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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 125-1996
September 17, 1996

INQUIRY RE: A decision of the Vancouver Police Department to withhold law enforcement records from an applicant

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on August 12, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the Vancouver Police Department (the public body) to sever information and withhold records in response to an applicant's request.

2. Documentation of the review process

On November 5, 1994 the applicant requested "all police reports, impact statements in the matter of an indictment CA821614, Vancouver British Columbia." The applicant was convicted in 1983 of multiple counts of rape, attempted rape, and indecent assault (as those offences were known at that time). The applicant is currently a resident of a federal correctional facility for an indeterminate period as a dangerous offender under the *Criminal Code*.

The Vancouver Police Department disclosed some records to the applicant on January 17, 1995. It severed some information and withheld some records under sections 15(1)(c) and 22(3)(b) of the Act.

On February 1, 1995 the applicant requested a review of the Vancouver Police Department's decision. No additional disclosure of information or records occurred then. This first review file was closed on May 16, 1995 when the applicant instructed the Office to "do as you deem appropriate."

On March 13, 1996 the applicant made a second set of requests for records to the Ministry of Attorney General. It transferred these requests to the Vancouver Police Department on March 20, 1996 under section 11 of the Act. The Vancouver Police Department responded on March 27, 1996 by issuing a new decision that confirmed its first decision of January 17, 1995.

On April 17, 1996 the applicant requested a review of the Vancouver Police Department's second decision.

3. Issues under review at the inquiry and the burden of proof

The issue to be reviewed by the Information and Privacy Commissioner is the Vancouver Police Department's application of sections 15 and 22 to the undisclosed and severed records.

The relevant sections are as follows:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> ...
>
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
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> ....
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> 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> ...
>
> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
>
> ....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in a record has been refused, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. In this case, it is up to the Vancouver Police Department to prove that the applicant has no right of access to the records withheld under section 15 of the Act.

However, if the record or part of the record that the applicant has been refused access to contains personal information of a third party, section 57(2) requires the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's privacy. In this case, the applicant must prove that the release of the personal information withheld under section 22 of the Act would not be an unreasonable invasion of the privacy of third parties.

4. The applicant's case

The Vancouver Police Department arrested the applicant in 1982 and 1983. He continues to seek records from the Vancouver Police Department in connection with these events. He appears to claim that at the time of the termination of his first request for review, he was not given appropriate notice to exercise his rights. He is still seeking full disclosure of the police records that he requested.

The applicant believes that the Vancouver Police Department and other individuals continue to be part of a conspiracy with regard to documents and records about him.

5. The Vancouver Police Department's case

I accepted *in camera* submissions from the Vancouver Police Department in this inquiry with respect to both sections 15 and 22 of the Act. I have used below, as I deemed it appropriate to do so, its specific arguments on these sections from its open submissions.

6. Discussion

Most of the applicant's submission concerns matters surrounding his original convictions, prosecution, and trial that are beyond my purview under the Act. There are standard remedies in the courts that he is at liberty to pursue. One thing that I can do is to act upon the applicant's request that I review the records in dispute, as I have done below.

On a procedural point, the Vancouver Police Department invited me to accept a record, as part of its submission, that reported on past mediation efforts by my Office. I have recently discussed my Office's policy on this issue in Order No. 121-1996, September 3, 1996, pp. 10, 11. In this particular case, I accepted the submission. In general, I remain unwilling to review records of mediation efforts.

Section 15(1)(c): The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to:

> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

The Vancouver Police Department submits that disclosure of the records in dispute "will seriously harm the effectiveness of police surveillance techniques and procedures in future investigations. Such techniques and procedures can only be successfully used if the surveillance subjects are unaware of the techniques and procedures." (Submission of the Vancouver Police Department on section 15(1)(c), paragraph 15) The Vancouver Police Department detailed various additional reasons for the sensitivity of these techniques and procedures in its *in camera* submission.

The Vancouver Police Department has refused to disclose only a small number of pages under this section. I find that it was appropriate for it to do so.

Section 22(3)(b): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if...

> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that

> disclosure is necessary to prosecute the violation or to continue the investigation

The Vancouver Police Department emphasizes that the applicant is seeking records about his victims and witnesses. It characterizes his submission as to why he wants access as "incoherent" and submits that he "has put forth no evidence worthy of consideration" by me with respect to his burden of proof under this section. (Submission of the Vancouver Police Department, paragraphs 4, 6) I agree with the Vancouver Police Department that the applicant has not met his burden of proof in this regard. He is preoccupied with what he perceives as invasion of his own rights and is clearly insensitive to the rights of his victims and those who testified against him.

I have reviewed the detailed submission of the Vancouver Police Department as to why its own decision not to disclose under this section should be upheld. The submission included both direct evidence and supporting documents from appropriate professionals. It is relevant in this regard that the applicant was convicted of a number of sexual crimes and that he continues to be incarcerated as a dangerous offender. It is self-evident that the records contain sensitive information about his victims and witnesses; there is a risk that release of this information to the applicant could traumatize and revictimize these persons. In particular, I agree with the following statement by Inspector David H. Jones of the Vancouver Police Department:

> It was and is my belief and concern that the victims in these cases had reacquired their privacy rights with the passage of time between the Applicant's conviction in 1983 and the date of his request in 1994. It was and is my belief that the victims who had the courage to testify against their attacker should not at a later date be penalized by the *Freedom of Information and Protection of Privacy Act* process. (Affidavit of David H. Jones, paragraph 9)

I made a similar finding in Order No. 49-1995, July 7, 1995, pp. 6, 7. (See also Order No. 58-1995, October 12, 1995, p. 6)

I intend to oversee the implementation of the Act in such a commonsense manner that revictimization of victims of sexual offenders will not be possible by release of their personal information to perpetrators.

I find that the records in dispute must be withheld under section 22(3)(b). (See Order No. 81-1996, January 25, 1996 pp. 6, 8)

7. Order

Under section 15 of the Act, I find that the Vancouver Police Department was authorized to withhold certain records in dispute. Under section 58(2)(b), I confirm the decision of the Vancouver Police Department to sever information under section 15.

Under section 22(3)(b) of the Act, I find that disclosure of the personal information in the records in dispute would be an unreasonable invasion of the privacy of third parties. I find that the Vancouver Police Department is required to refuse access to the information.

Under section 58(2)(c), I require the Vancouver Police Department to refuse access to the information severed under section 22.

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David H. Flaherty
Commissioner

September 17, 1996