

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2024-14

April 24, 2024

EDMONTON POLICE SERVICE

Case File Number 019141

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Summary: An Applicant made an access request to the Edmonton Police Service (the EPS or the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for records relating to the circumstances surrounding the death of an EPS officer in 2015. The Applicant also requested records relating to allegations made by the Applicant of misconduct or wrongdoing against various named officers.

The Public Body located records responsive to the first part of the Applicant's request, but withheld all records in their entirety under section 17(1).

With respect to allegations of misconduct or wrongdoing against named officers, the Public Body refused to confirm or deny the existence of responsive records under section 12(2)(b).

The Applicant requested a review of the Public Body's response. Following the review, the Public Body provided the Applicant with records responsive to the first part of the request, with some information withheld under section 17(1). The Public Body continued to refuse to confirm or deny the existence of records relating to the second part of the Applicant's request.

The Applicant requested an inquiry into the Public Body's application of section 17(1) and 12(2)(b).

The Adjudicator determined that the Public Body properly relied on section 12(2) to refuse to confirm or deny the existence of responsive records.

The Adjudicator upheld the Public Body's application of section 17(1) to personal information to which that provision can apply. However, the Adjudicator found that in some instances, the Public Body applied that provision to information to which that provision cannot apply. The Adjudicator ordered the Public Body to provide additional information to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 12, 17, 20, 71, 72.

Authorities Cited: AB: Orders 97-002, 2001-013, F2003-002, F2004-015, F2004-026, F2008-028, F2009-029, F2010-002, F2011-010, F2013-53, F2014-16, F2015-30, F2016-24, F2019-07, F2023-05 **ON:** Orders PO-1772, PO-2033-I.

I. BACKGROUND

[para 1] An Applicant made a request to the Edmonton Police Service (the EPS or the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) as follows:

On behalf of the CTLA Policing Committing I am making application for copies of all records as defined by section 1(q) of FOIPPA.

As you know, Constable [W] died while on duty on June 8, 2015. There was an investigation into the circumstances surrounding his death. According to the information I have, this investigation revealed the following:

1. Acting Staff Sergeant [...] attended the scene. It was discovered that he had a prohibited incendiary device in his duty bag and was not authorized to have it. He retained it from his time in the Tactical Section and it came to light at the scene when there was consideration of using it. He received either minor discipline or no discipline and it was kept quiet;
2. Officers [...] and [...] were involved in the investigation and were investigated for deceit, specifically about the information they knew about the suspect's history and how much of a threat he posed to the police. They minimized, generalized and were outright negligent and deceitful in what they told the Staff Sergeant who was assessing the risk in determining the appropriate response. This information was minimized and omitted during discussions with supervisors. Later, there was a full operational review by [Superintendent] Ed Mclsaac, Mclsaac had assembled a large binder containing the review he had completed and he reported to Chief Knecht that Constable [W]'s death did not have to happen;
3. [Named officer] lied to ASIRT, stating he had tried to call the on-call Tactical Sergeant, [...], who denied being called by [...]. Phone records later confirmed he did not try to call and ultimately [...] resigned in order to evade accountability;

4. There were other disciplinary actions taken but they were all disposed of under section 19(1) of the *Police Service Regulation*;
5. The Operational Review authored by McIsaac may not have been in electronic format but there is a hard copy in the possession of the Edmonton Police Service.

[para 2] The Public Body located records responsive to part of the Applicant's request, but withheld all records in their entirety under section 17(1).

[para 3] With respect to allegations of misconduct or wrongdoing the Applicant raised against named officers, the Public Body refused to confirm or deny the existence of responsive records under section 12(2)(b).

[para 4] The Applicant requested a review of the Public Body's response. Following the review, the Public Body provided the Applicant with records responsive to the first part of the request, with some information withheld under sections 17(1) and 20(1). The Public Body continued to refuse to confirm or deny the existence of records relating to the allegations of misconduct or wrongdoing.

