

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 268-1998
November 12, 1998**

INQUIRY RE: A request for third-party personal information in a Vancouver Police Department report

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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 September 28, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Vancouver Police Department (the Police Department) to sever third-party personal information from a police report.

2. Documentation of the inquiry process

On June 1, 1998 the applicant requested a copy of a police report from the Police Department. The report relates to a physical altercation that took place between the applicant and a third party in Vancouver on May 28, 1998. No criminal charges were laid against either the applicant or the third party as a result of the altercation.

The Police Department responded to the applicant on June 10, 1998 by disclosing the four-page police report. However, the Police Department had removed the third party's name, address, telephone number, date of birth, and physical description. The Police Department explained:

Information that could unreasonably invade the privacy of other persons has been removed from the police reports. Particular emphasis in this case has been placed on section 22(3)(b) of the *Freedom of Information and Protection of Privacy Act*. An excerpt of this provision is attached.

The applicant says that he had made his access request for the sole purpose of obtaining the name and address of the third party "since the other information described

in the report ([his] personal information, the narrative of what happened, and the police officer's identification number) is known to" him. The applicant wishes to obtain this information (the third party's name and address) so that he can start a civil court action against the third party.

Attempts at mediation failed. As a result, on September 4, 1998 my Office gave notice of the written inquiry to be held on September 28, 1998.

3. Issue under review and the burden of proof

The issue to be reviewed is whether the Police Department was required under section 22 of the Act to withhold the third party's name, address, telephone number, date of birth, and physical description from the record in dispute. This type of information is clearly "personal information" for the purposes of the Act.

The relevant section of the Act is as follows:

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
 - ...
 - (c) the personal information is relevant to a fair determination of the applicant's rights,
 - ...
 - (e) the third party will be exposed unfairly to financial or other harm,
 -
- (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,
 - ...
 - (d) the personal information relates to employment, occupational or educational history,
 -

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- (a) the third party has, in writing, consented to or requested the disclosure,
....

Under section 57(2) of the Act, if the part of the record that the applicant is refused access to contains personal information about a third party, as in this case, 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. The burden of proof therefore rests with the applicant in this inquiry.

4. The record in dispute

The record in dispute is a four-page police report from the Police Department. The report relates to a physical altercation that took place between the applicant and the third party on May 28, 1998.

5. The applicant's case

The applicant made a number of arguments in support of his position that the withheld information in the record in dispute should be disclosed:

1. In refusing me ... access to parts of the record, the ... public body, relied on section 22(3)(b) of the *Freedom of Information and Protection of Privacy Act* (the Act) to justify its decision. A correct reading of that section indicates that it cannot be relied upon in this case, as the information requested and which has been withheld – the name and address of the third party – was not compiled nor was it identifiable as part of an investigation into a possible violation of law.
2. The word 'compiled', as defined at page 26 of C.4.13 in the Government of British Columbia FOIIP Act Policies and Procedures Manual, 'means that the information was drawn from several sources or extracted, extrapolated, calculated or in some other way manipulated'. Clearly, in the present case the name and address of the third party were given, as I requested, by him to the police investigator. They were not drawn from any other source, nor extracted, extrapolated, calculated or in some other way manipulated. The fact that the public body did indicate at page 4, section 9 of the record that the identity of the third party by CPIC (Canadian Police Information Centre) does not make that information 'compiled' as part of an investigation into a possible violation of the law, as it was only a verification of identity.

3. Consequently, the non-applicability of s. 22(3)(b) and the non-reliance of the public body on any other section of the Act in order to justify its decision, removes the onus which lies on the applicant for the satisfaction of the legal burden. However, considering that the name and address are personal information protected by the Act, if this defect can be regarded as a curable irregularity and that the public body intended to generally rely on s. 22, then, the public body must have considered all the relevant circumstances, including those listed in s. 22(2), in making its decision under s. 22(3). Section 22(2)(c) requires the public body to consider whether ‘the personal information is relevant to a fair determination of the applicant’s rights’. In the present case, I made the request under s. 5 of the Act for the sole and unique purpose of obtaining the name and address of the third party to commence a civil litigation process ‘for a fair determination of [my] rights.’ Consequently, the personal information requested is relevant and falls within the meaning of s. 22(2)(c). Because of this, the fair determination of the applicant’s rights outweighs the third party privacy rights. Therefore, the disclosure of such information would not be an unreasonable invasion of the third party’s privacy.

