

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2024-12**

March 27, 2024

**CALGARY POLICE SERVICE**

Case File Number 019830

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made several access requests under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Calgary Police Service (the Public Body) for information relating to himself and two named Constables (Constable B and Constable G).

The Public Body responded to these requests in one response; it provided the Applicant with responsive records, but withheld information from the Applicant under various sections of the Act.

The Applicant requested an inquiry into the Public Body's response, including its search for responsive records. The inquiry addressed the Public Body's application of section 17(1), as well as its decision to not provide information to the Applicant as non-responsive and its search for records.

The Adjudicator found that the Public Body conducted an adequate search for records. The Adjudicator agreed that the information identified by the Public Body as non-responsive was not responsive to the Applicant's request. The Adjudicator also found that the Public Body properly withheld information under section 17(1).

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

**Cases Cited: AB:** Orders 96-022, 97-006, 2001-016, F2007-029, F2018-75, F2019-07

## **I. BACKGROUND**

[para 1] The Applicant made a several access requests under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to the Calgary Police Service (the Public Body) for information relating to himself and two named Constables (Constable B and Constable G). The Public Body responded to these requests in one response; it provided the Applicant with responsive records, but withheld information from the Applicant citing various sections of the Act.

[para 2] The Applicant requested a review of the Public Body's response, including its search for responsive records. The review did not settle the matter, and the Applicant subsequently requested an inquiry.

[para 3] At the start of the inquiry, the Public Body had withheld information from the Applicant under sections 17(1) and 20(1)(g) of the Act. The Public Body also did not provide some information to the Applicant's request, stating that it was not responsive to the request. In the course of the inquiry, the Public Body withdrew its application of section 20(1)(g) and provided a new copy of the records to the Applicant. The Public Body provided all of the information previously withheld under section 20(1), with the exception of part of one sentence, to which the Public Body applied section 17(1).

## **II. RECORDS AT ISSUE**

[para 4] The records at issue consist of police investigation records with information withheld under section 17(1) and as non-responsive.

## **III. ISSUES**

[para 5] The issues as set out in the Notice of Inquiry dated November 29, 2023, are as follows:

1. Did the Public Body properly withhold information as non-responsive to the Applicant's request?
2. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?
3. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?
4. Did the Public Body properly apply section 20(1) of the Act (disclosure harmful to law enforcement) to the information in the records?

[para 6] The last issue is no longer relevant as the Public Body withdrew its application of section 20(1).

#### **IV. DISCUSSION OF ISSUES**

*Preliminary issue – matters raised by the Applicant that not relevant to this inquiry*

[para 7] In his rebuttal submission, the Applicant raised several objections to the Public Body's affidavit sworn by the Public Body's Disclosure Analyst in relation to its search for responsive records. The Applicant asked that the affidavit be struck for technical reasons. The Applicant argues that the Analyst's signature is improper, that an index of records was not properly attached as an exhibit to the affidavit, and that it is improper that the header of the affidavit includes the Public Body's logo.

[para 8] I am not striking the Public Body's affidavit as I do not consider it to have been improperly provided. I also note that the Public Body's index of records that follows the affidavit in the Public Body's initial submission does not appear to be presented as an attachment or exhibit to the affidavit. Rather it is simply included as an item in the submission, presumably in response to the direction to the Public Body in the Notice of Inquiry to provide an index of records with its initial submission.

##### **1. Did the Public Body properly withhold information as non-responsive to the Applicant's request?**

[para 9] Past Orders of this office have discussed how public bodies should properly characterize information as non-responsive. Information must be considered in the context of the record as a whole, in determining whether it is separate and distinct from the remainder of the record. In Order F2108-75, I noted examples of records that might have separate and distinct information (at para. 57):

An example of 'separate and distinct' might be distinct emails in an email chain. Another example relates to police officers' notebooks, which often contain notes on unrelated incidents on a single page. In response to an access request for police records relating to one incident, the part of the notebook page that relates to a different incident might be non-responsive. Another example is where a personal note is added to a work email, such as a note referencing a medical absence, holiday or so on. Where that personal note does not have any relation to the remainder of the email or to the access request, it might be non-responsive.

[para 10] In this case, the records at issue consist of police investigation records, relating to a complaint made by the Applicant to the Public Body. The information severed as non-responsive relates to cases that do not involve the Applicant. I agree that this information is separate and distinct from the information relating to the Applicant's complaint. As such, it is not related or responsive to the Applicant's request.

##### **2. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?**

[para 11] A public body's obligation to respond to an applicant's access request is set out in section 10, which states in part:

*10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 12] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the applicant (see Order 97-006, at para. 7). An adequate search has two components in that every reasonable effort must be made to search for the actual records requested, and the applicant must be informed in a timely fashion about what has been done to search for the requested records (Order 96-022 at para. 14; Order 2001-016 at para. 13; Order F2007-029 at para. 50).

[para 13] The Notice of Inquiry specifies that this issue relates to whether the Public Body conducted an adequate search for responsive records.

[para 14] Although the Applicant stated in his request for review that the Public Body did not conduct an adequate search for responsive records, he did not specify in that request for review, or his later request for inquiry, what other records he expected to receive in response to his access request.

[para 15] The Notice of Inquiry instructed the Applicant to set out in his submission the reasons for believing more records exist than were located and/or describe as precisely as possible the records (or kinds or records) he believes should have been located.

[para 16] The Applicant did not provide any additional information in his initial submission. In his rebuttal submission, the Applicant reiterated that the Public Body's search was not adequate. He states that the Public Body did not mention whether it included social media or texts in the scope of its search. He also argues that more than one case file should have been located in relation to each constable.

[para 17] In Order F2007-029, the former Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.

- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced (at para. 66)

[para 18] With its initial submission, the Public Body provided an affidavit sworn by the Public Body's Disclosure Analyst who processed the Applicant's requests. Regarding Constable G, the Analyst conducted a search of the Applicant's name and reviewed all files to determine which would have involved Constable G in the given timeframe. One file was located. The Analyst also spoke with Constable G to ask if there were any other files relating to the Applicant. The Analyst states that Constable G informed the Analyst that they were not involved in other matters with the Applicant.

[para 19] Regarding Constable B, the Analyst conducted a search of the Applicant's name and reviewed all files to determine which would have involved Constable B in the given timeframe. One file was located. The Analyst also spoke with Constable B to ask if there were any other files relating to the Applicant. The Analyst states that Constable B informed the Analyst that they were not involved in other matters with the Applicant.

### *Analysis*

[para 20] Regarding the Applicant's question about social media or texts from the officers being searched, I find that the Public Body did include text messages in its search for responsive records; however, the content of the texts were withheld under section 17(1).

[para 21] The Applicant's comment regarding social media indicates that he expects the officers' social media accounts to have been included in the search for responsive records. There is no indication that any officers involved in the matters to which the records relate have, as a function of their job, any duties regarding the Public Body's social media. If the Applicant means to refer to officers' personal social media accounts, the Public Body is required to search for responsive record in its custody or control. The officers' personal social media accounts are not within the Public Body's custody or control. Therefore, their personal social media accounts would not be included in a search for records responsive to the Applicant's request.

[para 22] Although the Public Body's explanation of its search is brief, the Applicant has not provided sufficient reason to expect that it was not adequate. The Applicant was seeking records from Constable G and Constable B relating to him. The Analyst searched for police case files relating to the Applicant in which either constable was involved. As the Applicant was seeking records from officers, it was reasonable for the Analyst to look for police case files. The Analyst also spoke to each constable, who both confirmed that they had no involvement with the Applicant aside from the one case file each.

[para 23] If the Applicant believes that records other than police-file records would have been responsive to his request, he had an opportunity to say so but he did not. Given this, there does not seem to be any other apparent location to search for responsive records. Further, there is no indication from the content of the records that other related records may exist (e.g. a reference to a video).

[para 24] Lastly, while the Applicant states that more than one case file should have existed in relation to each constable, the Applicant has not provided any reason for his belief. For example, the Applicant may have indicated approximate dates, or incident details of other matters involving the constables.

