



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

Order 04-20

**VANCOUVER POLICE DEPARTMENT**

Celia Francis, Adjudicator  
September 1, 2004

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**Summary:** Applicant requested 13-year old complaint records. VPD found to have applied s. 19(1)(a) correctly and, with the exception of hospital employee names, s. 22.

**Key Words:** disclosure harmful to individual or public safety – threaten – mental or physical health – safety – reasonable expectation of harm – personal privacy – unreasonable invasion – functions of public body employees – compiled as part of investigation.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 19(1)(a) and 22(1), 22(2)(a), (c), (e), 22(3)(b), 22(4)(e).

**Authorities Considered: B.C.:** Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order 01-15, [2001] B.C.I.P.C.D. No. 16; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 00-28, [2000] B.C.I.P.C.D. No. 31.

## 1.0 INTRODUCTION

[1] The applicant submitted a request under the *Freedom of Information and Protection of Privacy Act* (“Act”) to the Vancouver Police Department (“VPD”) for a copy of an investigation report and associated notes. The records relate to a complaint that the applicant filed in 1991 with the VPD in which, among other things, he alleged that VPD officers had assaulted him at St. Paul’s Hospital.

[2] The VPD responded by disclosing some records in severed form and by withholding other records in full. The applicant asked for a review of this decision and, after mediation, the VPD sent another response to the applicant informing him that it had located more records.

The VPD then disclosed more records in severed form and withheld others in full. In both phases, the VPD applied ss. 22(3)(b) and 16(1)(b) of the Act to the withheld information and records. It appears that the VPD also applied s. 15(1) to some information in both phases of its response.

[3] According to the portfolio officer's fact report which accompanied the notice for this inquiry, mediation then led to consultation between the VPD and St. Paul's Hospital on the records which the VPD had withheld under s. 16(1)(b). After obtaining the views of St. Paul's on these records, the VPD withdrew the application of ss. 15 and 16. The VPD then disclosed, in severed form the records it had earlier withheld, with the exception of two pages which it continued to withhold in full. It told the applicant that it was applying ss. 19(1), 22(1), 22(2)(e) and 22(3)(b) to the remaining withheld information and records.

[4] Because the matter did not settle fully in mediation, a written inquiry was held under Part 5 of the Act. A notice of written inquiry was sent to the applicant and the VPD, and also to St. Paul's Hospital as an appropriate person under s. 54(b) of the Act. 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

[5] The issues before me in this case are:

1. Is the VPD authorized to withhold information under s. 19(1)(a) of the Act?
2. Is the VPD required to withhold information under s. 22(1) of the Act?

[6] Under s. 57(1) of the Act, the VPD has the burden of proof regarding s. 19(1)(a) while, under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

## 3.0 DISCUSSION

[7] **3.1 Records in Dispute** – The records that the VPD provided for this inquiry include: police continuation reports; *Police Act* citizen complaint forms; VPD officers' handwritten responses to the applicant's complaint; handwritten notes and typed reports by the investigator looking into the applicant's complaint; that investigator's notes of interviews with the applicant and others; correspondence between the applicant and the VPD, the BC Police Commission and the Ministry of Attorney General; the investigation report with attachments; VPD memoranda about the complaint; and a number of records that originated with St. Paul's Hospital (including nurses' notes, security reports, progress records, interview notes, a doctor's statement and a nurse's statement) which the investigator apparently gathered in the course of investigating the complaint. There are numerous duplicates of these records.

[8] The records spring both from the applicant's 1991 complaint that VPD officers had assaulted him at St. Paul's and from the applicant's related allegations about St. Paul's staff's

medical care of the applicant's wife before her death. The VPD internal investigation concluded that the applicant's complaint was unsubstantiated.

[9] The VPD disclosed the vast majority of the records, severing some information under ss. 19(1) and 22(1), principally names of hospital employees (doctors, nurses and security staff), family members and other patients.

[10] **3.2 Personal Privacy** – The VPD presented its arguments on the application of s. 22 at paras. 15-19 of its initial submission. It argued that ss. 22(1), 22(2)(e) and 22(3)(b) apply to the withheld names and other information. It said it withheld the identities of individuals other than the applicant, his wife and VPD officers on the grounds that the records, including third-party identities and other personal information, were compiled as part of an investigation into a possible violation of law. Disclosure of this information is therefore an unreasonable invasion of third-party privacy, in the VPD's view. It argued further that the factor in s. 22(2)(e) favours withholding the information and provided *in camera* argument and affidavit evidence supporting its position on this point.

[11] The Information and Privacy Commissioner has often discussed the application of s. 22. See, for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56. I have also considered it, for example, in Order 02-56, [2002] B.C.I.P.C.D. No. 58. Without repeating them, I will apply here the same principles and approach.

[12] Much of the applicant's submissions relate to his 13-year old complaints and allegations against VPD officers and St. Paul's Hospital staff. He also generally rejects the VPD's application of s. 22 and in places makes arguments which appear to relate to the factors in s. 22(2)(a) and (c).

