Order F07-04

VANCOUVER POLICE DEPARTMENT

David Loukidelis, Information and Privacy Commissioner

March 7, 2007

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Summary: The applicant news agency requested access to the transcript and audio tape of 911 calls placed by a named individual, as well as a copy of police reports relating to those calls. Section 25(1) does not require disclosure in the public interest. The VPD is not authorized to withhold the information under s. 15(1)(c), but is required to withhold it under s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(c), 22(1), 22(2)(f) and (h), 22(3)(b), 25(1).

Authorities Considered: B.C.: Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order No. 60-1995, [1995] B.C.I.P.C.D. No. 33; Order 00-16, [2000] B.C.I.P.C.D. No. 6; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Investigation Report P97-010; Order 04-21, [2004] B.C.I.P.C.D No. 21; Order 03-16, [2003] B.C.I.P.C.D. No. 16. **Ont.:** Order M-1039, [1997] O.I.P.C. No. 328; Order M-969, [1997] O.I.P.C. No. 190; Order MO-1429, [2001] O.I.P.C. No. 107; Order P-1375, [1997] O.I.P.C. No. 87, Order MO-1903, [2005] O.I.P.C. No. 17, Interim Order M-838, [1991] O.I.P.C. No. 333; Order MO-1362, [2000] O.I.P.C. No. 199; Order MO-1424, [2001] O.I.P.C. No. 88; Order M-1096, [1998] O.I.P.C. No. 90, Order P-1473, [1997] O.I.P.C. No. 298; Order MO-2061, [2006] O.I.P.C. No. 91; Order MO-2012, [2005] O.I.P.C. No. 211. **N.S.:** Report F1-01-81, [2000] N.S.F.I.P.P.A.R. No. 81.

Cases Considered: *Campbell v. MGN Limited*, [2004] UKHL 22 (H.L.).

1.0 INTRODUCTION

[1] **1.1 Background**—The background to this inquiry is straightforward. A reporter acting for a media outlet asked the Vancouver Police Department ("VPD") for access, under the *Freedom of Information and Protection of Privacy*

Act ("FIPPA"), to the transcript and audio tape of 911 calls[1] placed by a named individual ("third party") on a specified date. The applicant also sought a copy of the two police reports relating to the calls. The VPD denied access on the basis that the information in the requested records was third-party personal information. It gave no other reasons for withholding the requested records.

[2] The VPD notified the third party about the request and asked for his views on whether disclosure of the requested records would violate his personal privacy. In a letter to the VPD, the third party took the position that the information should be withheld under ss. 22(1) and (3)(b) of FIPPA. In later correspondence, the third party added that the information should also be withheld under s. 15(1)(c) of the Act. The VPD then clarified for the applicant that the requested records were being withheld under ss. 15(1)(c), 22(2)(f), 22(2)(h) and 22(3)(b) of FIPPA.

[3] The applicant requested a review of the VPD's decision on the basis that the subject of the 911 call and the police reports related to matters of significant public interest, but only a reduced privacy interest. The applicant also requested a "public interest override in the alternative". Mediation by this office not having succeeded, an inquiry was held under Part 5 of FIPPA. This office gave the third party notice of the inquiry under s. 54 of FIPPA and the third party made representations in the inquiry.

[4] As the discussion below indicates, in support of disclosure of the requested information the applicant relies quite heavily on the fact that the third party is a public figure who not only made public statements relating to the 911 telephone call and the incident that triggered the call, but was also outspoken in respect of issues related to the type of incident in which he was involved.

2.0 ISSUES

[5] The following issues are raised in this inquiry:

1. Does s. 25(1)(b) of the Act require disclosure of information?

2. Is the VPD required to refuse access under s. 22?

3. Is the VPD authorized to refuse access under s. 15(1)(c)?

[1] The tape of the 911 communications indicates that, technically, the same individual made three separate calls to 911 in quick succession. These calls followed on each other very quickly and all relate to the same incident. They are for all intents and purposes one call and I will refer to them as such for convenience.

