

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2006-016

February 21, 2007

CALGARY POLICE SERVICE

Case File Numbers 3444, 3445

Office URL: www.oipc.ab.ca

Summary: On the basis of information he had received from the Calgary Police Service (“CPS”), the Complainant complained that information-sharing agreements between CPS and an Affected Party, and a research agreement between CPS and another Affected Party, were in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act” or the “FOIP Act”). Though the Complainant alleged that his own personal information had been disclosed to third parties pursuant to these agreements, he did not provide evidence that substantiated this.

The Adjudicator dismissed the complaint on the basis the Complainant had failed to show that his own personal information had been disclosed by CPS. Section 65(3) of the Act permits a review and inquiry only if a person’s own personal information has been collected, used or disclosed. Therefore, a finding that personal information has been collected, used or disclosed contrary to the Act can be made in an inquiry only on the basis that the Complainant’s own personal information was so disclosed.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 16, 19, 33(b), 34(1)(g), 34(2), 65(3), 69(1), 72; *Personal Information Protection Act* S.A. 2003, c. P-6.5.

Authorities Cited: AB: Order 2001-039.

BACKGROUND

[para 1] The Complainant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act” or the “FOIP Act”) to the Calgary Police Service (“CPS”) for both general and personal information. CPS provided a series of responses which included information-sharing agreements between CPS and one Affected Party (a Society for the Prevention of Domestic Violence), and a research agreement between CPS and a second Affected Party. As well, the responses provided by CPS included records and answers to questions relating to a specific request by the Complainant as to what information held by CPS had been accessed about the Complainant and by whom. (I will refer to this latter part of the Complainant’s request as “the access question”).

[para 2] The Complainant’s initial complaint to this Office dealt with his position that the information-sharing and research agreements are contrary to the Act. Most of the arguments in his initial submissions in the inquiry also relate to this issue. These submissions contain no statement of facts, and he does not make clear whether or not he is alleging that his own personal information had, pursuant to the information-sharing agreements and research agreement, been used by CPS, or disclosed to and collected or used by the Affected Parties. One of the initial submissions contains some oblique suggestions that it may have been so disclosed, but no clear assertion. In one of his rebuttal submissions, the Complainant addresses to some degree whether his personal information had been disclosed to the first Affected Party. He points to certain material to try to show this. However, the material he refers to does not substantiate that it had happened. In view of this, I wrote to the Complainant asking him to confirm that he was alleging that this had happened, and if he was, requesting that he provide the evidence he has to substantiate this allegation.

[para 3] The Complainant responded to this request after several exchanges of correspondence. In his letter to me of January 29, 2007, he asserts his personal information had been collected and released to third parties by CPS without his knowledge or consent.¹ However, beyond this assertion, he provides no evidence that this had happened. He states he could not say to whom his information had been released because CPS had refused to disclose this information. At the same time, he asserts that the “Private Third party is in possession, and accessed my personal information”, but states that the full extent of this cannot be known until CPS is ordered to detail the releasing of the information.

¹ My question to the Complainant asked whether he was alleging that his own personal information had been collected, used or disclosed – it did not ask specifically whether he was alleging that it had been disclosed to the Affected Parties in this case. In his response he stated that the information had been accessed by “the Private Third party”. In view of the context, I take this to be a reference to the first of the two Affected Parties in this case. The Complainant’s response also refers to “Third Parties”, which potentially are other third parties. However, I am concerned in this case only with alleged disclosures pursuant to the information-sharing agreements involving the Affected Parties in this case (rather than with other, unrelated, disclosures) because the Complainant’s arguments about improper disclosure relate to disclosures that are made pursuant to these agreements. In any event, as will be seen below, the Complainant has not provided adequate evidence to me of disclosures to any third parties.

[para 4] CPS and the first Affected Party provided initial and rebuttal submissions. The second Affected Party did not provide submissions.

I. RECORDS AT ISSUE

[para 5] As this case involves a complaint, there are no records at issue.

III. ISSUES

[para 6] The issues as stated in the Notice of Inquiry are as follow:

Issue A: Does the Act apply to the information disclosed to the Affected Party under an information-sharing agreement between the Public Body and the Affected Party?

Issue B: Did the Public Body have the authority to collect the Complainant's personal information, as provided by section 33 and section 34 of the Act?

Issue C: Did the Public Body have the authority to use the Complainant's personal information, as provided by section 39 of the Act?

Issue D: Did the Public Body have the authority to disclose the Complainant's personal information, as provided by section 40 of the Act?

