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Order F12-17

VANCOUVER POLICE DEPARTMENT

Elizabeth Barker, Adjudicator

December 12, 2012

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Summary: The applicant requested records related to his involvement as a suspect in a police investigation. The adjudicator found the VPD was required to withhold most of the information on the grounds that disclosure would be an unreasonable invasion of third party personal privacy under s. 22(1) of FIPPA. The VPD was not required to withhold information relating to the police officers' actions.

Statutes Considered: *Freedom of information and Protection of Privacy Act*, ss. 22(1), 22(2), 22(3)(b), 22(4)(e)

BC Authorities Considered: Order 01-37, [2001] B.C.I.P.C.D. No. 38.

INTRODUCTION

[1] An applicant requested records related to his involvement in a Vancouver Police Department ("VPD") investigation. The applicant had been interviewed as a possible suspect in the investigation but was later cleared of suspicion. The VPD provided some information to the applicant but withheld other responsive portions of the records on the grounds that disclosure would be an unreasonable invasion of third-party privacy under s. 22(3)(b) of the *Freedom of information and Protection of Privacy Act* ("FIPPA").

[2] The applicant requested the Office of the Information and Privacy Commissioner ("OIPC") review the VPD's decision. Further information was released; however, not all issues were resolved, and the applicant requested that the matter proceed to inquiry under part 5 of FIPPA.

ISSUE

[3] The issue before me is whether the VPD is required by s. 22(1) of FIPPA to refuse access to the information in dispute.

DISCUSSION

[4] **Background**—In 2004, the VPD was investigating a criminal harassment case involving threatening emails. During the course of the investigation, the VPD identified the applicant as a person of interest, and two police officers questioned him. As a result of that interview, they determined that the applicant was no longer a suspect.

[5] In 2011, the applicant requested documents in the VPD file related to his involvement in the investigation, in particular the police report and copies of the threatening emails. In response, he received a copy of the VPD general occurrence report ("GO") with portions of it severed on the basis that the information was received in confidence (s. 16(1)(b)) and was compiled and was identifiable as part of an investigation into a possible violation of law (s. 22(3)(b)). The VPD also withheld the subject emails in their entirety on the basis that disclosure would be an unreasonable invasion of third party privacy (s. 22(1)).

[6] The VPD requested and received permission to provide portions of its submission and supporting affidavit evidence *in camera*.

[7] In its submissions, the VPD also clarified that it was no longer relying on s. 16(1)(b) to justify withholding information. Therefore, I have not considered the applicability of that section in this inquiry.

[8] **Records at Issue**—The records at issue consist of the VPD's 18 page GO as well as 12 additional pages of emails related to it.

[9] **Harm to Personal Privacy**—The parts of s. 22(1) of FIPPA relevant to this case are as follows:

> 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
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> …
>
> (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, … .

[10] Numerous decisions have considered the application of s. 22 and consistently applied the following principles:[1]

> [14] **…** The goal of s. 22(1) is to prevent the unreasonable invasion of the personal privacy of individuals through the disclosure of personal information. As has been observed in other orders, s. 22 does not guard against all invasions of personal privacy. It is explicitly aimed at preventing only those invasions of personal privacy that would be "unreasonable" in the circumstances of a given case.
>
> [15] It is worth repeating here the approach that should be used in assessing s. 22. In deciding whether it is required by s. 22(1) to refuse to disclose personal information to an applicant, a public body must first consider whether personal information is involved. The Act's definition of personal information, found in Schedule 1 to the Act, provides that "personal information" means recorded information about an identifiable individual…
>
> [16] The public body then must decide if the disclosure is deemed, by s. 22(4), not to be an unreasonable invasion of third-party personal privacy. If any of ss. 22(4)(a) through (j) applies, the information must be disclosed. If none of them applies, the public body then must consider whether any of the presumed unreasonable invasions of personal privacy created by s. 22(3) apply. If any one or more of those apply, the public body must consider all relevant circumstances – including those found in s. 22(2) – in deciding whether disclosure of the personal information would constitute an unreasonable invasion of a third-party's personal privacy. Last, even if none of the s. 22(3) presumed unreasonable invasions of personal privacy applies, the public body must still, considering all relevant circumstances, decide under s. 22(1) whether disclosure would be an unreasonable invasion of a third-party's personal privacy.

[11] I have applied the same approach to the facts of this case.

[12] I note that under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of personal information would not be an unreasonable invasion of third-party privacy.

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[1] Order 01-37, [2001] B.C.I.P.C.D. No. 38.

Personal information

[13] The emails consist of communications from the writer of the threatening emails to the victim. They identify both individuals by name and contain personal and identifying details. I find the entire content of these emails consists of their personal information. Similarly the withheld portions of the GO contain the personal information of third parties: the victim, witnesses and police officers. It includes names, identifying physical traits, professions, home addresses, what witnesses said and did, as well as police observations and actions. The VPD has disclosed the applicant's own personal information, with the exception of references to him on pp. 7 and 8 which also contain the names of two other third parties.

Section 22(4) factors

[14] I have considered whether the factors enumerated in s. 22(4) provide for disclosure of any of the personal information in this case. The section lists conditions under which disclosure of personal information would not be an unreasonable invasion of a third party's personal privacy. Section 22(4)(e) is relevant here:

> 22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
>
> …
>
> (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff, … .

