OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

Order F11-06

VANCOUVER POLICE BOARD

Jay Fedorak, Adjudicator

February 16, 2011

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Summary: An applicant requested his personal information in the custody of the VPD. The VPD responded by releasing copies of four police occurrence reports involving the applicant, but withholding some information collected through CPIC under s. 16(1)(b) and the personal information of third parties collected as part of the investigations on the four files under s. 22(1). The VPD was not authorized to refuse to disclose information under s. 16(1)(b) and is ordered to disclose this information. The VPD was required to withhold other information under s. 22(1), except for information that the applicant himself provided to the VPD.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 16(1)(b), 22(3)(a) and 22(3)(b).

Authorities Considered: B.C.: Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order No. 58-1995, [1995] B.C.I.P.C.D. No. 31; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order F05-24, [2005] B.C.I.P.C.D. No 32; Decision F10-10, [20] B.C.I.P.C.D. No. 49. **Ont.:** Order M-794, [1996] O.I.P.C. No. 233; Order M-826, [1996] O.I.P.C. No. 308; Order M-1004, [1997] O.I.P.C. No. 253.

1.0 INTRODUCTION

[1] The applicant made two requests for access to information about himself with the Vancouver Police Board ("VPD")[1] and received in response a set of records with some information severed under ss. 15, 16(1)(b) and 22(3)(b) of the

[1] The public body is the Vancouver Police Board but its staff commonly use the abbreviation VPD.

Freedom of Information and Protection of Privacy Act ("FIPPA"). The VPD also refused to confirm or deny the existence of some records under s. 8(2) of FIPPA. The applicant requested a review of the VPD's decision by the Office of the Information and Privacy Commissioner ("OIPC").

[2] During mediation, the VPD ceased to rely on s. 8(2) of FIPPA. Mediation was unsuccessful in resolving the matter further and so an inquiry under Part 5 of FIPPA took place. As part of its initial submission, the VPD ceased to rely on s. 15 of FIPPA.[2]

2.0 ISSUES

[3] The issues before me are whether the public body:

1. is required to refuse access under s. 22(1) of FIPPA; and

2. is authorized to refuse access under s. 16(1)(b) of FIPPA.

[4] Section 57(1) of FIPPA provides that a public body has the burden of proof where it has denied access to information in a record. However, under s. 57(2), where the public body has denied access to third-party personal information, the applicant has the burden of proving that disclosure of the information would not be an unreasonable invasion of third-party privacy. None of the parties addressed the burden of proof.

[5] The personal information about the third parties includes some information that is intertwined with the personal information of the applicant. Commissioner Loukidelis had this to say about the burden of proof facing a public body and an applicant where personal information is involved:

> … The burden under s. 57(2) applies, however, only where the issue is about unreasonable invasion of the personal privacy of someone other than an applicant. In my view, the Ministry has the burden of proving, under s. 57(1) of the Act, that the applicant has no right of access to the parts of the disputed records that contain her own personal information. This is because s. 57(2) only places the burden of proof on the applicant in relation to "personal information about a third party". …[3]

[6] Thus, in this case, VPD has the burden under s. 57(1) of proving that the applicant does not have a right of access to his own personal information. Under s. 57(2), the applicant has the burden of showing that disclosure of third-party personal information would not be an unreasonable invasion of third-party privacy.

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[2] VPD's initial submission, para. 60.
[3] See Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43.

3.0 DISCUSSION

[7] **3.1 Background**—The applicant was mentioned in four occurrence reports (also known as police reports). The first was a motor vehicle accident, in which the applicant, as a pedestrian, was hit by a motor vehicle. The second related to a complaint that the applicant made against other individuals. The third and fourth reports involved complaints against the applicant.

[8] **3.2 Records in Dispute**—The VPD severed witnesses' names and contact information, and comments that they made, as well as portions of the narratives from the four occurrence reports. It is this severed information that is in issue in this inquiry.

[9] **3.3 Harm to Personal Privacy**—The relevant provisions of s. 22 in this case are as follows:

> **Disclosure harmful to personal privacy**
>
> 22(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.
>
> (2) In determining under subsection (1) or (3) 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 British Columbia or a public body to public scrutiny,
>
> (3) 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 ...

[10] Numerous orders have considered the application of s. 22. One example is the following passage from Order 01-53:[4]

> [22] **3.3 How Section 22 is Applied** – When a public body is considering the application of s. 22, it must first determine whether the information in question is personal information within the Act's definition of "personal information". …

[4] [2001] B.C.I.P.C.D. No. 56.

> [23] The next step in the s. 22 analysis is to determine whether disclosure of the personal information would be an unreasonable invasion of a third party's personal privacy. The public body must consider whether disclosure of the disputed information is considered, under s. 22(4) of the Act, *not* to result in an unreasonable invasion of third-party privacy. …
>
> [24] Next, the public body must decide whether disclosure of the disputed information is, under s. 22(3), *presumed* to cause an unreasonable invasion of privacy. According to s. 22(2), the public body then must consider all relevant circumstances in determining whether disclosure would unreasonably invade personal privacy, including the circumstances set out in s. 22(2). The relevant circumstances may or may not rebut any presumed unreasonable invasion of privacy under s. 22(3) or lead to the conclusion that disclosure would not otherwise cause an unreasonable invasion of personal privacy. [italics in original]

[11] I take the same approach here.