[para 7] However, with the possible exception of Issue B, these issues assume there was a disclosure by CPS to the Affected Party or to some other third party.² There is, therefore, a preliminary issue of whether there was in fact such a disclosure. If I cannot find there was, I must dismiss the complaint without considering the remaining issues. I will therefore first decide the following factual issue:

Did CPS disclose the Complainant's personal information to the Affected Party or to some other third party?

² Issue B might be taken as referring to the initial collection of the Complainant's personal information by CPS. In contrast to the lack of evidence of disclosure of the Complainant's information by CPS to third parties, there is evidence before me that the CPS was in possession of some personal information of the Complainant, and hence that it collected it. I note CPS has answered Issue B by referring to sections 33(b) of the Act (for the purposes of law enforcement) and 34(1)(g) (for the purposes of law enforcement). The Complainant also makes a comment under this heading, questioning whether notification was given in accordance with section 34(2) of the Act (which requires that certain information be provided where collection is directly from the individual). However, given the focus of the Complainant's arguments on the information-sharing agreements, I take it his challenge is not to CPS's original collection of his information. Even if it is, he has not provided any indication of what this information was, whether it was collected directly from him (which would give rise to the notification requirement under section 34(2)), or how the collection was otherwise not in compliance with the Act. Likewise, I will proceed on the basis that the "use" referred to in Issue C is use associated with the information-sharing agreements, rather than internal use by CPS. Again, even if this assumption is wrong, I have no basis on which to find that whatever internal use CPS made of the information was other than proper.

IV. DISCUSSION OF THE ISSUE

[para 8] On the basis of the submissions and evidence before me, I cannot find that the Complainant's allegation is substantiated.

[para 9] The only party that directly addressed this issue in the initial round of submissions was the first Affected Party.³ In its submission, this party observes that "The Applicant fails to set out what personal information was accessed by or disclosed to [the Affected Party] in his complaint. Rather, the Applicant makes a general allegation that the Information Sharing Agreement that has been entered into between [the Affected Party] and CPS is invalid and contrary to the FOIP Act."

[para 10] The Complainant responds to this point in his rebuttal. He says:

For personal information accessed and disclosed to [the Affected Party]:

- a. see agreement between [the Affected Party] and Calgary Police Service
- b. see information requests by [the Complainant] to Calgary Police Service in Calgary Police Service Initial Brief dated May 11, 2006, Tabs 1 through 9
- c. see attached information request response, from [the Affected Party] dated November 15, 2005.

[para 11] With respect to item a, the existence of an information-sharing agreement does not establish that the Complainant's own information was shared.

[para 12] With respect to item b, I have reviewed the Complainant's requests to CPS for information and CPS's responses.⁴ These reveal that on May 8, 2005, the Complainant made an access request under the Act to the Calgary Police Service ("CPS") for both general and personal information. After further communications to clarify the nature of the requests, CPS provided a response on August 31, 2005, which answered some questions the Complainant had asked, and included 216 responsive records. The records included an information-sharing agreement between CPS and one Affected Party (a Society for the Prevention of Domestic Violence), providing for data access for the Caseworkers of the Domestic Violence Court Team to CPS's Police Information Management System ("PIMS"). They also included a research agreement (which CPS says it incorrectly described as an information-sharing agreement but which involves information sharing) between CPS and a second Affected Party. As well, the records included personal information of the Complainant relating to a specific request by the Complainant as to what information held by CPS had been accessed about the

³ The CPS provided a statement of facts, but this statement does not overtly address the alleged disclosure by CPS to third parties. The CPS also appends the correspondence between it and the Complainant about his information requests, but, as will be seen below, this correspondence does not help me determine the question.

⁴ As noted, this correspondence was provided to me in CPS's submission.

Complainant and by whom (“the access question”⁵). Under the heading pertaining to this issue, CPS provided what was in its words “a listing of what information has been accessed about yourself and by whom, when and why from the time period of April 01, 2004 to May 25, 2005”, but indicated in its response that it was withholding some of the information until the Complainant’s ongoing Professional Standards investigation was complete.

[para 13] The Complainant was not fully satisfied with CPS response, and wrote to CPS on September 5 indicating this. Among his points, he requested specific additional personal information, and stated, with respect to the access question, that CPS had provided (for most cases) “the whom, the when, the what, but not the why”. After further communications, CPS provided additional responses on September 23, 2005 and November 8, 2005. With respect to personal information, in the September 23 response, CPS provided some explanations and information (including a response in relation to the “why” issue⁶), as well as 26 pages of records. It is not clear whether any of the additional information about the Complainant’s personal information, or the additional records containing personal information that were provided related to what I have termed “the access question”. Additional records containing personal information were also provided in the November 8 response, but it is again not clear if these were responsive to the access question.⁷ As well as personal information, the November 8 response included a more recent information-sharing agreement (between the Chief of CPS and the first Affected Party and a public body), as well as records regarding the development, negotiating and drafting of the agreements. Some records were severed or withheld on the basis of specified exceptions.