[para 5] The Applicant requested an inquiry into the Public Body's application of section 17(1) and 12(2)(b).

II. RECORDS AT ISSUE

[para 6] The records at issue consist of 709 pages of records responsive to part of the Applicant's request. The Public Body applied sections 17(1) and 20(1) to withhold information in the records; the Applicant requested an inquiry into the Public Body's application of section 17(1). Information withheld under section 20(1) is not at issue.

[para 7] A significant amount of information withheld under section 17(1) was also withheld under section 20(1). Where both sections 17(1) and 20(1) were applied to the same information, that information is also not at issue for the reason that, even if I were to find that section 17(1) was not properly applied, the Public Body's application of section 20(1) to the same information was not challenged by the Applicant.

III. ISSUES

[para 8] The issues as set out in the Notice of Inquiry, dated October 3, 2023, are as follows:

1. Did the Public Body properly refuse to confirm or deny the existence of a record under section 12(2) of the Act (contents of response)?
2. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records to which the Public Body applied this provision?

IV. DISCUSSION OF ISSUES

1. Did the Public Body properly refuse to confirm or deny the existence of a record under section 12(2) of the Act (contents of response)?

[para 9] The Applicant's access request included a request for records relating to allegations made by the Applicant against named officers. In its response to the Applicant, the Public Body cited section 12(2)(b) of the FOIP Act in refusing to confirm or deny the existence of any responsive records.

[para 10] In the review conducted by this office prior to the inquiry, the Public Body also relied on section 12(2)(b) of the FOIP Act. However, in its initial submission to the inquiry, the Public Body states that it is also relying on section 12(2)(a) of the FOIP Act, which permits a public body to refuse to confirm or deny the existence of records where doing so would harm a law enforcement matter under section 20(1).

[para 11] Section 12(2)(a) is a discretionary exception. The Public Body has not explained why it did not raise this exception before its initial submission to the inquiry, nor has it explained why it should be permitted to raise a new exception so late in the process. Further, aside from citing the tests for relying on section 12(2)(a), the Public Body did not provide specific arguments in its exchanged submission as to how that provision applies in this specific case.

[para 12] The Applicant did not refer to the Public Body's new reliance on this provision in its rebuttal submission; it seems reasonable to conclude that the Applicant could have missed the brief reference to section 12(2)(a) in the Public Body's initial submission. As a consequence, the Applicant has arguably not had a meaningful opportunity to respond to the Public Body's new decision to rely on that provision.

[para 13] For these reasons, I am not considering the Public Body's reliance on section 12(2)(a). I will consider only the Public Body's reliance on section 12(2)(b), which states:

12(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of

...

(b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.

[para 14] The Public Body has the burden of proving that it properly relied on section 12(2) (Order F2009-029 at para. 11).

[para 15] In Order F2011-010, the adjudicator set out the test for properly applying section 12(2)(b) of the FOIP Act as follows (at paras. 9-10):

In order for a public body to properly apply section 12(2)(b) of the Act, it must do each of the following: (a) search for the requested records, determine whether responsive

records exist and provide any such records to this Office for review; (b) determine that responsive records, if they existed, would contain the personal information of a third party and that disclosure of the existence of the information would be an unreasonable invasion of the third party's personal privacy; and (c) show that it properly exercised its discretion in refusing to confirm or deny the existence of a record by considering the objects and purpose of the Act and providing evidence of what was considered (Order 98-009 at paras. 8 to 10; Order 2000-016 at paras. 35 and 38).

Part (b) of the foregoing test was recently re-worded as requiring the public body to show that confirming the existence of responsive records, if they existed, would reveal the personal information of a third party, and to show that revealing this personal information (that the records exist, if they exist) would be an unreasonable invasion of the third party's personal privacy (Order F2010-010 at para. 14).

[para 16] The first question is whether confirming or denying the existence of responsive records could disclose personal information of the named officers.

