

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2014-48

November 13, 2014

ALBERTA TREASURY BOARD AND FINANCE

Case File Number F6929

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Summary: An Applicant made an access request to Alberta Treasury Board and Finance (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for access to “all records related to accidents and or damage to vehicles owned by the Government of Alberta which were assigned to Ministers, Deputy Ministers and Assistant Deputy Ministers” within a 5-year timeframe.

In response, the Public Body created a summary of all accidents and/or damage, including the name of the individual driving the vehicle at the time of the incident, the actual or estimated dollar amount of related costs, and a summary of the incident. The Public Body provided the Applicant partial access to the records, withholding some information (the names of the drivers) under section 17 of the Act. The Public Body later consulted with the individuals named in the records, and released all the names of the drivers except the name of one individual who did not consent to having his or her name disclosed.

The Applicant requested a review of the decision to withhold the name of one individual, arguing that disclosure of the information would not be an unreasonable invasion of privacy under section 17(1) of the Act.

The Adjudicator found that section 17 applied to the information in the records and required the Public Body to withhold that information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 71, 72.

Orders Cited: AB: Orders 97-002, F2003-002, F2004-015, F2008-014, F2008-028, F2008-031, F2009-046, F2014-16.

I. BACKGROUND

[para 1] An Applicant made an access request to Alberta Treasury Board and Finance (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for access to “all records related to accidents and or damage to vehicles owned by the Government of Alberta which were assigned to Ministers, Deputy Ministers and Assistant Deputy Ministers” for the timeframe of January 1, 2008 to January 10, 2013. The request was dated January 10, 2013.

[para 2] After consulting with the Applicant, the Public Body created a summary of all accidents and/or damage, including the name of the individual driving the vehicle at the time of the incident, the actual or estimated dollar amount of related costs, and a summary of the incident.

[para 3] By letter dated February 27, 2013, the Public Body provided the Applicant with partial access to the records, withholding some information (the names of the drivers) under section 17 of the Act. The Public Body later consulted with the individuals named in the records, and released all the names of the drivers except the name of one individual who did not consent to having his or her name disclosed.

[para 4] The Applicant requested a review of the Public Body’s decision to apply section 17 to one name in the records, arguing that the information consists of “the names of public employees using public assets” and the disclosure would not be an unreasonable invasion of privacy. 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. The individual whose name was withheld in the records at issue participated in the inquiry as an affected party.

II. RECORDS AT ISSUE

[para 5] The records at issue consist of the summary of incidents created by the Public Body, with one name withheld. The records list the date of the incident, the occurrence code, the driver name, a short description of the incident, the costs associated with the loss, the “expense” cost (which may possibly include additional costs for repair, such as renting a car while the repairs are undertaken) and the total cost. The names of the drivers have been disclosed except the name of one driver, occurring twice in the records; this name remains at issue.

III. ISSUES

[para 6] The Notice of Inquiry, dated May 30, 2014, sets out the following issue:

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

IV. DISCUSSION OF ISSUES

[para 7] 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

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

...

(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,

...

(h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body,

...

(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,

...

- (e) *the third party will be exposed unfairly to financial or other harm,*
- (f) *the personal information has been supplied in confidence,*
- (g) *the personal information is likely to be inaccurate or unreliable,*
- (h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*

...

[para 8] The Public Body's submissions regarding its application of section 17 is not entirely clear. At one point it states:

In the September 12 letter [from the Public Body] to the affected parties [the individuals named in the records], the [Public Body] advised that releasing the complete records to the applicant, including all names as they appeared in the record, would reveal the financial benefit received in having the assigned vehicles repaired at no cost to the affected parties (in accordance with section 17(2)(e) and (h) of the FOIP Act) and is necessary to subject the workings of government to public scrutiny (in accordance with section 17(5)(a) of the Act).

[para 9] However, the Public Body also states that the “[d]isclosure of the names of the various drivers in connection with the disclosed circumstances or incidents of loss or damage, was arguably an unreasonable invasion of privacy for various reasons...” The Public Body lists the following as reasons for this conclusion:

- information communicated by an individual to their insurer (in this case, the Risk Management and Insurance (RMI) branch of the Public Body) is generally done in confidence (section 17(5)(f) – personal information supplied in confidence);
- the drivers did not see the RMI incident report to confirm its accuracy prior to disclosure to the Applicant (section 17(5)(g) – information is likely to be inaccurate or unreliable);
- disclosure might expose the driver to public ridicule or embarrassment, could reveal law enforcement information or result in other harms based on their role in the reported incident (section 17(5)(e) – individual will be exposed unfairly to financial or other harm and section 17(5)(h) – disclosure may unfairly damage reputation).

[para 10] The Public Body lastly stated:

As stated in the September 12, 2013 letter to all affected parties, [the Public Body] reconsidered and decided to release the requested information dependent on whether or not an affected party objects and asks the OIPC to review. The public body will rely on the Commissioner's Order in this matter.

[para 11] I conclude from the Public Body's submission that its position *was* that the disclosure of the information at issue is *not* an unreasonable invasion of privacy because the information falls within sections 17(2)(e) (information about a discretionary benefit of a public body employee or member of Executive Council) and (h) (information revealing a discretionary benefit of a financial nature); if section 17(2) applies, information cannot be withheld under section 17.

[para 12] However, the Public Body has now chosen to rely on consent from the third parties (in which case information cannot be withheld under section 17 by virtue of section 17(2)(a)) or, for the case in which consent was not provided, a determination by this Office. The Public Body offers possible reasons why the disclosure of the information may be an unreasonable invasion of privacy (although none of the factors cited by the Public Body would apply if the Public Body is correct that the information falls within section 17(2)).

[para 13] The Affected Party makes the following arguments in support of their position that disclosing his or her name in the records would be an unreasonable invasion of privacy:

- the Affected Party has requested that their name not be disclosed, pursuant to section 17(3) of the FOIP Act;
- the records are inaccurate as the occurrence code for one of the incidents to which the Affected Party's name is attached was incorrectly coded as "hit and run." The disclosure of the Affected Party's name with this incorrect information could unfairly expose him or her to financial or other harm because the inaccurate information "is an unreliable description of an event where the Affected Party could suffer legal consequences. Should the described incident in the record become litigious, disclosure of the inaccurate records will prejudice the Affected Party's right to a fair hearing. Disclosure of the Affected Party's name will also expose the Affected Party and the author to civil liability as a result of the inaccurate information";
- None of the factors in section 17(2) apply to the information. The Affected Party did not receive a financial benefit (section 17(2)(h));
- Disclosing the name of the Affected Party would not add anything meaningful to the information already provided to the Applicant.

[para 14] The Applicant has argued that the information at issue consists of information about the use of public assets by public body employees and therefore its disclosure would not be an unreasonable invasion of privacy.

Analysis of the application of section 17 to the name in the records

[para 15] Work-related information is normally not personal information, and its disclosure is therefore normally not an unreasonable invasion of personal privacy (Order F2008-028 at para. 53; Order F2008-031 at para. 129). However, although the drivers have access to the vehicles by virtue of their employment with the Government of Alberta (GOA), their use of the vehicles is not necessarily work-related. As the list encompasses only Ministers, Deputy Ministers, and Assistant Deputy Ministers, it seems unlikely (and none of the parties have argued) that driving the vehicles is part of the job duties of these individuals. (Indeed, the records show that in some cases, it was not a Minister or GOA employee, but a family member of that Minister or employee, who was driving the vehicle at the time of the incident).

Section 17(2)(a) – consent of the third party

[para 16] Section 17 does not apply to information if the subject of the information consents to its disclosure. The Public Body's submissions indicate that it obtained consent to disclose the names of all but one of the individuals named in the records. The fact that the Affected Party did not consent to the disclosure of his or her name indicates only that section 17(2)(a) does not apply to that information; it does not indicate that the disclosure would therefore be an unreasonable invasion of privacy.

