

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-14

April 2, 2026

CALGARY POLICE SERVICE

Case File Number 018298

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Calgary Police Service (the Public Body). The Applicant stated:

We would like to request access to the investigative materials related to CPS File No. CA16606537 incident involving [the Third Party] and its ensuing PSS investigations numbered #16-1313 and #16-1391, including relevant video recordings and photographs

The Public Body responded to the access request on June 12, 2020. It stated:

I collected 1700 pages of records, 3 in car digital video recordings, audio / visual interviews of various members who were in attendance as well as the ASIRT investigation.

We are denying access to these records as per section 17(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) which 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.

The only way we would be able to disclose the information is if you were to obtain the written consent of [the Third Party].

The Applicant requested review by the Commissioner of the Public Body's decision to refuse access to the records in their entirety.

At the inquiry, the Public Body indicated that it was now refusing access to the information in the records in their entirety on the basis that the records contained the personal information of police officers.

The Adjudicator found that there was a substantial amount of information in the records that was not personal information to which section 17(1) could apply. She also found references in the records that suggested the Public Body had severed information from the records under provisions other than section 17(1).

The Adjudicator issued an interim order requiring that the Public Body determine whether information in the records had a personal dimension. If it did not, or the information could be severed from the records without revealing personal information, the Public Body was directed to give the Applicant access to that information. The Adjudicator directed the Public Body to comply with section 12 of the FOIP Act when it made the decisions to grant or refuse access.

The Adjudicator directed the Public Body to provide an index of records for the inquiry.

The Adjudicator determined that she would make the decision as to whether section 17(1) required the Public Body to refuse access to information once the Public Body had made decisions it is required to make under the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 27, 72

Authorities Cited: AB: Orders F2013-51, F2023-05, F2023-42

Cases Cited: *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Calgary Police Service (the Public Body). The Applicant stated:

We would like to request access to the investigative materials related to CPS File No. CA16606537 incident involving [the Third Party] and its ensuing PSS investigations numbered #16-1313 and #16-1391, including relevant video recordings and photographs

[para 2] The Public Body responded to the access request on June 12, 2020. It stated:

I collected 1700 pages of records, 3 in car digital video recordings, audio / visual interviews of various members who were in attendance as well as the ASIRT investigation.

We are denying access to these records as per section 17(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) which 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.

The only way we would be able to disclose the information is if you were to obtain the written consent of [the Third Party].

[para 3] The Applicant requested review by the Commissioner of the Public Body's decision to refuse access to the records in their entirety.

[para 4] The Commissioner agreed to conduct an inquiry and delegated the authority to conduct it to me.

[para 5] The Public Body made submissions. After I reviewed the Public Body's submissions, I asked it questions regarding its application of section 17(1) to the information in the records. I stated:

The Public Body has severed all the information from the records at issue under section 17(1) (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). In its submissions, the Public Body refers generally to "third party" information in the records, but it does not clearly indicate the identity of the third parties to whom it refers or explain its position that the information in the records is the personal information of third parties

In its discussion of severing in its submissions, the Public Body appears to take the position that all information in the requested file is about the accused in some way. I ask that it explain how all the information it severed from the records reveals information about the accused. Assuming that the Applicant knows the identity of the accused and the nature of the charges brought against the accused, because of the public nature of the incident, what information could be gained about the accused by the Applicant from reviewing the information in the records? As an example, what could the Applicant learn about the accused from records 1415 - 1428? What recorded information about the accused within the terms of section 1(n) of the FOIP Act is present in these records?

If the Public Body takes the position that the information in the records is the personal information of police officers acting as third-party individuals, I ask that it also explain this position with evidence and with reference to the information it has withheld from the Applicant.

I note, too, that the Public Body informed the Applicant that the information in the records was being withheld solely under section 17; however, the records indicate the presence of severing under other provisions. These decisions were not communicated to the Applicant. Section 12 of the FOIP Act states, in part:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,
- (b) if access to the record or part of it is granted, where, when and how access will be given, and

- (c) if access to the record or to part of it is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based, [my emphasis]
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

It is not open to a public body to refuse access to information under provisions of the FOIP Act without informing the Applicant of the provision or provisions on which the public body relies, unless section 12(2), not reproduced, applies. The Public Body has not informed the Applicant of severing decisions made under any provision other than section 17(1) or its reasons for doing so, section 17(1) is the only provision it has applied under the FOIP Act. Should I find that the Public Body is not required by section 17(1) to refuse access to all the information in the records, my order would have the effect of directing the Public Body to give access to information it intended not to disclose.

If the Public Body intends to argue that it is authorized to sever information under provisions of the FOIP Act not included in its response to the Applicant, I ask that it explain the basis for the authority to do so at this point in time with reference to the provisions of the FOIP Act.

[para 6] The Public Body responded:

The records at issue involve personal information about the accused and about the involved officers as the Applicant has requested records about the investigation into the Officers. Those records relate to two Professional Standards Section (PSS) investigations (PSS 16-1313 and PSS 16-1391) that do not involve the Applicant. Professional standards investigations involve the personal information of Officers as well as personal information pertaining to the complainant or involved citizen.

The records that are referred to on pages 1415 – 1428 refer to what was being investigated in relation to the officers, meaning what the could be, would be or should be considered in the PSS investigation of the officers [*sic*].

In the decision by Honourable Justice McMahon in 2010 ABKB 82 para 12 he indicates that professional standards records contain information about a third party:

Since the records requested clearly contain personal information about a third party (the police officers), it is only Section 71(2) that comes into play. Hence the burden is on the Herald. As in our initial submission we outlined the argument pertaining to 71(2) and that the burden of proof to establish a public scrutiny argument and the subsequent invasion of the Officer's or the complainant's privacy is on the Applicant. We believe the Applicant failed to show this.

In reviewing the records with current processes, there are a number of other sections that would be utilized under the Act in addition to 17(1), if we were processing the records under a request from an involved party or someone who had consent. These sections would include 4(1)(b), 17(1), 27(1), 27(2), 24(1)(a), 24(1)(b) and Non-Responsive are most often utilized. However, at

the time of the access request, the records did not pertain to the Applicant and the Applicant did not have consent from any involved parties, nor did they present an argument under 17(5)(a) that would merit an invasion of privacy. Given that situation, the Analyst determined that there were no records of a general nature that could be released to the Applicant without releasing personal information of the involved parties.

[para 7] I understand the Public Body to say now that it has applied section 17(1) to information about the accused (the Third Party) as well as to any information referencing police officers in the records. I also understand the Public Body to say that it relies only on section 17(1) to withhold information from the Applicant, because the Applicant is not an “involved party” and does not have the consent of an “involved party”.

[para 8] Although the Public Body informed the Applicant that it had located “3 in car digital video recordings, audio / visual interviews of various members who were in attendance as well as the ASIRT investigation” it did not include the audio visual records at issue for my review. It also did not provide records 178 – 182 or 201 – 208 for the inquiry. Despite the Public Body’s response to my letter, cited above, some of these records indicate that they were withheld under section 27(1)(a) and no other provision of the FOIP Act.

II. INFORMATION AT ISSUE

[para 9] The information withheld from the Applicant by the Public Body is the information at issue.

III. ISSUE: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the head of the Public Body to refuse access to all the information in the records?

[para 10] As noted in the background, above, the Public Body severed all the information in the records under section 17(1) of the FOIP Act. It originally severed the information on the basis that it was the personal information of a third party accused and informed the Applicant that it would disclose the records with the consent of the third party (the Third Party); the Public Body clarified that it also applied section 17(1) to information regarding police officers in addition to information about the third party accused.

[para 11] Section 17 of the FOIP Act is limited in its application to personal information. 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 12] Information is personal information within the terms of the FOIP Act if it is recorded and is about an identifiable individual.

[para 13] Section 17(1) of the FOIP Act requires a public body to refuse access to personal information if disclosing the personal information to a requestor would be an unreasonable invasion of a third party's personal privacy. Section 17 of the FOIP Act contains provisions that assist in making this determination. It 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,

(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 14] 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 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 15] 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 16] The Public Body applied section 17(1) to withhold information that would reveal the names and other personally identifying information of police officers who witnessed events

in addition to the personal information of two police officers who became the subject of an ASIRT (Alberta Serious Incident Response Team) investigation.

[para 17] Section 17(4)(b) applies to personally identifying information about the Third Party accused as the information appears in a police file. As a result, there is a presumption that it would be an unreasonable invasion of the Third Party's personal privacy to disclose personally identifying information about the Third Party. That being said, most of the information in the records is not about the Third Party. In many parts of the records, information referencing the Third Party is included for the purpose of documenting the actions and operations of the Public Body. The personally identifying information of the Third Party could be redacted from the records and information regarding the actions and operations of the Public Body could be provided to the Applicant without affecting the personal privacy of the Third Party.

[para 18] The Applicant has not requested the personal information of the Third Party so much as information regarding the actions of police officers and the subsequent investigation. I am unable to identify a factor that would weigh in favor of disclosing the Third Party's personal information. In this case, it appears possible for the Public Body to redact the Third Party's personal information from the records and to provide information regarding the Public Body's actions and procedures to the Applicant.

[para 19] Section 6 of the FOIP Act requires a public body to sever information under exceptions and provide the remainder the Applicant, where possible. It 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.

[...]

While a public body must refuse access to personal information if it would be an unreasonable invasion of personal privacy to give an applicant access to it, it must also determine whether it is possible to sever personally identifying information from the records under section 17(1) and to provide the remainder to an applicant.

[para 20] As discussed above, the Public Body has withheld the names, statements, and findings of investigators and police witnesses from the records in addition to information that does not appear to be about anyone. I turn first to the question of whether the information severed by the Public Body as the "personal information" of police officers is personal information to which section 17(1) may be applied.

Is information in the records referencing police officers personal information to which section 17(1) applies?

[para 21] The Public Body made the following argument in support of its decision to sever personal information about the police officers. It stated:

Given the lack of consent, the redactions made on the records would have rendered them meaningless.

When a call for service is generated the actions that the officers take in relation to an individual all relate to the individuals involved. An individual should not be worried that their investigation whether it be as an accused, witness or victim can be made public for the purpose of a documentary that they haven't consented to. Section 17(4)(b) of the Act is the protection afforded to them. Those same individuals have the ability to file complaints under the Police Act if they question those actions. Again, their complaint and the investigation of the officer's actions takes place with varying levels depending on the complaint. Some are resolved informally, some go to hearings, others are investigated by a third party agency and can some lead to criminally charges.

Decisions can also be appealed to the Law Enforcement Review Board (LERB). Additionally, CPS can act as the complainant if it believes the actions of officers warrant an investigation or it meets certain criteria which automatically opens a Professional Standards investigation.

In this case, a third party, the Alberta Serious Incident Response Team (ASIRT), investigated the incident and in consultation with the Crown declined any charges. In addition, there was no hearing from the Professional Standards Investigation. In following the direction laid out in 2010 ABKB 82 regarding these types of files Justice McMahon stated in para 101 [...]

I have described the public component of the LERB and the Calgary Police Commission both of which exercise oversight review in relation to the CPS. Many of these complaints would be primarily employment issues for which the legislature has provided a detailed process for resolution, while balancing the public interest in the well-managed police service with the private and public interest in protecting against unreasonable loss of privacy merely for wearing the uniform.

The result then is that for this category of disciplinary decisions, Section 17(5)(a) of the Act does not weigh sufficiently against the presumption in Section 17(4) and so the right to the police officer's privacy remains.

I conclude as well that for this category of disciplinary decisions, Section 17(5)(h) is engaged:

The disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. The disclosure of disciplinary decisions that do not involve or result from any federal or provincial offence would not warrant the resulting reputational damage, and serves no public interest and so would be unfair.

If the results of the investigations led to a hearing that required naming the officers, the guideline in the decision was indicated in para 104, "As to the police officer, disclosure from the disciplinary decisions is restricted to the nature of the charge and the name and rank of the officer."

It did not indicate that the entire disciplinary hearing or documents be provided to the Calgary Herald but only the charge, name and rank. As this investigation did not result in any charges, provincially or federally, nor went to a hearing, the position of CPS is that 17(1) applied to all of the records related to all of the involved parties, the accused and the officers.

[para 22] The Applicant argues:

As far as the submissions regarding “third party information”, the Applicant is left in the difficult position of attempting to decipher the confusing response of the Public Body, as the Public Body has clearly failed to respond to the Adjudicator’s clear request that it “explain [its] position with evidence and with reference to the information it has withheld from the Applicant.”