[para 14] As noted, the correspondence shows that some of the information provided by CPS to the Complainant was his personal information, but it is not possible to derive from a review of this correspondence whether any of the records or other information given to the Complainant revealed or suggested that CPS shared his personal information with the Affected Party or with any other third party. Furthermore, if the records or information given to the Complainant do reveal or suggest this, he is in a position to tell me how they do this. He has not done so.

⁵ This was point 14 of the Complainant’s original access request.

⁶ CPS said that to answer why the Complainant’s name was run on a police database, a new record would have to be created and additional research would be required. It advised that if he felt there had been unnecessary access to the case files about him, he could file a complaint to the Professional Standards Section or to the Office of the Information and Privacy Commissioner. The reference to the Professional Standards section might be taken to suggest the access to the case files was done, at least in part, by CPS personnel rather than by some outside body. As well, the letter to the Complainant from CPS dated June 30, 2005 indicates that the audit it undertook to run on the PIMS database in response to the access question would identify members of the Calgary Police who had accessed his name (rather than any third parties).

⁷ While the CPS provided copies to me of the information-sharing and research agreements that were included in its response to the Complainant, it did not provide the records, given to him, that contained his personal information.

[para 15] With respect to the Complainant's item c, the Complainant appended a letter from the Affected Party responding to an information request he had made to it. In this letter, the Affected Party states:

Your request for "all information that [the Affected Party] has on record for [the Complainant] is denied.

[The Affected Party] is forwarding you the records containing information provided *to us by you* [emphasis added] as a complainant before the Criminal Court. Any other information we have on file pertaining to you is denied.

The Affected Party then goes on to state the basis for denying access to "any other information". This includes that the information was collected as part of a legal proceeding, and that disclosure might result in that type of information no longer being provided to the organization.⁸

[para 16] I cannot derive from the Complainant's reference to this response to him by the Affected Party that whatever additional information the Affected Party has about the Complainant was obtained by it from CPS. Indeed, the Complainant does not specifically allege that it was. It is possible that any additional information was, like the information referred to in the Affected Party's second paragraph, provided to the Affected Party by the Complainant in some other context, or was provided to it by some other third party or parties. The reference does not constitute evidence substantiating the Complainant's allegation.

[para 17] The Complainant's rebuttal submission also contains several references to a particular numbered CPS case file. He suggests that reference be made to this file for determining whether the CPS complied with its obligations under particular provisions of the FOIP Act. He also refers to this file when suggesting that the first Affected Party is obliged to demonstrate that it meets its purposes. However, I do not have this file before me, nor any information as to its contents. The references to the file do not allow me to draw any conclusions about whether it or information in it was disclosed to the Affected Party or Parties.

[para 18] The Complainant also suggests that he is providing evidence in support of his allegation in his letter to me of January 29, 2007. In addition to his assertion that his personal information was disclosed by CPS, without his knowledge or consent, he says the following:

As for evidence, the Private Third party is in possession, and accessed my personal information from the Public Body, the Calgary Police Service, neither party disputed this fact, in addition, please speak to [the OPIC Inquiries Clerk] and ask her to provide you with a copy of the additional requests for inquiries,

⁸ The Affected Party is not a public body under the *Freedom of Information and Protection of Privacy Act*. Neither is it an organization that is subject to the *Personal Information Protection Act*. However, it indicated to the Complainant that it follows the provisions of the latter act as a guideline.

regarding the release of my personal and confidential information to Third Parties without my knowledge or consent. The FULL extent of the release of my personal and confidential information, by the Public Body, the Calgary Police Service, cannot, and will NOT be known, until the Public Body, the Calgary Police Service is ordered to detail the releasing of this information, identifying who they released it to, when and why.

[para 19] I did not comply with the Complainant's request that I review other requests for inquiries that he has made to this Office to find evidence that would substantiate his allegation that his personal information had been disclosed to third parties. Evidence in an inquiry is to be provided by way of submissions and materials provided directly to the decision maker. If the Complainant's point is that he is still in the process of trying to obtain the requisite information, the proper time to bring this matter to review and inquiry will be after he has obtained it. If CPS has such information but will not provide it, that is a matter that could potentially become the subject of a request for review, but it is not the subject of the present inquiry. Furthermore, the correspondence between CPS and the Complainant with respect to his information requests (the part relating to "the whom, the when, the what, but not the why") suggests that CPS did provide information to him as to who accessed his personal information, at least for "most cases". With respect to the remaining "cases", if any, there is nothing in this correspondence that shows he asked for more such information, and no indication in his submissions in this inquiry, if he thinks something was missing, what he thinks it was and why he thinks this.

[para 20] In its initial submission CPS deals only with whether the information-sharing agreements are in conformity with the Act, and makes no comment as to whether it disclosed the Complainant's own personal information pursuant to the agreements. There is, however, nothing in this submission to suggest that it did.⁹

[para 21] Neither CPS, nor the Affected Party that made a submission, specifically denied that CPS had made such a disclosure. However, in light of the fact there was no direct allegation or evidence by the Complainant in his initial submissions that this had happened, I cannot draw any inference from this. It is possible these parties either assumed (rightly or wrongly) that there had been such a disclosure, or they thought they had to deal with the question of whether the information-sharing agreements were authorized whether or not the disclosure of the Complainant's own information pursuant to these agreements had happened.

⁹ The CPS's rebuttal contains comments that might be taken as having some bearing on this question. In order to rebut the Complainant's suggestion that it is obliged to comply with sections 16 and 19 of the Act (which deal with disclosing business information and "confidential evaluations" respectively), the CPS says that any information provided under the information-sharing agreements relates to criminal case files involving the Complainant, rather than the type of information contemplated by the two provisions. However, I do not take this as a positive assertion that the CPS provided the Complainant's personal information under the information-sharing agreements, particularly given the use of the phrase "*any* information provided" (in contrast to *the* information provided). I interpret these statements of the CPS simply as assertions that information stored in the PIMS database is information relating to criminal matters rather than business information or "confidential evaluations".

[para 22] I considered whether I ought to ask CPS to tell me whether or not it had in fact disclosed the Complainant's information to the Affected Party or to anyone else. There may be circumstances in which, given the relative availability of relevant information to the parties, there should be only a low threshold for a complainant to cross in providing a factual basis for a complaint. However, in my view, even in such cases a complainant must provide *some* evidence that the thing of which he complains happened – at a minimum, some credible basis for the complainant's idea or belief that it happened. In this case, I have been unable to find, in what the Complainant has provided, any factual foundation whatever for his claim. He does not suggest that he derived the information from documents given him by CPS, or that he has reason to believe records containing this information were withheld from him by CPS, or that his belief arises by virtue of some involvement he had in a situation in which the disclosure was or likely was made. With respect to the fact the Affected Party is in possession of information about him, this does not mean the information was obtained from CPS. Without at least some suggestion of the basis for his claim, I am not willing to shift to CPS the burden of establishing the factual foundation for the complaint.¹⁰

Conclusion

[para 23] On the basis of the foregoing evidence, I cannot find that the Complainant's allegation that CPS disclosed his personal information to the Affected Party or Parties, or to other third parties, is substantiated. Section 65(3) of the Act permits a review and inquiry only if a person's own personal information has been collected, used or disclosed. Thus a finding that personal information has been disclosed contrary to the Act can be made in an inquiry only on the basis the Complainant's own personal information was so disclosed.¹¹ Therefore, I cannot find, in this inquiry, that there was a contravention of the Act. I cannot consider the validity of the information-sharing agreements in isolation in the context of an inquiry.

[para 24] I acknowledge that the Complainant, CPS, and the Affected Party, proceeded primarily on the basis that the issue in this inquiry was about whether the information-sharing and research agreements between CPS and the Affected Parties were in contravention of or in conformity with the Act. I appreciate that all the parties who participated went to considerable time and effort to demonstrate their positions on this question. The inquiry appears to have been initiated because there was a misunderstanding either as to the facts, or as to the basis on which a request for review and an inquiry can be instituted. I regret the inconvenience to all the parties.

[para 25] A complainant who has a credible basis for a claim that his personal information was disclosed by a public body, and who has a sound reason to believe the

¹⁰ See Order 2001-039 at paragraph 34, where the then-Acting Commissioner said: "While I will review the conduct of the [Public Body], the Complainant bears the burden of providing some credible evidence that a disclosure of his personal information happened as alleged."

¹¹ An inquiry under section 69(1) can arise only if a request for review has been made under section 65(3). The latter section provides:

65(3) A person who believes that *the person's own personal information* has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review that matter. [emphasis added]

disclosure was in contravention of the Act, can make a request for a review to this Office, and if mediation is unsuccessful, such a matter can proceed to inquiry.

V. ORDER

[para 26] I make this Order under section 72 of the Act.

[para 27] I have an insufficient basis for finding that the Complainant's personal information was disclosed by CPS to any third party. I therefore dismiss his complaint.

Christina Gauk, Ph.D.
Director of Adjudication