

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 196-1997
November 13, 1997**

INQUIRY RE: An applicant's request for a record from the Victoria Police Department

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on August 19, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review from the applicant of a decision by the Victoria Police Department to sever information from a police incident report.

2. Documentation of the inquiry process

On March 26, 1997 the applicant requested an incident report that "relates to allegations made by Revenue Canada that [the applicant] acted in a way bothersome to a member of their staff." The Victoria Police Department responded to the applicant's request by disclosing a severed copy of the three-page incident report. The applicant received a severed copy of page one, all of page two, and none of page three.

Mediation by the Office of the Information and Privacy Commissioner resulted in the partial disclosure of page three. The applicant was not satisfied with the extent of disclosure and, on May 7, 1997, requested an inquiry by the Information and Privacy Commissioner. By consent of both parties, the inquiry date was rescheduled to August 19, 1997.

3. Issue under review and the burden of proof

The issue under review is the decision of the Victoria Police Department to sever information from the incident report under sections 15(1)(a), 15(1)(d), 19(1)(a), and 22(3)(b) of the Act. These sections are reproduced below:

Disclosure harmful to law enforcement

- 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) harm a law enforcement matter,
 - ...
 - (d) reveal the identity of a confidential source of law enforcement information,
 -

Disclosure harmful to individual or public safety

- 19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
- (a) threaten anyone else's safety or mental or physical health,
 - or
 -

Disclosure harmful to personal privacy

- 22(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,
 -
- 22(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,
 -

Section 57 of the Act establishes the burden of proof on parties in an inquiry. Under section 57(1), where access to information in the record has been refused under

section 15 or 19, it is up to the public body, in this case the Victoria Police Department, to prove that the applicant has no right of access to the record or part of the record.

Under section 57(2), where access to information in a record has been refused under section 22, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The record in dispute

The record in dispute is a three-page police incident report, as described above.

Procedural Objections

The Victoria Police Department objected to the filing of an *in camera* reply submission by the applicant. One of the grounds is that the applicant should not be allowed to withhold information from a law enforcement agency. Based on my review of this lengthy reply submission, I am of the view that it was appropriately made on an *in camera* basis because it contains a narrative of the recent business relationships of the applicant. While it is of assistance to me in understanding the background to this inquiry, it would be of no particular use to the Victoria Police Department.

5. The applicant's case

The applicant generally believes that he has a right of access under the Act to personal information about himself supplied to the Victoria Police Department by someone at Revenue Canada and to know the "official identification" of the person(s) who did so.

I describe below the applicant's detailed submissions on the application of various sections of the Act.

6. The Victoria Police Department's case

The Victoria Police Department submits that "the record at issue in this inquiry was produced directly as a result of a criminal investigation that could have led to the imposition of a criminal sanction," especially on the basis of the sections of the *Criminal Code* of Canada relating to the uttering of threats and criminal harassment. (Submission of the Victoria Police Department, Section 1.4)

The Victoria Police Department generally submits that the disclosure of any third party information withheld from the applicant would be an unreasonable invasion of the privacy of the third part(ies). (Submission of the Victoria Police Department Section 5.1)

I refer below in more detail to the Victoria Police Department's submissions on the application of various sections of the Act to the record in dispute.

7. Discussion

Section 15(1)(a): The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to (a) harm a law enforcement matter

With respect to the possible application of this section, the applicant submits that there “does not exist any law enforcement matter concerning the Applicant and the Victoria Department.” He thinks that a Revenue Canada employee or agent provided information about him to the Victoria Police Department causing it to open a file.

The Victoria Police Department relied on section 15(1)(a) for the limited purpose of withholding certain items from the narrative message formatted and transmitted via the Canadian Police Information Centre (CPIC) computer system, since these aspects of the CPIC system are not public knowledge and reflect confidential law enforcement methods. I agree that the Victoria Police Department was justified under section 15(1)(a) in refusing to disclose those aspects of the CPIC computer system which could compromise this policing tool.