[para 17] 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 18] Given the wording of the Applicant's access request, confirming the existence of responsive records would appear to confirm that the allegations made by the Applicant against the officers were known to the Public Body or possibly investigated by

the Public Body. In other words, the allegations would be supported, even if not substantiated.

[para 19] Many 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. In other words, in the absence of a personal dimension, information cannot be withheld under section 17(1).

[para 20] Past Orders have also said that information relating to possibly disciplinary actions does have a personal dimension (see Orders F2004-026, F2013-53).

[para 21] I agree that if the Public Body confirmed the existence of responsive records, doing so would reveal personal information to which section 17(1) may apply.

[para 22] The question to be answered is therefore whether it would be an unreasonable invasion of the named officers' privacy to confirm whether records relating to the Applicant's allegations exist.

[para 23] Past Orders have concluded that the factors outlined in section 17(2)-(5) are appropriate to use in determining whether confirming or denying the existence of responsive records is an unreasonable invasion of the named constable's privacy (see Order F2016-24).

[para 24] In this case, neither the Public Body nor the Applicant have argued that the factors in sections 17(2) or (3) are applicable. I agree that none apply.

[para 25] The Public Body has argued that sections 17(4)(d) and (g) create a presumption against disclosure. 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

...

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

...

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

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

...

[para 26] I agree that confirming or denying the existence of responsive records could reveal information about the named officers' employment history, as well as their names with other information.

[para 27] The Applicant has raised only the application of section 17(5)(a) as a factor that weighs in favour of disclosing any personal information of the officers that would be revealed by confirming or denying the existence of responsive records. This provision states:

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,

[para 28] 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 29] 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 30] Past Orders of this Office have made the distinction between allegations of wrongdoing by a public body employee, and allegations of a more systemic nature against a public body. For example, in Order F2015-30, I discussed the application of section 17(5)(a) to allegations made against a police officer in a disciplinary decision. I said (at para. 43):

I find that the Applicant has not provided credible evidence to suggest that activities of the Public Body require scrutiny. The unredacted portions of the Decision reveal that the actions of the Detective were called into question; however, there is no indication that the activities of the Public Body more broadly are being called into question, beyond this particular case in which the Detective may have provided deficient advice to a colleague. I may have found otherwise had the Applicant provided some evidence that the Detective routinely advised colleagues to lie or use misleading language on warrant applications or similar documents. However, the Applicant’s arguments merely speculate that this is the case, and the records themselves do not support such a finding.

[para 31] The Applicant argues that the Public Body failed to take this factor into account when it relied on section 12(2)(b) to refuse to confirm or deny the existence of responsive records. The Applicant argues that the Public Body cannot refer to related investigations, such as the Alberta Serious Incident Response Team (ASIRT) investigation or a fatality inquiry, to argue that the public interest has been satisfied; the Applicant argues that most of these investigations and resulting reports were not made available to the public.

[para 32] I take the Applicant’s point that while many investigations were conducted following Cst. W’s death, most of the resulting reports were not made public. However, the Applicant has not explained how disclosure of the requested information – records relating to specific allegations made by the Applicant against named officers – would be desirable for public scrutiny of the Public Body.

[para 33] In other words, even if responsive records exist, I do not know why those records relate to a matter for which public scrutiny is desirable. It follows that I do not know why confirming the existence of such records (if any exist) would be desirable for the purpose of subjecting the Public Body to scrutiny.

[para 34] The Applicant has not provided support for the allegations made in its request; there is no reason for me to conclude that these allegations have any validity, or that the allegations relate to actions of the Public Body that require scrutiny, rather than the named officers. I find that section 17(5)(a) does not apply.

[para 35] The Applicant has not cited any other factors weighing in favour of disclosure and none appear to apply. As several presumptions weigh against disclosure

and none appear to weigh in favour, I find that the Public Body properly relied on section 12(2)(b) to refuse to confirm or deny the existence of responsive records.

2. Does section 17(1) of the Act (disclosure harmful to personal privacy) apply to the information in the records to which the Public Body applied this provision?

