

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2021-15**

April 28, 2021

**CALGARY POLICE SERVICE**

Case File Number 008123

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

**Summary:** The Applicant made an access to information request to the Calgary Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act*, (the Act). Among other information, the Applicant sought contact information for an individual in order to serve him documents in a civil proceeding. The Public Body provided 13 pages of responsive records, withholding some information under section 17(1) of the Act, including the contact information the Applicant sought.

The Adjudicator found that presumptions against disclosure under section 17(4)(b) and 17(4)(g)(i) applied to information withheld under section 17(1). Regarding information withheld under section 17(1) that was not provided by the Applicant, the presumptions were not rebutted by any considerations in section 17(5). The Adjudicator found that the Public Body was required to withhold this information.

Regarding information withheld that was provided by the Applicant, the Adjudicator found that the consideration in section 17(5)(i) outweighed presumptions against disclosure under sections 17(4)(b) and 17(4)(g)(i). Since the Applicant was already aware of the information, it was not unreasonable to disclose this information to her. The Adjudicator ordered the Public Body to disclose this information to the Applicant.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 1(d), 1(g), 1(i), 1(j), 1(n), 1(p); 17(1), 17(4), 17(4)(b), 17(4)(g)(i), 17(5), 17(5)(a), 17(5)(b), 17(5)(c), 17(5)(d), 17(5)(e), 17(5)(f), 17(5)(g), 17(5)(h), 17(5)(i); 72.

**Authorities Cited: AB:** Orders 96-020, F2008-012, F2011-010, F2014-12, F2014-16, and F2019-06. **ON:** Order PO-2026.

**Cases Cited:** *Dagg v. Canada (Ministers of Finance)*, [1997] 2 S.C.R. 403

## I. BACKGROUND

[para 1] This matter is a review of the response to the Applicant's access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). The Applicant made the request to the Calgary Police Service (the Public Body). The original access request appears to have been lost by both parties. As such, some details such as the exact date and wording of the access request are not available in this inquiry. However, the events surrounding the access request are generally clear. Based on both parties' submissions, the background to the access request is set out below.

[para 2] In November 2016, the Applicant reported to the Public Body that she was the victim of several crimes at the hands of an individual with whom she was briefly acquainted in the past (the Acquaintance). In her report, the Applicant identified the Acquaintance. The Public Body declined to file charges against him.

[para 3] In the latter half of 2017, the Applicant made an access to information request to the Public Body, seeking a copy of the police report (the Report) regarding the allegations she reported in November 2016.

[para 4] In her access request, the Applicant specified that she was seeking the Acquaintance's address. She appears to be aware that the Public Body contacted the Acquaintance about her allegations, and thus knows how to contact him. The Applicant requires the Acquaintance's address in order to serve him with documents commencing civil proceedings against him for damages and child support. The Applicant included her statement of claim in her submissions; it contains substantially the same allegations that she made in the Report.

[para 5] On January 4, 2018, the Public Body responded to the access request. The Public Body provided the Applicant with a copy of the Report, consisting of 13 pages. It withheld some information from the Report, including the Acquaintance's address, under section 17(1) of the Act on the basis that disclosing it would be an unreasonable invasion of third party personal privacy.

[para 6] On January 26, 2018, this Office received the Applicant's request for review of the Public Body's response to her access request. Investigation and mediation were authorized to attempt to resolve the issues, but did not do so. The matter proceeded to inquiry.

## II. RECORDS AT ISSUE

[para 7] The Records at Issue are the 13 pages of records provided in response to the access request. The Public Body withheld some information under section 17(1) from each page. It did not withhold any pages entirely.

