

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2024-08

March 12, 2024

Calgary Heritage Housing

Case File Number 018935

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Calgary Heritage Housing for access to records that included information about complaints made about them.

In response Calgary Heritage Housing disclosed records with exceptions applied to them under section 17 of the Act. The Adjudicator found that a number of documents were duplicated and that the exceptions were not applied consistently throughout the records. The Adjudicator found that exceptions did not apply to information that has already been released; however, the information in the documents that are not duplicates has been withheld properly as disclosure would be an unreasonable invasion of the personal privacy of third parties.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), 1(n)(vi), 1(n)(viii), 1(n)(ix), 1(r), 17(1), 17(2), 17(3), 17(4), 17(5), 71(2), 72

Authorities Cited: AB: Orders F2022-44, F2008-016, F2021-39, F2023-13

I. BACKGROUND

[para 1] Robertson House is a facility for functionally independent seniors.

[para 2] The Applicant was a resident of Robertson House run by Calgary Heritage Housing (the Public Body) since April 14, 2019.

[para 3] On May 28, 2020, the Operations Manager at Calgary Heritage Housing sent the Applicant a letter regarding complaints made by other tenants against the Applicant for their “aggressive, meddling behavior” and for “intimidating tenants to gain information about others in the building”.

[para 4] The Applicant made a request under the FOIP Act to Calgary Heritage Housing on June 14, 2020:

I am requesting all information on me that is in possession of Calgary Heritage Housing, including reports from other tenants and staff...

I reiterate that I am requesting all written and verbal reports on me in your possession, including all recordings by phone or in person, I will need to know who wrote reports about me as well.

[para 5] The Applicant clarified the request on June 17, 2020:

To further confirm what I am requesting under the above Act this is to say that I want all General information and all personal information including but not limited to paper documents and all electronic and telephone recordings...Also the time period for the requested documents is from April 14, 2018 up to and including today.

[para 6] On August 13, 2020, the Public Body’s legal counsel sent a response to the Applicant’s FOIP request. The response (“**original response**”) including the cover letter consisted of 64 pages (un-redacted). The cover letter stated that the Public Body was “unable to confirm or deny the existence of some of the records” that were requested, and that if such records did exist, they would be withheld from disclosure under section 17 of the FOIP Act.

[para 7] The Applicant requested a review of the Public Body’s response on September 28, 2020:

I was disappointed with the 63-page disorganized, sloppy presentation of information from the Public Body’s lawyer, [NAME]. He did not number the pages or list any documents that he said he would not produce, nor confirm or deny only citing Section 17 as a way to avoid same, and I am disputing that on the basis there is defamatory information in his client’s possession against me and I have no way of knowing; who said

what or whose signature was placed (there were a couple of documents that had writing on one and no writing on the other letter of May 28, 2020). At the very least they ought to have told me what was said and redacted the names. I know there is defamatory information on me because I read the letter. I have never intimidated nor threatened any tenant. It is a sad day when others can say anything about you and not know who they are or what they said.

[para 8] After the mediation, on November 1, 2021, the Public Body, provided additional records to the Applicant, which fell within the scope of the request:

1. Meeting Minutes (“**the minutes**”), June 10, 2020 - 13 pages, redacted under section 17(1)
2. Emails, notes, memos etc. (“**the notes**”), Dec 2019-May 2020 - 26 pages (14 pages were redacted in their entirety and are excluded from the page count), redacted under section 17(1)
3. Email exchange on June 14 and 17, 2020 - 3 pages, no redactions.

[para 9] The Public Body also disclosed records to the Applicant that fell outside of the scope of the Applicant’s request for records.

[para 10] On December 31, 2020 the Public Body agreed to a continuing request on a biannual basis. These records are also outside the scope of the request.

[para 11] The Mediation process was unsuccessful and the Applicant requested an Inquiry.

II. RECORDS AT ISSUE

[para 12] The records at issue consist of the withheld portions of the responsive records.

III. ISSUES

[para 13] The Notice of Inquiry sets out the following issues:

1. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?
2. Did the Public Body properly apply section 27(1) of the Act (privileged information) to the information/record(s)?

