

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2014-16

April 4, 2014

EDMONTON POLICE SERVICE

Case File Number F6042

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to the Edmonton Police Service (the “EPS”) under the *Freedom of Information and Protection of Privacy Act* for copies of records relating to an incident that occurred in Edmonton in 1983. The EPS denied the Applicant’s request in reliance on section 17 of the Act.

The Adjudicator found that section 17 of the Act applied to most of the responsive information the Public Body had not released, as its disclosure would be an unreasonable invasion of the personal privacy of third parties. She confirmed the Public Body’s decision to refuse the Applicant access to this information and to sever it from the records. She also found that section 17 did not apply to the remaining responsive information, and directed the EPS to disclose it to the Applicant after severing.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*; R.S.A. 2000, c. F-25, sections 1(h), 1(h)(i), 1(h)(ii), 1(n), 12(2), 12(2)(b), 17, 17(1), 17(2), 17(2)(e), 17(3), 17(4), 17(4)(b), 17(4)(g), 17(4)(g)(i), 17(4)(g)(ii), 17(5), 17(5)(a), 17(5)(b), 17(5)(c), 17(5)(e), 17(5)(h), 32, 32(1)(b), 71(1), 71(2), 72.

Orders cited: AB: 97-011, 97-002, F2004-015, F2004-028, F2006-030, F2007-003, F2008-020, F2009-040, F2012-26, F2014-02.

Court Cases Cited: *Dunsmuir v. New Brunswick*, 2008 1SCR 190; *University of Alberta v. Pylypiuk*, 2002 ABQB 22; *Edmonton Police Service v. Alberta Information and Privacy Commissioner*, 2009 ABQB 593.

Authorities Cited: Service Alberta, *FOIP Guidelines and Practices Manual* (2009).

I. BACKGROUND

[para 1] On September 1, 2011, the Criminal Trial Lawyers' Association (the "Applicant" or "CTLA") made an access request to the Edmonton Police Service ("EPS" or the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act" or "FOIP Act"). The request sought all records relating to a police investigation of an incident that occurred in Edmonton in 1983 including the "C-1 Report and any records created by the office of the Chief of Police".

[para 2] The chair of the CTLA, acting in his personal capacity, had made earlier access requests relating to this incident. In response to his request of April 10, 2006, the EPS refused to confirm or deny the existence of records. After an inquiry was held and Order F2007-003 was issued (on January 15, 2008), the EPS responded in February 2008. It confirmed the existence of records but refused access to the records, relying on section 17 of the Act.

[para 3] By letter dated October 24, 2011, the EPS responded to the Applicant's September 2011 request, indicating that after again considering representations received from the third parties whose interests could be affected by the disclosure of the records, it was refusing access to the records in their entirety, relying on parts of section 17 of the Act (disclosure harmful to personal privacy).

[para 4] On December 28, 2011, the Applicant wrote to the Information and Privacy Commissioner (the "Commissioner") enclosing the EPS' response to its access request and requesting a review of this response. The Applicant attached to its request material submitted by its chair in his earlier access requests.

[para 5] The Commissioner assigned one of her officers to investigate and try to assist the parties to settle the matter. Mediation failed. On July 18, 2012 the Applicant requested an Inquiry. The Applicant asserted the EPS had not properly applied section 17 of the Act, and had not considered section 32.

[para 6] On July 9, 2013 the Commissioner issued a Notice of Inquiry. A written inquiry was set down.

[para 7] Both parties made initial and rebuttal submissions. As well, the EPS made an *in-camera* submission that was not disclosed to the Applicant. In its submissions the Applicant confirmed it sought to know only "how the ...EPS handled the [incident]". It said that "unless identifying information of non-police officers is integral to understanding how the EPS handled this [incident], any civilian's identifying information may be redacted".

II. RECORDS AT ISSUE

[para 8] The records at issue consist of a two-page General Occurrence (R1) report (the “Report”), as filled in by the one of the EPS investigators, and approved by another EPS member.

III. ISSUES

[para 9] The Notice of Inquiry dated July 9, 2013 sets out the following issue:

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

I have added section 32 as an issue.

IV. DISCUSSION OF ISSUES

Does section 17 of the Act (disclosure harmful to personal privacy) apply to the records/information at issue?

[para 10] The relevant parts of section 17 read 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

...

(e) the information is about the third party’s classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

...

(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

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
- (b) the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) the personal information is relevant to a fair determination of the applicant's rights,*
- ...
- (e) the third party will be exposed unfairly to financial or other harm,*
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,*

[para 11] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 12] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application) applies. Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 13] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said (at paras 43 and 43):

In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the

Commissioner, the relevant circumstances listed in s. 16(5) [now 17(5)] and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4).

In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s. 16(4) is [*sic*] met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

[para 14] Section 17(1) requires a public body to withhold information only once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and, having engaged in this process, the head concludes that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

1. *Is deference owed to the Public Body?*

[para 15] The EPS submits the head considered all the relevant circumstances, and that its decision not to disclose the Report deserves deference, and should be reviewed on a standard of reasonableness. It relies on *Dunsmuir v. New Brunswick*, 2008 1SCR 190, a case reviewing the decision of a quasi-judicial adjudicative tribunal, at paragraphs 47 and 48.

Reasonableness is a deferential standard ... A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. ...

... deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law. ... "deference as respect" requires of the courts "not submission but a respectful attention to the reasons offered or which could be offered in support of a decision" ...

[para 16] I do not, for the most part, disagree with the EPS' decision to withhold the information in the responsive records. However, the idea that the Public Body's decision is owed deference by the Commissioner is answered by Justice Gallant in *University of Alberta v. Pylypiuk* (cited above). Responding to a submission by the University that only the head of a public body may consider the factors under s. 16(5) [now 17(5)], and that the Commissioner could not depart from the University's conclusions, the court said (at para 40):

In response to the University's first assertion, s. 16 makes reference to the head of the public body making a determination at the initial stage of the process. The Commissioner's role under the Act is to conduct independent reviews of decisions made by public bodies and to resolve complaints under the Act. He is given the authority to conduct a review of decisions made by heads of bodies under Part 4. Under s. 66 he must conduct an inquiry if a matter is not resolved, and in that inquiry he may decide *all questions of fact and law*. Under s. 68 he may order the head of a public body to give the applicant access to all or part of a record *if the Commissioner determines* that the head of the public body is not authorized or required to refuse access. He may either confirm or require the head of the public body to reconsider its decision *if the Commissioner determines* that the head is authorized to refuse access. He may require the head

of the public body to refuse access to all or part of a record *if the Commissioner determines* that the head of the public body is required to refuse access. It is clear from the language of the Act that the Commissioner has the authority to determine whether access is to be granted to a record. The Commissioner is not bound by the head of a public body's conclusion under s.16(5). That would defeat the purpose of an independent review. [my emphasis]

[para 17] Based on the forgoing, I conclude the Commissioner, while she may wish to explain why she disagrees with the decision of a public body, does not owe deference to the head who makes a decision under section 17. Rather, she, and I as her delegate, are free to reconsider the factors and reach a new and independent decision.

[para 18] I will now deal with the application of section 17 to this case.

2. *Is information in the Report "personal information"?*

[para 19] Section 1(n) of the Act defines personal information as follows:

I 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 20] The Report contains the personal information of third parties, as defined above. It contains information about their names, addresses, race, dates of birth, sex, a licence number, information about health and physical disability, information about criminal history or involvement in policing matters, and facts and events involving these third parties. This is personal information under the Act.

[para 21] Pre-printed headings and categories of information in the Report are not personal information.