Instead the Public Body twists and distorts an unrelated precedent to support its position that the names of officers who are witnesses to an on-duty incident should be treated in the same manner as though those officers’ disciplinary histories are being requested. The CPS v Alberta case was a generalized request for a list of police officers who had been subject to disciplinary or criminal complaints, along with officer names and a summary of each allegation or incident. This is not what the Applicant is asking for here.

The Public Body also draws no distinction between the “accused” and witnesses, yet this distinction is obvious. In CPS v Alberta it was actual disciplinary records which were sought, which would have meant treating every single third party officer as an “accused”. However, the fact that the Court referred to an officer’s disciplinary history as “personal information about a third party” does not also make the name of every person who witnesses a serious incident “personal information about a third party.”

[para 23] In its submissions, the Public Body relies on *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82 (*Calgary Police Service*) in which McMahon J. quashed an order of the Information and Privacy Commissioner directing the Calgary Police Service to disclose the personally identifying information of police officers whose conduct was the subject of disciplinary proceedings conducted under the Police Regulation. McMahon J. found the Commissioner had unreasonably adopted a “one size fits all” approach to the personal information of police officers involved in disciplinary proceedings.

[para 24] I agree with the Applicant that *Calgary Police Service* is not on point. In *Calgary Police Service*, McMahon J. did not suggest that all identifying information of police officers in a public body’s records should be redacted. Rather, that case was focused on the question of whether the identities of police officers subject to *disciplinary proceedings under the Police Regulation* should be made public. McMahon J. found that section 17(5)(a) did not weigh sufficiently in favor of disclosure in that case.

[para 25] The records before me do contain some references to police officers whose conduct was under investigation; however, the records also contain references to police officers acting in a representative capacity, for example, as witnesses or investigators.

[para 26] Not all information referring to an individual is necessarily personal information to which section 17(1) can be applied under the FOIP Act. Information associated with an individual in an “official” or “representative” capacity may not be “about” the individual. Information about the actions of an employee performing work duties, may not be about the employee as an individual, unless the information has personal consequences for the employee, or contains information about the employee’s personal life. Such information is said to have “a personal dimension”.

[para 27] In Order F2013-51, the Director of Adjudication considered the question of whether information relating to an individual's work duties was personal information and said:

In Order F2011-014, the Adjudicator concluded that the name and signature of a Commissioner for Oaths acting in that capacity was not personal information, as it was not information about the Commissioner for Oaths acting in her personal capacity. She said:

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

However, individuals do not always act on their own behalf. Sometimes individuals may act on behalf of others, as an employee does when carrying out work duties for an employer. In other cases, an individual may hold a statutory office, and the actions of the individual may fulfill the functions of that statutory office. In such circumstances, information generated in performance of these roles may not necessarily be about the individual who performs them, but about the public body for whom the individual acts, or about the fulfillment of a statutory function.

I find that the names and other information about employees of the Public Body and the University of Calgary acting in the course of their duties, as representatives of their employers, cannot be withheld as personal information, unless the information is at the same time that of an individual acting in the individual's personal capacity.

[para 28] In Order F2023-42, the Adjudicator said at paragraphs 43 – 45:

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).

Where section 17(1) was applied to business contact information (such as work phone numbers of public body employees or business employees), it is not information to which section 17(1) can apply unless there is a personal dimension.

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

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

[para 29] The precedents above are clear that it is only when information about a public body's employees has a personal dimension that it will be personal information to which section 17(1) can apply. Information will have a personal dimension if it reveals something about the employee's personal life, or has personal consequences for the employee. If information is about disciplinary proceedings involving the employee, then the information will likely be the employee's personal information as it has a personal dimension.

[para 30] The Public Body has the burden of establishing that the information it considers to be the personal information of employees is personal information within the terms of the FOIP Act. In order F2023-05 at paragraph 25, the Adjudicator said:

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).

