

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2014-01**

January 14, 2014

**CITY OF CAMROSE**

Case File Number F5950

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An individual made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for access to a full copy of a complaint letter regarding a business run by the Applicant. The complaint had been signed by several individuals. The Public Body provided a copy of the complaint letter to the Applicant, but severed names and contact information of the complainants under section 17 (disclosure harmful to personal privacy). The remainder of the letter was provided to the Applicant.

The Applicant requested a review of the Public Body's response, arguing that the complaint letter had affected the renewal of his business licence.

The Adjudicator determined that a small amount of the withheld information was not personal information of third parties that could be withheld under section 17 and ordered the Public Body to disclose that information.

The Adjudicator upheld the Public Body's application of section 17 to the remaining information that had been withheld.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 30, 72.

**Authorities Cited: AB:** Orders 98-007, F2013-51.

## I. BACKGROUND

[para 1] An individual made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for access to a full copy of a complaint letter regarding a business run by the Applicant. The complaint had been signed by several individuals. The Public Body provided a copy of the complaint letter to the Applicant, but severed names and contact information of complainants under section 17 (disclosure harmful to personal privacy). The remainder of the letter was provided to the Applicant.

[para 2] The Applicant requested a review from this office. The Commissioner authorized a portfolio officer to investigate and to try to settle the matter. This was not successful, so the matter was set down for a written inquiry.

## II. RECORDS AT ISSUE

[para 3] The records at issue consist of a 12-page complaint, which had been made to the Public Body about a business run by the Applicant. Information was severed from two pages, and a third page was withheld in its entirety.

## III. ISSUE

[para 4] The issue set out in the Notice of Inquiry, dated January 16, 2013, is as follows:

1. **Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information/records?**

## IV. DISCUSSION OF ISSUES

*Is the information severed from the records personal information under the FOIP Act?*

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

*1 In this 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;*

[para 6] The information severed from the pages consists of the names and contact information of several individuals who were making the complaint; this is personal information under section 1(n)(i) of the FOIP Act. The complaint letter expresses the opinions of the signatories about the Applicant's business, so identifying the names of the individuals who have signed the complaint letter would also disclose personal information described in section 1(n)(viii).

[para 7] The complaint letter is signed "The [residents] of [named area/neighbourhood]; the Public Body severed the name of the area in which the complainants live. The Public Body has not provided specific reasons for severing this information under the exception for invasion of privacy, but presumably the Public Body decided that disclosing the description would allow the Applicant to determine the identity of each of the individual complainants.

[para 8] It is not clear from the records that every resident of the named area did in fact sign the letter. The letter states that the people who signed are "representing" the community as a whole. It seems possible that the author of the letter obtained signatures from some, but not all, of the residents in the named area. I do not believe that the disclosure of the named area would permit the Applicant to identify any particular person who signed the letter; therefore the named area severed from pages one and two of the records is not information about an identifiable individual to which section 17 can be applied.

[para 9] As well, the signatures in the records appear in a chart that also contains headers (on pages two and three); those headers do not themselves reveal personal information to which section 17 can be applied.

*Was the personal information properly severed under section 17?*

[para 10] The relevant portions of section 17 state the following:

*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*

*(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*

*(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,*

...

*(g) the information is about a licence, permit or other similar discretionary benefit relating to*

*(i) a commercial or professional activity, that has been granted to the third party by a public body, or*

*(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,*

*and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,*

...

...

*(4) A 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,*

...

*(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 11] Section 17(2) enumerates situations in which it is *not* an unreasonable invasion of privacy to disclose personal information of a third party. If one of the circumstances in section 17(2) applies to the information, then the information cannot be

withheld under section 17. I will therefore first consider whether section 17(2) applies to the information.

*Section 17(2)(a)*

[para 12] Section 17(2)(a) states that it is not an unreasonable invasion of a third party's privacy to disclose personal information if the third party has consented to that disclosure. In a recent Order of this office (Order F2013-51), the Director of Adjudication considered whether there is a positive obligation on public bodies to determine whether a third party would grant consent to disclose his or her personal information. She stated:

Section 17(2)(a) does not expressly state who is to initiate the provision of consent if consent would be forthcoming. An access requestor will often not be in a position to know whose personal information is in the records or what the nature of the personal information is. Occasionally a requestor may know some of this information and may be able to obtain the consent themselves. However, circumstances undoubtedly arise in which third parties would consent if asked, but the applicant is not in a position to ask. There is no reason in principle that the rule in favour of disclosure under section 17(2)(a) should apply only in the former kinds of circumstances but not the latter; if a third party would willingly consent to disclosure, disclosure would not be an unreasonable invasion of their privacy, regardless of the way in which their position on this question can be elicited. Therefore, if section 17(2)(a) is to ground a public body's decision to release records in the latter type of circumstance, the question of whether third parties consent to disclosure will have to be asked by the public body.

