

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-28

September 18, 2025

LETHBRIDGE POLICE SERVICE

Case File Number 015395

Office URL: www.oipc.ab.ca

Summary: The Applicant requested access to a video from the Lethbridge Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act):

Some time in April Const. [...] was called to the Westside Fire hall. [Name] made a video of myself speaking to a woman at this location. I am hoping to obtain a copy of such video. Const. [...] confirmed there is such a copy on file. Please forward a copy to [email address].

The Public Body refused access to the requested record pursuant to section 17(1) (disclosure harmful to personal privacy) of the FOIP Act.

The Adjudicator determined that section 17(1) of the FOIP Act required the head of the Public Body to refuse access to the personal information of a person who appeared in the video and the person who recorded the video. As the person who appeared in the video and the person who made the video were both known to the Applicant, as were the circumstances in which the video was made, it was impossible to sever their personal information from the video.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 17, 72.

Authorities Cited: AB: Order F2013-36, F2024-14, F2025-21.

I. BACKGROUND

[para 1] On August 6, 2019, the Applicant requested access to a video from the Public Body:

Some time in April Const. [...] was called to the Westside Fire hall. [Name] made a video of myself speaking to a woman at this location. I am hoping to obtain a copy of such video. Const. [...] confirmed there is such a copy on file. Please forward a copy to [email address].

[para 2] On August 26, 2019, the head of the Public Body refused access to the requested record pursuant to section 17(1) of the FOIP Act.

[para 3] On September 18, 2019, the Applicant asked the Commissioner to review the Public Body's response to the access request. The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

II. Does section 17(1) (disclosure harmful to personal privacy) of the FOIP Act require the head of the Public Body to refuse access to the requested record?

[para 4] Section 17 requires a public body to withhold the personal information of an identifiable individual when it would be an unreasonable invasion of the individual's personal privacy to disclose his or her personal information.

[para 5] Section 1(n) of the FOIP Act defines personal information. It states:

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 6] Information is personal information within the terms of the FOIP Act if it is recorded and is about an identifiable individual.

[para 7] 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

[...]

(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,

[...]

(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 8] Section 17 does not say that a public body must never 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 9] 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 10] As will be discussed in further detail below, section 6 of the FOIP Act imposes a duty on a public body to sever information that is subject to an exception if it can reasonably do so. Section 6 states, in part:

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[...]

The foregoing provision establishes that an applicant has a right of access to records including records containing the applicant's personal information. The right of access is subject to exceptions to disclosure, but if a public body can reasonably sever information subject to an exception, such as the personally identifying information of a third party, and provide the remainder to the applicant, it must do so. Section 6 creates a right for an applicant and a corresponding duty in the head of the public body.

Does the video contain personal information?

[para 11] The video clearly contains information about the Applicant and another person as the video records a dispute between them. That the Applicant and the other person were in a dispute / altercation is personal information about them, such as their appearance, conversation, gestures, location, situation, and demeanor.

[para 12] The video was submitted as part of a complaint to the Public Body and was taken by a witness. The witness's voice is audible at the beginning of the video. The interior of the witness's vehicle is visible as well as the witness's leg. The video also informs the viewer that the maker of the video saw the dispute / altercation and recorded it. The Applicant is aware of the identity of the witness and that the witness made the video. The Applicant and the witness know each other. While the video itself does not identify the witness, the witness is identifiable to the Applicant as the maker of the video, given the Applicant's knowledge of events.

[para 13] I find that the video contains the personal information of the Applicant, the other person and the witness. The Applicant's personal information is intertwined with the personal information of the witness and the other person. The Applicant appears in the video, but the witness made the video and the video reveals information about the witness to someone who can identify the witness and the other persons in the video, such as the Applicant. The video reveals that the witness took the video and also reveals the witness's location, and circumstances at the time of the video.

Is the personal information subject to a presumption under section 17(4)?

[para 14] The video is an identifiable part of a law enforcement record and was collected by the Public Body as part of a law enforcement investigation. The information about the witness and the other person falls within the terms of section 17(4)(b). As a result, the presumption arises that it would be an unreasonable invasion of their personal privacy to disclose their personal information from the video.

[para 15] No presumption applies to the personal information of the Applicant, as the personal information of an applicant cannot be withheld from an applicant under section 17(1); however, in the circumstances in which the video was taken, the information about the Applicant is also information about the witness. The presumption does apply to the witness's personal information.

Are there any relevant factors that outweigh the presumption?

[para 16] The Public Body provided the factors it considered relevant for the purposes of section 17(5) *in camera* to avoid disclosing the information to which it had applied section 17(1) in its submissions. These factors weighed against disclosure, rather than in favor of it.

[para 17] The Complainant's position is that he requires the video "[...] for my personal use, as proof of false accusations against myself. I have no plan nor purpose to publish the video or duplicate it for others."

As the Applicant refers to false accusations, I considered whether section 17(5)(c) is a relevant consideration.

[para 18] In Order F2025-21, the adjudicator discussed how section 17(5)(c) has been applied in previous orders. The adjudicator said at paragraph 63:

As noted by the adjudicator in Order F2023-02 at paragraph 50, four criteria must be fulfilled in order for section 17(5)(c) to apply:

[para 50] 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 F2008-31 at para. 112)

[para 19] From the foregoing, I understand that section 17(5)(c) may apply where the information in question is relevant to proceedings which are either existing or contemplated. That is not the case here. There is no indication that proceedings have been instituted or will be instituted in relation to the incident that is the subject of the video.

[para 20] I am unable to identify any factors that weigh in favor of disclosing the personal information of the other person and the witness.

Can the personal information be severed from the record and the remainder provided to the Applicant?

[para 21] As discussed above, the head of a public body has a duty under section 6(2) to consider whether information may be severed from a record and to provide the remainder to an applicant.

[para 22] In Order F2013-36, the Adjudicator said at paragraph 11:

Once the decision is made that a presumption set out in section 17(4) applies to information, then it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information. If the decision is made that it would be an unreasonable invasion of personal privacy to disclose the personal information of a third party, the Public Body must then consider whether it is possible to sever the personally identifying information from the record and to provide the remainder to the Applicant, as required by section 6(2) of the FOIP Act.

[para 23] In Order F2024-14, the Adjudicator said at paragraph 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).

As the Adjudicator noted in Order F2024-14, the head must consider whether information will continue to fall within the terms of section 1(n) of the FOIP Act once identifying information such as names is removed from the records. If it is not possible to identify an individual from the remaining information in the record once identifying information has been removed, section 6(2) of the FOIP Act requires the remaining information to be provided to the applicant.

[para 24] The head of the Public Body submitted that the personal information of the other person and the witness could not be severed from the video, given the Applicant's knowledge of their identities and the events that are the subject of the video.

[para 25] I find that the personal information of the witness and the other person cannot be severed from the video and the remainder given to the Applicant, because doing so would not serve to render them unidentifiable to the Applicant. The Applicant's knowledge of events and of the identities of the witness and the other person make severing personal information impossible.

[para 26] In this case, the manner in which the personal information of the Applicant is intertwined with the personal information of other people requires the Public Body to refuse access to the requested information.

III. ORDER

[para 27] I make this Order under section 72 of the FOIP Act.

[para 28] I confirm that the Public Body is required to refuse access to the requested record.

Teresa Cunningham
Adjudicator