[para 14] Upon examination of the responsive records at issue, I determined that the records to which the Public Body has applied section 27(1) of the Act, lie outside of the date range that the Applicant requested records for, April 14, 2018 – June 17, 2020. Therefore, the only remaining issue to be dealt with is as follows:

1. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

IV. DISCUSSION OF ISSUES

Applicant's Position

[para 15] The Applicant requested a review from the Commissioner on September 28, 2020, citing:

I was disappointed with the 63-page disorganized, sloppy presentation of information from the Public Body's lawyer, [NAME]. He did not number the pages or list any documents that he said he would not produce, nor confirm or deny only citing Section 17 as a way to avoid same, and I am disputing that on the basis there is defamatory information in his client's possession against me and I have no way of knowing; who said what or whose signature was placed (there were a couple of documents that had writing on one and no writing on the other letter of May 28, 2020). At the very least they ought to have told me what was said and redacted the names. I know there is defamatory information on me because I read the letter. I have never intimidated nor threatened any tenant. It is a sad day when others can say anything about you and not know who they are or what they said.

[para 16] In the request for an Inquiry, the Applicant was given the opportunity to provide additional submissions; however, the Applicant indicated that they were relying on the attachments to the Notice of Inquiry as they had no additional information to add.

Public Body's Position

[para 17] The Public Body submits that it properly applied section 17(1) of the Act to the documents disclosed to the Applicant, thereby protecting the personal information of the other tenants at Robertson House.

[para 18] Names of the tenants and non-resident third parties were redacted throughout. Where it was not possible to sever third party information, documents were withheld in their entirety.

Analysis

[para 19] This Order will deal with the redacted documents that fall within the scope of the request, those dated April 14, 2018 to June 17, 2020.

[para 20] I understand that the Public Body agreed to a continuing request, however, any records released pursuant to the continuing request fall outside of the requested scope date, and if the Applicant wishes, would be subject of a new application.

[para 21] There are two sets of records to which redactions under section 17(1) were applied. These records are the minutes and the notes listed in paragraph 8 above.

The Minutes

[para 22] On November 1, 2021, the 13 page record of minutes was released with redactions made under section 17(1). I note that the same un-redacted minutes can also be found in the original response at the PDF page numbers 52-64.

[para 23] I have reviewed both records to determine whether there is a difference between the two versions, I have not been able to identify any discrepancies that result in the difference in the way the exception is applied.

[para 24] The Public Body has made submissions with respect to the application of section 17(1) to its records, but the discrepancy in the severing process has not been addressed.

[para 25] I find that section 17(1) cannot apply to the minutes. As stated in Order F2022-44 at para 42:

...withholding information in one record that has already been disclosed elsewhere can no longer *reveal* the type of information to which section...applies.

The Notes: Duplicated Records

[para 26] The original record is 40 pages long. Once the Public Body applied section 17(1) to parts of this record, 26 pages were released to the Applicant.

[para 27] I note that the 40 pages contain duplicates of information released in the original response. I have noted the corresponding page numbers of the duplicated records. As the original response was not page numbered, I used the PDF page numbers to identify the records.

The Notes	Redactions	Original Response	Redactions
12	s. 17(1) in part	35	NONE
22-26	s. 17(1) in part	38-42	NONE
27	s. 17(1) in part	43	NONE
30-31	s. 17(1) in part	44-45	NONE
32-33	NONE	46-47	NONE
34-35	Entirety	27-28; 48-49	NONE
36	Entirety	18; 50	NONE
37	Entirety	51	NONE

[para 28] Just as I did with the minutes, I reviewed both records to determine whether there is a difference between the two versions, and I have not been able to identify any discrepancies that result in the different application of the exception.

[para 29] The Public Body has not made submissions with respect to the discrepancy in the severing process.

[para 30] Just as I found with the minutes, I find that section 17(1) cannot be applied to the duplicated records in the notes; the information has already been revealed in the original response and therefore cannot be severed after the fact.

The Notes: Non-Duplicated Records

[para 31] Section 1 of the Act includes a person's name and contact information as personal information:

- (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 32] Section 1 of the Act provides the following definition of "third party":

(r) "third party" means a person, a group of persons or an organization other than an applicant or a public body;

[para 33] In the FOIP Act, information is deemed personal if it is recorded and is about an identifiable individual.

[para 34] Section 17 sets out the circumstances in which a public body may or must not disclose the personal information of a third party in response to an access request. It 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.

[...]

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

[...]

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party[...]