This matter is closely tied with the duty of public bodies under section 30 of the Act, to give notice to third parties if it is considering disclosing their personal information. If there appears from the face of the records or other information in the possession of the public body the distinct possibility that an individual would consent to disclosure of their personal information if consulted, and the public body fails to determine whether this is so, it is failing to properly make the determination under section 30 of whether to "consider giving access", with its associated duty to notify third parties and obtain their views....

[para 13] Section 30 of the FOIP Act states in part:

*30(1) When the head of a public body is considering giving access to a record that may contain information*

...

*(b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 17,*

*the head must, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (4).*

[para 14] I agree with the adjudicator's analysis in this Order. If consent can be obtained from the third party, then the information cannot be withheld under section 17. Therefore, if there is a distinct possibility that a third party will consent to the disclosure

and the public body has not attempted to obtain the third party's views, withholding the information under section 17 might not be appropriate.

[para 15] However, the present situation differs from that in Order F2013-51. In that Order, the applicant had argued that the third parties who had provided statements for an investigation were not contacted by the public body regarding the possible disclosure of their information. The applicant had noted that one of the third parties was her husband, who would have provided his consent to disclose his personal information (see paragraph 142 of Order F2013-51).

[para 16] Unlike the circumstances of that case, I have no reason to believe, based on the records themselves or the submissions from the parties, that any of the third parties who had signed the complaint letter might have consented to the disclosure of their personal information to the Applicant. Although the complaint was made more than two years ago, and there is no evidence that the individuals who signed the complaint had an expectation that their names would be confidential (I discuss this further below), it seems to me that an individual making a complaint will usually be disinclined to consent to the disclosure of his or her name to the subject of the complaint. (The circumstances may be different if a complainant has already directly addressed the issue with the person complained against, but there is no evidence that this happened in the present case.)

[para 17] Further, in Order F2013-51, some of the information withheld under section 17 was not clearly information about an identifiable individual. The Director of Adjudication stated:

I note further that it may not have been possible for the person who performed the severing in this case to determine whether or not the interview notes would identify the person being interviewed if the name were severed. Indeed the only way it may have been possible to try to determine this would have been to ask the maker of the statements, and/or the person who made the notes. Conversely, some of the items of information, such as individuals' telephone numbers and an email address, are clearly their personal information. (Though the names might be severable, the Applicant could presumably try to discover whose phone numbers or email addresses they are by calling the numbers.)

Given this lack of clarity, I cannot determine whether much of the information that was withheld in part on the basis of section 17 was the personal information of an identifiable individual.

In the present case, there is no doubt that the names and contact information of the individuals are their personal information; in other words, there would not have been a reason for the Public Body to consult with the third parties in order to determine whether this information could identify them.

[para 18] For these reasons, I believe it is not necessary to order the Public Body to provide notice to the third parties under section 30 and obtain their views regarding the disclosure of their information. That said, while it may not be necessary in every instance to provide notice under section 30 and seek the views of third parties whose information

may be withheld under section 17, doing so (where practicable) would assist a public body to determine and consider all relevant factors under section 17 and may result in consent from the third party to disclose the information. It would also help a public body justify its reasons for withholding the information, if it decided to do so. In the present case, seeking views from the individuals who signed the complaint letter might have resulted in better evidence about the expectations of the third parties regarding the confidentiality of the complaint letter (discussed further below).

*Section 17(2)(b)*

[para 19] The Applicant argues that section 17(2)(b) (circumstances affecting health or safety) applies to the severed information in the records. He states:

One of my neighbors is a financial advisor whose portfolio includes my mutual funds. I've always been a supporter of my own local community and businesses. Yet now, under these circumstances, how do I know that my funds are safe? If he wanted the City of Camrose to shut my business down, I see a clear conflict of interest in him having my mutual funds under his control. Furthermore, according to the *Charter of Rights and Freedoms*, in section 7, I have "*the right to life, liberty and security of the person and the right not to be deprived of thereof except in accordance with the principles of fundamental justice.*" Surely my livelihood and economic security should not be in such a vulnerable position so as to be negatively affected by someone whom I need to trust.

[para 20] The Applicant further argues that the risk of losing his business licence would also have affected his well-being.

[para 21] To meet the requirements of section 17(2)(b), an applicant must (a) provide sufficient evidence of compelling circumstances affecting someone's health or safety, and (b) show that it is likely that the release of the particular information will have a direct bearing on the compelling health or safety matter (Order 98-007 at para. 47).

[para 22] With respect to the Applicant's arguments regarding the possibility that his financial planner signed the complaint letter, this possibility does not meet the test for section 17(2)(b). Although an individual's finances may have a bearing on his or her well-being, there is, in my view too indirect and remote a connection between the information the Applicant seeks (which would presumably tell him whether his financial advisor had signed the complaint), and his health and safety, for this provision to have any application. Even if he were to discover the financial planner had signed the complaint letter, it would be merely speculative to suggest this would have any relationship to the manner in which the financial planner had performed his duties to the Applicant with respect to the Applicant's investments, such that withdrawing his portfolio would improve his financial situation (and arguably thereby benefit his health and safety in the broad sense of these terms).

[para 23] As for the potential loss of his business licence, the Applicant states that in December 2011 he met with an employee of the Public Body regarding the renewal of his

business licence; it was at this time that the complaint letter was brought up by the Public Body to the Applicant. The Applicant also states:

Furthermore, the possible outcome that my business licence *could have been revoked* (as per the authors of the complaint letter had requested) most certainly would have affected my well-being in that the results would have been catastrophic... (my emphasis)

It seems that the Applicant's business licence was not in fact revoked as a result of the complaint letter. I do not know whether the renewal of the Applicant's business licence remains an ongoing concern and if so, whether the complaint letter from 2011 remains relevant. In other words, the Applicant has not provided me with sufficient evidence to find that the disclosure of the names in the complaint letter could have an effect on his ability to maintain his business licence because I do not know that the renewal of that licence remains an issue such that the complaint letter remains relevant.

*Section 17(2)(g)*

[para 24] The Applicant argues that the disclosure of the personal information in the records would not be an unreasonable invasion of privacy under section 17(2)(g) (the information is about a licence, permit or other similar discretionary benefit). In this regard, he states that because of the complaint letter sent to the Public Body,

the reissuing of my [business] license has been in question... Therefore, I believe that it is not unreasonable for my request of disclosure of all information, including the names of the individuals who made the complaint to the City, which not only affected my business license but my potential financial situation as an honest man trying to make an honest living.

[para 25] Although the Applicant's business is the subject of the complaint letter, the personal information withheld from the complaint letter is not related to the Applicant's (or any) business licence. The facts and opinions expressed in the complaint letter are about the Applicant's business. However, the names and contact information of the individuals who signed the letter are not information about the business licence. Therefore section 17(2)(g) does not apply to the information.

*Sections 17(4) and 17(5)*

[para 26] The Public Body argues that section 17(4)(g) (name with other personal information) and 17(5)(f) (personal information supplied in confidence) are factors weighing against disclosure of the information. I agree that section 17(4)(g) clearly applies to the information as it consists of names and contact information of individuals, and also reflects their opinions about the Applicant's business.

[para 27] The Public Body has not provided any support for its claim that the personal information in the complaint letter was provided in confidence (section 17(5)(f)). Further, there is no indication on the letter itself that the individuals who signed the letter intended

that their names and contact information would remain confidential. While those individuals *may* have intended that their information remain confidential, I have no reason to conclude that they did. Therefore I find that section 17(5)(f) is not relevant to the disclosure of the withheld personal information.

[para 28] As the Applicant's arguments speak to the effect of the complaint letter on his ability to renew his business licence, I have considered whether the personal information is relevant to a fair determination of the Applicant's rights. I conclude that it is not. While the renewal of the Applicant's business licence may have been in question (or may still be in question), the issues brought forward in the complaint letter about the Applicant's business have been disclosed to the Applicant. The information in the complaint is information that can be disputed or verified without having to speak to or question the individuals who have signed the complaint (for example, information about the state of the Applicant's yard). As stated above, I do not know whether the complaint letter remains relevant regarding the Applicant's business licence. Further, I do not have any reason for concluding that the identity of the individuals who signed the letter is required for the Applicant to make his case for a business licence renewal, even if the complaint letter has raised concerns about that renewal. Therefore I find that section 17(5)(c) (personal information relevant to a fair determination of the applicant's rights) is not relevant to the disclosure of the withheld personal information.

[para 29] No other relevant circumstances weighing in favour of or against disclosing the withheld information has been argued by the parties, and based on the submissions and records, I do not see any other circumstances that apply.

## **V. ORDER**

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

[para 31] I find that the Public Body did not properly apply section 17 to the information severed on page one of the records, the first severed item on page two of the records and the headers in the charts on pages two and three (per paragraphs 8 and 9). I order the Public Body to disclose this information.

[para 32] I find that the disclosure of the names and contact information of the individuals on pages two and three of the records would be an unreasonable invasion of privacy. Under section 72(2)(b), I confirm the Public Body's decision to refuse access to that information.

[para 33] 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.

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Amanda Swanek  
Adjudicator