



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

Decision F10-13

ABBOTSFORD POLICE DEPARTMENT

Alexander Boyd, Adjudicator

November 3, 2010

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Summary: The Abbotsford Police Department's request that an inquiry under Part 5 not be held is denied. When making an application under s. 56, a party must do more than state that an exception applies. It is necessary for the party to clearly establish that the circumstances surrounding its case have already been dealt with in previous orders.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2); *Freedom of Information and Protection of Privacy Act, Schedule 1*.

Authorities Considered: B.C.: Decision F07-04, [2007] B.C.I.P.C.D. No. 20; F08-11, [2008] B.C.I.P.C.D. No. 36; Order 01-53, [2001] B.C.I.P.C.D. No. 56.

1.0 INTRODUCTION

[1] The Abbotsford Police Department ("APD") has requested that, under s. 56 of the Freedom of Information and Protection of Privacy Act ("FIPPA"), an inquiry under Part 5 of FIPPA not be held with respect to the respondent's access to information request.

[2] After carefully considering the parties' submissions and, for the reasons outlined below, I have decided to deny the APD's application. This matter will be reconvened and proceed to an inquiry under Part 5 of FIPPA.

2.0 DISCUSSION

The access request

[3] The respondent made an access request to the APD for a copy of a police report provided by a third party. The respondent named this third party in his access request. The APD responded by providing the respondent with a severed copy of the requested police report. In its response letter to the respondent, the APD informed him that it had severed information under s. 22 of FIPPA.

[4] The respondent requested that this Office review the APD's decision to withhold portions of the requested records. As mediation was not successful in resolving this matter, the respondent requested that an inquiry take place under Part 5 of FIPPA. At this point, the APD requested that, under s. 56, an inquiry not proceed.

Parties' arguments

[5] In support of its position that an inquiry should not take place, in its submission the APD stated the following:¹

“The attached unsevered document demonstrates that the information severed is the name, date of birth, phone number, ethnicity and statement of a third party. This is clearly the personal information of a third party and therefore the mandatory section 22 exemption applies.”

[6] The APD did not provide any background information or explanation as to how it arrived at its decision that section 22 should be applied to portions of the records nor how, as a result of its decision, it determined that this matter should not proceed to an inquiry.

[7] In his reply to the APD's submission the respondent named an individual that he believes is the person who filed the police report and provided some information as to why he believes it is this individual.²

Issue

[8] Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

¹ APD initial submission, para. 3.

² Respondent's submission, para. 1.

[9] There have been a number of previous decisions and Orders which have laid out the principles to be followed when exercising the discretion contained in s. 56.³ Without repeating those same principles here, I have taken the same approach when arriving at my decision.

Analysis

[10] The issue that is the root of this matter is whether the APD has shown that it is plain and obvious that s. 22 applies to the withheld portions of the records and that an inquiry should therefore not be held.

[11] In Order 01-53, then Commissioner Loukidelis outlined the process a public body should apply when considering the application of s. 22.⁴ Without repeating that approach here, I have considered it when arriving at my decision.

[12] Unfortunately, in its submission the APD did not provide any information as to whether it followed the process outlined in Order 01-53. If one is to take the APD's submission at face value, it would appear that, once it determined that the information was third party personal information, the APD determined that it was required to withhold the information under s. 22 of FIPPA, without going through the rest of the s. 22 analysis.

[13] For example, the respondent has named a third party as being the individual who filed the police report. Without confirming or denying whether the respondent is accurate in his belief, it would appear this may be a relevant circumstance that should be considered at an inquiry.

[14] In its submission, the APD has described some of the information that has been withheld as being the "*statement of a third party*".⁵ Depending on the content of a statement, potentially portions of it may not meet the definition of being third party personal information.

[15] As a result of reviewing an unsevered copy of the records and without judging the merits of this case, I believe that a reasonable argument can be made that the contents of portions of the statement may be a relevant circumstance that should be considered. Given that this apparently was not resolved during the mediation process, an inquiry is the appropriate forum for this possibility to be determined. For the reasons outlined above, it is my view that the APD has not shown that it is plain and obvious that s. 22 applies to the withheld portions of the records. An inquiry should therefore be held.

³ See for example Decisions F07-04, [2007] B.C.I.P.C.D. No. 20 & F08-11, [2008] B.C.I.P.C.D. No. 36

⁴ Order 01-53, [2001] B.C.I.P.C.D. No. 56.

⁵ APD initial submission, para. 3.

3.0 CONCLUSION

[16] For the reasons outlined above, the APD's request that an inquiry not take place is denied and an inquiry will proceed.

[17] Nothing in this decision should be viewed as offering an opinion or decision as to the merits of the APD's case. These merits will be decided upon at an inquiry based on the evidence and arguments presented by both parties to that inquiry.

November 3, 2010

ORIGINAL SIGNED BY

Alexander Boyd
Adjudicator

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