Does the information constitute personal information?

[12] The severed information includes the information of the applicant intertwined with the information of third parties. This information is clearly about the third parties and the applicant and, therefore, constitutes personal information. However, the VPD has not withheld any information that is solely about the applicant.

[13] As none of the factors in s. 22(4) of FIPPA applies to this information, I will turn to s. 22(3) to determine whether disclosure is presumed to be an unreasonable invasion of third-party privacy.

Was the personal information collected as part of an investigation into a possible violation of law?

[14] The VPD submits that it collected this personal information as part of investigations into possible violations of the *Criminal Code*. It argues that "any third party personal information contained therein, or any information that can be expected to reveal the identities of third parties, was compiled and is identifiable as part of an investigation into a possible violation of law".[5] The VPD has applied s. 22(3)(b) to the names, addresses and telephone numbers of these third parties, as well as some, but not all, of the comments that they made to the police officers.

[15] The withheld information is clearly the personal information of third parties, in that it is about them or identifies them as having made comments about the applicant, and it appears in police reports on investigations of possible violations of the *Criminal Code*. I find that s. 22(3)(b) applies in this case.

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[5] VPD initial submission, paras. 8-32.

Relevant circumstances

[16] Having found that disclosure of the third-party personal information is presumed to be an unreasonable invasion of third-party personal privacy under s. 22(3)(b), I now turn to whether the relevant circumstances rebut this presumption.

[17] In this case, the parties have not directly raised any relevant circumstances with respect to this information. The parties have made no arguments as to whether, for example, the information was supplied in confidence. However, one of the reasons that the applicant is seeking the information is that he is dissatisfied with how the officers handled their investigations. This could be interpreted as suggesting that disclosure would be desirable to subject the VPD to public scrutiny in accordance with s. 22(2)(a) of FIPPA. I have reviewed the severed information and see no basis for this circumstance applying to the names and statements of witnesses and the names of other third parties. There is nothing in the severed information that reflects on how the police officers were conducting their investigation.

[18] I have reviewed the remaining relevant circumstances listed in s. 22(2) and, from the face of the records, I do not consider that any of them applies.

[19] The severed information includes information provided by a third party who was a subject of the applicant's complaint. This information includes his response to the applicant's allegations. This response contains information about the applicant intertwined with his own. As part of the VPD's submission, the third party provided *in camera* reasons as to the possible harm to him that could result from the disclosure of his comments about the applicant.[6] I am not able to discuss the details of this submission, but I can say that they weigh in favour of withholding his personal information.

[20] There is also an issue with respect to the name of the third party that appears in the statement the applicant provided to the police. The VPD disclosed all of the information that the applicant provided, except for the third party's name, as it appears in four places in the second of the four occurrence reports. The VPD submits that the information should remain protected because there is no requirement or undertaking to prevent the applicant from disclosing or publishing his copy of the report, possibly on the internet.[7] The VPD provided an example where an applicant posted the records that he received in response to a request for a police report.

[21] I do not find this argument persuasive. The potential for further disclosure exists with respect to records disclosed in response to any request under FIPPA. The VPD has not provided any reasons why the circumstances of this case

[6] VPD's initial submission, Exhibit B.
[7] VPD's initial submission, paras. 34-40.

should warrant protecting this information. The overriding issue is whether it would be an unreasonable invasion of a third party's privacy to disclose to the applicant information that he provided and still knows. The fact that the applicant was the source of that information is a relevant circumstance that, in this case, weighs heavily in favour of disclosure.

Would disclosure be an unreasonable invasion of privacy?

[22] With one exception, I find that no relevant circumstances in this case rebut the presumption of unreasonable invasion of personal privacy with respect to third-party personal information collected as part of these investigations into possible violations of law. With respect to the applicant's complaint against a third party, the reasons the third party provided *in camera* justify the conclusion that disclosure of his personal information would be an unreasonable invasion of the third party's personal privacy. Even though some of the withheld information is also about the applicant, it is intertwined with third-party personal information, disclosure of which would be an unreasonable invasion of third-party privacy. The applicant's personal information cannot be disclosed without revealing the personal information of the complainants. I therefore find that s. 22(1) applies to this information.

[23] The one exception is the name of the third party that the VPD has severed from the information that the applicant provided, the rest of which the VPD disclosed. The fact that he provided the information is a relevant circumstance that rebuts the presumption that it would be an unreasonable invasion of privacy to disclose to the information to him. Section 22(1) does not apply to this information.

[24] **3.5 Harm to intergovernmental relations—**The relevant provision of s. 16 in this case is as follows:

> **Disclosure harmful to intergovernmental relations or negotiations**
>
> 16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to ...
>
> (b) reveal information received in confidence from a government, *council* or organization listed in paragraph (a) or their agencies.

