



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

Order 04-21

WEST VANCOUVER POLICE DEPARTMENT

James Burrows, Adjudicator
September 1, 2004

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Summary: The applicant requested information about a credit search conducted about her. The applicant is entitled to all personal information about her provided it will not reveal the identity of a third party. Section 22 requires the public body to withhold information which could identify a third party. Section 22 does not require the public body to withhold the name of an employee of a private business.

Key Words: unreasonable invasion – personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 22.

Authorities Considered: B.C.: Order 03-21, [2003] B.C.I.P.C.D. No. 21; Order 00-53, [2000] B.C.I.P.C.D. No. 57; Order 01-46, [2001] B.C.I.P.C.D. No. 48.

1.0 INTRODUCTION

[1] On April 27, 2003, the applicant submitted a request under the *Freedom of Information and Protection of Privacy Act* (“Act”) to the West Vancouver Police Department (“WVPD”) for copies of any and all correspondence, records and documents concerning the circumstances that led the WVPD to do a query of her name through Equifax Canada.

[2] On June 3, 2003, the WVPD responded by providing seven pages of records responsive to the applicant’s request. Four pages of the records were severed under ss. 15 and 22 of the Act. On July 22, 2003, the WVPD provided another four-page record with some severing under ss. 15 and 22 on all pages.

[3] On July 3, 2003, the applicant requested this office review the decision of the WVPD.

[4] Mediation was not successful and on October 27, 2003, the applicant requested the matter go to inquiry. A written inquiry was set for December 9, 2003 under Part 5 of the Act.

[5] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[6] The issue in this inquiry concerns the WVPD's application of ss. 15 and 22 of the Act to the severing of the requested records.

[7] Section 57 establishes the burden of proof for inquiries. Under s. 57(1), the WVPD has the burden regarding s. 15 while, under s. 57(2), the applicant has the burden regarding third-party personal information.

3.0 DISCUSSION

[8] **3.1 Records at Issue** – In the initial release, the WVPD provided four records to the applicant, three of which it severed. The first severed record was a letter, the second a memorandum and the third a credit report. Subsequently the WVPD released a severed credit report invoice with its cover fax.

[9] In her reply submission, the applicant stated that she “has no interest in the Memo” and further agrees that the memorandum was appropriately withheld under s. 15. As there is no longer an issue about the severing of this record, I will not consider it in my decision.

[10] The credit report invoice was released in severed form on July 27, 2004. In her reply submission, the applicant stated that the WVPD's account number is of no interest. As the applicant does not wish to pursue the release of this specific information, I have not reviewed this severing in my decision.

[11] The WVPD also severed a segment of the credit report invoice which dealt with the credit inquiry for another unrelated person and associated information from the credit report invoice. In her reply submission, the applicant stated that she has no interest in the name or other particulars related to this credit inquiry, so I have not considered this severing in my decision.

[12] As well as the WVPD account number and the unrelated credit inquiry, the WVPD removed the invoice number and a reference number from the invoice. However, the applicant has stated that these numbers were handwritten back into the copies that she

received. She provided those copies as part of her reply submission. As she has already received this information, I have not included this severing in my decision.

[13] The WVPD also severed an ID number from the cover fax to the credit report. As the applicant had stated that she had no interest in the account number, I wrote to her to ask if she wished to pursue the release of the ID number. She responded that she was only interested in the ID number if it “would go to show that the WVPD obtained my personal information by leading Equifax to believe that it was the District of West Vancouver requesting the information rather than the WVPD.” The ID number performs a similar function to the account number and does not provide the type of information that the applicant has described. There is, therefore, no need for me to consider this information in this decision, since the applicant has indicated that, in light of my finding as to the ID number’s function, she does not seek access to that information.

[14] Since s. 15 was applied only to records that the applicant has stated in her submissions that she has no interest in pursuing, I do not need to consider the application of s. 15.

[15] What remains for me to consider is the severing of two records under s. 22:

- 1) the letter, and
- 2) an Equifax employee name from the credit report invoice cover letter.

[16] **3.2 Severing of the Letter** – The WVPD provided the applicant with a severed copy of an anonymous letter. Some of the severed information is the personal information of the applicant and some relates to a third party. In its submission, the WVPD argued that the severed portions of the letter must be withheld under ss. 22(3)(b) and (d). The WVPD also argued that s. 22(1) would apply to the severed information.

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,

...

- (d) the personal information relates to employment, occupational or educational history,

...

[17] In support of its application of s. 22(3)(b), the WVPD submitted an affidavit from a police officer of the WVPD. In his affidavit, he described the investigation which

he conducted following the department's receipt of the letter. He also detailed how the investigation was about a possible violation of the law as required under s. 22(3)(b).

