

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-026

February 25, 2010

MOUNT ROYAL UNIVERSITY

Case File Number F4702

Office URL: www.oipc.ab.ca

Summary: The Applicant requested records containing his personal information from Mount Royal College, (now Mount Royal University), (the Public Body) including a communication about him created by the security services office. The Public Body located responsive records but withheld a report created by the security services office. The Public Body withheld the information in these records under sections 17 (information harmful to the personal privacy of a third party) and 18 (information harmful to individual or public safety).

The Adjudicator decided that section 17 did not apply to the records at issue, because all the information in the records was either about the Applicant, or employees of the Public Body acting in representative capacities. Further, she found that section 18 did not apply as the Public Body had not established that there was a reasonable likelihood that harm would result to personal or public safety if the information in the report were disclosed to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 18, 72

Authorities Cited: AB: Orders 99-032, 99-009, F2004-032, F2006-006, F2008-028

Cases Cited: *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515

I. BACKGROUND

[para 1] On September 21, 2008, the Applicant requested records containing his personal information from the Public Body including a communication about him created by Campus Security.

[para 2] The Public Body responded to the Applicant's access request on October 28, 2008. The Public Body applied sections 17 (disclosure harmful to personal privacy) and 18 (disclosure harmful to individual or public safety) to withhold information from the records.

[para 3] The Applicant requested review of the Public Body's decision to withhold information on November 1, 2008. The Commissioner authorized mediation to resolve the issues between the parties. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. RECORDS AT ISSUE

[para 4] A two-page critical incident report dated May 11, 2007 is at issue.

III. ISSUES

Issue A: Does section 17 of the Act apply to the information in the records?

Issue B: Did the Public Body properly apply section 18 of the Act to the information in the records?

IV. DISCUSSION OF ISSUES

Issue A: Does section 17 of the Act apply to the information in the records?

[para 5] Section 1(1)(n) defines personal information under the Act:

- (n) *“personal information” means recorded information about an identifiable individual, including*
 - (i) *the individual's name, home or business address or home or business telephone number,*
 - (ii) *the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - (iii) *the individual's age, sex, marital status or family status,*
 - (iv) *an identifying number, symbol or other particular assigned to the individual,*
 - (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*

- (vii) *information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
- (viii) *anyone else's opinions about the individual, and*
- (ix) *the individual's personal views or opinions, except if they are about someone else;*

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

[para 6] Section 17 states in part:

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...

Section 17 applies only when the information would be harmful to the personal privacy of a third party.

[para 7] Section 1(r) of the Act provides the following definition of "third party"

- 1 In this Act,*
- (r) "third party" means a person, a group of persons or an organization other than an applicant or a public body;*

[para 8] The records at issue contain the personal information of the Applicant, in addition to information about employees of the Public Body. Section 17(1) does not apply in situations when an applicant requests the applicant's own personal information. As the Applicant is not a third party, section 17(1) does not apply to information about him in the records at issue.

[para 9] I will now consider whether section 17(1) applies to the information about the employees of the Public Body contained in the records at issue.

[para 10] In Order F2008-028, the Adjudicator reviewed the decisions of this office addressing information about individuals acting in their official capacity, and said:

In many of the records at issue, the Public Body applied section 17 of the Act to the names, job titles and/or signatures of individuals who sent or received correspondence, or who acted in some other way, in their capacities as politicians, employees of the Public Body, other government officials, or representatives of other bodies, businesses and organizations...

I find that section 17 does not apply to the foregoing names, job titles and signatures. First, in the case of government officials and employees (although not individuals associated with other organizations and businesses), section 17(2)(e) indicates that disclosure of their job titles and positions (i.e., employment responsibilities) is expressly not an unreasonable invasion of their personal privacy (Order F2004-026 at para. 105). Second, many previous orders of this Office have made it clear that, as a general rule, disclosure of the names, job titles and signatures of individuals acting in what I shall variably call a "representative", "work-related" or "non-

personal” capacity is not an unreasonable invasion of their personal privacy. I note the following principles in particular (with my emphases in italics):

Disclosure of the names, job titles and/or signatures of individuals is not an unreasonable invasion of personal privacy where they were acting in *formal* or *representative* capacities (Order 2000-005 at para. 116; Order F2003-004 at paras. 264 and 265; Order F2005-016 at paras. 109 and 110; Order F2006-008 at para. 42; Order F2008-009 at para. 89).

