



Order F21-46

CITY OF PRINCE RUPERT

Erika Syrotuck
Adjudicator

October 4, 2021

CanLII Cite: 2021 BCIPC 54
Quicklaw Cite: [2021] B.C.I.P.C.D. No. 54

Summary: An applicant requested a bylaw officer's body camera footage from the City of Prince Rupert (City). The City refused the applicant's request because it claimed disclosure of the footage could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person under s. 15(1)(f). The adjudicator found that s. 15(1)(f) did not apply and ordered the City to disclose the footage.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 15(1)(f).

INTRODUCTION

[1] A journalist made a request to the City of Prince Rupert (City) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for all body camera footage of an incident where a dog was shot and killed. The City refused the applicant's request, initially under s. 15(1)(a) (harm to a law enforcement matter), but later decided that the more appropriate exception is s. 15(1)(f) (disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person).¹

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision. Mediation did not resolve the issue and the matter proceeded to inquiry.

¹By email dated January 9, 2020.

ISSUE

[3] The issue I must decide in this inquiry is whether the City is authorized to withhold the body camera footage under s. 15(1)(f) of FIPPA. Under s. 57(1) of FIPPA, the burden of proof is on the City to prove that s. 15(1)(f) applies.

DISCUSSION

Background

[4] City bylaw officers attended to an incident about a dog at large. The bylaw officers called the RCMP to assist.² According to the RCMP, its officers made the difficult decision to put the dog down.³

[5] Both the applicant's and the City's submissions indicate that there was media coverage of the incident.

[6] The record in dispute is body camera footage from one of the bylaw officers who attended the incident.

Section 15(1)(f) – endangering the life or physical safety of a law enforcement officer

[7] Section 15(1)(f) allows a public body to refuse to disclose information to an applicant if disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

[8] The words "could reasonably be expected to" mean that the public body must establish a reasonable expectation of probable harm.⁴ This language tries to mark out a middle ground between that which is probable and that which is merely possible.⁵ In order to establish that there is a reasonable expectation of probable harm, the public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground.⁶ There must be a clear and direct connection between the disclosure of information and the harm alleged.⁷

Parties' submissions

[9] The City says that, as a result of the media coverage, the City's bylaw officers have suffered harassment and threats, particularly through Facebook

² This background is from a news story provided in the applicant's submissions.

³ *Ibid* referring to a statement from the RCMP.

⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ Order F17-15, 2007 CanLII 35476 (BCIPC) at para. 17.

and “private messages”. The City says that each time this story is run, it is forced to place the officers on desk duty to keep them out of harm’s way.⁸

[10] The City says that the purpose of the body cameras is for bylaw officers’ personal protection. It explains that bylaw officers have been physically assaulted in the past, resulting in injury and court proceedings.⁹ The City says that the decision to add body cameras to bylaw officers was made in response to an attack on a bylaw officer by a person.¹⁰

[11] The applicant’s submissions explain their reasons for seeking the information in dispute. Specifically, the applicant wants to know why the police were involved, whether less drastic alternatives such as a tranquilizer were considered and is concerned about the safety of the use of guns in public. The applicant also alleges that the City did not follow its own bylaw about dog control.

[12] I note that the applicant explicitly states that they have no desire to release the names of the officers¹¹ involved in the incident, but rather is seeking the information to bring closure to those who need it.

[13] In response, the City explains that the incident had been turned over to the RCMP¹² and therefore the City cannot answer questions about the use of force, including about the use of firearms during the incident.¹³

Analysis and finding

[14] I wish to first address the applicant’s submissions. The applicant raises several concerns relating to the police and bylaw officers’ handling of this incident. However, the sole issue I must decide is whether disclosure could reasonably be expected to endanger a person’s life or physical safety resulting from disclosure of the body camera footage.

[15] For the reasons that follow, I am not persuaded that disclosure of the body camera footage could reasonably be expected to endanger the bylaw officers’¹⁴ life or physical safety. More specifically, I am not satisfied that there is a direct connection between the information in dispute and the harm alleged.

⁸ City’s initial submissions.

⁹ City’s initial submissions.

¹⁰ City’s reply submissions.

¹¹ It is unclear whether the applicant is referring to bylaw officers, RCMP officers or both.

¹² Specifically, the City says an RCMP officer is a “peace officer” under the Dog Control bylaw, and that the bylaw delegates the same authority to a peace officer as to an Animal Control Officer or Bylaw Officer.

¹³ City’s reply submissions.

¹⁴ FIPPA defines “law enforcement”, however it is not necessary to decide whether a bylaw officer is a “law enforcement officer” because s. 15(1)(f) also applies to “any other person”.

[16] I understand the City's argument to be that disclosure of the video footage will result in another news story which will in turn result in threats against the bylaw officers due to renewed public interest in the matter.

[17] The submissions from both parties indicate that this particular matter has been publicized in the past. The City submitted that the officers personally received messages on social media as a result of the news coverage. However, the City did not provide examples of or details about the content and nature of the threats or harassment received by the officers in relation to this incident. It has only said that it was forced to put the officers on desk duty to keep them out of harm's way. The City has not explained their rationale for undertaking this measure in a way that helps to me to understand the severity or nature of the risk of harm.

[18] The City says that bylaw officers have been physically assaulted in the past, however, its submissions do not demonstrate a link between the risk of physical assault to an officer and disclosure of this type of information. For example, it has not provided any detail or context about the types of situations where bylaw officers have faced physical assault due to their jobs. Without further evidence or explanation, I am unable to assess the likelihood of a similar event occurring as a result of the disclosure of the information in dispute.

[19] Further, the City did not make any argument related to the specific content of the body camera footage. I have reviewed the body camera footage and, in the absence of further explanation, I do not see how disclosing it could reasonably be expected to endanger the life or physical safety of the bylaw officers.

[20] The City has failed to establish a clear and direct connection between the information in dispute and the harm alleged. As a result, the City has not met its burden to prove that disclosure of the body camera footage could reasonably be expected to endanger the life or physical safety of the bylaw officers.

[21] I find that the City is not authorized to refuse to disclose the body camera footage under s. 15(1)(f).

CONCLUSION

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

1. I require the City of Prince Rupert to give the applicant access to all of the body camera footage.

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2. The City of Prince Rupert must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 1 above.

[23] Pursuant to s. 59(1) of FIPPA, the City of Prince Rupert is required to comply with this order by November 17, 2021.

October 4, 2021

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F19-80491