4. A closer examination of the aforesaid record shows, at page 3, section 6, that the public body, by indicating that the third party is unemployed, did disclose an information, though useless to me, that is very much invasive to the third party’s privacy. One can argue that this disclosure contravenes s. 22(3)(d) of the Act, but this is not my purpose in this inquiry. Considering that the knowledge of the name of a person is the least invasive to personal privacy, and in any case less invasive than the knowledge of the employment status of that person, this represents one more reason favouring disclosure.

5. Finally, I would like to point out that the public body was ambiguous in handling this matter. On the one hand, it rightly considered in its letter to me, exhibit 1 hereto attached, that, because of the assault, I was victim of crime and offered me support for which I am grateful, and on the other hand, decided not to lay charges on the third party and not to disclose his identity. Such a practice is contrary to the attainment of natural justice.

The applicant also made extensive reply submissions which I have presented below.

6. The Vancouver Police Department’s case

The Police Department relies on sections 22(1) and 22(3)(b) of the Act to justify its decision to withhold the third party personal information. It argues that disclosure of this information is not necessary for a fair determination of the applicant’s rights pursuant

to section 22(2)(c). It also argues that because the applicant wants to obtain the information to sue the third party, section 22(2)(e) (unfair exposure to financial or other harm) applies. The Police Department is also concerned that disclosure of third party personal information in these circumstances might result in a situation where the public will no longer voluntarily supply police officers with their personal particulars or other information.

7. The third party's case

The third party did not submit an initial or reply submission in the inquiry. However, the third party notified my Office that he did not consent to disclosure of his name and address to the applicant.

8. Discussion

Section 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,

The Police Department relies on section 22(3)(b) of the Act and submits that it has a statutory obligation under this subsection to withhold third party personal information contained in the police report from the applicant. The applicant correctly points out that section 22(3)(b) only creates a presumption; it is not mandatory. The applicant also argues that this section does not apply, because the information requested “was not compiled nor was it identified as part of an investigation into a possible violation of law.” While I find the applicant’s arguments on this point interesting, in my view they are based on an overly technical interpretation of this provision. I am fully satisfied that the personal information in the record in dispute was “compiled and is identifiable as part of an investigation into a possible violation of the law” for the purposes of section 22(3)(b). There is therefore a presumption that the disclosure of this information would be an unreasonable invasion of the third party’s personal privacy.

Section 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 ... (c) the personal information is relevant to a fair determination of the applicant's rights,

The Police Department is concerned that disclosure of the third party information would have a chilling effect on police investigations, and that I should take this into account in deciding the issue in this inquiry. The applicant gives several reasons why he believes this is not a valid concern.

The applicant relies primarily on section 22(2)(c) as being a highly relevant circumstance favouring the release of the third party personal information. He says this section applies in the present case because he has requested the information in dispute in order to begin a civil litigation process for a fair determination of his rights. He also argues that “the issue that must be addressed is whether the public body complied with the various sections of the Act, and not whether other avenues are available to [him] to commence a civil proceeding.” I agree. The applicant also makes the fair point that requiring him to commence a John Doe action will not only cost him time and money, but will also “unjustifiably add one more burden on the already overloaded court system.”

Despite the applicant’s arguments, I find that the relevant circumstance in section 22(2)(c) is not sufficiently compelling to overcome the presumption in favour of non-disclosure in section 22(3)(b). The applicant has therefore not been able to discharge the onus on him to prove that disclosure of the third party personal information would not result in an unreasonable invasion of that third party’s personal privacy.

9. Order

I find that the Vancouver Police Department was required to refuse access to the withheld personal information in the record in dispute under section 22 of the Act.

Accordingly, under section 58(2)(c) of the Act, I require the Vancouver Police Department to refuse access to the withheld information in the record in dispute.

David H. Flaherty
Commissioner

November 12, 1998