

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-045

September 23, 2010

EDMONTON POLICE SERVICE

Case File Number F4481

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked the Edmonton Police Service (the “Public Body”) for records relating to a complaint about noise coming from his home. The information at issue was the identity and other personal information of the complainant/reporter, which the Public Body withheld under section 17 of the Act, on the basis that disclosure would be an unreasonable invasion of the complainant/reporter’s personal privacy.

The Adjudicator found that the presumptions against disclosure under section 17(4)(b) (information in a law enforcement record) and section 17(4)(g) (name appearing with or revealing other personal information) were applicable. Conversely, he found that there were no relevant circumstances weighing in favour of disclosure under section 17(5). While the Applicant argued that disclosure was justified on the basis that a complainant/reporter’s personal information may be disclosed where a complaint leads to charges, there were no charges in this case. While the Applicant argued that disclosure was justified on the basis that anonymity can encourage malicious or harassing complaints, there was no suggestion of malice or harassment in this case.

The Adjudicator confirmed the Public Body’s decision not to disclose the personal information of the complainant/reporter.

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), (2)(e), 17, 17(2), 17(4)(b), 17(4)(g), 17(5), 17(5)(c), 17(5)(f), 71(1), 71(2), 72 and 72(2)(b).

I. BACKGROUND

[para 1] In a letter dated March 26, 2008, the Applicant made the following access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Edmonton Police Service (the “Public Body” or “EPS”):

On March 13, 2008, two EPS Constables attended at my home ... on a noise complaint. This is an application under the FOIPP Act for copies of all records relating to this matter, including the audio record of the complaint call.

[para 2] By letter dated April 25, 2008, the Public Body gave the Applicant access to some of the requested information, but withheld the rest under section 17 of the Act, on the basis that disclosure would be an unreasonable invasion of the personal privacy of third parties.

[para 3] By letter dated April 30, 2008, the Applicant requested a review of part of the Public Body’s response to his access request. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry by correspondence dated July 6, 2008. A written inquiry was set down.

II. RECORDS AT ISSUE

[para 4] In responding to the Applicant’s access request, the Public Body severed information on four pages, and withheld all of the requested audio recording, which is on a compact disc. The compact disc records a telephone conversation of approximately two minutes between an employee of the Public Body and the complainant/reporter who complained about noise coming from the Applicant’s home.

[para 5] I find that only some of the withheld information is at issue. This is due to the scope of the Applicant’s request for review, his request for inquiry and his submissions in the inquiry. All three indicate that the Applicant is concerned only with the fact that the Public Body withheld information identifying the complainant/reporter. The Applicant does not appear to be interested in obtaining access to information about two subjects/witnesses mentioned in the police report (he presumably knows their identity and other information about them in any event), or obtaining access to information relating to the employee of the Public Body who spoke to the complainant/reporter during the telephone conversation.

[para 6] Accordingly, the only information at issue in this inquiry is the personal information of the complainant/reporter, which is found on three of the pages (an “R-1” form, an “R-2” form and an “Event Chronology”), and in parts of the audio recording.

III. ISSUE

[para 7] The Notice of Inquiry, dated June 1, 2009, set out the issue of whether the Public Body properly applied section 17 of the Act to the records (disclosure harmful to personal privacy).

IV. DISCUSSION OF ISSUE

Did the Public Body properly apply section 17 of the Act to the records (disclosure harmful to personal privacy)?

[para 8] Section 17 of the Act reads, in part, as follows:

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.

(2) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if

[various circumstances, none of which exist in this inquiry]

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

...

(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,

...

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

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

...

[para 9] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to the information that it withheld. In the context of section 17, the Public Body must establish that the severed information is the personal information of a third party, and may show how disclosure would be an unreasonable invasion of the third party's personal privacy. Having said this, section 71(2) states that, if a record contains personal information about a third party, it is up to the Applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy. Because section 17 sets out a mandatory exception to disclosure – and section 2(e) provides for independent reviews of the decisions of public bodies – I must also independently review the information in the records at issue and determine whether disclosure would or would not be an unreasonable invasion of personal privacy.

[para 10] The records at issue consist of the personal information of the complainant/reporter under section 1(n) of the Act. This includes his or her name, address, and telephone number under section 1(n)(i), which information appears in the paper records and is heard on the audio recording. Further, all parts of the audio recording during which the complainant/reporter is speaking consists of his or her personal information, as his or her voice is “recorded information about an identifiable individual”. The voice makes the complainant/reporter particularly identifiable in this case, given that the records disclosed to the Applicant state that he or she lives close to the Applicant's address.

[para 11] Under section 17(2) of the Act, a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy in certain circumstances. The Public Body submits that none of them exist here, and I agree.

[para 12] There is a presumption against disclosure of the complainant/reporter's personal information under section 17(4)(b), in that the information is an identifiable part of a law enforcement record (and disclosure is not necessary to dispose of the law enforcement matter or to continue an investigation). There is also a presumption against disclosure under section 17(4)(g), in that the complainant/reporter's name appears with other personal information about him or her, and disclosure of his or her name itself

would reveal personal information about him or her (e.g., the fact that he or she made the noise complaint).

[para 13] Even where there are presumptions against disclosure, all of the relevant circumstances must be considered under section 17(5) of the Act. The Public Body submits that none of the enumerated circumstances exist here, and that there are no other relevant circumstances in favour of disclosure.