## III. ISSUES

**ISSUE A: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the Public Body to withhold the information it severed from the Applicant?**

## IV. DISCUSSION OF ISSUES

**ISSUE A: Does section 17(1) of the Act (disclosure harmful to personal privacy) require the Public Body to withhold the information it severed from the Applicant?**

### *Applicable Law*

[para 8] “Personal Information” is defined in section 1(n) of the 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 9] Section 17(1) of the Act requires a public body to withhold third party personal information in response to an access request where disclosing it would be an unreasonable invasion of the third party's personal privacy. Section 17(1) 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.*

[para 10] The application of section 17(1) is informed by sections 17(4) and (5) which provide for presumptions that disclosure is an unreasonable invasion of third party personal privacy, and circumstances to consider in determining whether disclosure is an unreasonable invasion of third party personal privacy, respectively. Sections 17(4) and 17(5) state,

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

*(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*

*(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,*

*(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,*

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

*(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,*

*(e.1) the personal information consists of an individual's bank account information or credit card information,*

*(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*

*(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,*

*or*

*(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.*

*(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 11] The list of circumstances in section 17(5) is not exhaustive. Any other relevant circumstances must also be considered when determining whether or not disclosure is an unreasonable invasion of third party personal privacy.

### ***Application of the Law to the Records at Issue***

*Is the withheld information third party personal information?*

[para 12] Almost all of the information withheld under section 17(1) is third party personal information.

[para 13] The withheld information consists, in part, of personal information defined in section 1(n), about multiple third parties. This information includes names, addresses, telephone numbers, sex, age, marital status, family status, national or ethnic origin, religious beliefs and affiliations, health and health care information, and employment history.

[para 14] The withheld information also consists of personal information that is not listed in section 1(n) of the Act, but is nevertheless information about an identifiable individual. For example, information withheld from the third and fourth last lines of the penultimate paragraph on p. 2 describes personal relationship history of a third party and reveals the third party's sexual orientation.

[para 15] The only item of information withheld under section 17(1) that is not personal information is the single word withheld from paragraph 4) at the bottom of p. 5. The word is a verb that is not about an identifiable individual.

*Presumptions against disclosure under section 17(4)*

[para 16] For all withheld third party personal information, a presumption that disclosing the information is an invasion of third party personal privacy arises under section 17(4)(b). The personal information is in a Police Report, and is an identifiable part of a law enforcement record.

[para 17] A further presumption against disclosure arises under section 17(4)(g)(i). The withheld information contains the names of the third parties along with other personal information about them.

*Relevant Circumstances under section 17(5)*

[para 18] The Public Body argues, and I agree, that the circumstances in sections 17(5)(b) and (d) do not apply in this case. I also agree that sections 17(5)(g) and (h) neither weigh in favour nor against finding that disclosing information is an unreasonable invasion of third party personal privacy. Nothing in the evidence indicates that any of the withheld information is likely inaccurate. Further, a civil action regarding the same events alleged in the Report has already been commenced. Releasing the withheld information does not stand to affect any third party's reputation any more than the allegations in the civil action.

[para 19] The Public Body considered whether section 17(5)(a) is relevant, but found that disclosure is not desirable for the purposes of subjecting government activities to scrutiny. The Public Body considered factors relevant to determining whether section 17(5)(a) applies in respect of any information, as set out in Orders F2014-12 at para. 29 and F2014-16 at paras. 35 and 36.

[para 20] The Applicant does not specifically argue that section 17(5)(a) applies in this case, but at several places in her submissions she takes issue with how the Public Body handled her allegations against the Acquaintance. The Applicant states that the Acquaintance is a liar, and the Public Body failed to charge him simply because it believed his fabricated statements. I understand from these statements that the Applicant does not believe that the Public Body performed its duties properly, and that scrutiny of how it handled her case is in order.

[para 21] I have reviewed the factors that were held to be relevant to section 17(5)(a) in Orders F2014-12 and F2014-16, but do not need to delve into them at length. There is nothing in the evidence before me that indicates that releasing third party personal information is desirable for the purpose of submitting the actions of the Public Body to public scrutiny. The majority of the information in the Report has been provided to the Applicant, including the pertinent portions of the Acquaintance's statement to the Public Body concerning the Applicant's allegations. Even if the Public Body's actions warrant public scrutiny (I make no decision on that point here) releasing the withheld personal information will not substantially affect anyone's ability to do so. Thus, it is not desirable to release such information.