[6] As I have said in previous orders, such as Order 02-38,[2] while s. 57 of the Act is silent on the burden of proof under s. 25, as a practical matter it is in the interests of both parties to present evidence as to whether s. 25 applies and requires disclosure. Since the applicant has raised s. 25, it is particularly in the applicant's interests to provide information to support a finding that the mandatory disclosure requirements are met.

[7] With respect to the remaining two issues, ss. 57(2) and (3)(a) place the burden of proof on the applicant to prove that disclosure of the disputed records would not unreasonably invade the third party's personal privacy under s. 22. Section 57(1) places the burden on the VPD to demonstrate that s. 15(1)(c) authorized it to withhold information.

3.0 DISCUSSION

[8] **3.1 Public Interest Disclosure**—Section 25 requires disclosure of information in the public interest in certain circumstances and despite any other provision of FIPPA:

> **Information must be disclosed in the public interest**
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> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
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> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.

[9] As I said in Order 02-38, s. 25 is a unique provision in that it requires a public body to disclose information where certain facts exist, regardless of whether an access request has been made and despite any of FIPPA's exceptions to the right of access to information.

[10] The applicant's s. 25 argument is that "the public interest in accountability and truthfulness, particularly in public statements by…public figures, overrides any suggestion that such a public figure should be permitted to make a public allegation and be free from scrutiny or accountability over it".[3] It is fair to say this boils down to saying something like if a "public figure" of some description makes a "public allegation" of some kind, there is a public interest in preventing the spread of information without accountability which demands, under s. 25, that records which may or may not disprove the public figure's allegation be released.

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[2] [2002] B.C.I.P.C.D. No. 38.
[3] Para. 15, initial submission.

[11] The VPD relies on Order No. 60-1995,[4] where Commissioner Flaherty found s. 25(1)(b) did not apply to a request for information relating to whether or not elected officials and other public figures own guns. The VPD also refers to Order 02-38, where I found that s. 25(1) requires the existence of circumstances of clear gravity and present significance that establish an urgent and compelling need for public disclosure of specific information. The VPD argues that the records in issue here disclose no such information.

[12] The VPD also makes the point that, as I found in Order 00-16,[5] s. 25 is not intended to be a mechanism for investigating the activities of public bodies where suspicions arise. By extension, the VPD argues that s. 25 is not an investigative tool for those who seek to look into the affairs of public figures.

[13] Last, the VPD contends that the applicant's reasoning is flawed and would, if accepted, lead to an absurd result:

> …Following the Applicant's line of reasoning, if by way of example, a politician asserts in public that British Columbians should take advantage of local vacation destinations and that he or she had not traveled out of the Province on vacation for one year, the Applicant would seem to suggest that any public body must, without delay, make public any and all information in its custody or under its control, where the information refutes the politician's public comments. The Applicant's submissions…would seem to suggest that this same argument and mandatory public disclosure must be applied to scrutinize a politician's age or marital arrangements.
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> The Vancouver Police Department submits that the Applicant's section 25 argument is flawed owing to the fact that the Applicant would not have the public body assess whether it is in the public's interest to disclose the information in its custody or under its control. Rather the Applicant would seem to suggest that when a public figure makes a public comment, that comment must be scrutinized and held to its truthfulness, *per se*, against all responsive records in the custody or under the control of a public body, including those records that contain third party personal information.[6]

[14] Section 25(1)(b) undoubtedly does not compel disclosure of information about all matters that may be of public concern, interest or debate. Nor is it triggered simply because there may be an interest on the part of the public in testing the accuracy or truthfulness of statements made openly by public figures. This is not to say there is no public interest in testing what is said by public figures, but, as previous decisions regarding s. 25 affirm, there is no question that s. 25 was intended to, and does, set quite a high threshold that must be crossed before it is triggered. While I accept the applicant has raised public

[4] [1995] B.C.I.P.C.D. No. 33.
[5] [2000] B.C.I.P.C.D. No. 6.
[6] Para. 28, reply submission.

interest concerns in this case, they do not approach those reflected in the criteria for disclosure under s. 25. Applying the approach taken in earlier decisions regarding s. 25, I conclude that the material before me does not support a finding that there is an urgent and compelling need for mandatory public interest disclosure of the information in the records in issue here. I therefore find that s. 25(1) does not require the VPD to disclose this information.

[15] **3.2 Personal Privacy**—Section 22 of the Act has been the subject of many orders and I will follow, without repeating, the approach to applying s. 22 outlined in Order 01-53.[7]

[16] These are the relevant portions of s. 22:

> ***Disclosure harmful to personal privacy***
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> 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.
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> …
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> 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
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> …
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> (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,…
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> 22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> (a) the third party has, in writing, consented to or requested the disclosure,…

[17] The VPD withheld the records under s. 22(1), which requires a public body to refuse to disclose personal information if its disclosure "would be an unreasonable invasion of a third party's personal privacy." My review of the records reveals that the majority of the information they contain consists of recorded information about identifiable individuals, including the third party.[8]

[18] The information in the records consists of personal information about individuals, including the third party. Some of it is personal information of individuals who were interviewed about the underlying incident or personal

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[7] [2001] B.C.I.P.C.D. No. 56.

[8] The exception arises because the police reports are in a standard computerized form, with the form containing instructions to police as to what information is to be included in completing a report.

information of individuals who were referred to by those interviewed. The personal information includes the names of individuals and information such as telephone numbers, addresses and birth dates. The rest of the personal information consists of the comments, opinions and views of the third party and others about the incident that triggered the 911 telephone call by the third party and the events that followed. The police reports also contain the comments of the reporting police officers about the individuals who were interviewed. I am satisfied that all of this information consists of personal information, including that of the third party.

[19] I will note here that there is no evidence to support a finding that anyone, including the third party, has requested disclosure of that individual's personal information or consented in writing to disclosure, as contemplated by s. 22(4)(a).[9]

[20] In support of its decision to withhold the records, the VPD relies on s. 22(3)(b), which creates a presumption of an unreasonable invasion of personal privacy where 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 VPD points to decisions in other provinces, under similar statutory exceptions protecting third-party privacy, to support its position.

[21] As regards the 911 audio tape, the VPD relies on Ontario Order M-1039[10] and Order M-969,[11] as well as Nova Scotia Report F1-01-81[12]. In all these cases, public body decisions to refuse access to 911 tapes were upheld. In the Nova Scotia case, the issue was whether a 911 tape about a murder-suicide should be disclosed because all of the information about the crime had been made public. The applicant, a journalist, wanted the information for use in relation to a documentary he was producing on spousal abuse. Relying on Ontario Order M-1429,[13] Order M-969 and Order P-1375,[14] Review Officer Fardy found that disclosure of the information on the 911 tape would give rise to an unreasonable invasion of the (deceased) victim's personal privacy. Publicity of the facts of the crime did not warrant disclosure of personal information.

[22] In Ontario Order M-1039, the applicant journalist sought access to audio tapes or written transcripts of 911 telephone calls that a mother had made to police about her son's suicide. At the time the access request was made, the 911 tapes had been destroyed. The applicant also sought access to other records, including a Homicide/Sudden Death Report, but access was denied on

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[9] Certainly, any public statements by the third party contained in media reports that are found in the applicant's submissions do not amount to such a request.
[10] [1997] O.I.P.C. No. 328.
[11] [1997] O.I.P.C. No. 190.
[12] [2000] N.S.F.I.P.P.A.R. No. 81.
[13] [2001] O.I.P.C. No. 107.
[14] [1997] O.I.P.C. No. 87.

the basis that the personal information in the records had been compiled and was identifiable as part of an investigation into a possible violation of law. Inquiry Officer Cropley held that police had properly withheld the personal information of two identifiable individuals who had not consented to disclosure.[15]

[23] Ontario Order M-969 upheld the decision of a police board to withhold a transcript of a 911 telephone call that an individual had made to police. The access applicant owned a private investigation agency and the 911 call, which was made by another individual, resulted in the police investigating an incident where one of the applicant's investigator's vehicles was blocked by two vehicles and two civilians. The police contended that they were investigating a possible violation of law in response to an allegation of criminal offences raised by the 911 call. Inquiry Officer Higgins concluded as follows:

> 18 … In the circumstances, I am satisfied that the Police were investigating a possible violation of law. No charges resulted from this investigation, but the presumption refers to the investigation of a possible violation of law, and does not require criminal charges to have been laid or proceedings to have been commenced (Orders M-395 and P-613).
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> 19 Therefore I find that the disclosure of the personal information in the records, all of which relates to individuals other than the appellant [the applicant], would be a presumed unjustified invasion of personal privacy under section 14(3)(b).

[24] The applicant in this case attempts to distinguish these decisions on the basis that the 911 callers in those cases were not public figures, whereas the third party is a public figure. I am not persuaded that such a distinction should be drawn.

[25] There are more Ontario decisions about access to 911 tapes or transcripts than those the VPD has cited. For example, Ontario Order M-1096[16] held that disclosure by police of transcripts of 911 calls would be presumed, to use the Ontario statutory formulation, to be an "unjustified invasion" of third-party personal privacy. In that case, Inquiry Officer Big Canoe ultimately upheld the decision of the police to refuse to confirm or deny to the applicant whether or not

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[15] Ontario Order MO-1903, [2005] O.I.P.C. No. 17, to which the VPD did not refer, also dealt with a request for access to tapes or transcripts of a 911 call. In that case, unlike Order M-1039, the access applicant was the mother of the deceased, not a journalist. The 911 tapes had been destroyed in the ordinary course, but Adjudicator Morrow ordered disclosure of personal information in a dispatch log, and portions of a Homicide/Sudden Death Report, that contained personal information of two individuals who had consented in writing to disclosure to the applicant and personal information of the applicant's deceased son, on whose behalf the applicant was entitled to act under the Ontario law.

[16] [1998] O.I.P.C. No. 90. Other Ontario decisions in which access was denied to personal information in 911 calls include Interim Order M-838, [1991] O.I.P.C. No. 333, Order MO-1362, [2000] O.I.P.C. No. 199 and Order MO-1424, [2001] O.I.P.C. No. 88.

a particular record existed. The applicant had been arrested at the residence from which he said the 911 call had been made and, in making his access request, the applicant had provided the name of the individual he believed made the call.

[26] The result was the same in Ontario Order P-1473,[17] where the applicant had sought access to a 911 call relating to a domestic incident involving him and his former spouse.

[27] In Order MO-2061,[18] the applicant sought access to the audio tape or transcript of a 911 call placed by a named individual on a date and at a time identified in the request. The requested information included the applicant's personal information. Adjudicator DeVries required disclosure of one 911 tape (or a transcript) because, as the evidence showed, the applicant had been present during the call and had heard the entire conversation. Adjudicator DeVries held that, since the applicant knew the contents of the 911 call already, applying the presumption against disclosure would lead to an absurd result in the circumstances. The information in the other 911 call, however, was found to have been properly withheld on the basis of a statutory presumption similar to that in our s. 22(3)(b).

[28] In British Columbia, Investigation Report P97-010[19] dealt with a complaint that the VPD had disclosed the complainant's personal information contrary to s. 22 by disclosing to her landlord, in response to his access request, records containing details of her 911 calls to the police for help. Commissioner Flaherty said the following:

> …when a person calls 911 and seeks assistance the call, and any information supplied during the conversation with a 911 operator is in the strictest confidence.
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> …
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> …if confidential calls for help to 911 are accessible to third parties…it will seriously undermine the public's confidence in reaching out for emergency assistance for fear of a breach of personal privacy…
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> …
>
> …where the subject of the request [for the 911 record] is specified and the released records concern that person, such a practice [of disclosure] is very invasive of the person's privacy.[20]

[17] [1997] O.I.P.C. No. 298.
[18] [2006] O.I.P.C. No. 91.
[19] See http://www.oipc.bc.ca/investigations/reports/invrpt10.html.
[20] At pp. 3, 4 and 7.

