

ALBERTA
**OFFICE OF THE INFORMATION AND
PRIVACY COMMISSIONER**

ORDER F2002-001

March 27, 2002

EDMONTON POLICE SERVICE

Review Number 2237

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant complained that the Edmonton Police Service (the “EPS”) disclosed the Applicant’s personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Adjudicator found that the EPS did disclose the Applicant’s personal information, and the disclosures were in compliance with the Act.

Statutes Cited: *Court of Queen’s Bench Act*, R.S.A. 1980, c. C-29, section 17; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, sections 1(h) [previously section 1(1)(h)], section 1(n) [previously section 1(1)(n)], 33(b) [previously section 32(b)], 34(1)(g) [previously section 33(1)(c)], 40(1)(c),(e),(ee) [previously section 38(1)(b),(d),(cc)], 41 [previously section 39], 72 [previously section 68]; *Police Act*, S.A. 1988, c. P-12.01, section 38.

Authorities Cited: **AB:** Order 96-007; **B.C.** Order 01-027.

I. BACKGROUND

[para. 1.] In late 1999, the Edmonton Police Service (the “EPS” or the “Public Body”) provided a news release to the media. The release set out details of a criminal investigation involving the Applicant, who had taken a child out of province in violation of a Court Order (the “Court Order”). The news release set out the circumstances in which the removal had occurred, the fact that a warrant was being issued for the arrest of the Applicant, gave a physical description of the Applicant, and indicated that the Applicant could try to hide his identity to avert suspicion. A photograph of the Applicant

was available to the media. The EPS later issued a second news release, indicating that the Applicant turned himself in and had been released on bail. Newspaper articles appeared in relation to the EPS news releases.

[para. 2.] By letter dated July 28, 2001, the Applicant filed a privacy complaint against the EPS under the *Freedom of Information and Protection of Privacy Act* (the “Act”), alleging that the EPS maliciously and negligently “released private information to the media in 1999 causing trauma and injury to the whole family.”

[para. 3.] Mediation and an investigation report followed, which failed to produce a resolution to the complaint. On November 14, 2001, a Notice of Inquiry was issued, setting down a written inquiry to deal with this issue.

[para. 4.] The EPS filed an initial submission and an *in camera* affidavit, which I accepted. The Applicant filed an *in camera* submission. I advised the EPS by letter of my decision to accept the substance of the Applicant’s submission *in camera*, and provided a list of the materials that made up the Applicant’s submission. Those materials included a copy of the United Nations Universal Declaration of Human Rights and copies of newspaper articles that resulted from the news releases. The Applicant asked to file a late rebuttal submission *in camera*, which I allowed.

[para. 5.] On January 1, 2002, the Revised Statutes of Alberta 2000 consolidation came into force. Although this did not result in substantive changes to the Act, some provisions of the Act were renumbered. The Notice of Inquiry and the submission of the EPS refer to the previous section numbering of the Act. As such, for ease of reference, in this Order I will refer to both the current and the previous section numbers of the Act.

II. ISSUE

[para.6.] There is one issue in this inquiry:

Did the Public Body disclose the Applicant’s personal information in compliance with Part 2 of the Act?

III. DISCUSSION OF THE ISSUE

A. Preliminary Matter

[para. 7.] This complaint involves multiple disclosures of information. The EPS submission deals with its two news releases. As well, the Applicant submitted two articles from the *Edmonton Sun* in which comments about the Applicant were attributed to an employee of the EPS.

[para. 8.] I accept that the information in the news articles is satisfactory evidence of additional disclosures of information by the EPS. I will deal with all of these disclosures in this Order.

B. Is the information at issue the Applicant’s “personal information”?

[para. 9.] “Personal information” is defined in section 1(n) [previously section 1(1)(n)] of the Act non-exhaustively as follows:

1(n) ‘personal information’ means recorded information about an identifiable individual, including

(i) the individual’s name...

...

(iii) the individual’s age, sex, marital status or family status,

...

(vii) information about the individual’s...criminal history, including criminal records where a pardon has been given,

(viii) anyone else’s opinions about the individual

[para. 10.] A review of the news releases and the news articles shows that the EPS disclosed the Applicant’s name, his photograph, and an extensive personal description of the Applicant, including his age, sex, height, hair colour, marital status, and the fact that he had a child. All of that information is plainly the Applicant’s “personal information” under sections 1(n), 1 (n)(i) and 1(n)(iii) [previously sections 1(1)(n), 1(1)(n)(i) and 1(1)(n)(iii)] of the Act.

[para. 11.] The EPS also disclosed information pertaining to the Applicant’s conduct leading to the criminal investigation, the charge, warrant, arrest and his subsequent release on bail. I must determine if any of this information falls within the reference to “criminal history” under section 1(n)(vii) [previously section 1(1)(n)(vii)] of the Act.

[para. 12.] There is no definition of “criminal history” in the Act. Black’s Law Dictionary (Sixth Edition) makes the point that “criminal” refers to “that which pertains to or is connected with the law of crimes, or the administration of penal justice.” In Order 96-007, Commissioner Clark found that the Act’s reference to “criminal history” included a release date from prison. In British Columbia Order 01-027, at paragraph 24, Commissioner Loukidelis stated that the British Columbia *Freedom of Information and Protection of Privacy Act’s* reference to “criminal history” within its definition of “personal information” included “information about an individual’s alleged criminal history or acts.”

[para. 13.] I am satisfied that information pertaining to the criminal investigation, the laying of the abduction charge on the basis of the breach of a court order, the abduction, the warrant, the surrender and the bail relate to the Applicant’s “criminal history” under section 1(n)(vii) [previously section 1(1)(n)(vii)]. That information is the Applicant’s personal information for the purposes of the Act.

[para. 14.] I note that the Applicant clearly views the EPS disclosure of information, or opinion, about the Applicant's behavior, and his manner of disguising himself, as highly sensitive personal information. Whether or not this information is accurate, it amounts to information about an identifiable individual (the Applicant), and is his personal information under section 1(n) [previously section 1(1)(n)] the Act.

C. By what authority did the Public Body disclose the Applicant's personal information?

[para. 15.] The EPS argued that its conduct was justified under multiple provisions of the Act. The first argument advanced in the EPS submission was that the Applicant's personal information

... had been gathered during and for the police investigation surrounding the abduction committed by the Applicant. The information was released to assist the police in this investigation to obtain information from members of the public that would enable the police to locate both the Applicant and his [child].

That is, the EPS argued that the Applicant's personal information was collected and disclosed for the purposes of law enforcement.

(i) Did the EPS collect the Applicant's personal information for the purposes of law enforcement?

[para. 16.] The authority to collect personal information for the purposes of law enforcement is found in section 33 [previously section 32], in Part 2 of the Act:

*33 No personal information may be collected by or for a public body unless
...
(b) that information is collected for the purposes of law enforcement*

[para. 17.] The relevant provisions of the definition of "law enforcement" in section 1(h) of the Act [previously section 1(1)(h)] are:

1(h) 'law enforcement' means

(i) policing...

(ii) a police...investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred...

[para. 18.] The evidence shows that the EPS collected the Applicant's personal information for a criminal investigation pursuant to a complaint filed that the Applicant had abducted a child, contrary to a Court Order. I find that the EPS collected the

Applicant's personal information for the purposes of law enforcement, as it was authorized to do under section 33(b) of the Act [previously section 32(b)].

[para. 19.] I also find that the Applicant's personal information was collected indirectly by the EPS for the purposes of law enforcement, as authorized under section 34(1)(g) of the Act [previously section 33(1)(c)]:

34 (1) A public body must collect personal information directly from the individual the information is about unless

...

(g) the information is collected for the purpose of law enforcement

(ii). Did the EPS disclose the Applicant's personal information for the purposes of law enforcement?

[para. 20.] In deciding whether the personal information was disclosed for the purposes of law enforcement, as required under section 40(1)(c) of the Act [previously section 38(1)(b)], is relevant, and reads:

40 (1) A public body may disclose personal information only

...

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose

[para. 21.] The EPS submitted that the Applicant's personal information was released during a police investigation, in an attempt to obtain information from the public that would enable the EPS to locate and apprehend the Applicant. The EPS argued that disclosure of the information was necessary to perform the law enforcement duties imposed upon it under what was then section 38 of the *Police Act*, S.A. 1988, c. P-12.01:

38(1) Every police officer is a peace officer and has the authority, responsibility and duty

(a) to perform all duties that are necessary

(i) to carry out his functions as a peace officer

...

(ix) to apprehend persons who may lawfully be taken into custody, and

(b) to execute all warrants and perform all related duties and services.

[para. 22.] EPS also relied on section 17 of the *Court of Queen's Bench*, R.S.A.1980, c. C-29, arguing that the disclosures were necessary to help enforce the Court Order and give proper assistance to the Court, to enforce the law:

17 ...peace officers shall give assistance to and comply with the directions of the Court and the judges in the exercise of the jurisdiction of the Court.

[para. 23.] Section 40(1)(c) [previously section 38(1)(b)] has two branches: the first branch authorizes disclosure for the purpose for which the information was collected or compiled; the second branch authorizes disclosure for a use consistent with the purpose for which the information was collected or compiled.

[para. 24.] I have no difficulty accepting the argument that the Applicant's personal information was initially disclosed to the public for the purposes of law enforcement. I also accept that the subsequent disclosures detailing the Applicant's surrender and release on bail were part of the communication flow between the EPS and the public, and were made to wind down the search phase of the investigation. Therefore, those disclosures also pertain to law enforcement.

[para. 25.] I find that the Applicant's personal information was disclosed for the purposes of law enforcement, satisfying the first branch of section 40(1)(c) [previously section 38(1)(b)]. I do not need to consider the remaining arguments of the EPS.

(iii.) Did the EPS properly exercise its discretion?

[para. 26.] Section 40(1)(c) is a discretionary ("may") provision, requiring that the EPS properly exercise its discretion to disclose the Applicant's personal information in light of the objects and purposes of the Act and the relevant circumstances. After reviewing the matter in light of those considerations, and carefully considering the evidence submitted by the EPS respecting its concerns about the health and safety of the Applicant and his child, I am satisfied that the EPS properly exercised its discretion to disclose the Applicant's personal information under the Act.

(iv.) Conclusion

[para. 27.] Consequently, I find that the EPS disclosed the Applicant's personal information in compliance with Part 2 of the Act.

D. Does the Universal Declaration of Human Rights apply in this inquiry?

[para. 28.] The Applicant's legal argument relied on the Universal Declaration of Human Rights (the "Declaration"), and made a number of points in annotations to various articles of the Declaration. The Applicant's major legal argument on point, as I understand it, is that the EPS disclosures amounted to acts of gratuitous privacy invasion, discrimination and persecution against the Applicant and his family, in violation of several articles of the Declaration.

[para. 29.] The Declaration is a statement of principle adopted by the United Nations General Assembly in 1948. In a series of articles, it sets out the human rights that ought to be enjoyed by all persons. The Applicant did not appreciate that the Declaration is not itself a binding legal instrument: it is not what international law scholars call "hard law." The United Nations used the Declaration as a basis to draft two subsequent documents on

human rights that could be ratified and clearly legally bind its signatories. Consequently, I find that the Declaration has no application to this inquiry.

IV. ORDER

[para. 30.] I make the following Order under section 72 [previously section 68] of the Act:

I find that the Public Body disclosed the Applicant's personal information in compliance with Part 2 of the Act.

Dave Bell
Adjudicator