In that case, the Adjudicator distinguished between the personal information of police officers who acted as witnesses and those who were the subject of a disciplinary investigation. Information about the latter was personal information, while information about the former was not, and could not be withheld under section 17(1). The Adjudicator said at paragraphs 122 - 123:

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

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

[para 31] The records before me indicate that ASIRT conducted an investigation in relation to some officers, but significantly fewer than all the police officers whose names appear in the records. Information revealing that an officer is a "subject officer" – that is, an officer under investigation – has a personal dimension and is the personal information of such an officer.

[para 32] The majority of the information in the records is not the personal information of police officers, but is about police officers acting solely as representatives of the Public Body. In addition, the personally identifying information of representatives of ASIRT conducting investigations is not personal information to which section 17(1) can be applied. Like police officers, ASIRT investigators act in a representative capacity when they investigate.

[para 33] I find that the information in the records that would serve to identify police officers who are the subject of an investigation as to whether their conduct was appropriate or were about to be the subject of such an investigation is information with a personal dimension. I find that information about police officers conducting investigations, making arrests, and documenting such actions is information about the police officers acting in a representative capacity and lacks a personal dimension.

Does section 17(1) of the FOIP Act require the Public Body to refuse access to information about the subject officers and the Third Party?

[para 34] As discussed above, *Calgary Police Service v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 82 (CanLII), (*Calgary Police Service*) on which the Public Body relies in support of its decision to refuse access to the records in their entirety, the Calgary Herald requested records regarding disciplinary decisions made under the Police Regulation. I am unable to identify any records of this kind in the records at issue. I find that *Calgary Police Service* is not on point, given that the records before me do not contain disciplinary decisions of the kind under review in that case. That the records related to disciplinary proceedings was a significant factor weighing against disclosure in the Court's view.

[para 35] It is unclear, on the evidence before me, that there are factors weighing in favor of disclosing the personal information of the Third Party or information identifying police officers who were the subject of investigations. This lack of clarity results, in part, from the Public Body's blanket application of section 17(1) to the information in the records, without any demonstrated consideration of whether the information it withheld was personal information. It may be the case that if the Applicant were provided with information from the records other than personally identifying information that the Applicant would have sufficient information to determine whether the records give rise to a matter of public interest and to discuss whether the government bodies charged with addressing the public interest, did so appropriately. Alternatively, it may be possible for the Applicant to make informed arguments regarding the public interest in viewing some personally identifying information once the Applicant reviews information in the records that is not subject to an exception.

[para 36] As will be discussed below, the Public Body has not yet responded to the Applicant as required by section 12 of the FOIP Act. It has not yet determined, in accordance with the FOIP Act whether section 17(1) applies to information in the records or met the obligation under section 6 to sever personally identifying information subject to section 17(1) and provide the remainder to the Applicant. It is not for me to make these decisions or take these actions on its behalf in relation to over 1700 pages of records.

[para 37] As the Public Body has not yet met its obligations under the FOIP Act it is unclear what information will be withheld or disclosed once it has made decisions in accordance with the FOIP Act. I have decided to make the decision as to whether section 17(1) requires the Public Body to refuse access to information once the Public Body has reviewed the records and made decisions as to whether each record contains personal information. If it determines that information is personal information subject to section 17(4), it must then consider how the factors set out in section 17(5) apply and whether they weigh against or in favor of disclosure.

Did the Public Body sever the information as required by section 6 of the FOIP Act?

[para 38] Cited above, section 6(2) requires a public body to turn its mind to the question of whether it is possible to sever information subject to an exception from records and to provide the remainder to an applicant.

[para 39] The Public Body provided insufficient evidence and submissions to support its decision to refuse access to the entirety of the records under section 17(1). Most of the information in the records is not information about an identifiable individual acting in a personal capacity. While the Public Body suggests in its submissions that if it severed personally

identifying information from the records the remaining information would be meaningless, it did not support this argument with reference to the content of the records. The Public Body did not demonstrate how severing personally identifying information from the records and providing the remainder to the Applicant would mean that it would provide only meaningless information to the Applicant. Instead, its view that it cannot sever personally identifying information from the records appears based on its view that any information about police officers or ASIRT representatives performing their duties is “personal information”. As discussed above, information about representatives of a public body in records is only their personal information if it has a personal dimension. As discussed above, in most cases information about police officers in the records lacks a personal dimension. It is when the records indicate that the police officers are “subject officers” – that is, “officers that are the subject of an investigation” – that information about them has a personal dimension.