Section 17(2)(e) – classification, salary range, discretionary benefits and employment responsibilities

[para 17] This provision states that it is not an unreasonable invasion of privacy to disclose information about the classification, salary range, discretionary benefits or employment responsibilities of an employee of a public body.

[para 18] In Order F2009-046, the adjudicator clarified the scope of this provision; he stated (at paras. 57-58):

Section 17(2)(e) states that it is not an unreasonable invasion of the personal privacy of officers and employees of public bodies if one discloses information about their "classification, salary range, discretionary benefits or employment responsibilities". Given the set of information listed, it is my view that section 17(2)(e) is intended to permit the disclosure of relatively general information about the employment, pay and entitlements of public officials. Reference is made to "classification" as opposed to job title, to "salary range" as opposed to salary, and to "employment responsibilities" as opposed to work-related activities actually carried out. In keeping with the nature of the information listed, I believe that information about "discretionary benefits", within the meaning of section 17(2)(e), includes the name and nature of the discretionary benefit, which officers and employees are entitled to it, and as was found in Order F2003-002 (at para. 24), the formula or mechanism for calculating the benefit. However, the information contemplated by section 17(2)(e) does not normally include details such as the dollar amount of the discretionary benefit paid to a particular individual. I say "normally" because, as I hypothesize below, there may be times when the discretionary benefit is simply a dollar amount without any reference to a formula, or reference to the formula will necessarily reveal the dollar amount.

My interpretation that section 17(2)(e) captures relatively general information flows not only from the nature of the series of information listed in that provision. Unlike other provisions of section 17(2) – namely sections 17(2)(f) and 17(2)(h) – section 17(2)(e) does not use the term "details".

[para 19] This provision encompasses information about any discretionary benefits granted to public body employees – as public body employees – whether they are benefits of a financial nature or otherwise. That said, I agree with the above analysis that the provision does not normally apply to *detailed information* about a discretionary benefit. In this case, the vehicle itself is a discretionary benefit related to the individual's office or employment; costs associated with the vehicle that are paid by the Public Body seem to be a discretionary benefit as well. However, in my view the exact dollar amounts of those costs, and the details of the events that

led to the costs, are details that are not encompassed by the provision. In other words, the information in the records relating to the costs associated with driving incidents is not information about a discretionary benefit *within the terms of* section 17(2)(e). Further, the date and description of the incident are not information about a discretionary benefit. In my view, this provision does not apply to the information at issue.

Section 17(2)(h) – details of a discretionary benefit

[para 20] This provision states that it is not an unreasonable invasion of privacy to disclose details of a discretionary benefit of a financial nature granted by the Public Body to a third party. In Order F2003-002, the adjudicator found that sections 17(2)(e) (discussed above), 17(2)(g) (information about a licence, permit, or other similar discretionary benefits) and 17(2)(h), which all address discretionary benefits, each encompasses a different situation or context (at para. 29). He concluded that section 17(2)(e) addresses discretionary benefits of public body employees, and section 17(2)(h) addresses a different context (i.e. it does not apply to discretionary benefits of public body employees). I agree that, in order for each provision to be meaningful, it must encompass different situations.

[para 21] As already discussed, section 17(2)(e) addresses information about any discretionary benefits granted to public body employees (as public body employees), that is disclosable. In other words, the information at issue is the type of information that could fall within section 17(2)(e), rather than the type of information that falls within section 17(2)(h). The fact that section 17(2)(e) does not apply to the information at issue is not because the information doesn't relate to a discretionary benefit (it does); rather, it is due to the detailed (as opposed to general) nature of the information.

[para 22] Because the information at issue is the type of information that could fall into section 17(2)(e) rather than section 17(2)(h), I conclude that the latter provision does not apply.