[29] Here, the VPD has provided affidavit evidence to establish that the personal information in issue was compiled as part of its investigation into whether the incidents that were the subject of the 911 telephone call were a violation of law. I find that was so. I also find that the contents of the 911 audio tape triggered, and were part of, the police investigation into a possible violation of law and thus the record and its contents form part of that investigation.[21] The police reports in issue consist entirely of the fruits of that investigation. I find that s. 22(3)(b) applies to the personal information in the records and that neither of the exceptions s. 22(3)(b) contemplates applies. I therefore find that the s. 22(3)(b) presumption of unreasonable invasion of personal privacy arises.

[30] As required by s. 22(2), the next step is to consider the relevant circumstances in order to determine whether the presumption under s. 22(3)(b) is overcome.

[31] In its initial submission, the applicant makes it clear that it does not view 911 calls as information for which there is generally a right of public access. It concedes that such calls would ordinarily attract a personal privacy or law enforcement exemption. The applicant argues, however, that there are unusual circumstances here which warrant disclosure of the requested information. As noted earlier, the applicant says that different considerations apply because the third party is a public figure who later made public assertions about the 911 call and the incident that triggered the 911 call, and who has been outspoken about issues similar to those that the incident raised. The applicant submitted media reports quoting the third party to illustrate this.

[32] The applicant contends that revealing information which simply confirms or contradicts information that the third party already has voluntarily revealed publicly gives rise to a reasonable, not unreasonable, violation of the third party's privacy. Put somewhat differently, the applicant argues the s. 22(3)(b) presumption is rebutted by the third party's public disclosure of information relating to the same incident.

[33] The applicant relies on the House of Lords decision in *Campbell v. MGN Limited*[22] to support its position. The plaintiff in that case was a celebrated fashion model who had publicly stated she did not use drugs. A British newspaper published an article captioned "Naomi: I am a drug addict", accompanied by a surreptitiously taken photograph of her meeting other addicts outside a Narcotics Anonymous meeting. The plaintiff brought an action against the newspaper's publisher claiming damages for common law breach of confidence—wrongful publication of her private information—and unlawful invasion of her privacy. She also sought compensation under the *Data Protection Act, 1998*.

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[21] See Order No. 04-21, [2004] B.C.I.P.C.D No. 21, at para. 19.
[22] [2004] UKHL 22 (H.L.).

[34] In *Campbell*, it was conceded at trial that, because of the plaintiff's repeated public claim that she had never had a drug problem, the newspaper was entitled to publish the fact that she was an addict and was attending treatment. What remained to be considered was whether the newspaper was also entitled to publish where she was receiving treatment, the details of her treatment and the surreptitiously taken photograph of her meeting with other addicts. The majority of the House of Lords held that the plaintiff's public statements did not justify what the newspaper did, but the entire court agreed that, where a public figure chooses to present a false image and make untrue statements about his or her life, the press will normally be entitled to set the record straight. Accordingly, the plaintiff's false claims created a sufficient public interest in the correction of the information she had given.

[35] The applicant argues that parallels exist between this case and *Campbell*, contending that, if there is any discrepancy between the third party's public statements and the records' contents, the same need for accountability applies. The applicant says that, to the extent that information in the 911 tape and transcript substantially matches the third party's public statements, there is no privacy over them. To the extent the information in the records instead contradicts or casts in a different light the third party's public statements, "they ought to be revealed lest the FOIPPA be used as a shield from accountability over public truthfulness".[23]

[36] The VPD says *Campbell* should be given "absolutely no consideration or weight with respect to the current inquiry" because it is entirely distinguishable both on its facts and in respect of the applicable legal framework.[24] The VPD also says, relying on Order No. 60-1995, that the third party, "insofar as he may be considered a public figure, has at least as great a right to the personal privacy contemplated by s. 22(1) as that of members of the general public".[25]

[37] In its decision to refuse access, the VPD relied on the factors found in ss. 22(2)(f) and (h), but neither the VPD nor the third party have mentioned these in their submissions in this inquiry. In the absence of evidentiary material sufficient for a proper consideration of those factors, I will not address them.[26] I will now consider whether other relevant circumstances exist and whether they overcome the s. 22(3)(b) presumption.