[para 40] As it explained in its submissions, the Public Body refuses access to entire files when they are requested by someone whom it considers is not an “involved party” or who lacks the consent of an “involved party”. When a party is “involved” in the file, the Public Body then considers whether other provisions of the FOIP Act, such as section 27, apply to information and could be a basis for refusing access to information. As the Applicant was not an “involved” party, the Public Body did not refuse access under section 27.

[para 41] The Public Body’s stated practice does not comply with the FOIP Act. Section 6 of the FOIP Act, discussed above, gives an applicant the right to access any information in records not subject to an exception. The Public Body’s stated approach is one where it automatically refuses access regardless of whether the information is subject to an exception or not, or whether excepted information can be severed. While it is likely that there will be personal information subject to section 17(1) in its files, it does not follow from this that the Public Body may refuse access to the rest of the information in a file in its entirety. It also does not follow from the fact that there may be personal information in records that the Public Body need not review the records to determine whether there is information in a file not subject to an exception that could be provided to the applicant.

[para 42] Section 12 of the FOIP Act states:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant’s questions about the refusal, and*

(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

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

(a) a record containing information described in section 18 or 20, or

(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.

The foregoing provision sets out the information that a public body must include in a response to an applicant.

[para 43] When confirming the existence of responsive records would have the effect of communicating personal information subject to section 17(1) to an applicant, a public body may apply section 12(2) of the FOIP Act to avoid this outcome. In this case, the Public Body did not rely on section 12(2) but confirmed the existence of over 1700 responsive records.

[para 44] The FOIP Act does not differentiate between access requests made by “involved parties” and parties that were not involved in a file, as the Public Body’s arguments suggest. Section 3 of the FOIP Act is clear that the FOIP Act does not replace existing methods for obtaining information and that the FOIP Act does not affect the information available to parties to legal proceedings. As a result, parties to proceedings are entitled to information from the Public Body’s files by virtue of their involvement in the proceedings, such as an accused or a police officer subject to disciplinary proceedings. Parties to proceedings, such as Court or disciplinary proceedings, are not required to make access requests under the FOIP Act for information regarding those proceedings. The information a party to a proceeding may obtain is decided in accordance with the rules of the proceeding and ultimately by the decision maker conducting the proceeding.

[para 45] The FOIP Act provides that an applicant may request information from a public body that has the information in its custody or control. There is no requirement that an applicant be involved in the proceedings documented in a file before an applicant may obtain records or receive a response compliant with sections 6 and 12 of the FOIP Act. The duty of a public body when it is responding to an access request is to determine whether exceptions apply to information requested by an applicant and to determine whether it can release the remaining information to an applicant if it decides that the requested information is subject to an exception.

[para 46] Section 12(1) of the FOIP Act requires a public body to cite all the exceptions to disclosure on which a decision to refuse access is based and to provide reasons. It is not open to a public body to refuse access to information under the FOIP Act without citing all the provisions of the FOIP Act on which it relies.

[para 47] The Public Body's response to the Applicant and its submissions for the inquiry indicate that it considered the lack of consent of the Third Party to be determinative as to whether the Applicant could receive any records. In its submissions in response to my questions, the Public Body adopted the position that the records contain the personal information of police officers. The Public Body's submissions do not support finding that it reviewed each record and considered whether the record contains personal information. As discussed above, section 17(1) of the FOIP Act is limited in its application to personal information. If disclosure of information would not reveal personal information that has a personal dimension, it cannot be withheld under section 17(1).

The Public Body's reliance on other exceptions to disclosure

[para 48] The Public Body withheld from my review information it claims was withheld under section 17(1). The records themselves indicate that the Public Body refused access to information under section 27(1) of the FOIP Act. While the Public Body claims it has not applied section 27(1), given that it considers the Applicant not to be an involved party, the records indicate that it did withhold information from the records under this provision.

[para 49] The Public Body has not established through evidence or argument that the information it withheld from my review is subject to section 17(1). When a public body relies only on section 17(1) to refuse access to information in records, it must provide those records to me so that I may review the evidence of the records. In the absence of the records, I am unable to determine whether the records the Public Body withheld from my review contain information subject to section 17(1) of the FOIP Act.