[para 14] The Applicant makes the following submissions:

The EPS refused to give information which could reveal the identity of the complainant(s), citing s. 17.

While the information is personal, it should have been determined that there was no privacy interest or, at least, an insignificant one. Moreover, revelation would not be an unreasonable invasion of privacy.

It must be the case that no confidentiality was offered to the complainant. Nothing in the disclosed material suggests that it was. The complaint was under a bylaw that could have resulted in a charge. If there was a charge, the Applicant would have been entitled to full disclosure of the information and the complainant would have to testify at a public trial. Complainants are told when they give witness statements: "The accused may have a legal right to a copy of this report."

It is in the interests of fairness that subjects of complaints to the police be entitled to know the identity of their accuser. Anonymity can encourage malicious and/or harassing complaints.

[para 15] The Applicant made similar arguments in his request for review. There, he says that a complainant must realize that, if a charge were laid, his or her name could not be kept confidential, the information would have to be disclosed to the prosecution and the accused, and the complainant would have to testify if there were a trial. The Applicant additionally argues, in his request for an inquiry, that a complainant is not entitled to privacy unless he or she is a confidential informant.

[para 16] I first considered whether the complainant/reporter in this case supplied his or her personal information in confidence, which would be a relevant circumstance against disclosure under section 17(5)(f). While it is possible that he or she had an expectation of confidentiality when making the noise complaint, there is no indication in the paper records or in the audio recording that he or she supplied his or her personal information in confidence. Further, the Public Body does not argue that section 17(5)(f) applies here, so I presume that the employee who took the complainant/reporter's telephone call did not have the impression that the noise complaint was being made confidentially. I find that the relevant circumstance under section 17(5)(f) does not exist in this inquiry.

[para 17] While the fact that personal information was supplied in confidence weighs against its disclosure, the fact that personal information was *not* supplied in confidence does not mean that it should be disclosed. An individual may not have supplied his or her personal information in confidence, yet still be entitled to privacy in respect of that information. In other words, not supplying personal information in confidence does not equate to acquiescing in, or effectively consenting to, its disclosure.

[para 18] With respect to confidentiality, the Applicant argues here that disclosure of the personal information of the complainant/reporter would not be an unreasonable invasion of personal privacy because, if there were a charge, prosecution and/or trial as a result of the noise complaint, the Applicant would be entitled to all of the information relating to the complaint, including the identity of the complainant/reporter, in the interest of fairness. This argument deals not only with the issue of confidentiality, but also raises the possibility that disclosure of the complainant/reporter's personal information may be relevant to a fair determination of the Applicant's rights, which would weigh in favour of disclosure under section 17(5)(c).

[para 19] However, just because there may hypothetically be circumstances weighing in favour of disclosure of information relating to a complaint, at a future point in time, this does not mean that those circumstances exist from the time that the complaint is made. The possibility that the subject of a complaint "may" have a legal right to a copy of a police report is not the same as saying that a copy of the report "will" be disclosed. In this case, the records indicate that the Public Body did not proceed with any enforcement in relation to the noise complaint, as the noise had already stopped when police arrived and they therefore could not assess whether it had been unreasonable. As there were no charges, I find that the Applicant's arguments regarding a lack of confidentiality and a fair determination of his rights do not apply. These circumstances, in which disclosure of the personal information of the complainant/reporter may have been justified according to the Applicant, did not arise in this case.

[para 20] The Applicant also submits that the personal information of the complainant/reporter should be disclosed because anonymity can encourage malicious and/or harassing complaints. Again, a mere possibility of this nature is not sufficient to justify disclosure. There must be something in the facts of the given case that suggest that a complaint was malicious and/or harassing before this particular circumstance raised by the Applicant will weigh in favour of disclosure, if at all.

[para 21] Here, the records indicate that noise coming from the Applicant's home was an ongoing concern for many people in the neighbourhood, that one of the neighbours had circulated a petition regarding the noise and forwarded it for enforcement the previous year, and that the complainant/reporter's specific complaint on March 13, 2008 was due to noise being heard at approximately 9:30 in the evening. As there were recurring concerns about noise coming from the Applicant's home, those concerns were expressed by more than one person, and the complainant/reporter's specific complaint occurred at a time in the evening when the noise complained of would arguably be unreasonable, I see no malice or harassment on the part of the complainant/reporter in

this case. Likewise, the substance of the telephone conversation between the Public Body and the complainant/reporter in no way suggests that the complainant/reporter was being malicious or harassing when he or she made the call.

[para 22] No other relevant circumstances possibly weighing in favour of disclosure of the complainant/reporter's personal information have been drawn to my attention, and I see none myself. As I find that there are no circumstances weighing in favour of disclosure, only the presumptions against disclosure remain. I therefore conclude that disclosure of the personal information of the complainant/reporter would be an unreasonable invasion of his or her personal privacy.

V. ORDER

[para 23] I make this Order under section 72 of the Act.

[para 24] I find that disclosure of all of the personal information of the complainant/reporter in the records at issue would be an unreasonable invasion of his or her personal privacy under section 17 of the Act. Under section 72(2)(b), I confirm the Public Body's decision to refuse access.

Wade Riordan Raaflaub
Adjudicator