[18] A third party also provided an *in camera* submission which I have reviewed. In essence the third party supported the position of the WVPD that the release of third-party personal information would be an unreasonable invasion of personal privacy.

[19] The applicant argued that, since the letter was sent anonymously before the investigation began, it cannot be part of the investigation. I disagree. A record which instigates an investigation is, by its very nature, part of the investigation. Similarly, personal information which was compiled before an investigation may become part of the investigation file and subject to s. 22(3)(b). Therefore, based on the affidavit of the WVPD officer, I agree that some of the severed information in the letter was appropriately withheld under s. 22(3)(b).

[20] However a portion of the severed information is the personal information of the applicant. Through her submissions, I am able to determine that she is aware of the information and, in any event, is entitled to that portion of the information related to her which will not allow the identification of any third party. Therefore I find that the WVPD must provide the applicant with a re-severed copy of the letter and make available to the applicant her own personal information.

[21] As I find that s. 22(3)(b) applies to third-party personal information in the letter, I have not considered the application of s. 22(3)(d) to the same information.

[22] **3.3 Severing of a Personal Name from the Credit Report Invoice Cover Letter** – The applicant also asked that a personal name attached as a cc: [copied to] to the credit report invoice be released to her as the name is an Equifax employee. The applicant argued that she believes that Equifax is inappropriately providing credit history information to police agencies without an individual's consent. Therefore she believes that she should be entitled to this information. The WVPD's position is that the name of the Equifax employee is third party personal information and must be withheld under s. 22(3)(d) of the Act.

[23] For s. 22(1) of the Act to apply, the release of third party personal information must be an unreasonable invasion of the third-party's personal privacy.

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.

[24] The fact that an individual works for Equifax is undoubtedly third party personal information under the Act. However, would the release of this information be an unreasonable invasion of the individual's privacy?

[25] The WVPD has provided me with no argument beyond the assertion that s. 22(3)(d) creates a presumption of an unreasonable invasion of third-party privacy if an employee's name is disclosed. While it is reasonable to argue that s. 22(3)(d) of the Act applies to an employee's name, it still remains for me to decide whether the disclosure would be an unreasonable invasion of privacy. The WVPD has provided me with no other information which would allow me to determine if the release of this name would be an unreasonable invasion of privacy.

[26] In Order 03-21, [2003] B.C.I.P.C.D. No. 21, the Commissioner found that s. 22(3)(d) applied to names of employees working for a private company. The names were related to other personal information and the Commissioner ordered that the names be withheld. However in that order, he also acknowledged that there were circumstances where the release of the name of an employee of a private company would not be an unreasonable invasion of privacy.

[28] ... Nor do the findings in this case, nor Order 01-46, mean that names of employees of private sector organizations must be withheld under s. 22(1) in all cases. This case involves employee names and more. The privacy interests of such individuals must be considered in the circumstances of each case, without any presumption or inclination that disclosure of their names would invade personal privacy (much less unreasonably so, as s. 22(1) contemplates).

[27] Reviewing the relevant circumstances available under s. 22(2), I do not find that any of these circumstance favour withholding the employee's name in this matter. However, as the Commissioner has noted in past orders, this is not an exhaustive list.

Relevant Circumstances – Section 22(2) of the Act requires a public body to consider “all relevant circumstances” in deciding whether a disclosure of personal information will result in an unreasonable invasion of a third party's personal privacy. Section 22(2) sets out relevant circumstances to be considered, but that list is not exhaustive. Other factors may be relevant and have to be considered. A circumstance may favour disclosure or it may favour the withholding of personal information, but the circumstance is not in itself determinative of the issue [Order 00-53, [2000] B.C.I.P.C.D. No. 57, at p.12].

[28] In this particular instance, I believe that the employee name is something that would be available to other Equifax customers during the normal course of business. The name is not associated with other personal information, as in Order 01-46, [2001] B.C.I.P.C.D. No. 48 or Order 03-21, other than the fact the individual is employed by Equifax. The name is not even associated with a job title. The fact that the name of an individual would be released as part of normal business practice seems to me to be a relevant circumstance in determining if this release would be an unreasonable invasion of third-party privacy. I believe that the release of the name would not be an unreasonable invasion.

[29] Therefore, based on the reasons above, I find that the WVPD must release the name of the Equifax employee severed from the credit report invoice.

4.0 CONCLUSION

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

1. I require the West Vancouver Police Department to provide the applicant with a re-severed version of the letter that I will provide the department, which will disclose some of the information from the severed letter, and withhold other portions under s. 22 of the Act, and;
2. I require the West Vancouver Police Department to disclose the name of the Equifax employee severed from the credit report invoice.

September 1, 2004

ORIGINAL SIGNED BY

James Burrows
Adjudicator