Conclusion

[para 50] As discussed above, the Public Body has refused access under section 17(1) to information that is not personal information to which that provision applies. I have also found that it did not meet the duties created by sections 6 and 12 of the FOIP Act. Its decision to refuse access to the records in their entirety makes it difficult to assess whether section 17(1) applies to information that may be personal information. It is unknown to what extent the public interest would weigh in favor of disclosure until the Public Body makes decisions in accordance with the FOIP Act as to there is personal information in the records and whether it is required to refuse access to that personal information. It is possible that the Applicant may receive sufficient information to raise issues of public interest if the Public Body gives access to the information that is not personal information. That cannot be known until the Public Body complies with its duties under the FOIP Act and provides the information to the Applicant that is not subject to an exception to disclosure.

[para 51] I have decided to direct the Public Body to comply with its duties under the FOIP Act, prior to issuing a final order. I will order the Public Body to determine whether section 17(1) applies to the information in the records. In making this determination it must determine whether the records contain personal information about police officers to which section 17(1) can apply. These determinations must be made in accordance with my findings that the personally identifying information of the Third Party and information that could reveal that a police officer was the subject of an ASIRT investigation has a personal dimension. Additionally, information about a police officer's personal history may also have a personal dimension.

Information about police officers or ASIRT representatives carrying out their duties is information about them acting in a representative capacity. Once the Public Body makes these determinations, it must consider whether it can redact the information from the records and provide the remainder to the Applicant.

[para 52] The Public Body must provide me with the information it has withheld from the Applicant solely under section 17(1) that it has not yet provided for the inquiry, including the video recordings. If it relies on section 27 of the FOIP Act to refuse access to this information or some of it, it must provide evidence for the inquiry to establish that the information is privileged. Moreover, it must point to authority to raise exceptions to the right of access at this point in the proceedings when it did not cite this provision in its response to the Applicant.

[para 53] The Public Body has not yet provided an index of records for the inquiry. The Notice of Inquiry states:

If the number of pages of the records at issue exceeds 3 pages, the Respondent is to include with its submission an Index of Records in the manner set out in Practice Note – Preparing Records at Issue and Index of Records, which has been previously provided to the parties and is available on the OIPC website at <https://oipc.ab.ca/resource/practice-note-preparing-records-at-issue-and-index-of-records/>. Please note that the requirements for an index of records provided for an inquiry are different from the requirements for an index provided at the settlement phase.

This index must be part of the Respondent's submission provided to the parties listed in the first page of this Notice.

I will direct the Public Body to comply with obligation in the Notice of Inquiry and the Practice Note to provide an index of records for the inquiry. This will assist the inquiry by assigning unique page numbers to records and descriptions of them that may be used by the parties in their submissions and in the order.

IV. INTERIM ORDER

[para 54] I make this Order under section 72 of the FOIP Act.

[para 55] I order the Public Body to meet its duty to determine whether there is personal information subject to section 17(1) in the records and to make a decision regarding access that complies with section 12(1) of the FOIP Act. Complying with section 12(1) requires informing the Applicant whether access is granted or refused, the provision of the FOIP Act on which the Public Body relies, and a reason for refusal. The Public Body must make a decision that accords with my direction that only information with a personal dimension may be withheld under section 17(1). If information is not personal information and is not subject to solicitor-client privilege, the Public Body must provide that information to the Applicant.

[para 56] I order the Public Body to determine whether it is possible to sever personal information subject to section 17(1) from the records and to provide the remainder to the Applicant. If it is, it must provide that information to the Applicant in accordance with section 6.

[para 57] I order the Public Body to prepare an index of records for the inquiry.

[para 58] I order the Public Body to provide for the inquiry all the records at issue it did not provide, unless it is claiming solicitor-client privilege over them. If it claims solicitor-client privilege, it must provide descriptions of the records and sufficient evidence to establish that the records are privileged and point to authority to claim solicitor-client privilege despite not asserting it or referring to section 27 in its response.

[para 59] 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.

[para 60] Once the Public Body has complied with the order, I will provide a new schedule for submissions and determine whether the Public Body is authorized or required to refuse access to information in the records.

Teresa Cunningham
Adjudicator