[25] Commissioner Loukidelis established the two-part test for the application of s. 16(1)(b) in Order 02-19.[8] The first part is to determine whether the information was supplied by one of the bodies listed in s. 16(1)(a) or any of their agencies. The second part is to determine whether such a body provided the information in confidence.

[8] [2002] B.C.I.P.C.D. No. 19, paras. 17-67.

[26] The VPD has applied s. 16(1)(b) to two passages. The first related to the personal information of a third party that originated from the provincial motor vehicles branch. It consisted of about half of a page. The VPD applied s. 22(1) of FIPPA to the same passage. As I have found that s. 22(1) applies to this information, I do not need to deal with the application of s. 16(1) to it.

[27] The second is a four-word entry that consists of "a CPIC result code indicating the Applicant's status on the C[anadian] P[olice] I[nformation] C[entre] system".[9] The VPD argues that s. 16(1)(b) applies to communications it received in confidence from the Royal Canadian Mounted Police ("RCMP"), pertaining to the applicant. The VPD submits that previous orders in British Columbia have confirmed that s. 16(1)(b) applies to information provided by the RCMP to public bodies in British Columbia, including information that the RCMP has inputted into CPIC.

[28] In Order 02-19, Commissioner Loukidelis found that the RCMP was a federal agency for the purpose of s. 16(1)(b).[10] Therefore, I need only consider whether the VPD has established that it received the information in issue in confidence from the RCMP.

[29] With respect to this issue, the VPD pointed out that previous orders in Ontario have found that information in CPIC is not to be disclosed by any other police organization or agency, unless that body was the one that entered the information into CPIC.[11] The VPD said that the information about the applicant's status in CPIC "represents an aggregation of data received from third party CPIC agencies".[12] The VPD provided no further reasons or any evidence to support its contention that the information was received in confidence.

[30] The conclusions expressed in Ontario orders, while relevant, are not sufficient. The VPD has not met the standard required to establish that, in this case, the information was received in confidence.

[31] Senior Adjudicator Francis made similar comments in Order F09-19[13] about the weakness of the evidence that the VPD had supplied with respect to confidentiality in the context of the application of s. 16(1)(b):

> [32] The VPD's argument and evidence on this issue are not compelling and not up to the standard that previous orders have required for establishing that this exception applies. The brief manual

[9] VPD's initial submission, para. 58.
[10] At para. 58.
[11] VPD initial submission, paras. 53-59; Order No. 58-1995, [1995] B.C.I.P.C.D. No. 31; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order F05-24, [2005] B.C.I.P.C.D. No. 32; Ontario Order M-794, [1996] O.I.P.C. No. 233; Ontario Order M-826, [1996] O.I.P.C. No. 308; Ontario Order M-1004, [1997] O.I.P.C. No. 253.
[12] VPD initial submission, para. 58.
[13] [2009] B.C.I.P.C.D. No. 19.

> extract referred to above provides some support for its position. More detailed documentary evidence would, however, have been helpful, for example, documents describing the operation of the CPIC system and the confidential receipt of information in the system, including any relevant memoranda of understanding. Relevant affidavit evidence from VPD officers or others with direct knowledge and experience in the confidential receipt of information through the CPIC system would also have been desirable.

[32] In the present case, the VPD did not even provide the manual extract mentioned in Order F09-19. In a similar case involving CPIC information, I found in Order F10-07 that the VPD had correctly applied s. 16(1)(b) of FIPPA. In that case, it provided satisfactory evidence in the form of a letter from the RCMP confirming that the RCMP had provided the CPIC information in confidence to the VPD.[14] It provided no such corroboration in this case. I also note that, even had it established that it received the information in confidence, the VPD has provided no evidence that it exercised discretion in applying s. 16(1)(b).

[33] Therefore, the VPD has not met its burden of proof with respect to information about the applicant's status in the CPIC system. I find that s. 16(1)(b) does not apply to the information.

4.0 CONCLUSION

[34] For reasons given above, under s. 58 of FIPPA, I make the following orders:

1. Subject to para. 2 below, I require the head of the Vancouver Police Board to refuse to disclose, in accordance with s. 22(1), the information in the requested record.

2. I require the head of the Vancouver Police Board to disclose to the applicant the name of the third party that it severed in four places on p. 4 of the second of four occurrence reports.

3. I require the head of the Vancouver Police Board to disclose to the applicant the information about the applicant's status on CPIC that it withheld under s. 16(1)(b) of FIPPA on p. 1 of the fourth occurrence report.

[14] Order F10-07, [2010] B.C.I.P.C.D. No. 11, para. 20.

4. I require the head of the Vancouver Police Board to give the applicant access to the information identified in paras. 2 and 3 above within 30 days of the date of this order, as FIPPA defines "day", that is, on or before March 30, 2011 and, concurrently, to copy me on its cover letter to the applicant, together with a copy of the records.

February 16, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

OIPC File Nos. F09-39137 and F09-40096