[para 36] As set out above, only the information to which section 17(1) was applied alone is at issue in this inquiry. Where section 17(1) was applied in conjunction with section 20(1), that information is not at issue as the Applicant did not challenge the Public Body's application of section 20(1).

[para 37] With respect to this issue, the Notice of Inquiry states:

Under section 71(2) of the Act, the Applicant bears the burden of showing that disclosing personal information to which section 17(1) applies would not be an unreasonable invasion of a third party's personal privacy.

[para 38] 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). The definition of personal information in the FOIP Act has been provided above.

[para 39] As stated above, 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) unless that information has a personal dimension in the circumstances. Where personal information appears in the context of allegations of wrongdoing or disciplinary matters, there is a personal dimension.

[para 40] Some of the information withheld under section 17(1) consists of names, contact information, statements by or about civilian third parties who witnessed the relevant incident or who were somehow involved with (or believed to be involved with) the incident. All of this information is personal information to which section 17(1) can apply.

[para 41] The Public Body has also withheld the address of the incident, which is that address of the deceased individual responsible for Cst. W's death. I conducted an internet search to determine whether this address has already been made public in news reports. However, reports of the incident refer to the neighbourhood or streets, but not the precise address of the incident. Although this is personal information of an individual who is now deceased, this remains personal information to which section 17(1) can apply.

[para 42] The Public Body has applied section 17(1) to information about officers who experienced injuries as a result of the incident leading to Cst. W's death.

[para 43] In Order F2023-05, I reviewed past precedent from Ontario, which discussed injuries sustained by correctional officers in the course of performing their job duties (see Orders PO-1772 and PO-2033-I). I noted that Ontario's precedent makes the same personal/professional distinction stated above; in those cases, the Ontario Orders found that information about the injuries sustained while the officer where performing their job duties was personal in nature. I agreed with that analysis and made the same finding regarding information about injuries sustained by police officers during an arrest. I find that this analysis also applies to some of the information in the records at issue. Specifically, I find that this analysis applies to information relating to the officers' injuries; it does not apply to other information about those officers, such as information about how they performed their job duties.

[para 44] With respect to Cst. W, information that reveals only the fact of his death is often disclosed in the records. Although the fact of his death is well-known and also disclosed in various places in the records, additional details about Cst. W relating to the incident, such as injuries, remains his personal information to which section 17(1) can apply.

[para 45] That said, the Public Body has also withheld information to which section 17(1) cannot apply. In some cases, this information is not personal information of an identifiable individual. In other cases, it is about an individual only in relation to the performance of their work duties. In some cases, the Public Body withheld more information than necessary for the purpose of section 17(1). In other words, the Public Body could have severed names or other identifying information and released more information to the Applicant.

Information to which section 17(1) cannot apply

[para 46] The following are some examples of information withheld under section 17(1) that is not personal information to which that section can apply. I have attempted to conduct a thorough review of the records at issue; however, I may have missed instances in which the Public Body applied section 17(1) incorrectly. I will order the Public Body to review the records at issue and disclose to the Applicant information to which section 17(1) cannot apply, with the following examples and discussion as guidance.

[para 47] While the personal information of witnesses is information to which section 17(1) can apply, in some instances the Public Body withheld information that is no longer about an identifiable individual once the names and other identifiers are removed. Where this information is severable from the identifiers, it is no longer about an identifiable individual and section 17(1) cannot apply (for example, discrete items withheld on the second half of page 63 and the top of page 64).

[para 48] In some instances, the Public Body withheld entire paragraphs of statements from officers acting in their professional capacity that reference third party individuals, where the personal information of the individuals – to which section 17(1) can apply – could be severed from the surrounding information. For example, on page 90 the Public

Body withheld four paragraphs almost in their entirety; once the Public Body severs the name of the individual; their address (specific or the general description¹); and the description of the individual's companion, the remaining information is no longer about an identifiable individual and section 17(1) cannot apply.