Disclosure of the names, job titles and/or signatures of individuals acting in their *professional* capacities is not an unreasonable invasion of personal privacy (Order 2001- 013 at para. 88; Order F2003-002 at para. 62; Order F2003-004 at paras. 264 and 265).

The fact that individuals were acting in their *official* capacities, or signed or received documents in their capacities as public officials, weighs in favour of a finding that the disclosure of information would not be an unreasonable invasion of personal privacy (Order F2006-008 at para. 46; Order F2007-013 at para. 53; Order F2007-025 at para. 59; Order F2007-029 at paras. 25 to 27).

Where third parties were acting in their *employment* capacities, or their personal information exists as a consequence of their activities as *staff performing their duties* or as *a function of their employment*, this is a relevant circumstance weighing in favour of disclosure (Order F2003-005 at para. 96; Order F2004-015 at para. 96; Order F2007-021 at para. 98; Order F2008-016 at para. 93).

I further note that the foregoing principles have been applied not only to the information of employees of the particular public body that is a party to the inquiry, but also to that of employees of other public bodies (Order F2004-026 at paras. 100 and 120), representatives of organizations and entities that are not public bodies (Order F2008-009 at para. 89; Order F2008-016 at para. 93), individuals acting on behalf of private third party businesses (Order 2000-005 at para. 115; Order F2003-004 at para. 265), individuals performing services by contract (Order F2004-026 at paras. 100 and 120), and individuals acting in a sole or independent capacity, such as lawyers and commissioners for oaths (Order 2001-013 at paras. 87 and 88; Order F2003-002 at para. 61). In my view, therefore, it does not matter who the particular individual is in order to conclude, generally, that section 17 does not apply to personal information that merely reveals that an individual did something in a formal, representative, professional, official, public or employment capacity. It has also been stated that records of the performance of work responsibilities by an individual is not, generally speaking, personal information about that individual, as there is no personal dimension (Order F2004-026 at para 108; Order F2006-030 at para. 10; Order F2007-021 at para. 97). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting the business of government – and by extension other bodies and organizations – as “about them” (Order F2006-030 at para. 12). In other words, although the names of individuals are always their personal information [as it is defined as such in section 1(n)(i) of the Act], the fact that individuals sent or received correspondence – or conducted themselves in some other way in connection with their employment, business, professional or official activities, or as representatives of public bodies, businesses or organizations – is not personal information to which section 17 can even apply.

The present inquiry provides a useful distinction. I concluded above that disclosure of the names, job titles and other identifying information of members of the general public – who wrote correspondence or otherwise interacted with the Public Body in their private or personal capacities – would be an unreasonable invasion of their personal privacy. By contrast, when the records at issue merely reveal that individuals acted in their work-related or non-personal capacities, or did something as representatives of a public body, business or organization, section 17 does not apply to their names, job titles or signatures.

[para 11] If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of “third party” under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.

In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

[para 12] The records at issue contain the following information about employees of the Public Body:

1. the name and signature of an investigator
2. the name of an employee
3. the statements made to the investigator by an employee about an incident that took place during the course of her duties (line 1 a – e) on page 2
4. that an employee formed an opinion about the Applicant (line 2) on page 2
5. the statement made by the investigator to the employee and directions given by the investigator to the employee (lines 3 & 4) on page 2

Information about the investigator

[para 13] I find that the information about the investigator contained in the records at issue is about the investigator as a representative or employee of the Public Body. The investigator prepared the report in the records as part of his duties as an officer with Mount Royal College Security and Public Safety. Further, the instructions the investigator gave to the employee as to how to address the incident were made in his capacity as an investigator on behalf of the Public Body. I therefore find that section 17 does not apply to the investigator’s name, signature or other information about him in the records at issue as this information is information about the employee as an agent of the Public Body, and is therefore about the Public Body.

Information about the employee

[para 14] The employee brought an incident that took place in the course of her employment to the attention of the Public Body’s security office. As the records at issue indicate that the Applicant has knowledge of the incident described in the records at issue, and is aware of the employee’s role in the incident, it would not be possible to provide the Applicant with his own personal information, without also providing

information about the employee. The question becomes whether the information about the employee is personal information, or information about the employee as a representative of the Public Body.

[para 15] Not only do I find that the employee's knowledge of the incident arose from her duties as an employee, but I find that reporting the incident to the security office and making a statement about the incident was also part of her duties as an employee. All of her dealings with the Applicant were done as an employee of the Public Body and decisions made in relation to his requests were made with the authority of the Public Body. This finding is supported by the employee's reported statement referring to "enforcing guidelines", which appears in paragraph 1(e) of page 2 of the records at issue.

[para 16] Under section 1(n) of the Act, cited above, an opinion held about an individual is the personal information of the subject of the opinion. However, the fact that an individual holds an opinion about another individual can be information about the individual who has formed the opinion. In Order F2006-006 the Adjudicator noted:

A third party's personal views or opinions about the Applicant - *by that reason alone* - are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information.

In this case, the opinion formed about the Applicant is based on the employee's experience providing services to the Applicant on behalf of the Public Body, and on a conversation that took place between the Applicant and the employee regarding the Public Body's guidelines. Further, review of the records at issue indicates that this opinion was given to the security office so that the security office could assess the situation and take any steps that office considered necessary. I find that the opinion was also provided by the employee in a representative capacity, as part of her employment duties.

[para 17] As I find that the information in the records at issue about the employee is about her as a representative of the Public Body, I find that section 17 does not apply to that information.

[para 18] For the reasons above, I find that section 17 does not apply to the information in the records.

Issue B: Did the Public Body properly apply section 18 of the Act to the information in the records?

[para 19] Section 18 states:

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, or*
- (b) interfere with public safety.*

(2) *The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a physician, a regulated member of the College of Alberta Psychologists or a psychiatrist or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety.*

(3) *The head of a public body may refuse to disclose to an applicant information in a record that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health.*

[para 20] In Order 99-009, the former Commissioner explained the necessary elements of what is now section 18. He said:

In Order 96-004, I said that where "threats" are involved, the Public Body must look at the same type of criteria as the harm test referred to in Order 96-003, in that (i) there must be a causal connection between disclosure and the anticipated harm; (ii) the harm must constitute "damage" or "detriment", and not mere inconvenience; and (iii) there must be a reasonable expectation that the harm will occur.

Consequently, for section 17(1)(a) to apply, [now section 18(1)(a)], 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 21] In Order F2004-032, the Adjudicator found that a Public Body cannot rely on speculation and argument that harm might take place, but must establish a reasonable expectation that harm would result from disclosure before it may apply section 18.

[para 22] Similarly, in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 the Court said:

The Commissioner's decision did not prospectively require evidence of actual harm; the Commissioner required some evidence to support the contention that there was a risk of harm. At no point in his reasons does he suggest that evidence of actual harm is necessary.

The evidentiary standard that the Commissioner applied was appropriate. The legislation requires that there be a "reasonable expectation of harm." Bare arguments or submissions cannot establish a "reasonable expectation of harm."

[para 23] These cases establish that section 18 applies to harm that would result from disclosure of information in the records at issue, but not harm that would result from factors other than disclosure of information in the records at issue. Further, a public body

must provide evidence that there is a reasonable expectation that harm will result from the disclosure of information contained in the records.

[para 24] The Public Body provided a letter of the investigator dated November 13, 2009 to its FOIP Coordinator in support of its position. This letter states:

Just to recap, subject incident occurred at Mount Royal University in and around the third parties work place. Incident involved a Mount Royal University employee and a person who was not yet a student at the time of the incident.

The suspect in this case behaved in a manner deemed to be threatening to the point where Security Services was called to the scene (Enrolment Services) to assist with a confrontation.

The employee requested that her involvement in the case be kept confidential. The employee remains traumatized by this incident and continues to fear retaliation and concern for her safety.

Policy 1704 Mount Royal University Personal Harassment Policy, refer to para A and C (3) (attached) further states that; It is the responsibility of the Mount Royal community to ensure that the work and learning environment are free from personal harassment and the need to promote a harassment free environment. Subject responsibility includes but is not limited to unauthorized release of personal information that may endanger employee safety.