Section 17(3) – third party request for non-disclosure

[para 23] The Affected Party states that he or she has requested that their name not be disclosed, pursuant to section 17(3) of the FOIP Act. This provision relates to section 17(2)(j); these provisions state:

17(2)(j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:

(i) enrolment in a school of an educational body or in a program offered by a post-secondary educational body,

(ii) repealed 2003 c21 s5,

(iii) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

(iv) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under subsection (2)(j) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested that the information not be disclosed.

[para 24] As the Affected Party's personal information does not relate to enrolment in an educational body, attendance at or participation in a public event, or receipt of an honour or award from a public body, section 17(2)(j) does not apply to the information and therefore section 17(3) also does not apply.

Section 17(4)(b) – information in a law enforcement record

[para 25] The Public Body mentioned in its submission that information in the records may reveal law enforcement information. The Public Body did not elaborate any further on this point. The Public Body may have been indicating that section 17(4)(b) weighs against disclosing the information. This provision creates a presumption against disclosing information that is an identifiable part of a law enforcement record. However, in this case, the records at issue consist of a summary of vehicle incidents created by the Public Body to respond to the Applicant's request. The Public Body has not provided me with any arguments regarding the source of the information in the summary of vehicle incidents, and there is no indication from the records themselves that the information is part of a law enforcement record. Therefore, I have no reason to believe that this factor applies to the information.

Section 17(4)(g) – name and other information about the third party

[para 26] This provision applies where a third party's name appears with other personal information of that party, or where the context of the name would reveal personal information about that individual; this factor weighs against disclosure. The Affected Party states that the disclosure of his or her name could provide information about his or her driving habits or abilities and is therefore an unreasonable invasion of privacy.

[para 27] As the Affected Party's name appears in the records with other information (e.g. the fact that he or she has use of a GOA vehicle), I agree that this factor weighs against disclosure.

Section 17(5)(a) – public scrutiny

[para 28] The Public Body states that in a letter from the Public Body to the affected parties, it stated that the disclosure of the names in the records was "necessary to subject the workings of government to public scrutiny (in accordance with section 17(5)(a) of the Act)."

[para 29] In order for the desirability of public scrutiny to be a relevant factor, there must be evidence that the activities of the public body have been called into question, which necessitates the disclosure of personal information in order to subject the activities of the public body to public scrutiny. (See Order 97-002, at para. 94; Order F2004-015, at para. 88; Order F2014-16, at para. 34.)

[para 30] In Order F2014-16, the Director of Adjudication discussed appropriate factors to consider in determining whether public scrutiny is desirable. She said (at paras. 35-36):

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).

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 31] The Applicant has argued that the information at issue relates to the use of public assets by public body employees. However, the Applicant has not provided any argument as to what activities of the Public Body require scrutiny, or why the name of the Affected Party is necessary to achieve that scrutiny. The Applicant has not argued that the Public Body's activities (paying for repairs to GOA vehicles) require scrutiny, or how knowing about this activity would achieve public accountability, be in the public interest or promote public fairness.

[para 32] In Order F2008-014, former Commissioner Work drew a distinction between curiosity and a need for public scrutiny. He stated (at para. 49):

In coming to this conclusion, I took note of the fact that there is a difference between satisfying public curiosity and promoting public scrutiny. The disclosure of further information regarding the personal credit card transactions such as the vendor names, locations of the vendors or other transaction identifiers may satisfy public curiosity. However, I do not find that the disclosure of this information would promote further public scrutiny.

[para 33] The fact that certain Ministers or GOA employees were involved in incidents may be of minor interest to some members of the public, but this is not sufficient to meet the test for desirability of subjecting the activities of the Public Body to public scrutiny under section 17(5)(a). The Applicant has not provided sufficient reasons to find that the disclosure of the Affected Party's name is desirable for this purpose. The Public Body also did not specify how it concluded in its letter to affected parties that section 17(5)(a) weighs in favour of disclosing names of the drivers. I find that this factor does not apply.