[para 49] The following is a list of pages in which the Public Body can disclose additional information to the Applicant after severing names, addresses, other identifiers of third parties. In some pages there are also details of officers that have a personal dimension; additional information can be disclosed after severing such personal details.

- 182
- 229
- 263
- 302
- 371
- 407
- 462
- 517 to the top of 520
- 537
- 577
- 607
- 638
- 685
- 693

[para 50] Most of the information about officers acting in their professional capacity was disclosed; however, in some instances it was withheld under section 17(1). The Public Body applied section 17(1) primarily where information about officers acting in their professional capacities is intertwined with information about injured officers. However, in a few instances, the Public Body applied section 17(1) to information about officers acting in their professional capacity that is not intertwined with other personal information (for example, the last sentence starting at the end of page 36 and ending at the top of page 37, information at the top of page 141, paragraphs 7 and 9 on page 142, paragraph 8 on page 153, paragraph 5 on page 159). This is not information to which section 17(1) can apply.

[para 51] The Public Body withheld a portion of an officer's statement on page 105 that does not appear to contain personal information (paragraphs 7, 8 and most of paragraph 17). Even if there is information that could be characterized as information of injured officers, the same information was disclosed in subsequent paragraphs. I find that section 17(1) cannot apply to paragraphs 7, 8 and the first half of paragraph 17 on page 105.

¹ Because of the context of the record and surrounding information, it is possible that an individual whose information appears in the records could be identified by disclosing a general description of their address.

[para 52] The Public Body disclosed the names of various witnesses, other than Public Body officers, who were acting in their professional capacities, but withheld the general location of those witnesses (i.e. the city and province in which they are located) under section 17(1). The location of these witnesses when acting in their professional capacities is not personal information to which section 17(1) can apply.

[para 53] Similarly, some information about hospital staff, such as the name of a treating physician, was withheld under section 17(1). This information about the staff relates only to their job duties. Where this information is intertwined with personal information of injured officers such that it cannot reasonably be severed from the officers' personal information, section 17(1) can apply. However, in some instances this information is not intertwined with personal information of injured officers and as such, is not information to which section 17(1) can.

[para 54] In some cases the Public Body applied section 17(1) to information that is not about an identifiable individual. For example, the Public Body applied section 17(1) to withhold the name of hospitals where various officers were taken to treat their injuries; in some cases this information is intertwined with other information about the officer. However, in other cases, only the name of the hospital was withheld (for example, on pages 55 and 517 of the records at issue). In this latter case, the name of a hospital to which an officer was taken, absent other personal information that cannot be severed, is not personal information of the officer to which section 17(1) can apply. The same analysis applies to the directions taken to the hospital, on pages 88, 161, 169.

[para 55] The following information is not personal information and section 17(1) cannot apply:

- Page 405, last sentence in paragraph 2
- Page 464, paragraph 5
- Page 499, paragraph 3
- Page 594, first two sentences of paragraph 12

[para 56] The remaining discussion relates only to the information to which I have found section 17(1) can apply.

Sections 17(2) – (5)

[para 57] 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.

Sections 17(2) and (3)

[para 58] Section 17(2) prescribes a number of circumstances in which it is not an unreasonable invasion of privacy to disclose personal information. None of the parties have argued that any provisions of section 17(2) are relevant and, from the face of the records, none appear to apply.

[para 59] Neither of the parties has argued that section 17(3) applies to any of the withheld information, and from the face of the records, this provision does not apply.

Section 17(4)

[para 60] The Public Body argues that sections 17(4)(b), (d) and (g) apply to the personal information in the records. Sections 17(4)(d) and (g) have been reproduced above. Section 17(4)(b) states:

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,

[para 61] This provision 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 62] Law enforcement is defined in section 1(h) of the FOIP Act, to include:

1 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 63] The records at issue are identifiable as police investigation records. Therefore, section 17(4)(b) applies.

[para 64] Section 17(4)(d) creates a presumption against disclosure of personal information that relates to employment or educational history. This applies to a small amount of personal information in the records.