[para 22] The name and rank of the EPS investigating officer who prepared the Report is personal information, as is the similar information of the EPS member who approved it. However, section 17 does not apply to personal information that reveals only that the officers were acting in their employment capacity, unless that information also has a personal dimension (Order F2014-02, para 31 and Order F2009-040, para 60). In this case I find it is not an unreasonable invasion of the personal privacy of the police officers to disclose their names and rank in the context of records documenting their activities in their employment capacities. I say this in spite of the fact the Applicant's allegation possibly suggests some irregularity in the timing of the Report, such as might make the information their personal information (though this is not clear). Even if that is so, the names of the investigating officers are known to the Applicant. Any such suggestion is in relation to their actions only, and does not mention the EPS member who approved the Report.

[para 23] The Report also records the activities and views of the officers while engaged in the police business of conducting an investigation. I find this is not personal information. (Order F2008-020, at para 27).

3. The factors under section 17

[para 24] Under section 71(1) of the Act, the Public Body has the burden of proving the applicant has no right of access to the information it withheld. In the context of section 17, the Public Body must establish the 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. That said, section 71(2) specifies that if a record contains personal information about a third party, it is up to the Applicant to prove disclosure would not be an unreasonable invasion of the third party's personal privacy.

[para 25] Section 17(2) addresses situations where disclosure of a third party's personal information is *not* an unreasonable invasion of personal privacy.

(a) Employment responsibilities, section 17(2)(e)

[para 26] In its letter to the EPS of February 19, 2008 that the Applicant attached to its request to this office, the Applicant argued that this section applies. The Applicant suggested the section covers the conduct of one of the third parties while engaged in employment responsibilities.

[para 27] I do not accept this submission. The section speaks to a description of employment responsibilities and what duties are required in the discharge of those responsibilities. This provision does not require disclosure of information describing how employment responsibilities were carried out (Order 97- 002, para 52). I find section 17(2)(e) does not apply.

(b) Presumptions and relevant circumstances, section 17(4)

[para 28] Section 17(4) addresses situations where disclosure of a third party's personal information is *presumed* to be an unreasonable invasion of personal privacy

(i) Law enforcement record, section 17(4)(b)

[para 29] The EPS relies on section 17(4)(b) of the Act, and refers me to section 1(h), which defines "law enforcement" as follows:

1(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred ...

[para 30] The EPS submits that because the information is an identifiable part of a law enforcement record, a presumption of an unreasonable invasion of personal privacy would arise if the personal information in the Report were disclosed.

[para 31] I find the police investigation constitutes law enforcement under section 1(h)(i) and (ii). The Report flows from a police investigation into circumstances in which, depending on what was discovered, criminal sanctions might have ensued. It is a law enforcement record. While section 17(4)(b) does not apply where "disclosure is necessary to dispose of the law enforcement matter or to continue an investigation", neither of these exceptions is applicable, as there was no ongoing investigation and no charges were forthcoming. Hence the presumption arises and disclosure of the personal information in the Report is presumed to be an unreasonable invasion of personal privacy pursuant to section 17(4)(b) of the Act

(ii) Name and other personal information, section 17(4)(g)

[para 32] The EPS submits a presumption of an unreasonable invasion of personal privacy arises if the personal information consists of a third party's name when it appears with other personal information about a third party and the disclosure of the name itself reveals personal information about the third party. The Report contains third party names. Those two third parties provided information in the course of this police investigation. I find the presumption arises and disclosure of the personal information in the Report is presumed to be an unreasonable invasion of personal privacy pursuant to section 17(4)(g)(i) and (ii).

(c) *Relevant circumstances under section 17(5)*

[para 33] Even where presumptions against disclosure arise under section 17(4) of the Act, when determining whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, section 17(5) requires the public body to consider all the relevant circumstances.

(i) *desirability of public scrutiny, section 17(5)(a)*

[para 34] The Applicant raises the application of section 17(5)(a) as a factor weighing in favour of disclosure of the personal information of third parties in this case. For desirability of public scrutiny to be a relevant circumstance, there must be evidence the activities of the public body have been called into question, and that this necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny. (See Order 97-002, para 94; Order F2004-015, para 88.)

[para 35] In determining whether public scrutiny is desirable, I may consider factors such as:

1. whether more than one person has suggested public scrutiny is necessary;
2. whether the applicant's concerns are about the actions of more than one person within the public body; and
3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.

(Order 97-002, paras 94 and 95; Order F2004-015, para 88).

[para 36] It is not necessary to meet all three of the foregoing criteria in order to establish there is a need for public scrutiny. (See *University of Alberta v. Pylypiuk* (cited above) at para 49.) For example, in Order F2006-030, former Commissioner Work said (at para 23) that the first of these factor "is less significant where the activity that has been called into question, though arising from a specific event and known only to those immediately involved, is such that it would be of concern to a broader community had its attention been brought to the matter", commenting that "[i]f an allegation of impropriety that has a credible basis were to be made in this case, this reasoning would apply".

[para 37] In this case, the Applicant submits that the matter being investigated involved the commission of a crime, a fact which the Applicant says was conveyed to it by a confidential source. It further submits the EPS engaged in a cover-up and this cover-up was orchestrated by the then-Chief of the EPS. The Applicant provides newspaper articles relating to the incident and asserts that there were false statements in the newspaper reports, and that the media was misled.

[para 38] The Applicant also provides statements made by individuals that are contained in documents (a statement of claim and a statement of defence) filed in court proceedings. Some of these statements are made by another EPS member, and are to the effect that the same Chief of EPS discontinued an investigation into substantiated allegations of criminal behaviour against

police officers, in an unrelated matter. For these reasons, the Applicant takes the position the matter warrants public scrutiny.

[para 39] I accept that the proper functioning of a police department can be a matter calling for scrutiny where there is credible evidence calling it into question.

[para 40] With respect to the “confidential source”, it was open to the Applicant (as I believe it is aware given its familiarity with this office’s procedures) to provide more detailed *in camera* evidence about this question, including, if it were available, an *in camera* affidavit from the source of this information, indicating what he or she knows and how they know it, or at a minimum some further explanation or description of verifiable events that would make the allegation believable. I cannot take into account assertions and speculations that are not based on concrete evidence.

[para 41] I have also reviewed the materials relating to the other alleged ‘cover-up’ by the then-police Chief. I am unaware of any factual determinations made relative to those proceedings. These materials are not, in my view, sufficiently conclusive or determinative that such an alleged ‘cover-up’ took place to permit me to reach any conclusions with respect to the similar allegations relating to the case at hand.

[para 42] In *Edmonton Police Service v. Alberta Information and Privacy Commissioner* 2009 ABQB 593, Justice Nielsen made the following observations (at para 38):

Section 69 of *FOIPP* provides that the person making the Request for a Review and any person given a copy of that Request for Review has a right to make representations to the Commissioner during the Inquiry and that the Commissioner may decide whether the representations are to be made orally or in writing. ... Further the formal rules of evidence do not apply to an Inquiry pursuant to *FOIPP: Order F2002-016 The City of Calgary*. Therefore, the Commissioner is entitled to consider all of the submissions before him and to give the weight to same which he deems appropriate.

As the Commissioner’s delegate, I may consider all the submissions before me and give the weight to them I deem appropriate.

[para 43] In this case I choose to give minimal weight to the assertion made by the Applicant that a crime was committed and a cover-up occurred. It is speculative and lacks foundational evidence. No persuasive evidence is offered to suggest the police investigation was not handled appropriately in 1983, or that the police provided false information to the media. Furthermore, I have reviewed the investigation Report in light of the Applicant’s allegations. As well, I have considered its timing relative to the incident to the extent this can be determined (the dates of the Report, incident and approval are all the same), which was another point that would possibly have some relevance to what the Applicant is alleging. None of this information in the Report serves to support the speculative allegation that a crime was covered up.

[para 44] Similarly, I cannot draw anything conclusive from the extracts of documents filed in legal proceedings.

[para 45] In view of these considerations, I do not accept that the Applicant has shown that disclosure of the personal information in the records is necessary to permit public scrutiny of the related events and police actions.

