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

Order F09-24

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Jay Fedorak, Adjudicator

November 19, 2009

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Summary: The applicant requested the résumés of all regional and chief coroners since 1967. The Ministry withheld the records under s. 22(1), on the grounds that disclosure of the employment and educational history of the third parties would constitute an unreasonable invasion of privacy. Section 22(1) requires the Ministry to withhold the requested records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1) and 22(3)(d).

Authorities Considered: B.C.: Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order No. 54-1995, [1995] B.C.I.P.C.D. No. 27; Order No. 128-1996, [1996] B.C.I.P.C.D. No. 55; Order 00-48, [2000] B.C.I.P.C.D. No. 52; Order 01-18, [2001] B.C.I.P.C.D. No. 19; Order 04-06, [2004] B.C.I.P.C.D. No. 6; Adjudication Order No. 2, June 19, 1997 (URL: http://www.oipc.bc.ca/orders/adjudications/Adj2a.html); Decision F06-05, [2006] B.C.I.P.C.D. No. 24.

Cases Considered: *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police),* [2003] S.C.J. No. 7; *R. v. McNeil*, [2009] S.C.J. No. 3.

1.0 INTRODUCTION

[1] This inquiry arises from a request by an applicant to the Office of the Chief Coroner, an agency of the Ministry of Public Safety and Solicitor General ("Ministry") for the résumés of all active and past regional and chief coroners in British Columbia since 1967. The Ministry responded that disclosure would be

an unreasonable invasion of the third parties' personal privacy and withheld the records in their entirety under s. 22(1) of FIPPA, citing ss. 22(2)(f) and (g) and 22(3)(d). The applicant requested a review of that decision. During mediation, the Ministry provided the applicant with copies of personal biographical summaries of several of the coroners who were subjects of this request, as published in documents presented at the Coroner's Basic Training Course during 2002, 2004 and 2005. As mediation was unsuccessful in resolving the matter, a written inquiry was held under Part 5 of FIPPA.

2.0 ISSUE

[2] The issue in this inquiry is whether the Ministry is required to refuse access to the records in dispute under s. 22(1) of FIPPA.

[3] Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of the requested information would not be an unreasonable invasion of the third parties' personal privacy.

3.0 DISCUSSION

[4] **3.1 Records in Dispute**—The records consist of copies of the résumés of thirteen of the twenty-two regional coroners and two of the five chief coroners who had been in office since 1967.

[5] **3.2 Harm to Personal Privacy**—The relevant provisions of s. 22 in this case are 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.
>
> …
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if …
>
> (d) the personal information relates to employment, occupational or educational history. … .

[6] The Commissioner has considered the application of s. 22(1) in numerous orders and the principles for its application are well established.[1] I have applied those principles here without repeating them.

[1] See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56.

Is it "personal information"?

[7] The Ministry contends that the résumés consist of the personal information of identifiable individuals and the applicant does not refute this point. I find that the records consist of the personal information of current and former regional and chief coroners.

[8] None of the parties raised the issue of the application of s. 22(4) to the records, and I see no basis for its application.

Presumption of unreasonable invasion of privacy

[9] The Ministry contends that the résumés at issue consist of the educational and employment history of identifiable individuals in accordance with s. 22(3)(d) of FIPPA. The Ministry cites a number of orders and decisions that found that résumés of employees of public bodies and organizations consist of educational and employment history in accordance with s. 22(3)(d) of FIPPA.[2] The applicant does not address this point. I agree with the Ministry's description of the information in dispute and find that s. 22(3)(d) of FIPPA applies to the records.

Is the presumption of unreasonable invasion of privacy rebutted?

[10] The crux of this case is whether there are relevant considerations in accordance with s. 22(2) that rebut the presumption that the disclosure of the educational and employment history of these Ministry employees would constitute an unreasonable invasion of their personal privacy.

[11] The applicant argues that disclosure of the résumés would not be an unreasonable invasion of the personal privacy of the current and former regional and chief coroners for two reasons. Although he does not directly cite s. 22(2)(a), the applicant contends that there is a public interest argument for disclosure. He argues that decisions of the Coroners Service with respect to investigations of deaths in police custody have lacked investigative rigour. The applicant believes that the reason for this is that most regional and chief coroners have worked previously for the Royal Canadian Mounted Police ("RCMP"). In his opinion, this renders them reluctant to criticize officers who might have been former colleagues.

[12] The applicant submits that access to the employment history of these coroners is necessary because:

> The public has a right to know the training and qualifications of BC Coroners and it has a right to know if a reasonable apprehension of bias

[2] Order No. 54-1995, [1995] B.C.I.P.C.D. No. 27, Order No. 128-1996, [1996] B.C.I.P.C.D. No. 55, Order 00-48, [2000] B.C.I.P.C.D. No. 52, Order 01-18, [2001] B.C.I.P.C.D. No. 19, Order 04-06, [2004] B.C.I.P.C.D. No. 6, Adjudication Order No. 2, June 19, 1997 (URL: http://www.oipc.bc.ca/orders/adjudications/Adj2a.html) and Decision F06-05, [2006] B.C.I.P.C.D. No. 24.

> can be found in decisions they have made in deaths in custody involving former employers and colleagues.[3]

[13] The applicant also submits that a decision of the Supreme Court of Canada, *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*[4] provides a compelling precedent regarding a request under the federal *Access to Information Act* for details of the current and past employment of certain RCMP officers. The applicant submits that:

> Though as a quasi-judicial body "master of your own house" you may be [*sic*] there is no disputing that the Supreme Court is, and deserves, the last word on all legal matters and they faced a similar question with enough parallels that you must give it appropriate consideration and weight in coming to your decision.

[14] In his opinion, the parallels between the two cases are so strong that the decision sets an appropriate precedent.

[15] He cites another Supreme Court of Canada case that resulted from a request by defence counsel to the Ontario Court of Appeal to force the Crown to disclose police disciplinary records and criminal investigation files relating to the police officer who was the Crown's main witness against his client. Defence counsel wanted to use the information to discredit the testimony of the police officer, and the applicant believes that the decision of the Supreme Court was to order disclosure.[5] The applicant contends that this decision is a precedent for the disclosure of personal information about police officers. In the applicant's words:

> The Supreme Court ordered an agent of the crown to disclose a matter of work history as it's clearly in the public interest and thus not an "unreasonable invasion of privacy".[6]

[16] The Ministry disagrees with the applicant that there is a public interest argument in favour of disclosure based on the reasonable apprehension of bias. First, it claims there is a fundamental flaw in the applicant's perception of the role of the coroner during an inquest in that he appears to assume that the coroner exercises decision-making authority. The Ministry asserts, on the contrary that:

> During an inquest it is the jury, not the coroner, that makes the findings of fact and renders a verdict.[7]

[17] The Ministry also refutes the applicant's contention that coroners who have a background in law enforcement would not be objective when dealing with deaths in custody:

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[3] Applicant's submission, p. 13.
[4] [2003] S.C.J. No. 7.
[5] *R. v. McNeil*, [2009] S.C.J. No. 3.
[6] Applicant's submission, p. 8.
[7] Ministry's reply submission, para. 1.

> Such an allegation impugns the professional integrity and dedication of the individuals involved. The [Coroners] Service says that there is no foundation for the Applicant's allegation that coroners with police backgrounds are not impartial. Before such an allegation of bias is given any credence there must first be some evidence of bias in specific cases.[8]

[18] The Ministry contends that it is inappropriate to automatically assume the presence of bias in coroners, as a result of their previous employment affiliation, without any evidence of bias with respect to coroners in particular cases. It submits that this is the equivalent of assuming that judges who had previously worked as prosecutors would be biased when dealing with a criminal case.[9]

[19] The Ministry also submits that there is a mechanism in place to deal with situations where there might be reason to question the impartiality of a coroner, in that s. 45 of the *Coroners Act* gives the chief coroner the authority to require a coroner to withdraw in such a case.

[20] The Ministry presents some statistics to support its case. During 2007 and 2008, there were forty-five inquests, thirty-four of which concerned deaths in custody. Coroners with police backgrounds presided over only four of those cases. In addition, the Ministry disclosed that, of the fifteen third parties whose résumés are available, only six had experience in a police force.[10]

[21] The Ministry also provides a description of its hiring process. It has identified the appropriate skills, knowledge and experience necessary to perform the duties of the position. This information is included in the job description, which the Ministry has provided to the applicant. One of the key qualifications is investigative experience, particularly investigating deaths. One possible way of obtaining that experience, the Ministry says, would be to work as a police officer. Nevertheless, this is just one of many factors taken into account during hiring competitions. The Ministry insists that it always hires the best qualified person, regardless of whether he or she has worked as a police officer.[11]