[38] It is helpful to consider the types of factors that have, in similar cases, overcome presumptions of unjustified invasion of privacy under Ontario's access

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[23] Para. 10(b), initial submission.
[24] Para. 2, reply submission.
[25] Para. 17, reply submission.
[26] In light of what follows regarding s. 22, I need not in any case address these two factors to dispose of this case. As regards confidentiality and s. 22(2)(f), I will say in passing that it is reasonable to expect, as a general rule, that 911 calls will be considered confidential. See Investigation Report P97-010.

and privacy law. Ontario's *Freedom of Information and Protection of Privacy Act* is not, of course, identical to FIPPA, but its personal privacy exception is similar to s. 22 and I consider that the Ontario decisions, while they are by no means binding on me, are of some assistance.

[39] In Ontario Order MO-2012,[27] the applicant, an Ottawa news station, sought access to information relating to the time when a particular 911 call had been received by police, as well as notes explaining any delays in contacting emergency medical services ("EMS"). The access request arose out of a multiple homicide and an alleged delay in the dispatch of EMS to the crime scene. Adjudicator Morrow found that release of personal information in the responsive records was presumed to constitute an unjustified invasion of personal privacy under s. 14(3)(b) of Ontario's *Municipal Freedom of Information and Protection of Privacy Act* (that section is the counterpart to s. 22(3)(b) of FIPPA). He then went on to consider whether the personal information could be released under s. 16 of that Act, which provides that the personal privacy exemption "does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption". Adjudicator Morrow ultimately concluded the information should be disclosed on public interest grounds:

> … the appellant has made a strong case that there is a compelling public interest in the release of log times and annotations that may explain the time delay in the dispatch of EMS in respect of the specific incident in question in this appeal. In my view, the public has a right to know the causes of the delay in this case, including whether this was an isolated incident or representative of systemic deficiencies and, if warranted, to consider possible solutions for improving response time in EMS dispatch within the Ottawa community. In my view, this is a serious issue of public safety, and based on the nature of the information and the appellant's representations, I am satisfied that this issue "rouses strong interest or attention". Disclosure of this information would also shed light on the operations of the Police in an important area of public interest and safety.
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> …
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> After a careful examination of the information at issue in the records, I find that the personal information that is responsive to the appellant's narrowed request is not particularly sensitive in light of the disposition of the criminal charges and the fact that the individuals who were the victims of this tragic incident are now deceased. In addition, I am satisfied that the information in the records that is responsive to the appellant's request does not contain the personal information of the individual who was charged and tried as a result of this incident.[28]

[27] [2005] O.I.P.C. No. 211.
[28] Para. 54.

[40] Although FIPPA does not contain an equivalent to s. 16 of the Ontario Act, public interest considerations can nonetheless be relevant factors for s. 22(2) balancing purposes. The relative sensitivity of the personal information is also a factor to consider. The relevant factors identified here by the applicant are that the third party is a public figure, he is the person who placed the 911 call, and he chose at a later date to publicly reveal to the media circumstances surrounding the 911 call.

[41] While the third party's personal information in the disputed records is not as sensitive as it would be in the case, for example, of 911 calls relating to a sexual assault or suicide, it is still more sensitive than the type of information that was released in Ontario Order MO-2012. The personal information of other identifiable individuals found in the records at hand is also more sensitive than that involved in Ontario Order M0-2012. In all of the circumstances, I am not persuaded that the identified factors—the third party's status as a public figure and later public comments by the third party—alone suffice to overcome the s. 22(3)(b) presumption. I agree with the general view expressed by Commissioner Flaherty in Order No. 60-1995, *i.e.*, that the fact that an individual with a public profile chooses to make public comments in one context does not mean that the individual's privacy should not be protected in a different context.