[para 65] Section 17(4)(g) creates a presumption against disclosure of personal 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 in the records.

Section 17(5)

[para 66] The Applicant has raised only the application of section 17(5)(a) as a factor that weighs in favour of disclosing personal information in the records. This provision is reproduced above, along with the tests for the application of this provision.

[para 67] The Applicant provided a copy of the Fatality Inquiry report conducted into Cst. W's death. This report refers to other investigations that were conducted in relation to Cst. W's death, which were provided for the Inquiry. These include an operational review by the Public Body, a Fatality Review Board review, an Occupational Health and Safety investigation, an ASIRT investigation, and an ASIRT review of the Public Body's operational review. The author of the Fatality Inquiry report discusses the outcomes of these reports. It also discusses the operational review at length, including the facts surrounding the incident leading to Cst. W's death, the involvement of various officers, the procedures that existed at the time and how they were implemented, and the conclusions and recommendations of the author of that report.

[para 68] The Applicant states that the evidence and submissions made in the Fatality Inquiry are not public. The Applicant also states that the scope of that Inquiry did not include making findings of individual misconduct. The Applicant states (rebuttal submission, at paras. 15-16):

...Judge Lepp [who conducted the Fatality Inquiry] found "there is no need to comment on any possible individual misconduct" and it would be unfair "to make any unnecessary findings regarding any possible errors or missteps, criminal or otherwise". However, the CTLA is keenly interested in this aspect, as would the public.

The CTLA plans to explore that and the integrity of the investigation.

[para 69] The Applicant further argues that the Public Body was unlikely to have provided information to the Fatality Inquiry relating to the allegations against the officers the Applicant made in its access request. It argues that the Public Body has possession of the reports provided for the Fatality Inquiry, and that "there is no reason to withhold them when they have been presented at a Fatality Inquiry, discussed at the FI, and are the subject of comment in the FI report".

[para 70] The Applicant goes on to state that it is also interested in the investigative records underlying these reports, "to determine whether the reports accurately reflect the investigations."

[para 71] The Public Body argues that prior to the inquiry it disclosed much of the information in the records at issue to the Applicant, and that "the disclosure of names, addresses, and personal characteristics about individuals who were involuntarily exposed to the events of June 8, 2015 would not elucidate any useful information for bettering EPS' public accountability" (initial submission, at para. 22).

Analysis

[para 72] I understand the Applicant to be arguing that the need for public scrutiny into the Public Body's activities surrounding the death of Cst. W has not been fulfilled by the various investigation into his death, as those investigations have not been made public. The Applicant raises concerns about the integrity of the investigations, and appears to doubt whether the Public Body thoroughly investigated alleged wrongdoings of certain officers.

[para 73] However, the Applicant has not provided any support for its concerns and allegations that would justify the disclosure of personal information of third parties in the records.

[para 74] Further, a significant amount of information in the records at issue has been disclosed to the Applicant. The Applicant has not explained how the personal information that continues to be withheld is relevant to subjecting the Public Body to scrutiny.

[para 75] I find that section 17(5)(a) is not applicable.

[para 76] The Applicant has not argued that other factors weigh in favour of disclosure, and none appear to apply.

Conclusions regarding section 17(1)

[para 77] As several presumptions against disclosure apply to the personal information withheld in the records and no factors weigh in favour of disclosure, I find that section 17(1) applies to all of the personal information in the records at issue to which that provision can apply.

V. ORDER

[para 78] I make this Order under section 72 of the Act.

[para 79] I find that the Public Body properly relied on section 12(2)(b) to refuse to confirm or deny the existence of responsive records.

[para 80] I find that some of the information withheld under section 17(1) is not personal information to which that provision can apply, as discussed at paragraphs 46-56. I order the Public Body to review the records at issue and disclose to the Applicant information to which section 17(1) cannot apply, with the examples and discussion in this Order as guidance.

[para 81] I uphold the Public Body's decision to apply section 17(1) to withhold the personal information in the records, where I found that section can apply.

[para 82] 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