Analysis

[22] The applicant's arguments concerning the possibility of a reasonable apprehension of bias in the decisions of coroners are speculative. The applicant postulates the existence of bias but provides no substantive evidence. The applicant's main argument is that police officers, in many cases, have not been held accountable for deaths in custody. He believes that coroners have been complicit in this alleged failure of accountability, not based on the facts of

[8] Ministry's reply submission, para. 4.
[9] Ministry's reply submission, para. 4
[10] Ministry's reply submission, paras. 7-8.
[11] Ministry's reply submission, para. 3.

the case, but because the coroners were formerly police officers themselves. Owing to the lack of evidence in support of his arguments, the applicant has not satisfied me that s. 22(2)(a) is a relevant consideration in this case.

[23] Moreover, I think it important that the Ministry has provided the applicant with information that is relevant to the concerns he has expressed, though it would have been helpful had the Ministry provided this information in response to the original request, rather than waiting until mediation or the inquiry. As noted above, the Ministry has confirmed that, of the fifteen employees for whom résumés exist, six were former police officers. It has also provided the applicant with the names and employment background of ten of the coroners, as disclosed in the list of speakers in the programs for the Coroner's Basic Training Course over several years. While not the complete information the applicant is seeking, it does provide a general indication of former police officers employed as coroners. I also think it relevant to point out that the requested résumés contain additional personal information that is completely irrelevant to the public interest issue the applicant has argued.

[24] I turn now to the applicant's claims that *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)* is a relevant precedent that should guide the decision here. In that case, the applicant had requested certain information from the RCMP concerning four of its officers. The Information Commissioner of Canada had recommended the disclosure of information relating to historical postings of those officers, including their rank, years of service and anniversary dates of service. This decision was based on s. 3(j) of the federal *Privacy Act* that excludes from the definition of "personal information":

> 3(j) Information about an individual who is or was an officer or employee of a government institution that relates to the position or function of the individual.

[25] As this information is not personal information, the Federal Court Trial Division found that the RCMP was not required to withhold it in accordance with s. 19(1) of the federal *Access to Information Act*. The Supreme Court of Canada upheld the recommendation of the federal Information Commissioner and ordered the information disclosed.

[26] While the applicant sees parallels with this case, he ignores the substantive differences in the wording between the federal legislation and FIPPA and the different circumstances of the cases. In the federal case, certain information about employees of agencies subject to the federal legislation is deemed *not* to be personal information. As it is not personal information, it cannot be withheld under the provision protecting personal information. There is no reasonableness test. Therefore, the Supreme Court did not decide that the disclosure of information about RCMP officers was not an unreasonable invasion of privacy because there was a public interest in disclosure. It merely confirmed

that, according to federal legislation, the information was not personal information.

[27] Under FIPPA, however, similar information is personal information and subject to a reasonableness test, in that it must be withheld if disclosure would constitute an unreasonable invasion of third-party privacy. Therefore, the federal decision provides no guidance as to whether a public scrutiny argument rebuts the presumption of unreasonable invasion of privacy in the case before me. Nor does *R. v. McNeill* provide any guidance, as the issue in that case was the disclosure of information in the context of criminal proceedings. Moreover, the applicant is incorrect in interpreting this decision of the Supreme Court of Canada as having ordered the disclosure of the information, because, on the contrary, it actually did the opposite, by overturning a decision of the Ontario Court of Appeal that had ordered disclosure.

[28] Another difference in the two cases is the scope of information requested. In the federal case, the applicant requested specific information about the postings of police officers. In this case, the applicant requested the entire education and employment history of coroners. The reasons the Supreme Court ordered disclosure of certain details of the postings of RCMP officers are not applicable to the greater scope of personal information that the applicant has requested in this case.

[29] The Ministry in its original response also cited ss. 22(2)(f) and (g) as relevant considerations. The Ministry did not address these provisions in its submissions, however, and I see no basis for their application here.

[30] Therefore, I find that, in accordance with s. 22(3)(d), disclosure of the requested information is presumed to be an unreasonable invasion of the personal privacy of the employees concerned and that no relevant considerations rebut this presumption. The applicant has not met his burden of proof and I find that s. 22(1) applies to the requested information.

4.0 CONCLUSION

[31] For the reasons given above, I require the Ministry to withhold the requested information under s. 22(1) of FIPPA.

November 19, 2009

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator