ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2023-05

January 27, 2023

PUBLIC SAFETY AND EMERGENCY SERVICES

Case File Number 017130

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Justice and Solicitor General (now Public Safety and Emergency Services, the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for particular reports of the Alberta Serious Incident Response Team (ASIRT) reports. The Public Body responded, providing 119 pages of responsive records, with information withheld under section 17(1) of the Act.

The Applicant requested a review, and subsequently an inquiry, into the Public Body's response.

The Adjudicator found that the Public Body properly applied section 17(1) to most, but not all, information withheld under that provision.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 71, 72

Authorities Cited: AB: Orders 97-002, 2001-013, F2003-002, F2004-015, F2004-026, F2008-009, F2008-020, F2008-028, F2009-044, F2009-044, F2010-031, F2013-03 F2013-53, F2014-12, F2014-16, F2014-23, F2015-02, F2019-24, F2020-23, F2021-26, F2022-45, v. **ON:** Orders PO-2033-I, PO-1772

Cases Cited: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015

ABQB 246, *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94

I. BACKGROUND

[para 1] The Applicant made an access request to Alberta Justice and Solicitor General (now Public Safety and Emergency Services, the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for

> ASIRT final reports for 2016-71(S) and 2016-72(S) - [MP] for the time period Jan1, 2016 - September 9, 2019

[para 2] The Public Body responded, providing 119 pages of responsive records, with information withheld under section 17(1) of the Act.

[para 3] The Applicant requested a review, and subsequently an inquiry into the Public Body's response.

II. RECORDS AT ISSUE

[para 4] The records at issue are comprised of the withheld portion of two ASIRT reports, which total 126 pages.

[para 5] The Public Body provided an unredacted copy of the records at issue for the review that preceded this inquiry. Those records were retained for this inquiry. The records contain comments presumably inserted by whomever processed the access request. The comments appear to provide reasons for some redactions. Any support for the Public Body's redactions should be provided in its exchanged submissions to this inquiry, in accordance with the inquiry procedures provided to the parties, and not in the unexchanged records at issue. As such I have not reviewed the comments.

[para 6] The person who was arrested during the incident is referred to in the records as the Affected Person. The officers whose conduct is being investigated are referred to in the records as Subject Officers. The other officers directly involved in the incident whose conduct is not being investigated are referred to as Witness Officers or Police Witnesses. Neighbours who witnessed the incident are referred to as Civilian Witnesses. EMS staff who witnessed the incident are referred to as Emergency Medical Services Witnesses or Professional Witnesses. I will use the same terminology in this Order.

III. ISSUES

[para 7] The issue set out in the Notice of Inquiry dated August 11, 2022, is:

> Does section 17(1) of the Act (disclosure an invasion of personal privacy) apply to the information?

IV. DISCUSSION OF ISSUES

Preliminary Issue – parties' reliance on findings of Senior Information and Privacy Manager

[para 8] With its initial submission, the Applicant provided a copy of the Senior Information and Privacy Manager's Letter of Findings from this office's review that preceded this inquiry. The Applicant states that they 'adopt' the Manager's conclusions set out in the Letter of Findings.

[para 9] This inquiry is a *de novo* process and not a review of the Manager's conclusions. I acknowledge that the Applicant is at a disadvantage in terms of making submissions regarding information that they do not have. I have briefly reviewed the Manager's analysis in the Letter of Findings; the Manager concluded that some information withheld under section 17(1) is not information to which that provision can apply, either because it is not information about an identifiable individual, or because it is not the type of personal information to which section 17(1) can apply.

[para 10] By adopting the Manager's conclusions, the Applicant may be asking that I consider the Manager's analysis in their findings and come to the same conclusions. As the inquiry is a *de novo* process, it would not be appropriate for me to rely on or be influenced by the Manager's analysis rather than coming to my own conclusions.

[para 11] Wherever section 17(1) is an issue, the first analysis is to determine whether the information at issue is information to which that provision can apply; I will therefore conduct my own analysis of the records in this regard.

[para 12] With its initial submission, the Public Body also provided a Letter of Finding relating to a different file. This Letter of Finding was provided in support of the Public Body's arguments regarding whether section 17(1) can apply to certain information about officers located in the records.

[para 13] The Public Body states that the Letter of Finding relates to another file before this office, which was a review of the same records as those at issue here, requested by a different applicant. The Public Body offers the Manager's analysis in the Letter of Findings as support for its arguments in this inquiry, as the Manager apparently accepted them in his review of the other file.

[para 14] For the same reasons as above, it would not be appropriate for me to rely on or be influenced by a Manager's finding on this file or another file addressing the same records, rather than coming to my own conclusions. Further, findings of Managers are not binding as precedents. I will consider the Public Body's arguments on their merits, without considering whether or why the Manager agreed or disagreed with the Public Body's position.

Preliminary Issue – Public Body's duty to assist

[para 15] In their initial submission, the Applicant asked that this inquiry address the Public Body's duty to assists an applicant under section 10 of the Act. Specifically, the Applicant raised a concern about the Public Body's apparent lack of submissions made to the Manager for the review preceding this inquiry. The Applicant also raised a concern about the Public Body's response to recommendations made by the Manager following the review.

[para 16] As stated above, this inquiry is a *de novo* process and not a review of what occurred in the prior review, or how the Public Body responded (or failed to respond) in the course of that review. I will therefore not add section 10 as an issue in this inquiry.

Does section 17(1) of the Act (disclosure an invasion of personal privacy) apply to the information?

[para 17] The records at issue consist of two ASIRT reports. ASIRT is the Alberta Serious Incident Response Team. ASIRT "investigates events where serious injury or death may have been caused by police and serious or sensitive allegations of police misconduct" (at https://www.alberta.ca/alberta-serious-incident-response-team.aspx). Its authority is provided under the *Police Act*.

[para 18] The Applicant states that ASIRT reports "related to a police incident in which an individual was shot by police and then physically punched and kicked by police officers while being arrested and unable to defend himself" (initial submission, at para, 3).