[42] As for *Campbell*, for a variety of reasons it is not relevant to the s. 22 analysis. The first and most obvious reason is that *Campbell* concerned an action for common law breach of confidence and alleged unlawful invasion of privacy. It did not involve interpretation and application of privacy legislation substantially similar to FIPPA or issues such as those arising in this inquiry. Nor is there any similarity between the facts in that case and the circumstances here. In *Campbell*, the media received information from an anonymous source proving that the plaintiff had misrepresented herself publicly. It was held that, armed with such proof of misrepresentation, the media were normally entitled to set the record straight. In this case, the applicant has produced no evidence which could give rise to an inference that the third party's public version of the incident varies from the version he (or other third parties) provided during the police investigation. The applicant instead speculates that the information at issue may (or may not) reveal that the third party was (or was not) entirely truthful. This is no more than speculation on the applicant's part and is not enough to overcome the s. 22(3)(b) presumption of unreasonable invasion of personal privacy in this case.

[43] I have considered whether the third party's name should be disclosed where it appears in the requested information on the basis that the applicant already knows the third party's identity. I have also considered whether the police reports, to the extent that they consist of the standard information found in such reports—*i.e.*, with all third-party personal information removed—should be disclosed to the applicant. I have, however, decided against this on the grounds advanced by the VPD, namely that with such severing the reports would be

virtually meaningless. I am satisfied that the records cannot, as provided by s. 4(2), "reasonably be severed".[29]

[44] I find that the presumed unreasonable invasion of the third party's personal privacy under s. 22(3)(b) has not been overcome and that s. 22(1) required the VPD to refuse to disclose the disputed records. In light of my conclusions on s. 22, it is not necessary for me to consider whether the VPD was also authorized to withhold the information under s. 15(1)(c) of FIPPA, but for the sake of completeness I will consider that issue.

[45] **3.3 Harm to Investigative Techniques and Procedures**—The VPD initially refused to disclose records on the basis of s. 15(1)(c), which authorizes a public body to refuse to disclose information if the disclosure could reasonably be expected to "harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement".

[46] In this inquiry, the VPD made no submissions and adduced no evidence respecting s. 15(1)(c), thus failing to meet its burden under s. 57.

[47] Regarding s. 15(1)(c), the third party argues that a crime investigation technique is to accept 911 calls to report incidents to the police. If 911 calls are not treated confidentially, the third party contends, many people will be reluctant to report incidents. The applicant responds that the VPD's investigation into the circumstances surrounding the 911 call has been completed and there are no criminal proceedings arising from the incident. The police file is closed, so there is no ongoing basis to refuse disclosure. Last, the applicant says, the incident described in the records has been made public.

[48] Quite apart from the VPD's failure to meet its s. 57 burden, I agree with the applicant that s. 15(1)(c) does not authorize the VPD to withhold the requested information. Even if I accept for discussion's sake only that a 911 call can be considered an "investigative" technique for s. 15(1)(c) purposes, it is a technique that can comfortably be described as routine and I fail to see how disclosure of these records could, in all of the circumstances, "reasonably be expected" to harm the effectiveness of such techniques in future. I find that s. 15(1)(c) did not authorize the VPD to refuse to disclose the disputed records.

4.0 CONCLUSION

[49] Because I have found that s. 25 does not require disclosure in the public interest, no order under s. 58 is necessary in that respect. In light of my finding and order respecting s. 22(1), I make no order in relation to s. 15(1)(c).

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[29] Regarding severance generally, see Order 03-16, [2003] B.C.I.P.C.D. No. 16. Support for this approach is also found in Ontario Order MO-1429.

[50] For the reasons given above regarding s. 22(1), under s. 58 I require the VPD to refuse to disclose the disputed records in their entirety.

March 7, 2007

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

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