[para 22] The Public Body considered whether section 17(5)(c) is a relevant circumstance that weighs in favour of finding that disclosing the withheld information is not an unreasonable invasion of third party personal privacy in that the Acquaintance's address might be said to be relevant to a fair determination of the Applicant's rights to bring a civil claim for damages and child support.

[para 23] The test to determine whether personal information is relevant to a fair determination of an Applicant's rights was set out in Order F2008-012 at para. 55 and has been reiterated in numerous orders of this Office since. The test has four parts:

- (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.

[para 24] The Public Body argues that (c) and (d) above are not met in this case, at least with respect to contact information for the Acquaintance. With regard to (c), the Public Body states,

...The personal information does not have any bearing on the determination of the right in question. In other words, the limited personal information that has been redacted is not relevant to the question of whether the third party is the father of the child in question, nor is it relevant to the question of whether he is liable to pay child support and in what amount, if he is the father of the child. It is submitted that the 2016 contact information for the third party is entirely irrelevant to the determination of the right to child support in question.

[para 25] I agree with the Public Body. The Acquaintance's contact information has no bearing on determining the Applicant's right to child support or damages in the civil action brought by the Applicant against the Acquaintance.

[para 26] Regarding (d), the Public Body asserts that providing an address in order to allow an applicant to effect service may be a matter of convenience, but convenience is not the test under section 17(5)(c). It cites Order F2019-06 for support for its position. Order F2019-06 states, at paras. 68 to 70,

The Applicant has not specified which particular complainants or witnesses may be relevant to such a lawsuit, or why contact information collected almost three years ago from the complainants and witnesses is required to prepare for the proceeding (item (d) in the test cited above). The names of all complainants and witnesses have been provided to the Applicant; if he intends to serve these individuals with a statement of claim (or other legal document), the contact information in the records may be convenient for him but 'convenience' is not the standard set out for section 17(5)(c) to apply.

In other words, the Applicant has not provided satisfactory support to find that the contact information for the named witnesses and complainants is required to prepare for such a proceeding.

I find that section 17(5)(c) is not a factor.

[para 27] The same reasoning from Order F2019-06 applies here. The address is not required for the civil proceeding. The Public Body also notes that there are alternative means of effecting service on a prospective defendant when an address for service is unknown.

[para 28] I also find that it is not required in order to ensure an impartial hearing. Whether or not the Applicant has such information does not prejudice the civil action.

[para 29] I find that section 17(5)(c) is irrelevant with respect to the Acquaintance's contact information.

[para 30] I also find that section 17(5)(c) is irrelevant with respect to other withheld third party information for the same reasons as for the Acquaintance's contact information. None of it is significant to the rights in question in the civil action, or required to prepare for it or ensure an impartial hearing.

[para 31] I also observe the following argument from the Public Body on the applicability of section 17(5)(c):

If the Applicant is successful here, the result would be that the police would be required to hand over personal information to every civil claimant that needed help serving a potential defendant. It is submitted that there is nothing in the purpose or intent of the Act that would support such broad and privacy invasive disclosure requirements on the police.

[para 32] In my view, the Public Body's interpretation of section 17(5)(c) in the greater context of the Act is correct.

[para 33] The Act does not apply only to police, but to all public bodies. The scope of all public bodies, as defined in sections 1(p), 1(j), 1(d), 1(g), and 1(i), is immense. It includes numerous entities that are bound to have any individual's address or contact information, such as municipalities, schools, universities, and health authorities. An individual could make an access request to any of them in a bid to acquire personal contact information for someone else; not just the police. While the Act provides for access to information, it also places a heavy emphasis on protection of privacy, particularly in the form of protecting third party personal information, as evidenced by the complex and nuanced terms of section 17.

[para 34] The decision in Ontario Order PO-2026 discussed the tension between protection of privacy and the interest in disclosing an address in order to effect service in a civil action. The Adjudicator stated,

In a sense, the facts before me present a stark choice between the values of openness and privacy, both of which are central to the *Act*. In arriving at my conclusions, I have been guided by both of these values in considering whether to order disclosure of the information at issue, and have considered the extent to which each is furthered by either the disclosure or non-disclosure of the information. On the value of openness expressed in the *Act*, it has been said that the

overarching purpose of access to information legislation...is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry....Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.

[*Dagg v. Canada (Minister of Finance)* (1997), 1997 CanLII 358 (SCC), 148 D.L.R. (4th) 385 at 403, per La Forest J. (dissenting on other grounds)].

The disclosure of the information at issue in this case, the address of the affected party, has a somewhat indirect connection to the exercise of democratic rights described above. On the other hand, as I have indicated, the prospect of the disclosure of an individual's address, over his objections, brings to the forefront the fundamental purpose under the Act of the protection of personal privacy.

Having regard to the factors under section 21(2) identified, and the more general considerations discussed above, I am satisfied that it has been established that the disclosure of the affected party's address would constitute an unjustified invasion of his personal privacy.

[para 35] Like the Adjudicator in Order PO-2026, my decision is also guided by consideration of the purposes of the Act, which are the same as those quoted in *Dagg v. Canada (Ministers of Finance)*, [1997] 2 S.C.R. 403 (*Dagg*) above. The overarching purpose of access to information is to promote democracy, while a fundamental purpose is the protection of privacy.

[para 36] I also consider the following passage from *Dagg* concerning the importance of privacy, at paras. 65 to 67:

The protection of privacy is a fundamental value in modern, democratic states; see Alan F. Westin, *Privacy and Freedom* (1970), at pp. 349-50. An expression of an individual's unique personality or personhood, privacy is grounded on physical and moral autonomy -- the freedom to engage in one's own thoughts, actions and decisions; see *R. v. Dymnt*, [1988] 2 S.C.R. 417, at p. 427, per La Forest J.; see also Joel Feinberg, "Autonomy, Sovereignty, and Privacy: Moral Ideals in the Constitution?" (1982), 58 *Notre Dame L. Rev.* 445.

Privacy is also recognized in Canada as worthy of constitutional protection, at least in so far as it is encompassed by the right to be free from unreasonable searches and seizures under s. 8 of the *Canadian Charter of Rights and Freedoms*; see *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145. Certain privacy interests may also inhere in the s. 7 right to life, liberty and security of the person; see *R. v. Hebert*, [1990] 2 S.C.R. 151, and *R. v. Broyles*, [1991] 3 S.C.R. 595.

Privacy is a broad and somewhat evanescent concept, however. It is thus necessary to describe the particular privacy interests protected by the *Privacy Act* with greater precision. In *Dymnt*, I referred to *Privacy and Computers*, the Report of the Task Force established jointly by the Department of Communications/Department of Justice (1972), especially at pp. 428-30. That "report classifies these claims to privacy as those involving territorial and spatial aspects, those related to the person, and those that arise in the information context". It is the latter type of privacy interest that is of concern in the present appeal. As I put it in *Dymnt*, at pp. 429-30:

Finally, there is privacy in relation to information. This too is based on the notion of the dignity and integrity of the individual. As the Task Force put it (p. 13): "This notion of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit." In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected. Governments at all levels have in recent years recognized this and have devised rules and regulations to restrict the uses of information collected by them to those for which it was obtained; see, for example, the *Privacy Act*. . . .

See also *R. v. Duarte*, [1990] 1 S.C.R. 30, at p. 46 ("privacy may be defined as the right of the individual to determine for himself when, how, and to what extent he will release personal information about himself"); *R. v. Osolin*, [1993] 4 S.C.R. 595, at pp. 613-15 (*per* L'Heureux-Dubé J., dissenting); Westin, *supra*, at p. 7 ("[p]rivacy is the claim of individuals . . . to determine for themselves when, how, and to what extent information about them is communicated to others"); Charles Fried, "Privacy" (1968), 77 *Yale L.J.* 475, at p. 483 ("[p]rivacy . . . is control over knowledge about oneself").