[13] The relevant parts of s. 22 read 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
- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
  - ...
  - (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 20 disclosure is necessary to prosecute the violation or to continue the investigation,
- ....
- (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,
- ....

### ***Functions of public body employees***

[14] The VPD withheld under s. 22(3)(b) of the Act the names of a number of doctors, nurses, security staff and other employees of St. Paul's Hospital, a public body under the Act. St. Paul's supported the VPD's position on this, while the applicant pointed out that these people work for a public body and suggested that their names are known among staff and patients (item 6, p. 4, initial submission).

[15] As the VPD said, it disclosed the names of its own officers. It did so for all officers mentioned, both in their capacity as investigators and as subjects of the applicant's allegations that they assaulted him. The VPD also disclosed the names of employees of other public bodies, such as the Ministry of Attorney General. It did this presumably because it considered that s. 22(4)(e) applies to this information.

[16] For reasons it does not discuss, however, the VPD did not address whether or not s. 22(4)(e) applies to information about St. Paul's employees. In Order 02-56 (upheld in *Architectural Institute of B.C. v. Information and Privacy Commissioner for B.C.*, 2004 BCSC 217), I said that a public body begins the analysis of s. 22 with a consideration of whether s. 22(4) applies to third-party personal information. If it does, the public body stops there. It does not then consider whether s. 22(3) applies to that information.

[17] In Order 01-15, [2001] B.C.I.P.C.D. No. 16, the Information and Privacy Commissioner discussed the type of information covered by s. 22(4)(e):

### ***Information About the Functions of Ministry Employees***

[35] The Ministry argues that s. 22(1) applies to the names of Ministry employees and descriptions of their actions. As I noted in Order 00-53, [2000] B.C.I.P.C.D. No. 57, public body employees are third parties for the purposes of s. 22. This does not mean, however, that all recorded information about them must be withheld under s. 22(1). The information in records 4-9 as to Ministry employees' names and actions appears in the context of work-

related activities and relates to their functions as employees of a public body. It therefore falls under s. 22(4)(e), in my view, such that disclosure of that information would not result in an unreasonable invasion of the employees' personal privacy. See Order 00-53. I return to this issue below in the discussion of s. 22(3)(d).

[18] The Commissioner's views on the application of s. 22(4)(e) are equally apt here. In this case, the St. Paul's records for the most part pre-date the complaint and the VPD's investigation. They recount the third parties' actions and dealings with the applicant in the workplace, as employees of a public body. The names of doctors, nurses, security staff and other employees of St. Paul's therefore fall under s. 22(4)(e). As such, disclosure of this information is not an unreasonable invasion of those employees' personal privacy. It is therefore unnecessary to consider whether s. 22(3)(b) applies to the same information.

[19] **3.3 Unreasonable Invasion of Privacy** – The VPD argued that s. 22(3)(b) applies to the withheld information, which the applicant disputed.

*Compiled as part of an investigation*

[20] The VPD said that any personal information in the records in dispute, specifically third parties' names and other identifying information, was compiled as part of an investigation into a possible violation of law. It argued that disclosure of this information would therefore be an unreasonable invasion of third-party privacy (paras. 16 & 17, initial submission).

[21] The applicant argued in his initial submission (pp. 4-5) that names are not personal information and that he already knows the withheld names. He also said (item 9, p. 5):

In this situation where people have been assaulted, kidnapped and murdered and the police have taken a payoff to cover it up, disclose [*sic*] is necessary to continue the investigation and for possible [*sic*] future prosecution as there is no time limit on prosecuting criminal offenses.

[22] While some of the third-party personal information that the VPD withheld falls under s. 22(4)(e), other personal information relates to individuals who are not public body employees. I agree with the VPD that this latter type of personal information was compiled and is identifiable as part of an investigation into a possible violation of law. It therefore falls under s. 22(3)(b) and its disclosure is presumed to be an unreasonable invasion of third-party privacy.

[23] **3.4 Relevant circumstances** – The VPD argued that s. 22(2)(e) applies while, as noted above, the applicant's arguments appear to raise the factors in ss. 22(2)(a) and (c).

*Subject public body to scrutiny*

[24] I infer from the applicant's submission that he believes that the withheld information would assist in subjecting the VPD and St. Paul's Hospital to public scrutiny. He alludes to this belief several times in his submissions. An example from p. 2 of his initial submission on this point follows:

Crooks hide documents. Honest people show the complete records without deletions. The internal investigation unit of the Vancouver Police Department and staff at St. Paul's hospital are acting like gangsters and murdering crooks. These two organizations operate as public trusts and all their records and documents should be publicly available upon demand. However the people operating these two organizations run them like criminal organizations and information is extremely difficult to pry out of them. ...

[25] The VPD responded that the applicant's assertions that VPD officials lied and engaged in criminal activities are without substance and in any case not relevant to the issues under review in this inquiry (para. 1, reply).

[26] The events described in these records took place in 1991 and most of the records date from that period. The records indicate that the VPD investigated the applicant's complaints and allegations and found them to be unsubstantiated. The applicant is well aware of the steps the VPD and St. Paul's Hospital staff took in dealing with him and his complaint and knows how the VPD arrived at its conclusions on his complaints.