(ii) *public health or safety, section 17(5)(b)*

[para 46] The Applicant submits disclosure is likely to promote public health and safety, pointing to an *Edmonton Journal* article from November, 1983. As the article makes reference to a topic which in some circumstances could have public health or safety implications, I presume the Applicant is suggesting personal information in the Report should be disclosed that assists in public understanding of health or safety issues.

[para 47] Section 17(5)(b) focuses on the public at large: with respect to health, the test is whether the health of the public would be maintained or improved by the disclosure of particular personal information; with respect to safety, the test is whether disclosure of personal information would reduce the community's exposure to a particular risk or danger. (See *FOIP Guidelines and Practices*, 2009, pages 130 and 131.) If there were personal information in the Report that meets these tests, that fact would weigh in favor of disclosure. I have reviewed the investigation Report and find it contains no personal information that meets these two tests.

(iii) *information relevant to determination of rights, section 17(5)(c)*

[para 48] The EPS submits the disclosure of information in the Report is not relevant to the determination of the Applicant's rights. In Order F2012-26, the Adjudicator said (at para 61):

In order for section 17(5)(c) to be a relevant consideration, all four of the following criteria must be fulfilled: (a) the right in question is a legal right drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; (b) the right is related to a proceeding that is either existing or contemplated, not one that has already been completed; (c) the personal information to which the applicant is seeking access has some bearing on or is significant to the determination of the right in question; and (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

The Applicant identifies no ongoing proceeding to which the information would be relevant. Nor has it established the Applicant's rights will be decided in any such proceeding. I accept EPS' position. Section 17(5)(c) is not a factor weighing in favour of disclosure.

(iv) *unfair harm and damage to reputation, section 17(5)(e) and (h)*

[para 49] The EPS submits disclosure of personal information of the two third parties would cause them unfair harm and unfair damage to reputation.

[para 50] The Report contains sensitive personal information pertaining to the two third parties.

[para 51] No charges flowed from this police investigation. Hence the personal information "exists in the context of an investigation rather than a formal proceeding [where the third parties

would] have the opportunity to explain [their] conduct”. (See Order F2008-020, para 70.) Given the nature of the personal information, I find its disclosure would expose the two third parties unfairly to harm and would unfairly damage their reputations. This weighs against disclosure.

(v) *refusals to consent to disclosure*

[para 52] In 2008 the EPS notified the two third parties of the Applicant’s request for access to records relating to the 1983 incident. Their response is described in the EPS disclosure analyst’s affidavit sworn September 18, 2013, as follows:

“...at that time neither individual consented to disclosure of their personal information. I do not have any reason to believe that these individuals would have changed their views on release of their personal information.”

[para 53] The individuals’ refusals to consent to the release of their personal information are a relevant circumstance under section 17(5), and weigh against its disclosure (See Order 97-01, para 50; Order F2004-028, para 32.)

(vi) *public facts*

[para 54] The fact the two third parties were in Edmonton and that the police were involved in an investigation relative to them was made public in November 1983. The press reports described some of the information in the investigation Report, and the incident received broad public attention.

[para 55] In Order F2007-003, in the context of determining whether the EPS properly refused to confirm or deny the existence of a record of the incident under section 12(2) of the Act, I addressed whether the fact information has been placed in the public domain was a relevant circumstance to be considered under section 17(5). I ordered the EPS to respond to the Applicant’s request without relying on section 12(2)(b) of the Act, in part because at least some information that would be revealed by disclosing any records that existed would already be in the public domain.

[para 56] The EPS produced the Report for my review in this inquiry. In that Report there is additional personal information beyond that made public in 1983. However, the fact that *some of* the personal information has come into the public domain is a relevant circumstance weighing in favour of disclosure of as much of the information in the Report as was formerly made public. (However, as will be seen in the concluding section below, this is not a determinative factor for disclosing that information in this case.)