[para 19] The Public Body applied section 17(1) to withhold information in the responsive records about the Affected Person; information about Subject Officers and Witness Officers; and statements of Subject Officers, Witness Officers, EMS Witnesses, and Civilian Witnesses. The Public Body also withheld still photos from dash cam videos, and maps and diagrams of the relevant areas.

[para 20] The Public Body has disclosed information relating to officers involved in the investigation, such as ASIRT investigators and officers who collected evidence from the scene of the incident, after the incident had concluded. These officers were not directly involved in the incident.

[para 21] 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.*
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> *...*
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> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
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> ...

(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,

...

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

...

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

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provide by the applicant.

[para 22] Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld.

[para 23] Under section 17, if a record contains personal information of a third party, section 71(2) states that it is then up to the applicant to prove that the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[para 24] 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 25] While the Applicant has the burden of proving that it would not be an unreasonable invasion of privacy to disclose personal information to which section 17(1) applies, the Public Body has the burden of establishing that the information withheld under section 17(1) is personal information to which that provision can apply (Order F2010-002, at para. 9).

[para 26] The Applicant argues that the Public Body has withheld information that is not about an identifiable individual. The Applicant has also argued that section 17(1) does not apply to information about some or all of the officers located in the records.

Is the withheld information about an identifiable individual?

[para 27] Presumably the Public Body believes that the information it has withheld under section 17(1) is personal information to which that provision applies. However, its submissions do not contain any specific arguments on this point, including why it has withheld information that does not appear to be about an individual. Therefore, I have only the context of the records upon which to base my decision.

[para 28] The Applicant argues that the Public Body has withheld information that is not about an identifiable individual, such as "photos, images, video clips or any summary or description of photos, images or video clips contained in the reports" (initial submission, at para. 11).

[para 29] The Applicant also points to entire statements that were withheld (such as on pages 26-27, and 107-111), arguing that "[i]t is difficult to accept that no information contained in these statements can be severed in a way that complies with section 17(1)" (initial submission, at para. 12).

[para 30] I have reviewed the records and agree that some of the information withheld by the Public Body under section 17(1) is not about an identifiable individual. Other information contains personal information of an identifiable individual but additional information could have been provided to the Applicant after severing identifiable information.

[para 31] With respect to photographs, maps, and drawings of the neighbourhood where the incident occurred, where individuals appear in those photographs, they contain personal information of those individuals. While many of those photographs are somewhat blurry, the individuals depicted in most of the photographs would be identifiable to persons who know them. The adjudicator in Order F2008-020 said (at para. 30):

> Under section 1(q) of the Act, a record means a record of information in any form and specifically includes "images". I find that the Video contains personal information, as it consists of the images of the individuals appearing in the Video, being the members involved and the unidentified male. Although the Applicant argues that the unidentified male has not been conclusively *identified*, he is nonetheless *identifiable*. An individual does not have to be identifiable by every person reviewing a particular record in order for there to be personal information about that individual; the individual needs only to be identifiable by someone. In this particular case, even if neither the Public Body nor I can conclusively identify the individual in the Video, he is identifiable by other persons viewing the Video, such as his friends, his family members and himself.

[para 32] This approach has also been taken in Order F2015-02 (at para. 15). I agree with this approach to determining whether a photograph of an individual is about an identifiable individual when the image is unclear. However, in three photos, the image of individuals is either so unclear or so small as to render the individuals unidentifiable.

[para 33] The photo on page 67 apparently contain images of individuals; however, it is impossible to ascertain that fact without the description of the photo that occurs in the records. The photo appears to be a still from a video, taken while the vehicle in the photo is in motion. Based on the description of the photo appearing in the records, I conclude that a dark blur is the body of a police officer. The officer is identified in the records but the name was withheld under section 17(1). Given the nature of this photo, it is not clear that it reveals personal information about an identifiable individual. Even if it does, the officer in the photo is not the subject of the ASIRT investigations that led to the reports. Therefore, his image appears only in relation to his work duties. The implications of this analysis will be discussed in more detail below.

[para 34] The photos at pages 115-116 are described as stills from helicopter video footage. There are clearly individuals in the photos; however, each individual is so small as to be rendered non-identifiable. Therefore, section 17(1) does not apply.

[para 35] Some photos have no identifiable individuals (first photograph on page 66, the photos on pages 77, 78, 79, and 81 and 118). Nothing else in these photos appears to be information about an identifiable individual. Therefore, section 17(1) cannot apply.

[para 36] The license plate of the vehicle driven by the individual involved in the incident is clearly visible in the photo on page 79; the license plate number also appears elsewhere in the records. It is clear from the records that the vehicle had been stolen by the individual involved in the incident.

[para 37] License plate numbers were found in *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 not to constitute personal information, as it is information about the vehicle and not the individual vehicle owner. The Court said (at para. 49):

> But a vehicle licence is a different thing. It is linked to a vehicle, not a person. The fact that the vehicle is owned by somebody does not make the licence plate number information about that individual. It is "about" the vehicle. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal information, but that is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it.

[para 38] However, information about property can also be personal information about the property owner, in certain circumstances (see *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2015 ABQB 246 (varied on other grounds in *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110)).

[para 39] Order F2021-26 considered whether a licence plate number was personal information in the particular circumstances of that case, after considering the Court's comments in *Edmonton (City)* and *Leons*, cited above. The adjudicator found (at para. 34-35):

> I find that when considered in the context of information already provided to the Applicant, the license plate number and description the car are personal information.
>
> The license plate number and description of the car do not appear on their own. They appear in the context of a complaint, made by the Applicant, that the Third Party does not properly control their dog in public spaces. The date, time, and place of the dog attack are recorded in the records, and are already provided to the Applicant. When combined with the date, time, and place of the dog attack, the license plate and description of the car serve to identify and, therefore, implicate the driver of the car as the person accused of being responsible for the dog attack. In this way, the license plate and description of the car are about an identifiable individual and, thus, are the Third Party's personal information.