[15] I find that s. 22(4)(e) applies to the police officers' names and badge numbers but not to the details about what individual officers said and did during the course of the investigation.

Investigation into possible violation of law

[16] The VPD asserts that s. 22(3)(b) applies to the withheld information and therefore raises the presumption that disclosure would be an unreasonable invasion of third-party privacy. It submits that "the information withheld pursuant to s. 22(3)(b) was compiled as part of an investigation into a possible violation of law, and 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."[2] It also argues that additional disclosure of the GO, and any disclosure of the emails, would invade the privacy of witnesses, complainants and the victim.

[2] VPD submission, para. 9.

[17] The applicant disputes whether the VPD was in fact conducting a bona fide investigation. He suggests that the VPD and the victim conspired to fabricate the alleged offence as a pretext to detain him against his will, and that the VPD has ulterior motives for doing so. The applicant argues that the VPD cannot apply s. 22(3)(b), if there was no bona fide investigation in the first place.

[18] I find that the records relate to an actual criminal investigation undertaken by the VPD. The personal information contained in the GO was clearly compiled for, and is identifiable as part of, a police investigation into a possible violation of the law. Similarly, the emails were collected and used by the VPD as evidence in that investigation. The VPD also disclosed the fact that criminal charges were eventually laid against another individual.[3] There is nothing in the records that suggests the events they detail were fabricated as the applicant alleges.

[19] Therefore, I find that s. 22(3)(b) applies and disclosure of the records is presumed to be an unreasonable invasion of third-party privacy.

Relevant circumstances

[20] The VPD states that it does not believe that any of the relevant circumstances in s. 22(2) overcome the presumption established by s. 22(3)(b). The applicant provides no information or argument on this point.

[21] I have considered the circumstances listed in s. 22(2), specifically unfair financial or other harm to a third party (s. 22(2)(e)) and damage to a third party's reputation (s. 22(2)(h)), and I conclude that both are relevant with respect to the victim's personal information. I am not at liberty to detail the evidence and argument that I reviewed in reaching my conclusion on this point, given that it is based on the materials that were submitted *in camera*. However, I can say after reviewing the *in camera* material that releasing the victim's personal information would clearly cause emotional distress and harm as well as unfairly damage the victim's reputation. The emails, in particular, are disturbing, and sensitivity to the individual who received them is called for in the circumstances of this case. The harm to the victim from disclosure far outweighs any value to the applicant in assessing his claim, unsupported by the evidence, that the VPD conspired with the victim against him. Therefore, the factors I have considered strongly weigh in favour of withholding the victim's personal information, and the presumption that disclosure would be an unreasonable invasion of privacy has not been overcome.

[3] GO report, p. 16.

[22] Regarding the personal information of the witnesses who were questioned or involved in the police investigation, I find that there are no circumstances in s. 22(2) that rebut the presumption that disclosure would be an unreasonable invasion of their personal privacy.

[23] I noted above that the applicant was given all of his personal information with the exception of two passages which refer to him at pp. 7 and 8. Those passages also contain the names of two other people and for this reason were withheld by the VPD.

[24] Section 4 of FIPPA provides that:

> **Information rights**
>
> 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
>
> (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[25] An applicant's own information does not of course fall under s. 22(3) and an applicant does not have the burden of proving why he should have access to his own personal information. In this circumstance, it would be a simple matter to sever the names of the two third parties that are intertwined with the applicant's personal information. What remains after this severance does not reveal the identity of the two third parties or otherwise invade their personal privacy.

[26] Lastly, with respect to the information about the officers' activities during the course of the investigation, while it meets the definition of personal information found in FIPPA, it is not information of a personal nature. It is instead information about the officers in their professional and public role, in the normal course of work-related activities, carrying out their assigned duties. In these circumstances disclosure would not be an unreasonable invasion of their personal privacy. However, in several instances other third-party personal information is inextricably interwoven with the information about the police officers' activities such that it cannot be reasonably severed. There are only a few instances (on pp. 8, 13 and 14) where severing can reasonably occur and the VPD can provide additional information about the police officers' activities without disclosing other individuals' personal information.

[27] In conclusion, I find that disclosure of the personal information in the GO is presumed to be an unreasonable invasion of third-party personal privacy because it was compiled and is identifiable as part of an investigation into a possible violation of law (s. 22(3)(b)). The presumption is only rebutted with respect to the police officers' personal information where the personal information of other third parties can reasonably be severed to protect their privacy.

CONCLUSION

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

1. Subject to para. 2 below, I require that the VPD refuse to disclose the information that it withheld in accordance with s. 22(1).

2. I require that the VPD give the applicant access to the information highlighted on pp. 7, 8, 13 and 14 in the copy of the GO which accompanies the VPD's copy of this decision.

3. I require that the VPD give the applicant access to this information within 30 days of the date of this order as FIPPA defines "day", that is, on or before January 29, 2013. The VPD must concurrently copy me on its cover letter to the applicant, together with a copy of the records.

December 12, 2012

ORIGINAL SIGNED BY

Elizabeth Barker
Adjudicator

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