situation is distinguishable. In the earlier decision, it was the Applicant himself who had knowledge of the information. Information as contained in a record held by a Public Body can have far broader and more serious implications for a third party's privacy than the knowledge of that information by a single individual, particularly if it is disseminated further. As the former Commissioner noted in Order 96-021 (at para 170), a further threat to privacy remains because once the personal information is disclosed, there is no requirement that the applicant maintain its confidentiality. This could well be the basis for the former Commissioner's rejection of the idea that despite the Applicant's knowledge of the information, the record containing it should not be disclosed.

[para 15] In the present case, in contrast, the key facts of the incident described by the Applicant are known not only to the Applicant, but were clearly public knowledge and received broad public attention, albeit a long time ago. Thus if the records exist, they would at most reveal that the police made and kept a record of an incident of which the public was already well aware. I cannot see how, as a matter of common sense, revealing whether or not the police made or kept records relative to a matter in which they are publicly known to have been involved can be said to unreasonably invade the personal privacy of a persons who were also involved in the matter and were known to be so.

[para 16] In reaching this conclusion, I am aware that there is an earlier decision of this Office (Order 2001-001) which contains a comment that the privacy protections of the Act are not negated by prior public exposure. However, in that case, the decision turned in part on the fact that it was not clear whether the information that was in the public domain was accurate. As noted earlier, in this case, the nature of the press reports are such that certain key facts, including the fact of police involvement, are not open to question. Further, other decisions of this office (for example, Orders 98-001 and 99-017) treat the fact that personal information has come into the public domain (through court proceedings) as a relevant circumstance for finding that disclosure would not be an unreasonable invasion of personal privacy.

[para 17] Records responsive to the Applicant's request, if they existed, might reveal further personal information about third parties who were involved. However, knowledge of whether such records exist would not reveal whether certain reported facts about this particular incident took place. Thus disclosure of whether the records exist would not reveal anything personal about third parties, and cannot be an unreasonable invasion of the personal privacy of any third party.

[para 18] I find, therefore, that section 12(2)(b) does not apply, and that the Public Body must respond to the Applicant without relying on it.

V. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] I order the Public Body to respond to the Applicant's request without relying on section 12(2) of the Act.

[para 21] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order, that it has complied therewith.

Christina Gauk, Ph.D.
Director of Adjudication