[para 40] In this case, because the vehicle was stolen, the license plate number is not associated with the car owner such that it could be characterized as personal information about the car owner. The license plate number is also not associated with the individual

who stole the vehicle. Following the analysis of *Leon's*, I find that the license plate number is not personal information and cannot be withheld under section 17(1).

[para 41] That said, the owners of the stolen vehicle are identified at page 21 of the first report. Their names and home address are their personal information to which section 17(1) applies.

[para 42] The Public Body has also withheld information that identifies the route the stolen vehicle took, the neighbourhood in which the incident occurred, as well as the addresses of particular homes near which certain events occurred or evidence was located. These addresses are not associated with any information about who lives at the addresses. They appear only to pinpoint the location of events or evidence. As such, the analysis of the Court of Appeal in *Leon's*, cited above, applies such that these addresses are about property, not individuals. Therefore, they cannot be withheld under section 17(1). Where addresses are linked to identifiable individuals (such as the address of the Affected Person), those addresses are personal information of those individuals.

[para 43] Several photos consist of maps of the neighbourhood in which the incident occurred, with no additional identifying information. This is in contrast to a map or photo that identifies the residents of certain homes in the photo or map. Where no additional identifying information appears in the maps or photos, they do not contain personal information. I note that page 15 includes a map, but that map identifies the residents of a particular house, and as such, contains the personal information of those residents. The manner in which the house is identified in that map means that this personal information cannot be severed from the remainder of the map; therefore, section 17(1) can apply to the entire map.

[para 44] Much of the information in the records does consist of personal information of third parties. In many cases, only the names of Subject Officers, Witness Officers, EMS Witnesses, and Civilian Witnesses was withheld, with the remaining information disclosed to the Applicant. However, the Public Body has withheld Civilian Witness statements in their entirety.

[para 45] The Affected Person was named in the Applicant's access request. For this reason, information about the Affected Person cannot be provided to the Applicant after severing their name, as this person has already been identified by the Applicant. This includes their witness statement, the majority of which is identifiable as being about the Affected Person.

[para 46] In a few instances, the Public Body withheld comments made by Civilian Witnesses that describe the location and appearance of their home. Because the general location of the incident is known (it is revealed in media stories of the incident, which were easily located via an internet search), details provided by witnesses who live in the area could be used to pinpoint where they live and possibly their identities (i.e. an explanation of what a witness could see from their front window could allow that witness' home to be identified).

[para 47] On page 116-117, the Public Body withheld most of the information under the heading “Civilian Video”. Some of the information under this heading describes the quality of the video; this is not personal information once the name of the Civilian Witness is removed. Much of the information under this heading relays what is shown in the video, which is the conduct of the officers during the incident; this information has already been disclosed elsewhere in the records. I have reviewed this information to determine whether, after the name of the Civilian Witness is removed, disclosing the information could identify the location of the Civilian Witness who took the video (and thereby possibly enable the identity of that person). However, the descriptions in this analysis do not pinpoint the vantage point of the person taking the video. The location where the incident occurred is lined with houses; it is not possible from the description of the video to determine by which house the person taking the video may have been standing. The exception is a comment, appearing near the end of page 117, that provides a partial description of the Civilian Witness’s house. This comment could distinguish this person’s house from their neighbours. Therefore, that comment is information to which section 17(1) can apply, along with that person’s name.

[para 48] Statements of four Civilian Witnesses have been withheld in their entirety on pages 107-111. The names and addresses of these Civilian Witnesses are their personal information to which section 17(1) can apply, wherever they occur in the records. This includes where a precise address is not provided but a description of their home is given, that could be used to identify it. In some instances there is additional information about the Civilian Witness that could identify them if disclosed. This is information to which 17(1) can apply.

[para 49] On pages 107, 108, 109 and 111, the first paragraph under each Civilian Witness’s name does not contain identifiable information about the Civilian Witness, except their name and house location (specific address or sufficiently specific description of their house location). Once the name and address information is removed, the remainder is not information to which section 17(1) can apply.

[para 50] Of the seven bullet points starting on the bottom half of page 107 to the top of page 108, the first and third contain personal information that could identify the Civilian Witness. The first half of the fifth bullet (before the word ‘and’) and the first sentence in the seventh bullet could also identify the Civilian Witness. This information is personal information to which section 17(1) can apply, along with the Civilian Witness’s name wherever it occurs. The remainder of the information in those seven bullets does not identify the Civilian Witness and its therefore not personal information of an identifiable individual.

[para 51] The information in the three bullet points in the bottom half of page 108 does not identify the Civilian Witness, except the last sentence of the first bullet point. Section 17(1) can apply only to the latter information, along with the Civilian Witness’s name wherever it occurs. The bolded text at the bottom of page 108 to the top of page 109

could serve to identify the Civilian Witness from other information in the records, such that section 17(1) can apply to that information as well.

[para 52] The information in the second and third sentence in the first bullet on page 109 could identify the Civilian Witness. Section 17(1) can apply to that information, as well as the Civilian Witness's name.

[para 53] All of the information in the second and fifth bullets (of five complete bullet points) on page 110, and part of the first sentence in the fourth bullet (between the word 'by' and the comma) could identify the Civilian Witness. Section 17(1) can apply to that information, as well as the Civilian Witness's name.

[para 54] The bolded text after the bullet points at the top of page 111, and all of the information in the last six bullet points on page 111 could identify the Civilian Witness. Section 17(1) can apply to that information, as well as the Civilian Witness's name.

[para 55] On page 125, the Public Body withheld several numbered paragraphs in their entirety. These paragraphs repeat information provided in witness statements. Where I have found above that the identities of the witnesses can be severed from information in the statements such that section 17(1) cannot apply to that severable information, the same applies to any information repeated on page 125.

[para 56] I will discuss information about Witness Officers in the next section.

[para 57] I will order the Public Body to disclose the information I have found above not to contain information about an identifiable individual.

Is the information about police officers in the records personal information to which section 17(1) can apply?

[para 58] Past Orders of this Office state that the disclosure of the names, contact information and other information about public body employees, that relates only to the employees acting in their professional capacities is not an unreasonable invasion of personal privacy under section 17(1) (see Orders 2001-013 at paras. 89-90, F2003-002 at para. 62, F2008-028 at para. 53) unless that information has a personal dimension in the circumstances.

