



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F11-09

ABBOTSFORD POLICE BOARD

Celia Francis, Senior Adjudicator

March 30, 2011

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Summary: The applicant requested a police report from the Abbotsford Police which disclosed the report in severed form. The APB was found to have severed information correctly under s. 22(1). It was not necessary to consider s. 19(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(e), 22(2)(f), 22(3)(b).

Authorities Considered: B.C.: Decision F10-13, [2010] B.C.I.P.C.D. No. 56; Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43; Order F11-05, [2011] B.C.I.P.C.D. No. 5; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 04-20, [2004] B.C.I.P.C.D. No. 20; Order F10-07, [2010] B.C.I.P.C.D. No. 11.

1.0 INTRODUCTION

[1] The applicant in this case was the subject of a complaint to the Abbotsford Police Board (“APB”) in December 2007. Two years later, he requested access to the resulting police report under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), to “assess” whether the complainant had “issued a false police report against me”. The APB responded by providing access to the requested report, withholding some information under s. 22(1) of FIPPA.

[2] The applicant requested a review of the APB's decision by this office ("OIPC"), saying the "release of this information would allow me to review its contents and determine whether false statements were issued to the Abbotsford Police Department". Mediation was not successful and the applicant requested that this matter proceed to inquiry. At this point, the APB asked under s. 56 of FIPPA that an inquiry not proceed. Adjudicator Boyd declined the APB's request in Decision F10-13,¹ saying the APB had not shown it was plain and obvious that s. 22(1) applied to the severed information. He directed that the inquiry proceed.

[3] The fact report accompanying the notice for this inquiry states that the APB informed the OIPC that a third party did not wish to participate in this inquiry. The APB also told the OIPC that, as a result of its conversation with that third party, it had decided to apply s. 19(1) to the severed information, as well as s. 22(1). The responsible investigator approved the late addition of s. 19(1) and the inquiry proceeded. The OIPC invited and received submissions from the applicant and the APB.

2.0 ISSUES

[4] The issues before me are whether the public body is authorized to withhold information under s. 19(1) and is required to withhold information under s. 22(1).

[5] Section 57 of FIPPA sets out the burden of proof in an inquiry. Under s. 57(1), the APB has the burden respecting s. 19(1) and the applicant's own personal information.² 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.

3.0 DISCUSSION

[6] **3.1 Record in Dispute**—The disputed record is an eight-page police occurrence report from December 2007. The APB disclosed information related to the applicant (the subject of the report), such as his name, date of birth, address, telephone number, ethnicity and case type ("harassment"). The APB also disclosed a few details from the synopsis of the complaint—that the applicant had sent emails to a third party accusing him of "spreading rumours and slander" about the applicant and his family.

[7] The APB withheld certain third-party information including such items as name, address, telephone number and date of birth. It also withheld certain details about the complaint, including a written statement by a third party.

¹ [2010] B.C.I.P.C.D. No. 56.

² See Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43, and Order F11-05, [2011] B.C.I.P.C.D. No. 5, at paras. 8-9.

[8] The APB applied s. 22(1) to all of the severed information and s. 19(1) to the severed complaint details.

[9] **3.2 Application of Section 22**—The relevant parts of s. 22 are these:

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 ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,...
- (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, ...

“personal information” means recorded information about an identifiable individual other than contact information;

“contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[10] Numerous orders have considered the application of s. 22, for example, Order 01-53.³ First, the public body must determine if the information in dispute is personal information. Then, it must consider whether disclosure of any of the information is not an unreasonable invasion of third-party privacy under s. 22(4).⁴ Then the public body must determine whether disclosure of the information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3). Finally, it must consider all relevant circumstances, including those listed in s. 22(2), in deciding whether disclosure of the information in dispute would be an unreasonable invasion of third-party privacy. I take the same approach here.

³ [2001] B.C.I.P.C.D. No. 56.

⁴ This section states that disclosure of a number of types of personal information is not an unreasonable invasion of third-party privacy.

[11] **3.3 Is it personal information?**—Neither party addressed whether the withheld information is personal information. However, the record itself shows that the withheld information is “personal information”, as it is recorded information about identifiable individuals. Some of the information is third-party personal information, some is the applicant’s personal information and some is jointly personal information of the applicant and third parties. None of the information is “contact information”.

[12] The parties did not comment on the applicability of s. 22(4). I see no basis for its application here and will therefore turn to the application of ss. 22(3) and 22(2).

[13] **3.4 Presumed Unreasonable Invasion of Privacy**—The APB argued that it was required to withhold the information in question as it consists of the names, addresses, telephone numbers, “personal statements and other personal information of third parties”. It referred to previous orders it considered relevant and argued that disclosure of the severed information “would result in harm to the personal privacy and safety of a third party”.⁵ This was the extent of the APB’s arguments on s. 22. It did not explicitly address s. 22(3).

[14] The applicant argued that he knows who made the police report.⁶ He also gave an account of an incident from several years ago that he believes ultimately gave rise to the police report. He appears to believe this incident justifies disclosure of the information in dispute.⁷ The applicant also did not explicitly address s. 22(3).

[15] Since neither of the parties addressed whether s. 22(3) applies, I was left with the record itself. It is a police report on a complaint that a third party made about the applicant. As such, I conclude that the third-party personal information in this police report was “compiled and is identifiable as part of an investigation into a possible violation of law” as contemplated by s. 22(3)(b). Disclosure of the third-party personal information is therefore presumed to be an unreasonable invasion of third-party privacy.⁸

[16] **3.5 Relevant Circumstances**—As above, neither of the parties explicitly addressed s. 22(2). The severed complaint details on pp. 6-7 of the police report are marked “confidential”. I am satisfied from this, as well as the severed information itself, that a third party provided complaint information in confidence. I therefore find that s. 22(2)(f) applies, favouring withholding the personal information in issue.

⁵ Paras. 7-9, APB’s initial submission.

⁶ Page 3, applicant’s initial submission.

⁷ Page 1, applicant’s reply submission.

⁸ See Order 04-20, [2004] B.C.I.P.C.D. No. 20, and Order F10-07, [2010] B.C.I.P.C.D. No. 11, for similar findings.

[17] I have also considered the contents of the APB's *in camera* affidavit on s. 19(1). While I am constrained in what I can say about it, I can say that it supports the conclusion that disclosure of the severed personal information could expose third parties to unfair harm. I therefore find that s. 22(2)(e) is a relevant circumstance, also favouring withholding the personal information in issue.⁹

Conclusion on section 22(1)

[18] I found above that the third-party personal information in question falls under s. 22(3)(b). Its disclosure is thus presumed to be an unreasonable invasion of third-party privacy.

[19] I also found that ss. 22(2)(e) and (f) apply, favouring withholding the severed personal information as a whole. While some of the personal information in issue is the applicant's, it is intertwined with third-party personal information. The applicant has not discharged his burden of proof regarding third-party personal information. The APB has met its burden respecting the applicant's own personal information. In the circumstances of this case, I find that disclosure of both the third-party personal information and the intertwined personal information of the applicant and third parties would be an unreasonable invasion of third-party personal privacy. A applicant is almost always entitled to have access to her or his own personal information. This is one of those rare cases however in which the applicant is denied access to his personal information. I find that s. 22(1) applies to all of the severed information.

[20] Given my finding on s. 22(1), I need not consider whether s. 19(1) applies as well.

4.0 CONCLUSION

[21] For reasons given above, under s. 58 of FIPPA, I require the head of the Abbotsford Police Board to deny the applicant access to the personal information in dispute under s. 22(1).

March 30, 2011

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File No.: F09-40613

⁹ Again see Order 04-20.