[para 37] While disclosing the Acquaintance's address might be said to have a "somewhat indirect" connection to exercising democratic rights, disclosing the address in this case does not facilitate democracy in an appreciable way. The Applicant's civil action concerns her private interest in receiving pecuniary compensation, if it succeeds. There is little in the way of broader public concerns at stake.

[para 38] In contrast, disclosing the Acquaintance's address utterly destroys his privacy rights, completely depriving him of the ability to determine for himself "when, how, and to what extent he will release personal information about himself." If there are any circumstances when an individual would surely refuse to provide their address, refusing in order to avoid being sued must be among them. There is nothing to be gained and much to lose by being named as a defendant in a civil suit.

[para 39] The parties did not address sections 17(5)(e) and (f). I find that section 17(5)(f) is irrelevant here. There is no evidence before me that any withheld third party personal information was provided in confidence. While the Public Body has the Acquaintance's contact information, it appears that the Acquaintance did not provide it. Rather, the Public Body collected it in the course of investigating the Applicant's allegations.

[para 40] I find that section 17(5)(e) warrants comment.

[para 41] Some orders of this Office have found that exposure to civil liability can constitute harm under section 17(5)(e). See, for example, Order 96-020. However, other orders have found that *mere* exposure to civil litigation, does not amount to *unfair* harm. The Adjudicator in Order F2011-010 stated at para. 19,

The Public Body submits that the relevant circumstance under section 17(5)(e) is present in this case because the Third Party "would be harmed with respect to future civil litigation if the existence or non-existence of the records was disclosed". However, if the alleged fact scenario of the Applicant were true and responsive records existed, a civil action against the Third Party would not expose him unfairly to financial or other harm. In my view, unless it is frivolous, vexatious or the like, a legal proceeding does not constitute unfair harm.

[para 42] The same reasoning from Order F2011-010 applies here. Just because the Acquaintance may be exposed to civil litigation, it does mean that any resulting harm would be unfair. Since there is no evidence that any harm would be unfair, I find that section 17(5)(e) is irrelevant in this case.

[para 43] Lastly, I find that section 17(5)(i) applies in respect of information withheld beneath the heading "Will State" on p. 2, continuing up to, but not including, the heading "Involved Addresses" on p. 7 of the Records at Issue. Information withheld from these pages appears in the Applicant's own statement to the Public Body, and in a draft statement of facts that underpins her allegations made to the Public Body in the Report. The third party personal information in these statements was provided by the Applicant,

including the name of the Acquaintance given by the Applicant, which also appears in her civil claim. It is evident that the Applicant is already party to this information. As such, section 17(5)(i) weighs in favour of finding that disclosing this information is not an unreasonable invasion of third party personal privacy.

[para 44] The parties do not argue that there are any further relevant circumstances, beyond the ones listed in section 17(5). I do not find that there are any.

*Weighing the Considerations under section 17(5) against the presumptions in section 17(4)*

[para 45] With the exception of information to which section 17(5)(i) is a relevant consideration, I find that presumptions that disclosing information is an unreasonable invasion of third party personal privacy under sections 17(4)(b) and (g)(i) apply, and are not rebutted. There are no relevant factors weighing in favour of disclosure under section 17(5). I find that the Public Body was required to withhold this information.

[para 46] With regard to information to which section 17(5)(i) is relevant, I find that presumptions against disclosure under section 17(4) are outweighed by the consideration in section 17(5)(i). The Applicant is already aware of this information, which consists of her own version of events. It is not an unreasonable invasion of third party privacy to disclose that information back to her.

## **V. ORDER**

[para 47] I make this Order under section 72 Act.

[para 48] I order the Public Body to disclose information withheld under section 17(1) beneath the heading “Will State” on p. 2, continuing up to, but not including, the heading “Involved Addresses” on p. 7 of the Records at Issue. This information includes the single word on p. 5 that is not third party personal information.

[para 49] I order the Public Body to confirm to me that it has complied with this Order within 50 days of receiving a copy of it.

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John Gabriele  
Adjudicator