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

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

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(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

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

[para 35] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 36] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5) (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 37] I examined the non-duplicated portions of the notes: pages 1-11, 13-21, 28-29, 38-40. Section 17(1) was applied to information on all pages except pages 13-14; no exceptions were applied to these two pages.

[para 38] Pages 1-11, 15-21, 28-29 and 38-40 contain information pertaining to tenants, or third parties who are not tenants but who have worked or interacted with the management of the building. The names, unit numbers, information supplied by tenants and third parties, and information exchanged by the Public Body with respect to other tenants and third parties has been redacted under section 17(1).

[para 39] The redacted portions of the records include the following information of the tenants and third parties (the associated definition clause under the Act is set out for each item):

- names (s.1(n)(i))
- unit numbers (s.1(n)(i))
- health information (s.1(n)(vi))
- comments concerning tenants (s.1(n)(ix))
- hand written notes (s.1(n)(i) and s.1(n)(viii))
- emails and email addresses

[para 40] Section 1(n) is a non-exhaustive list of examples of personal information. While the list does not contain a direct reference to emails and email addresses, this office has found that emails and email addresses can be personal information given the context.

[para 41] In Order F2008-016 at paragraph 76, the Adjudicator stated:

In addition to the examples listed in section 1(n) of the Act, this Office has found that month and day of birth, initials (when a third party is identifiable), physical description, signatures, fax numbers and e-mail addresses can be personal information in the proper context (Orders F2006-014 at paragraphs 29, 30, 31; 99-017 at paragraph 60, 2000-029 at paragraph 22; 97-016 at paragraph 39; 2000-032 at paragraph 28 and 2001- 038 at paragraph 37)...

[para 42] At paragraph 16 in Order F2021-39, the Adjudicator stated:

The Complainant's first and last name, home address, and home telephone number are personal information under section 1(n)(i) of the Act; in conjunction with this information, his e-mail address is also personal information since it is information about an identifiable individual. The text of the Complaint also contains the Complainant's personal information under section 1(n)(ix) of the Act in the form of his opinion...

[para 43] Section 17(4)(g) states:

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 44] I find that the information withheld pursuant to section 17(1) by the Public Body, in the non-duplicated records, falls under one or more of the categories listed in section 1(n) and is therefore personal information, and that this information appears with other personal information about the third party. Accordingly, section 17(4)(g)(i) of the Act gives rise to the presumption that disclosure would be an unreasonable invasion of the third party's personal privacy. I note that the Applicant suggested that the names could be redacted and "what was said" provided. However, given the nature of the information it may be possible for the Applicant to identify the sources of the statements from their content and therefore it should not be disclosed.

[para 45] According to section 71(2) of the Act, it is the Applicant's responsibility to prove that the withheld information would not be an unreasonable invasion of privacy of third parties.

[para 46] On the Request for Inquiry form, the Applicant, expresses that they ought to be able to defend their "good name" and "17.5c" is written in the margin of the document. I presume the Applicant is referring to section 17(5)(c) of the Act.

[para 47] As stated in Order F2023-13 at paragraph 43:

Section 17(5)(c) weighs in favour of disclosure where the personal information is relevant to a fair determination of the Applicant's rights. Four criteria must be fulfilled for this section to apply:

- (a) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
- (b) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
- (c) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (d) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. (Order F2008-012 at para. 55, Order F2008- 031 at para. 112)

[para 48] After examining the Applicant's submission, I did not find any evidence of a legal proceeding, or how any of the Applicant's rights may be at issue.

[para 49] The Applicant has not provided any arguments with respect to how the information is relevant in determining their rights and there are no arguments provided with respect to their entitlement to the third party information.

[para 50] Therefore, I find that section 17(5)(c) does not apply and that the Applicant has not met the burden of proof in accordance with section 71(2).

V. ORDER

[para 51] I make this Order under section 72 of the Act.

[para 52] I find that the Public Body properly withheld personal information to which section 17(1) applies as it pertains to the non-duplicated documents referred to in paragraphs 37 and 38.

[para 53] I find that section (17)(1) does not apply to the information already disclosed to the Applicant by way of the disclosure of records in the original release, as discussed at paragraphs 22-25 and 26-30. I order the Public Body to disclose this information to the Applicant.

[para 54] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Pam Gill
Adjudicator
/kh