[para 25] The Public Body's explanation of its search could have been more thorough. However, the Applicant appears to be seeking police case files, and the Public Body searched all case files involving the Applicant that also involved the named constables in the given timeframe. The Public Body also spoke with the constables to determine whether they had been involved in any other matters also involving the Applicant. The Applicant has given insufficient reasons to expect that other case files or records ought to have been located. I find that the Public Body conducted an adequate search for records.

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

[para 26] The Public Body withheld personal information of third parties appearing in the records.

[para 27] 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 28] 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 29] The Public Body's submission regarding its application of section 17(1) is sparse. It states only:

*All 17(1) redactions were involving third party individuals or those third-party individual's involvement with the Officers. We released the information where it was determined that it would not identify the third parties involved and where we could not sever it to anonymize the third party, it was removed.*

[para 30] The Applicant's sole argument on the application of section 17(1) is as follows:

Further to paragraph 3, the information was never to be removed, given that they could have easily anonymized the third party, Further or in the alternative, no third party required anonymization since no information ought to have been masked for obvious reasons, given that the sections they advised apply, simply did not apply and they erred in law, and in fact and/or a mix of such.

[para 31] The information withheld under section 17(1) includes the names and contact information for individuals who were involved in an incident with the Applicant or who witnessed the incident. The withheld information also includes statements from those individuals, and text communications between those individuals and officers. None of the information withheld under section 17(1) relates to officers or other Public Body employees.

[para 32] Having reviewed the records, I find that the information withheld under section 17(1) is personal information of the individuals to whom it relates. I also agree with the Public Body that the information withheld under section 17(1) cannot be rendered non-identifiable by simply redacting names; this is because the Applicant could likely identify them by the remaining information once their names were severed. Therefore, I find all of the information withheld under section 17(1) is personal information of third parties.

[para 33] The next step is to determine whether disclosing this personal information would be an unreasonable invasion of the third parties' privacy. Section 17 is a mandatory exception: if the information falls within the scope of the exception, it must be withheld. In Order F2019-07 the adjudicator described how section 17(1) operates as follows (at paras. 22-23):

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.

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 34] Sections 17(2) and (3) do not appear to apply in this case and so I needn't discuss them.

[para 35] Neither the Public Body nor the Applicant have made submissions regarding the application of section 17(4). For the following reasons, I find that sections 17(4)(b) and (g) apply to the personal information in the records. These provisions state:

*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*

...

*(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,*

...

[para 36] Section 17(4)(b) applies to personal information that 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 continue an investigation.

[para 37] Law enforcement is defined in section 1(h) of the Act, to include:



*I In this Act,*

...

*(h) “law enforcement” means*

*(i) policing, including criminal intelligence operations,*

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

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

[para 38] As the records consist of police records, I find that section 17(4)(b) applies to all of the personal information withheld under section 17(1).

[para 39] Section 17(4)(g) creates a presumption against disclosure of information consisting of a third party’s name when it appears with other personal information about that third party, or where the name alone would reveal personal information about the third party. This provision applies to all of the third party personal information to which section 17(1) has been applied.

[para 40] As stated above, section 17(5) is a non-exhaustive list of factors to consider when determining whether disclosing personal information would be an unreasonable invasion of privacy. The Applicant has not indicated that any factors weigh in favour of disclosure, and none appear to apply.

[para 41] At least two presumptions against disclosure apply to the personal information, and no factors weighing in favour of disclosure have been demonstrated to apply. Therefore, I find that the third party personal information was properly withheld under section 17(1).

## **V. ORDER**

[para 42] I make this Order under section 72 of the Act.

[para 43] I find that the Public Body properly characterized information as non-responsive to the Applicant’s request.

[para 44] I find that the Public Body fulfilled its duty under section 10 by conducting an adequate search for records.

[para 45] I find that the Public Body properly applied section 17(1) to the third party personal information in the records and confirm the Public Body's decision to refuse access to that information.

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Amanda Swaneke  
Adjudicator