[27] It seems that the applicant is still concerned that the VPD did not conduct a proper investigation of his complaint (see, for example, item 10, p. 2, reply). However, the minimal amounts of personal information that the VPD severed from the records would not, in my view, assist in subjecting either the VPD or St. Paul's Hospital to public scrutiny in this case. Section 22(2)(a) is not relevant here.

#### ***Fair Determination of applicant's rights***

[28] The applicant also appears to believe that s. 22(2)(c) applies, saying, for example, that complete disclosure is necessary for (unspecified) legal matters (see item 6, p.5, reply) or that St. Paul's staff gave false information to the VPD and that he needs to call them before a judge to reveal why they did so (see item 15, p. 11, reply).

[29] The Commissioner has said that rights are "legal rights" for the purposes of s. 22(2)(c) (see Order 01-07, [2001] B.C.I.P.C.D. No. 7, for example). The applicant has not explained what legal rights he may have at stake nor how the small amounts of third-party personal information severed from these 13-year old records would be relevant to the determination of any such rights. I find that s. 22(2)(c) is not relevant here.

#### ***Unfair harm***

[30] The VPD argued that the relevant circumstance in s. 22(2)(e) is present and that it weighs against disclosure of the withheld information to the applicant. Its argument and evidence on this point were almost all *in camera*. The applicant objected to the *in camera* material but I consider it properly received *in camera* in this case.

[31] The applicant said he has already received many of the documents with no deletions (he did not explain how) and asks how these people should feel threatened (see, for example,

item 3, p. 2, and item 8, p. 5, initial submission). He rejected the VPD's argument on harm to others, claiming (at item 9, p. 5) that the only people who suffered "unreasonable harm" were:

- a) [the applicant's wife] who suffered unreasonable assault, unreasonable kidnapping and unreasonable murder and;
- b) [the applicant] who suffered unreasonable assault and kidnapping and who has been unreasonable [*sic*] denied justice for his murdered wife.

[32] The applicant also argued in his reply (item 7, p. 2) that:

It is extremely bizarre for someone to claim that releasing information twelve or more years after an event will somehow lead to harm to themselves and others.

[33] I cannot say much about the *in camera* affidavit evidence. I have carefully considered it, however, and, while it does not relate directly to the withheld personal information in this case, I conclude that it and the other material before me support the argument that disclosure of the personal information in issue would unfairly expose third parties to harm. I find that s. 22(2)(e) applies to the withheld s. 22(3)(b) information in this case, favouring its withholding.

***Is the applicant entitled to any personal information?***

[34] Section 22(4)(e) applies to the names of St. Paul's employees. As I discuss below, however, the VPD is authorized to withhold the same information under s. 19(1)(a).

[35] I have found that s. 22(3)(b) applies to the third-party personal information that relates to individuals other than public body employees. The applicant has not rebutted the presumption in s. 22(3)(b) and the only relevant circumstance favours withholding this information. I therefore find that the VPD is required by s. 22(3)(b) to withhold this information.

[36] **3.5 Threat to Health or Safety** – The VPD argued that s. 19(1)(a) applies to the withheld information in this case. Section 19(1)(a) reads as follows:

**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 ... .

[37] The Information and Privacy Commissioner has considered s. 19(1)(a) in a number of orders, for example, at paras. 57-60 of Order 01-15. He referred there to Order 00-28, [2000] B.C.I.P.C.D. No. 31, acknowledging that it is not necessary to establish certainty of harm or a specific degree of probability of harm. He went on to say:

[60] ... [Section] 19(1)(a) is triggered only where there is a reasonable expectation that disclosure of information could threaten the safety or mental or physical health of someone

other than the applicant. There must be a rational connection between the disclosure and the feared harm – speculation will not suffice.

[38] The VPD based its case for the application of s. 19(1)(a) on the *in camera* argument and evidence it submitted on s. 22(2)(e). I said in my discussion of s. 22(2)(e) that the *in camera* evidence does not relate directly to the withheld personal information in this case. However, I concluded that it, together with the other material before me, supports the argument that s. 22(2)(e) applies to some of the personal information in this case.

[39] I have come to a similar conclusion regarding the applicability of s. 19(1)(a) in this case. I am unable to discuss the *in camera* evidence, as it is properly received *in camera*. I have, however, carefully considered the material before me, including the records and the *in camera* affidavit material, and am persuaded that disclosure of the personal information in these records could reasonably be expected to threaten the safety or mental or physical health of individuals as contemplated by s. 19(1)(a).

#### **4.0 CONCLUSION**

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

1. Subject to para. 3 below, I require the VPD to give the applicant access to the information related to St. Paul's employees that it withheld under s. 22.
2. I require the VPD to refuse access to the remaining personal information that it withheld under s. 22.
3. I confirm that the VPD is authorized to refuse access to the information which it withheld under s. 19(1)(a).

September 1, 2004

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator