

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-06

March 27, 2015

ALBERTA TRANSPORTATION

Case File Number F6997

Office URL: www.oipc.ab.ca

Summary: Alberta Transportation (Driver Fitness and Monitoring) (the “Public Body”) sent a letter to the Applicant, advising her that a third party had raised a concern that the Applicant may have a medical and/or physical condition that could affect her ability to safely operate a motor vehicle. Based on the contents of the third party’s letter, the Public Body required the Applicant to have a medical report completed by her regular treating physician.

Subsequently, the Applicant asked the Public Body for a copy of her Driver Fitness and Monitoring File. The Public Body found 13 records responsive to the Applicant’s request, and eventually disclosed most of these records. However, it withheld the letter that had raised concerns regarding the Applicant’s ability to safely operate a motor vehicle, citing section 17(1) (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

The Adjudicator found that record was properly withheld pursuant to section 17(1) of the Act.

Authorities Cited: **AB:** Order F2004-009

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 2, 4, 6, 17, 72; *Traffic Safety Act*, R.S.A. 2000, c.T-6, s. 60.1

I. BACKGROUND

[para 1] The Applicant received a letter from Alberta Transportation (Driver Fitness and Monitoring) advising that a third party had raised a concern that she “may have a medical and/or physical condition that could impair [her] ability to safely operate a motor vehicle”. The Applicant wished further details regarding this concern, so on February 12, 2013, she made a request under the Act to the Public Body for a copy of her Driver Fitness and Monitoring File.

[para 2] The Public Body found 13 records related to the request and disclosed most of them. The Public Body did not disclose the letter from a third party outlining concerns regarding the Applicant’s ability to operate a motor vehicle, citing section 17(1) of the Act.

[para 3] The Applicant requested a review of the Public Body’s decision and the matter was referred for an investigation and to attempt to resolve the dispute. That was not successful.

[para 4] The Applicant requested an inquiry. A Notice of Inquiry was sent to the Public Body and the Applicant and submissions were received and exchanged between the two parties.

II. INFORMATION AT ISSUE

[para 5] The information at issue consists of a one page letter written by a third party addressed to Driver Fitness and Monitoring regarding concerns about the Applicant’s ability to operate a motor vehicle.

III. ISSUES

[para 6] The Notice of Inquiry identified two issues:

- 1. Are the records excluded from the application of the Act by section 4(1)(I)(ii) (record made from information in the Office of the Registrar of Motor Vehicle Services)?**
- 2. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?**

IV. DISCUSSION OF ISSUES

- 1. Are the records excluded from the application of the Act by section 4(1)(I)(ii) (record made from information in the Office of the Registrar of Motor Vehicle Services)?**

[para 7] Neither party addressed this issue in their submissions. It appears that this issue was resolved during the mediation process.

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

[para 8] The Applicant asserts her right under section 2(c) of the Act to access personal information about herself that is held by the Public Body. The Public Body maintains that section 17 does not permit it to disclose personal information as the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 9] To determine whether the record was properly withheld, it is necessary to look at relevant portions of section 17 of the Act. Section 17 states, in part:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[...]

17(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,

[para 10] Section 17(4) states that disclosure is presumed to be an unreasonable invasion of personal in certain circumstances.

[para 11] The record discloses the name and phone number of the third party. As such, it is personal information that falls within the definition of section 1(n) of the Act. The disclosure of this information is presumed to be unreasonable pursuant to section 17(4)(g)(i) of the Act.

[para 12] The Public Body must also consider other relevant circumstances before concluding that the disclosure would be unreasonable. In this case, the Public Body considered sections 17(5)(c) and (f).

a. Section 17(5)(c) – the personal information is relevant to a fair determination of the applicant's rights.

[para 13] The Public Body asserts that it reviewed the letter from the third party and took certain steps. These steps did not deprive the Applicant of any driving rights or privileges as a result of this complaint; they merely required the Applicant to provide a medical report. The Applicant asserts that it is not sufficient to close her file by saying that since she did not lose her license, she is not entitled to the information she seeks. She believes that she is entitled to information that caused her emotional stress and increased the cost of her application for a license.

[para 14] The Applicant, in her submissions, asserts that the information she seeks should be disclosed as she believes that the writer of the complaint was not “acting in good faith, but was in fact, was acting maliciousously (*sic*), as is being evidenced in an ongoing investigation as to my practice as a healthcare professional.”

[para 15] There is no evidence provided to me that the two matters (the complaint to the Public Body and the professional investigation) are related. There is also no evidence before me that the complaint was made maliciously or not in good faith. Even if it were the case that the letter was written for malicious reasons, unless it can be shown that it would affect a fair determination of the Applicant’s rights, it is not a relevant consideration.

[para 16] The Applicant states that she needs the complaint letter so that she and her doctor are able to respond to specific concerns of her medical condition. The Public Body’s request of the Applicant that followed from the complaint was to have a report completed by a regular treating physician and to document all medical conditions and include a list of all prescribed medications. The resulting report fully supported the Applicant’s ability to safely operate a motor vehicle, and her driving privileges were not affected.

[para 17] The Applicant is not entitled to a driver’s license as of right. A license is issued to citizens of the province upon meeting certain criteria and payment of fees (*Traffic Safety Act*, R.S.A. 2000, c.T-6). The license may be cancelled or suspended, or conditions may be imposed upon its use. An Albertan wishing to obtain a license may be required to provide medical proof that there is no medical impediment to their ability to drive. In this case, that is what the Public Body asked of the Applicant. Upon providing such a medical report, the Applicant is entitled to have that report considered fairly by the Public Body.

[para 18] Order F2004-009 dealt with a very similar situation. In that order, the adjudicator said:

In considering section 17(5)(c) (fair determination of the Applicant's rights), it is important to note that the Public Body takes information of the complaint and then does an independent assessment of the situation. Therefore the complaint letter itself is the trigger for the review, but it alone does not impact on the rights of the Applicant. There is also no evidence in front of me that the Applicant experienced a loss of driving privileges or any other consequence as a result of the complaint. Likewise there is no evidence that

there are any potential legal proceedings faced by the Applicant in which his rights may be affected. Therefore, I find this factor is not relevant in this inquiry.

[para 19] I adopt that reasoning here. The personal information sought by the Applicant will not assist in a fair determination of the Applicant's rights. She has the right to have her medical report considered fairly in light of the Public Body's concern regarding her ability to operate a motor vehicle. That proceeding has concluded, and furthermore, the personal information sought in this regard would not have been relevant to that determination.

b. Section 17(5)(f) – the personal information has been provided in confidence

[para 20] In considering this section, the Public Body has referred to section 60.1 of the *Traffic Safety Act*. It provides the following:

60.1 If information is provided to the Registrar in good faith that a person

(a) is not competent to safely operate a motor vehicle,

(b) is not qualified or does not have the ability to operate a motor vehicle safely, or

(c) may have a medical or physical condition that impairs his or her ability to safely operate a motor vehicle,

no person shall release the identity of the person providing the information, or release any information provided by that person that could reasonably be expected to reveal that person's identity, unless the person providing the information authorizes the release of that identifying information in writing.

[para 21] The Public Body provided a page of information taken from its website that is entitled "Reporting Concerns About Driver Fitness". It lists steps to be taken to report a concern and outlines the steps that will be taken once a complaint is received. It states that a complaint, when received, will trigger a file review and a decision will be made as to what is required to determine fitness to drive. Additionally, it includes the following information:

Information received relating to unsafe drivers is not disclosed in accordance with the Freedom of Information and Protection of Privacy Act.

[para 22] The Public Body also provided a Department Policy Statement regarding the guidelines used to handle complaints and/or concerns regarding potentially unsafe drivers. If the complaint or concern is submitted anonymously, it is documented, but not investigated. If the complaint is written and signed, it is to be kept confidential and the

identity of the complainant shall not be revealed to the person being reported. This policy statement was disclosed to the Applicant.

[para 23] The third party submitting the letter/complaint clearly indicated that their personal details were not to be disclosed to the Applicant. This weighs substantially in favour of non-disclosure of personal information.

[para 24] I find disclosure of the personal information of the third party would be an unreasonable invasion of the third party's personal privacy.

c. Section 6(2) – Can the personal information be severed from the record?

[para 25] The Applicant has a right to access the record in question if the personal information of the third party can reasonably be severed from the records (section 6(2)).

[para 26] The Public Body has submitted that upon review of the record, it concluded that the record could not be severed in part without the risk of identifying the third party; it withheld the record in its entirety.

[para 27] In reviewing the contents of the record, it expresses the opinion of the third party and gives examples of behavior of the Applicant. The examples relate to specific details of events and people involved in those events. That information could easily be used to identify the third party. This would be an unreasonable invasion of the third party's personal privacy.

[para 28] I agree with the Public Body's conclusion that the record could not be effectively severed.

[para 29] I find that the Public Body properly withheld the information at issue from the Applicant.

V. ORDER

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

[para 31] I find that section 17 of the Act applies to the record. I confirm the Public Body's decision not to disclose the record to the Applicant.

Neena Ahluwalia Q.C.
Adjudicator