Subject employee's rights to privacy are also protected under Workplace Health and Safety VAH001 – Violence and Harassment behaviors such as;

Physical assault or aggression,
Unsolicited and unwelcome conduct, comment, gesture or contact which causes offense or humiliation.

The Mandate of Security Services is to provide a safe working and learning environment for all campus users. Release of personal or third party information contained in Security Services files normally requires a Court Order prior to release of information.

The Public Body has not made any arguments in support of its application of section 18 to the records at issue. However, the letter of November 13, 2009, assuming that its references to a suspect are references to the Applicant, appears to provide arguments in favor of withholding the records at issue as a matter of employee safety. I will therefore consider these arguments.

[para 25] The investigator characterizes the subject of the records at issue in the following way:

Incident involved a Mount Royal University employee and a person who was not yet a student at the time of the incident.

The records at issue indicate that the Applicant was a student at the time of the incident. The discussion documented between the employee of the Public Body and the Applicant turned on whether he had standing as a part-time or a full-time student. As the records at issue are contemporaneous with the incident, I accept the evidence of the records that the Applicant was a student.

[para 26] The investigator states:

The suspect in this case behaved in a manner deemed to be threatening to the point where Security Services was called to the scene (Enrolment Services) to assist with a confrontation.

The records at issue contradict this statement, as they indicate that security services were not called to the scene of a confrontation. Rather, the employee of the Public Body decided to go to the security services office and report the details of a conversation she had had with the Applicant after she had confronted him with information. Again, as the report in the records at issue was made on the day the employee of the Public Body made her report to security, I find it is more likely to be an accurate account of events than the letter of November 13, 2009.

[para 27] The investigator notes:

The employee requested that her involvement in the case be kept confidential. The employee remains traumatized by this incident and continues to fear retaliation and concern for her safety.

The records at issue do not indicate that the employee requested that her involvement in the case be kept confidential. Further, there is nothing in the records at issue to suggest that the employee was traumatized by her conversation with the Applicant at the time she made a report at the security services office or continues to be so. The records at issue do not indicate that the employee feared retaliation or was concerned for her safety, or that a threat was made to an individual's safety or mental or physical health. The investigator has not provided the source of his information regarding the employee's mental state. While it is possible that the employee may fear retaliation and be concerned for her safety, given that the other statements made by the investigator are inaccurate and he has not provided the basis for his opinions about the employee, I am unable to give any weight to the statements regarding the employee's mental state.

[para 28] In any event, the records at issue and the investigator's letter both indicate that the Applicant is already aware of the employee's involvement in the conversation she had with him. There is no evidence that the Applicant's knowledge of the conversation and his knowledge of the employee's involvement in it have led to any of the harms contemplated by section 18(1). Further, the records do not contain information about a threat to individual's safety or mental or physical health, for the purposes of section 18(3).

[para 29] The investigator argues that releasing the information in the records at issue would result in harassment and endanger employee safety. However, the investigator did not explain what it is about the information that would have this effect, or why he believes releasing the information in the records at issue would result in harassment or compromise to employee safety, or establish facts that would lead me to conclude that disclosure of the information in the records could reasonably be expected to have this effect.

[para 30] I find that the records at issue indicate that an employee of the Public Body was concerned that the Applicant might take issue with a letter that she believed he would receive from a branch of the Government of Alberta in the future. Further, assuming the information in the records at issue is factual, and I have no reason to assume otherwise, I find that the Applicant is already aware of the information contained in them, given that the records document a conversation that took place between the Applicant and an employee of the Public Body. As the Applicant already has knowledge of the information in the records at issue and no harm has resulted to date, I find that it is very unlikely that harm would reasonably result to the safety of employees of the Public Body if the information in the records at issue is disclosed.

[para 31] For these reasons, I find that section 18 does not apply to the information in the records at issue.

V. ORDER

[para 32] I make this Order under section 72 of the Act.

[para 33] I order the Public Body to give access to the Applicant to the records at issue in their entirety.

[para 34] 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 with the Order.

Teresa Cunningham
Adjudicator