Section 15(1)(d): reveal the identity of a confidential source of law enforcement information

The Victoria Police Department relied on section 15(1)(d) to deny the applicant access to information that “would reveal the identity of party(ies) who reported law enforcement information to the Public Body.” (Submission of the Victoria Police Department, Section 1.4)

The Victoria Police Department pointed out that it adheres to the principles of community policing, which requires a partnership between the police and the public designed to produce a peaceful and secure environment for the community. Trust is a vital ingredient in this partnership. The police, it is submitted, engender this trust by ensuring that the public may seek their assistance in confidence. The Victoria Police Department submits that to disclose the complainant information “not only places the public trust at risk, but also places individuals at risk by creating a ‘chilly atmosphere’ that may discourage persons in need of police help from reporting their concerns out of fear that the perpetrator may seek retribution.” (Submission of the Victoria Police Department, Section 3.2) See Order No. 36-1995, March 31, 1996; Order No. 66-1995, November 27, 1995, p. 4; Order No. 163-1997, May 14, 1997, p. 5. In the present inquiry, the Victoria Police Department severed all information that might possibly lead to identifying the source of the allegations:

These are very often decisions which require a considerable amount of judgment as there is no way for the Public Body to conclusively determine which information may tend to identify the complainants when the

specific knowledge of the Applicant is not known. In this case, because of the Applicant's violent history, the Public Body took a wide approach to severance thus endeavoring to ensure it acted prudently and cautiously to protect the identity of the confidential sources. (Submission of the Victoria Police Department, Section 3.3)

I agree with the reasoning of the Victoria Police Department in the circumstances of this particular applicant. I am satisfied that the Victoria Police Department has discharged its burden of establishing that disclosure of the information could reasonably be expected to reveal the identity of a confidential source of law enforcement information under section 15(1)(d) of the Act.

Section 19(1): The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to (a) threaten anyone else's safety or mental or physical health

With respect to the application of this section, the applicant submits that there is no law enforcement matter in existence concerning him and the Victoria Police Department, particularly in view of the fact that no charges were contemplated in the episode that led to the creation of the record.

The Victoria Police Department states that the nature of the complaint to the police about the applicant was that he had "displayed threatening behaviour.... On this occasion the matter was resolved informally without criminal charges by a verbal warning from the Saanich Police Department." The Victoria Police Department points out that charges would in all likelihood have resulted had the police determined that a warning was not sufficient. It argues on the basis of a submission, filed in part *in camera*, that it was compelled to exercise its duty under this section, relying on Order No. 171-1997, June 26, 1997, p. 4; and Order No. 109-1996, June 4, 1996, p. 3. (Submission of the Victoria Police Department, Sections 2.1 and 2.2)

The Victoria Police Department submits that where the subject of a complaint faces no penalties or criminal process (as opposed to the contrary situation), then "prudence dictates that the Public Body exercise its discretion in favour of non-disclosure [of the identity of complainants] in order to ensure the preservation of the peace and the protection of the public." (Submission of the Victoria Police Department, Section 2.3) The Victoria Police Department tendered evidence which revealed that the applicant was convicted in 1996 for assault causing bodily harm and, at the time of this access request, there were two types of assault charges pending against him.

On the basis of the applicant's recent criminal conviction for assault, I find that the Victoria Police Department was justified in withholding the information from the applicant under section 19(1)(a).

Section 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, ... (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

The applicant again submits that there is no law enforcement matter between himself and the Victoria Police Department but there may be between him and certain employees or agents of Revenue Canada. This submission misconstrues the role of the Victoria Police Department in protecting from disclosure law enforcement information in its custody.

I agree with the applicant's submission that the information supplied to the Victoria Police Department by someone at Revenue Canada is his personal information but this is subject, of course, to the exceptions in the Act that the Victoria Police Department is seeking to apply.

The Victoria Police Department has relied on the presumption that disclosure of personal information is an unreasonable invasion of a third party's personal privacy under subsection 22(3)(b) of the Act and relies on the circumstances set out in section 22(2)(e) and (f). (Submission of the Victoria Police Department, Section 4.3) See Order No. 66-1995, p. 6. Furthermore, the Victoria Police Department argues that the applicant has no legitimate need for the information, since there are no criminal proceedings, arising out of the circumstances of this matter, against him. (Submission of the Victoria Police Department, Section 4.4)

Having reviewed the evidence, I conclude that the applicant has failed to discharge the burden of proving that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy under section 22(1).

Review of the Record in Dispute

Based on my review of the record in dispute, I find that the Victoria Police Department has properly applied sections 15, 19, or 22 of the Act to information withheld from the applicant.

8. Order

I find that the Victoria Police Department was authorized under sections 15(1)(a), 15(1)(d) and 19(1)(a) of the Act to refuse access to the severed information in the record in dispute. Under section 58(2)(b), and (c) of the Act, I confirm the decision of the Victoria Police Department to refuse access to the severed information.

I also find that the Victoria Police Department was required under section 22(1) of the Act to refuse access to the third-party personal information in the record in dispute. Under section 58(2)(c) of the Act, I require the Victoria Police Department to refuse access to the severed information.

David H. Flaherty
Commissioner

November 13, 1997