Section 17(5)(e) – unfair financial or other harm

[para 34] The Affected Party argues that the occurrence code for one of the incidents indicates, erroneously, that the incident was a hit and run. They argue that disclosing the name of the Affected Party together with that information could expose the Affected Party to legal consequences if the incident became subject to a legal dispute, and that the disclosure of the

name would prejudice the Affected Party's right to a fair hearing and could expose him or her to civil liability.

[para 35] Given the information in the records, this alleged harm seems unlikely. The narrative of the incident indicates that the Affected Party's vehicle was damaged by a third party while parked. It is therefore unclear to what civil liability the Affected Party would be exposed. Further, although the date of the incident is provided in the records, the location is not; neither is the make and model of the Affected Party's vehicle that was involved. Even if the Affected Party could be held liable for the incident (which seems unlikely), there does not seem to be sufficient information in the records to link the information (or the Affected Party) to a particular incident. Therefore, I find that this factor does not apply.

Section 17(5)(f) – personal information supplied in confidence

[para 36] The Public Body states that:

[i]nformation communicated between an individual and their insurer [the Risk Management and Insurance (RMI) branch of the Public Body, in this case] is generally provided in confidence. The individuals who reported their incidents to RMI were not advised and arguably did not expect that their at-fault or other driving events would be publicly disclosed.

[para 37] Neither the Public Body nor the Affected Party has provided any evidence that the information provided by the Affected Party was supplied in confidence to the Public Body. The fact that an individual "arguably did not expect" the information to be disclosed, does not indicate that the information was supplied in confidence; nor does the unsupported statement that information provided to insurers is "generally provided in confidence." Since the RMI is part of the Public Body, it could presumably have provided evidence, such as indications of confidentiality on claim forms, to support its claim. I find that this factor does not apply.

Section 17(5)(g) – information likely to be inaccurate

[para 38] The Affected Party has argued that the occurrence code "hit and run" is inaccurate and unreliable. The Affected Party has not told me why this information is inaccurate. The narrative information (which states that a third party hit the parked vehicle) is potentially consistent with the occurrence code; the Affected Party has not objected to the accuracy of that information. While section 17(5)(g) requires only that the information is *likely* to be inaccurate, the Affected Party is in a position to tell me how it is inaccurate; therefore, it seems insufficient for the Affected Party to merely suggest that it is inaccurate without saying why.

[para 39] Further, the personal information at issue is the Affected Party's name; the fact his or her vehicle was involved in the incident is not clearly the Affected Party's personal information. For example, it does not seem to reflect anything about his or her driving abilities (since the information states that the vehicle was parked at the time of the incident). As the Affected Party has not told me why the information is inaccurate, and it is not clear to me how this particular information (the occurrence code) could be said to be the Affected Party's personal information, I find that this factor does not apply.

Section 17(5)(h) – unfair harm to reputation

[para 40] The Affected Party's arguments under section 17(5)(e) seem to apply to this provision as well. For the same reasons for which I found section 17(5)(e) doesn't apply, I find that this factor doesn't apply to the information at issue.

Conclusion regarding section 17

[para 41] I found that none of the circumstances in section 17(2) apply to the information; therefore, the disclosure cannot be presumed *not* to be an unreasonable invasion of the Affected Party's privacy.

[para 42] I also found that while many factors cited by the Public Body and Affected Party weighing against disclosure of the Affected Party's name do not apply, section 17(4)(g) weighs against disclosure. In contrast, there are no factors that weigh in favour of disclosure. Therefore I conclude that it would be an unreasonable invasion of the Affected Party's privacy to disclose his or her name in the records.

V. ORDER

[para 43] I make this Order under section 72 of the Act.

[para 44] I find that section 17(1) of the Act applies to the information withheld in the records and uphold the Public Body's decision to withhold that information.

Amanda Swanek
Adjudicator