(vii) *timing of application for access, and date of the events*

[para 57] The incident occurred in 1983. The Act came into force in 1996. The Applicant’s first access request, made by its counsel in his personal capacity, was dated April 10, 2006. I believe the 10 year delay in bringing the access request, and the passage of time since the incident, are relevant circumstances within the terms of section 17(5) of the Act.

[para 58] More than 30 years have now passed since the incident and its attendant public attention. Even if it were true to say, as the Applicant urges, that what the Report contains was “highly relevant in the public interest” in 1983 (and I have found that I have no basis for concluding this), it is in 2014 merely an obscure footnote in Alberta history. Even if the Applicant could use the contents of the Report to try to show the EPS engaged in questionable conduct 30 years ago, whatever police practices or aspects of police culture prevalent then may have far less relevance, or no relevance, today. (I acknowledge the Applicant points out that the former police Chief whose activities he questions is still involved in policing, but he is only a single individual, and is no longer a member of the EPS.)

[para 59] There is no present public interest and no present need for public scrutiny that makes disclosure of personal information in the Report necessary now. Put another way, the date of the event leads now to a greater expectation of personal privacy. Unless there is convincing evidence to wake this proverbial sleeping dog, and I have been shown none, this is surely a situation in which to let it lie.

Conclusion under section 17

[para 60] After weighing all the applicable presumptions and the relevant circumstances, as well as reviewing the contents of the Report, I find the disclosure of third parties’ personal information (other than that of EPS members) contained in the Report, would be an unreasonable invasion of their personal privacy. (A small amount of the personal information entered into the main body of the Report is not personal, but providing it after severing the bulk of it would be meaningless, and it need not be disclosed for this reason. The final line of the Report is, in my view, primarily about the actions of the police rather than about the other third parties, so should be disclosed.)

Does section 32 of the Act (public interest override) apply to the records/information?

[para 61] Section 32 of the Act reads, in part, as follows:

32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant ...

(b) information the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

[para 62] The Applicant asserts that it “monitors matters concerning the integrity of the criminal justice system in Alberta. ... This, of course, includes the police.” It submits section 32(1)(b) applies and information in the Report must be disclosed, as there is a clear public interest in knowing if a crime occurred and the EPS engaged in a cover-up orchestrated by the Chief of Police.

[para 63] Section 32(1)(b) was addressed in Order F2009-040 at paragraph 92:

However, for section 32(1)(b), to apply , there must be circumstances *compelling* disclosure, or disclosure *clearly* in the public interest, as opposed to a matter that may be of interest to the public (Order F2004-024, at para 57). [emphasis in original]

[para 64] I repeat the comments I made earlier. Other than unsubstantiated allegations, the Applicant has provided no evidence that there was a crime, or that it was covered up. Nothing I see on reviewing the Report suggests this.

[para 65] I am not persuaded any of the personal information in the Report should be disclosed on the basis there is a clear and compelling public interest (as distinguished from the Applicant's particular interest) in its disclosure. This is especially so given the significant amount of information disclosed in the media reports in November 1983. That disclosure at that time was adequate to address any public interest considerations. I find section 32 does not apply.

V. ORDER

[para 66] I make this order under section 72 of the Act.

[para 67] I require that the EPS disclose to the Applicant all the pre-printed information in the Report form and Continuation Form.

[para 68] I require the EPS to withhold from the Applicant the following:

- on page 1 of the Report, all information entered into the fields (boxes) for the purpose of documenting the investigation, except the case file number at the top right of the page, the regimental numbers in the field "Investigators", the initials and entry in the "Surname" fields, the entry in the "Additional Reports" field, the information in the "Signature of Investigator" field near the bottom of the page, the handwritten information in the "Approved By" field, and the information entered in the "Member I/C Case" field;
- on page 2 of the Report (Continuation Form), all information entered into the fields for the purpose of documenting the investigation, except the information entered in the "Page No.", "Occur. No.", and "Division" fields, and the final line in the body of the Report.

[para 69] I require the EPS to disclose the remaining information itemized in the two bullets above.

[para 70] I order the EPS to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Christina Gauk, Ph.D.
Director of Adjudication