[para 59] In other words, in the absence of a personal dimension, such information cannot be withheld under section 17(1).

[para 60] Past Orders of this office have also found there to be a personal dimension to information about an employee's work duties where it appears in the context of allegations of wrongdoing (e.g. investigations into the conduct, disciplinary proceedings, etc.). In Order F2010-031 the Adjudicator stated:

> Information about an individual's performance of work duties may be personal information in a context where it is suggested or alleged that the individual has acted improperly or wrongfully (Order F2008-020, para. 28).

See also Orders F2004-026, F2013-53, F2014-23

[para 61] The Public Body has argued that as the ASIRT reports are investigations into the conduct of the Subject Officers, the information about the officers contained in the reports has a disciplinary context.

[para 62] The Applicant disagrees with this characterization, arguing (rebuttal submission, at para. 19):

> No reference is contained in the record to any police disciplinary record. This is an investigative report which summarizes facts, not a record of any disciplinary proceeding. There is no evidence that the witness officers whose names were redacted were under investigation or subject to any disciplinary action.

[para 63] The reports both state that ASIRT was assigned to conduct investigations into whether the actions of the named officers were legal and justified with respect to the force used during the incident. The investigations were initiated under sections 46.1 and 46.2 of the *Police Act*. These investigations could lead to criminal charges, or disciplinary action (section 46.1(4) of the *Police Act*). Therefore, the personal information of the officers whose conduct is being investigated has a personal dimension, as their professional conduct is being investigated for possible wrongdoing. The proceedings needn't themselves result in charges or disciplinary actions for this to be the case.

[para 64] Information in the records that identifies the Subject Officers has a personal dimension. Most of the information about these officers' conduct has been disclosed to the Applicant, with only the officer's names and other identifiers withheld. In some instances, the Public Body has also withheld information about their employment history and training. I agree that all of this information has a personal dimension such that section 17(1) can apply.

[para 65] Because both ASIRT reports relate to the same incident, the Subject Officers in one report are Witness Officers in the other report. The first report identifies which officers are the Subject Officers in the second report. In addition, because the descriptions of the incident are substantially similar in both reports, disclosing the names of the Subject Officers in either report (including the report in which they are a Witness Officer) would identify them as a Subject Officer in the relevant report. Therefore, the names and other personal information about the Subject Officers in the reports has a personal dimension in whichever report that information appears, as it can serve to identify them as a Subject Officer whose conduct was investigated.

[para 66] As noted above, the Public Body has provided findings from a senior information and privacy manager on another file, in which the Public Body had argued that being involved in a code of conduct investigation is not part of a police officer's

regular job duties, and “therefore this information is personal to the involved parties.” I have explained that findings of a senior information and privacy manager are not binding on me, whether or not they relate to the same or similar records at those at issue here. That said, the Public Body has adopted this argument in this case and I will address it.

[para 67] In its rebuttal submission, the Public Body cites Order F2009-044 as stating that “even being named in a disciplinary proceeding is part of employment history”. The Public Body cites paragraph 29 of that Order, which states:

> The term “employment history” describes a complete or partial chronology of a person’s working life such as might appear in a personnel file, and this can include a record of disciplinary action (Order F2003-005 at para. 73). Further, the results or conclusions of an investigation may be part of a personnel file and therefore of a person’s employment history (Order F2004-015 at para. 83). I take this to include the results or conclusions of a hearing, including results or conclusions that are favourable to the employee. In this inquiry, even where charges were not substantiated, I believe that the fact that a formal disciplinary hearing occurred (or began if later discontinued) would make it part of an individual’s employment history.

[para 68] The Public Body’s argument appears in the context of a discussion regarding what is and is not a ‘regular’ part of an officer’s work duties. It may be that the Public Body means to argue that if an officer’s personal information appears in records relating to an investigation of *their* conduct, then it has a personal dimension such that section 17(1) can apply. If this is the Public Body’s argument then I have already found that to be the case, following past precedents of this Office and other jurisdictions discussed above.

[para 69] However, if the Public Body means to argue that this also applies to information about the Witness Officers when those officers are *not* the subject of the investigation, then I disagree.

[para 70] The test is whether personal information of an employee appears in relation to that employee’s job duties. If so, section 17(1) will generally not apply to that personal information. However, where there is a personal dimension to that information even in a work-related context, then section 17(1) can apply. The Public Body seems to argue that there is a personal dimension to information that appears in relation to the performance of work duties when those duties, such as providing witness statements, are not regular day-to-day work duties but rather are duties that arise only occasionally. However, it has not provided any support for this idea.

[para 71] As discussed, when information about an employee occurs in a disciplinary context in relation to that employee, that information has a personal dimension. However, there is no precedent to extend that principle to another employee whose information appears in relation to an investigation into a coworker’s conduct unless that other employee’s information, by itself, has a personal dimension. In other words, the mere fact that an employee’s information appears in an investigation or disciplinary record is insufficient, by itself, to find that there is a personal dimension to that employee’s information. Rather, there must be something about the context in which that employee’s

information appears to give it a personal dimension (such as being the subject of the investigation).

[para 72] With respect to employee witness statements specifically, where employees provide statements in the course of an investigation of a co-worker's conduct, such statement are sometimes professional statements lacking a personal dimension while in other instances, the statements may have a personal dimension, such as when the employee giving the statement offers a personal opinion.

[para 73] In Order F2014-23 the adjudicator considered the application of section 17(1) to withhold witness statements of officers made during an investigation into a complaint about officer conduct. The adjudicator found that section 17(1) could not apply to most of the information, as it did not have a personal dimension; she said (at paras. 14-15, 19):

> Using record 35 as an example, of the seven paragraphs severed from the record, the fourth, fifth and sixth paragraphs appear to contain only background information that the witnesses became aware of and provided to the investigator by virtue of their roles as employees of the Public Body. A great deal of the information severed from the records consists of narratives of events that lack a personal dimension. Although the names of the witnesses are contained in these paragraphs, in most cases the information is not about them, but relates to their job duties. The witnesses were asked to make statements because they were employees of the Lethbridge Police Service and the Public Body and as such, had knowledge of the events under investigation and the processes followed by the Public Body.
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> Record 46 contains a series of typed statements attributed to employees. Using this record as an example, I note that the statements recount workplace events and circumstances. The Public Body has severed these statements in their entirety. While severed information contains the names of witnesses and their statements, it lacks a personal dimension. Rather, the information consists of factual accounts of practices and policies at the Public Body. The statements do not appear to convey anything personal about the employees making the statements. It is therefore unclear that record 46 contains personal information.
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> …
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> Most of the information the Public Body severed under section 17 is not personal information, but is information relating to the operations of the Lethbridge Police Service. Where individuals are referred to in the records, it is as employees acting in a representative capacity. However, as discussed above, it is possible that some of the information may consist of personal opinions, in which case, the fact that an individual holds a particular opinion may be the individual's personal information. As it remains possible that some of the information the Public Body severed under section 17 is personal information, I have decided that I must require the Public Body to make decisions as to whether the opinions of employees it has severed from the records have a personal dimension, such that the fact that the employee holds the opinion could be said to be the employee's personal information.

[para 74] The adjudicator in Order F2019-24 followed the analysis above in a similar situation (at paras 20-23):

> The Public Body in the case before me has severed all statements made by third parties, and the names of third parties and entire interviews. While some of the severed information may constitute personal information of third parties, some does not. For example, most of the questions posed by the interviewer do not impart information about third parties. While many of the questions contain information about the Applicant, unless inextricably intertwined with information about a third party, information about an applicant is not information that can be withheld from an applicant under section 17(1). This is because section 1(r), which defines the term "third party" for the purposes of the FOIP Act, establishes that applicants, like public bodies, are not third parties. Only information about a third party may be withheld under section 17(1).
>
> The Public Body has severed information about the Applicant, not only where it appears in questions, but in the answers provided by interviewees. In some cases the information appears to be factual, as in the case where interviewees recount events. In other cases, the interviewees interpret the Applicant's actions, which suggests that the information is an opinion about the Applicant. Under section 1(n)(viii) of the FOIP Act, an opinion about an individual, is not the personal information of the opinion holder, but that of the individual whom the opinion is about.
>
> As I noted in my letter to the Public Body, reproduced above, the fact that an individual recounts events involving other individuals and has knowledge of them, or has formed an opinion, may be personal information about that individual. If the individual who recounts events or forms an opinion about someone else does so in a professional capacity, the fact that the individual recounted events or formed an opinion will not be personal information. However, if the individual recounted events or formed the opinion in the individual's personal capacity, then the information may have a personal dimension and be personal information. If the information is personal information, a public body must then conduct an analysis under section 17(1) to determine whether the information of the individual who provided the facts or opinion should be withheld or disclosed. If it is to be withheld, then the Public Body must comply with its duty under section 6(2) of the FOIP Act and consider whether it is possible to sever the identity of the individual who recounted events or provided an opinion and to provide the information about the applicant to the applicant.
>
> As it appears that the Public Body has severed information under section 17(1) that is not personal information, or is, alternatively, the personal information of only the Applicant, I must direct it to review the information it has severed under section 17(1) and to make new determinations as to whether the information is personal information of a third party or not. If it is not, then the information cannot be severed under section 17(1).

[para 75] In Order F2013-03, the adjudicator set out the distinction between employees acting in their work capacity or in a more personal capacity, as follows (at paras. 44-45):

> Given these principles, I find that section 17(1) does not apply to some of the information that the Public Body withheld, as set out later in this Order. For instance, when the Applicant's former supervisor or the Public Body's human resources coordinator sent or received correspondence, or dealt with the Applicant, they were generally acting in a

> work-related capacity, without any personal dimension. Conversely, when employees, associates or clients of the Applicant provided their views or opinions about the Applicant, as a result of difficulties they were having when dealing with her, I find that there is a sufficient personal dimension so as to give rise to the possibility that disclosure of their identities, in conjunction with their views and opinions, would be an unreasonable invasion of their personal privacy.
>
> When the third parties in question, whether unsolicited or during an interview, provided their views or opinions about the Applicant – who was their supervisor or associate – there is a personal dimension because they did so confidentially, and would presumably have concerns about their job or their relationship with the Applicant, or fear retaliation or some other negative consequence, if the Applicant came to know their comments. Where the disclosure of information is likely to have an adverse effect on an individual, the record of a work-related act potentially has a personal dimension, and may therefore constitute the individual's personal information (Order F2006-030 at paras. 12, 13 and 16; Order F2008-020 at para. 28). Conversely, when the Applicant's supervisors and the human resources coordinator provided their views or opinions about the Applicant and her work performance, they were doing so in a work-related capacity without any personal dimension, as part of their roles and responsibilities were to evaluate, or assist in the evaluation, of the Applicant. Having said this, my comments are not intended to set out a uniform rule. There may be times, depending on the context and the content of the particular record, when a colleague or someone being supervised provides comments strictly in a work-related capacity, and when a supervisor's comments have a personal dimension.

[para 76] In Order F2020-23, the adjudicator considered the application of section 17(1) to statements made by public body employees in the course of a workplace investigation. He said (at paras. 158-161):

> Under section 17(1), the Public Body redacted its employee's answers to the investigator's questions in their entirety, applying section 17(1) in a blanket fashion. It appears that the Public Body considered that the mere fact that a statement was made in the context of an investigation makes the statement, or the fact that a certain person made it, personal information. This is not the case.
>
> The Public Body's employees took part in the investigation as matter of their employment duties. The fact that they made any particular statement is a matter of performance of their duties, and as such is not their personal information. See Order F2009-026 at paras. 10 to 11. This principle also extends to opinions about an applicant that are formed as a result of dealing with the applicant in the course of employment duties, when the opinion is given as matter of employment duties, such as answering the investigator's questions. As stated by the Adjudicator in Order F2009-026 at paras. 14 to 17:
>
>> The employee brought an incident that took place in the course of her employment to the attention of the Public Body's security office. As the records at issue indicate that the Applicant has knowledge of the incident described in the records at issue, and is aware of the employee's role in the incident, it would not be possible to provide the Applicant with his own personal information, without also providing information about the employee. The question becomes whether the information

> > about the employee is personal information, or information about the employee as a representative of the Public Body.
> >
> > Not only do I find that the employee's knowledge of the incident arose from her duties as an employee, but I find that reporting the incident to the security office and making a statement about the incident was also part of her duties as an employee. All of her dealings with the Applicant were done as an employee of the Public Body and decisions made in relation to his requests were made with the authority of the Public Body. This finding is supported by the employee's reported statement referring to "enforcing guidelines", which appears in paragraph 1(e) of page 2 of the records at issue.
> >
> > Under section 1(n) of the Act, cited above, an opinion held about an individual is the personal information of the subject of the opinion. However, the fact that an individual holds an opinion about another individual can be information about the individual who has formed the opinion. In Order F2006-006 the Adjudicator noted:
> >
> > > A third party's personal views or opinions about the Applicant - *by that reason alone* - are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information.
> >
> > In this case, the opinion formed about the Applicant is based on the employee's experience providing services to the Applicant on behalf of the Public Body, and on a conversation that took place between the Applicant and the employee regarding the Public Body's guidelines. Further, review of the records at issue indicates that this opinion was given to the security office so that the security office could assess the situation and take any steps that office considered necessary. I find that the opinion was also provided by the employee in a representative capacity, as part of her employment duties.
> > As I find that the information in the records at issue about the employee is about her as a representative of the Public Body, I find that section 17 does not apply to that information.
>
> I agree with the Adjudicator in Order F2009-026.
>
> Accordingly, section 17(1) does not apply in blanket fashion to the answers given to the investigator. As with the Public Body's other redactions under section 17(1), it must be applied to individual pieces of personal information. The result is that much of the information redacted from these pages should be disclosed to the Applicant.

[para 77] The cases cited above show a consistent approach to the application of section 17(1) to information in statements made by public body employees in the course

of their job duties. I agree with the above analyses. Whether information about Public Body employees is personal information to which section 17(1) applies depends on whether the information relates only to the employees' work duties or whether there is a personal dimension to the information. An employee providing an opinion on a matter may be doing so in the course of their work duties, which does not have a personal dimension. However, there can be situations in which there is a personal dimension to the opinion or context in which it is given, such that it is properly characterized as personal information of the opinion giver to which section 17(1) can apply.

[para 78] Notably, in the cases cited above, whether participating in workplace investigations was a 'regular' part of the employees work duties was not considered a factor in determining whether their information has a personal dimension such that section 17(1) can apply. Presumably, participating in such investigations is a regular job duty only for those tasked with conducting the investigation. Yet the precedents above relate primarily to employees who provided statements about coworkers under investigation. The Public Body has not addressed any of the precedents cited above, or provided any other precedent to support its position on this point.

[para 79] The above analysis was followed in Order F2022-45, which considered the application of section 17(1) to records containing:

- descriptions of conversations and/or questions between a Public Body employee investigating incidents involving the Applicant (an "Investigator") and other Public Body employees who were co-workers of the Applicant and who witnessed the incidents being investigated;
- names of public body employees who were co-workers with the applicant and who witnessed and made formal statements regarding incidents involving the applicant; and
- notes of conversations between an investigator and other public body employees who were co-workers of the applicant and who witnessed the incidents, as well as detailed statements made by these public body employees to the investigator.

[para 80] In that Order, I concluded (at para. 36):

> From my review of the records, I conclude that when a complaint is made about an employee in the Applicant's position, other employees may be asked to provide a statement regarding the incident, as part of the investigation. This appears to be part of these employees' job duties. Therefore, for the most part, these statements do not contain information to which section 17(1) can apply. There are exceptions however, for statements that have a personal dimension; for example, statements about personal relationships between officers, complaints initiated by an employee that have a personal aspect, or where the employee providing the statement is involved in the incident in such a manner as it has a disciplinary aspect for that employee as well as the Applicant.

[para 81] I have reviewed the records in light of the precedents above, to determine whether any information about the officers who are not the subjects of the investigation

has a personal dimension. Information about the conduct of the Witness Officers merely describes how they performed their work duties, which are not under investigation. Statements provided by the Witness Officers are presented in a factual manner, outlining their observations of the incident. With one exception, these officers have not offered personal observations or made other remarks that might have a personal dimension (for example, remarks about a difficult work relationship with another officer might have a personal dimension).

[para 82] As part of their statement to the ASIRT investigator, one of the Witness Officers made a comment that can be characterized as a personal judgement about the conduct of another officer. In my view, there is a personal dimension to that statement. The statement has been disclosed (on page 107 of the records) with the Witness Officer's name withheld. I agree that the name of this Witness Officer has a personal dimension such that section 17(1) can apply. This is the case wherever this officer's name appears, as disclosing it elsewhere in the records could serve to identify which statement is theirs.

[para 83] This officer's comment appears again at page 125 of the records; in that instance, it was withheld along with the officer's name. As the comment was disclosed elsewhere in the records, it must also be disclosed on page 125; only the officer's name is information to which section 17(1) can apply.

[para 84] In a few instances, statements of Witness Officers include information about the officer's employment history, such as the number of years that officer has worked as an officer. That information has a personal dimension such that section 17(1) can apply to that information. In at least once instance, an officer's age is mentioned; this is information to which section 17(1) can apply.

[para 85] The records also refer to injuries suffered by officers during the incident. Ontario Orders PO-1772 and PO-2033-I have discussed injuries sustained by correctional officers in altercations with inmates. Ontario's orders make the same personal/professional distinction as found in Alberta's precedents. While the correctional officers were conducting their duties when the injuries occurred, the Ontario Orders found that information about the injuries was personal in nature. I agree with this conclusion. In my view, information about the officers' injuries in the records has a personal dimension such that section 17(1) can apply. This is the case whether or not the officers are Subject Officers or Witness Officers.

Photos

[para 86] The records contain several photos in which various officers are identified or identifiable. The individual involved in the incident also appears in some of the photos.

[para 87] The Public Body argues that images of officers are routinely withheld as they "can form part of their employment history" (initial submission, at page 5). The Public Body makes this argument with respect to the application of section 17(4)(d), which weighs against disclosure of personal information that relates to an individuals

employment or education history. The factors set out in sections 17(2)-(5) are applicable only to personal information that has a personal dimension such that section 17(1) can apply. If personal information in the records lacks a personal dimension such that section 17(1) cannot apply, then the factors listed in sections 17(2)-(5) are not relevant.

[para 88] Order F2014-12 addressed the application of section 17(1) to photos and videos taken in a correctional facility. In that case, the public body applied section 17(1) only to images of inmates, and not of employees. The adjudicator states (at paras. 15-16):

> The Public Body has applied section 17(1) to withhold the images of inmates from a photograph and from a video. It has not applied section 17(1) to withhold the images of its employees from the photograph or the video as it takes the position that its employees are in the course of their duties and acting as its representatives. It therefore reasons that the images of its employees are not the employees' personal information.
>
> I agree with the Public Body that the images of its employees are not their personal information in this case as the images reveal nothing personal about them and would not have personal consequences for them. The video reveals only that they are conducting the business of the Public Body.

[para 89] I agree with this analysis. The Public Body has not addressed this Order, or provided any other precedent to indicate this analysis should not apply here.

[para 90] In this case, the photos all appear to be stills from dash cam videos. Some, but not all, of the officers involved (both Subject Officers and Witness Officers) appear in the photos. The photos depict the officers performing their work duties. Therefore, the analysis above applies to these photos as well: photos that contain images of the officers whose conduct is being investigated have a personal dimension. Photos that contain images of only the Witness Officers do not have a personal dimension. Photos that include images of other identifiable individuals, such as the Affected Person, contain personal information to which section 17(1) can apply.

Is the information about EMS Witnesses in the records personal information to which section 17(1) can apply?

[para 91] The records include statements made by EMS Witnesses who attended the scene of the incident. Much like the statements of the officers, these statements are primarily factual observations of the EMS Witnesses, who were at the scene as a function their work duties.

[para 92] The Public Body has not addressed its application of section 17(1) to information of EMS staff in its submissions. I presume that the same arguments made vis à vis statements of Witness Officers is intended also to apply to the EMS Witnesses.

[para 93] The same analyses regarding statements made by Witness Officers above also applies to statements made by EMS staff. There is nothing in the records before me

to indicate that information about the EMS Witnesses has a personal dimension such that section 17(1) can apply, for the same reasons as above.

[para 94] Only information in these statements that identifies the Subject Officers, Affected Person, Civilian Witnesses, or contains medical information about any of the officers involved in the incident is information to which section 17(1) can apply.

Conclusion regarding whether section 17(1) can apply

[para 95] The information relating to the Subject Officers whose conduct is being investigated has a personal dimension such that section 17(1) can apply; this is true for both reports (i.e. including the report in which they are a Witness Officer). Any information about the Affected Person involved in the incident is about an identifiable individual as they were named in the access request, and is information to which section 17(1) can apply. Information that identifies Civilian Witnesses is also information to which section 17(1) can apply.

[para 96] I have also found that the name of one Witness Officer is information to which section 17(1) can apply, as is information about the employment history, age and information detailing injuries relating to any of the officers.

[para 97] The remaining information about Witness Officers and EMS Witnesses does not have a personal dimension such that section 17(1) can apply. I will order the Public Body to provide that information to the Applicant.

[para 98] I have also identified information that is not about an identifiable individual or that can be separated from information about an identifiable individual such that it is no longer about an identifiable individual. I will order the Public Body to provide that information to the Applicant.

[para 99] The analysis regarding the application of sections 17(2)-(5) below applies only to the information to which I found section 17(1) can apply.

Application of sections 17(2) – 17(5)

[para 100] Sections 17(2) and (3) refer to circumstances in which disclosure of personal information is not an unreasonable invasion of privacy. None of the parties have argued that any provisions of sections 17(2) or (3) are relevant and, from the face of the records, none appear to apply.

[para 101] Section 17(4) lists circumstances in which disclosure is presumed to be an unreasonable invasion of privacy. The Public Body has argued sections 17(4)(a), (b), (d), and (g) apply to the information withheld under section 17(1).

[para 102] The relevant portions of this provision state:

17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(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,

...

(d) the personal information relates to employment or educational history,

...

(g) the personal information consists of the their 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 103] I agree that sections 17(4)(a) and (d) each apply to some information in the records. Sections 17(4)(g) and (b) apply to all of the information in the records.

[para 104] Section 17(5) is a non-exhaustive list of factors to consider in determining whether disclosing personal information would be an unreasonable invasion of privacy. The Public Body argues that sections 17(5)(e) and (h) apply to some information, weighing against disclosure of that information.

[para 105] The Applicant's submissions regarding factors that weigh in favour of disclosure are minimal. The Applicant's submissions primarily speak to whether the Public Body withheld information to which section 17(1) does not apply – e.g. information that is not above an identifiable individual, or personal information to which section 17(1) does not apply for other reasons. These arguments have been addressed above.

[para 106] With respect to the application of factors set out in section 17, the Applicant's description of the content of the records – that they relate to "a police incident in which an individual was shot by police and then physically punched and kicked by police officers while being arrested and unable to defend himself – indicates that section 17(5)(a) may apply.

[para 107] The relevant provisions in section 17(5) state:

17(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,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

...

Section 17(5)(a)

[para 108] Section 17(5)(a) weighs in favour of disclosure where the disclosure is desirable to subject the Public Body's activities to public scrutiny. 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 109] 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 110] The Public Body argued that any public interest in the records has been satisfied, given the age of the records (the reports are dated 2016).

[para 111] The Applicant argues that the Public Body was responsible for much of the delay relating to their access request; they state (rebuttal submission):

> [6] To be clear, the Applicant is also responsible for some delay here. However, let us appreciate for a moment the unfortunate circumstance of a Public Body refusing to disclose redacted records (while providing minimal legal basis for doing so), and then deliberately failing to respond to reasonable requests for submissions within the mandatory mediation process, thereby compelling applicants to proceed with inquiries to obtain any information as to why this information was withheld – only to then argue that the extensive delays caused by such conduct renders any public interest in seeing the documents "satisfied."

[para 112] I agree that in this case, the age of the records is not determinative of whether section 17(5)(a) applies.

[para 113] The Applicant's submissions provide only minimal arguments as to why disclosure of personal information in the records is desirable to subject the Public Body's activities to public scrutiny. They state (rebuttal submission):

> [18] The Applicant disagrees with the Public Body's analysis under section 17(5) as contained on page 6. Clearly the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. There is a very strong public interest in disclosing these records, regardless of the delay involved.

[para 114] The Applicant also notes that the incident to which the reports relate was reported by multiple media outlets.

[para 115] As set out above, in order for section 17(5)(a) to apply, 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. As stated in Order F2008-009 (at para. 65) and several subsequent Orders:

> What is most important to bear in mind is that the reference to public scrutiny of government or public body activities under section 17(5)(a) requires some public component, such as public accountability, public interest or public fairness (*University of Alberta v. Pylypiuk* at para. 48; Order F2005-016 at para 104).

[para 116] The fact that an investigation was conducted into a particular incident involving police officers does not, by itself, show the desirability of public scrutiny. In contrast, in Order F2008-020 the applicant had raised a possible concern that allegations against police officers were not properly dealt with in terms of criminal charges or disciplinary charges that were (or were not) laid. In that case, the applicant had requested records relating to an incident in which a police officer allegedly assaulted an individual. The adjudicator considered whether the need for public scrutiny was satisfied by the

disclosure of the disciplinary decision resulting from a complaint about the alleged assault. He found that the public body's resolution of the alleged assault required further scrutiny, given the applicant's concerns about how the public body approached that resolution. The adjudicator concluded (at para. 55, emphasis added):

> Given all of the foregoing, the Applicant has shown that more than one person has suggested that public scrutiny of the Public Body's activities is necessary in this case; that the concerns about the quality and integrity of the Public Body's internal investigations are about the actions of more than one person within the Public Body; and that the Public Body's previous disclosure of information and its own investigation does not obviate the need for public scrutiny. <u>There is also a public component to the matter, as it is desirable for the Public Body to be publicly accountable in its resolution of cases involving serious allegations of police wrongdoing, the Criminal Trial Lawyers' Association has publicly raised concerns regarding the integrity and quality of the Public Body's investigations, and the specific investigation in this case was the subject of some degree of media attention.</u>

[para 117] The subject matter of the records in this case suggests that the Applicant may believe that the activities of the relevant police service require public scrutiny. It is clear that the incident was investigated; this is how the records at issue came to be in existence. The Applicant has not indicated whether or why they believe that the incident requires public scrutiny in addition to the ASIRT investigation.

[para 118] The Applicant may believe that it is the activities of ASIRT that require public scrutiny. In other words, the Applicant may believe that the ASIRT investigation was deficient in some way, such that the ASIRT reports should be disclosed for the purpose of public scrutiny. Again, the Applicant has not said as much or provided any support for such a conclusion.

[para 119] While much of the information in the records at issue has been withheld, the information provided to the Applicant provides a reasonably thorough description of the incident. The recommendations made in the reports have also been disclosed. It is not clear why the disclosure of the personal information in the records is desirable for the purpose of public scrutiny. Without actual arguments on this point, I cannot conclude that section 17(5)(a) applies.

Other factors

[para 120] The Applicant has argued that police officers are identified as such when working with the public. They state (rebuttal submission):

> [15] Appearing in public and publicly identifying oneself as a police officer is a routine part of being a police officer. It is inconsistent to suggest that police officer names and faces cannot be released through the FOIP process because it will identify police officers as police officers. Officers state their names and identify themselves as police every time they participate in regular police duties, such as conducting traffic stops; detaining individuals in public; questioning witnesses; and testifying in court. There is no logic to

> publicizing this information in everyday operations but hiding it through the FOIP process.

[para 121] I understand the Applicant to be arguing that it is not an unreasonable invasion of the officers' privacy to disclose their image in these photographs, as they are regularly identified as police officers in the public as part of their job duties.

[para 122] I have already found that photos showing the images only of Witness Officers do not contain information to which section 17(1) can apply. Therefore, only photos containing images of Subject Officers and the Affected Person contain information to which section 17(1) can apply. The Applicant's argument above does not apply to photos containing the Affected Person's image.

[para 123] Regarding the photos containing images of the Subject Officers, disclosing the photos could serve to identify the Subject Officers. Therefore, disclosing the photos that identify the Subject Officers discloses more than merely their images, which the Applicant argues are essentially public already. Disclosing the photos discloses the fact that the conduct of these Subject Officers is being investigated by ASIRT.

[para 124] The Applicant has not provided persuasive arguments in favour of disclosing the identities of the Subject Officers. Given this, the Applicant's argument regarding the photos, the disclosure of which would also disclose the identities of the Subject Officers, is not, by itself, persuasive.

Conclusion

[para 125] I have found that a significant amount of information withheld under section 17(1) is not information to which that provision applies.

[para 126] However, a significant amount of information in the records is personal information to which section 17(1) applies. I have found that there is at least one factor that weighs against disclosure of all of the third party personal information in the records to which section 17(1) applies, and no factors weigh in favour of disclosure. I find that the Public Body must continue to withhold the third party personal information to which section 17(1) applies.

V. ORDER

[para 127] I make this Order under section 72 of the Act.

[para 128] I find that section 17(1) cannot apply to some information withheld under that provision. I order the Public Body to disclose the information to which that provision does not apply, as set out this Order.

[para 129] I find that the Public Body properly withheld personal information to which section 17(1) applies.

[para 130]   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.

____

Amanda Swanek
Adjudicator