

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2006-029

March 26, 2007

EDMONTON POLICE SERVICE

Case File Number 3568

Office URL: www.oipc.ab.ca

Summary: Pursuant to an information request made to the Edmonton Police Service (the “EPS” or the “Public Body”), the Complainant obtained a list of queries made relative to him on police information databases, by EPS members. He complained that these queries were conducted without authority, in violation of the *Freedom of Information and Protection of Privacy Act*.

The Adjudicator reviewed the information the Public Body provided about these queries. Based on this review, she rejected the complaint. The Public Body had provided explanations for most of the 14 queries. For seven, it provided documentation or explanations showing the law-enforcement purpose for the queries. Five of the queries were conducted by the Police Information Check Unit, which conducts such checks in relation to individuals who themselves request them or consent to them. With respect the two remaining queries, conducted in 2000 and 2001, the sworn EPS members who conducted them could not recall the reasons they had done so. However, the Complainant neither suggested, nor offered any evidence, that these officers did, or would have had any motive to, conduct these checks for any purpose other than a law enforcement purpose or a purpose necessary for an EPS operating program. As their evidence was not contradicted, the Adjudicator accepted the officers’ sworn evidence that they had not queried any names on any EPS information system - which includes the queries using the Complainant’s name - other than to complete their police duties.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 33, 39, 72.

BACKGROUND

[para 1] On November 22, 2005, the Complainant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Edmonton Police Service (the “EPS” or the “Public Body”) that included “ ... all police checks of my name in CPIC & PROBE records.¹” The time period was for January 1, 1990 to November 22, 2005.

[para 2] The Public Body responded on January 23, 2006. Its response included a list of queries conducted on the two police information databases using the Complainant’s first and last names, as well as his first, middle and last names. The list included the dates and times of the queries and the reasons for conducting the queries, where known. As well, the Public Body provided a list of all EPS case files associated with the Complainant’s name in the Public Body’s file management system (PROBE).

[para 3] On receiving this information, the Complainant filed a complaint with this Office that his personal information had been used without authorization. Mediation was unsuccessful, and the matter was set for inquiry.

I. RECORDS AT ISSUE

[para 4] There are no records at issue in this inquiry.

III. ISSUE

[para 5] The issue stated in the Notice of Inquiry is:

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

IV. DISCUSSION OF THE ISSUE:

[para 6] Under section 33 of the Act, a Public Body has the following authority to collect information:

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,
or*

¹ CPIC queries access the Canadian Police Information Centre database operated by the RCMP. PROBE refers to the local Edmonton database.

(c) *that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 7] Under section 39, a Public Body may use personal information for the purpose for which it was collected or compiled, or for a use consistent with that purpose, and it must use the personal information only to the extent necessary to carry out its purpose in a reasonable manner.²

[para 8] The information of the Complainant that was collected and used by the Public Body in conducting the queries – his name – was his personal information.

[para 9] I must decide whether the Public Body has shown that its collection and use of the Complainant's personal information was for a law enforcement purpose, or for a purpose relating to and necessary for an operating program of the Public Body, and whether the extent of its use was appropriate for these purposes.

[para 10] The Public Body submits that it was not governed in its use of the information prior to the *Freedom of Information and Protection of Privacy Act* coming into force for local government bodies, on October 01, 1999. I accept this submission. Therefore, the Public Body needs to establish its authority for use of the Complainant's personal information only for uses after that date. Of the 36 queries that the records show were conducted, 14 occurred after that date, and only these 14 are at issue in this case.

[para 11] The Public Body provided the following information in relation to these queries.³

[para 12] Query #23, conducted on October 16, 1999 by a sworn member of the EPS, was in relation to a traffic stop in which a number of violation tickets were issued to the Complainant. This was substantiated by a printout from the PROBE system.

[para 13] Query # 24, conducted on December 16, 1999, was conducted by a non-sworn (civilian) member of the EPS working at the time as a Fingerprint Technician in the Police Information Check Unit. Such checks are conducted in relation to individuals who themselves request them, in order that the results may be provided to third parties such as employers or volunteer organizations who wish to obtain background information about

² Section 39 provides, in part, as follows:

39(1) A public body may use personal information only

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

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

³ Most of the queries (#23 - #34) are numbered in the same manner as in the Table provided under Tab 8 of the Public Body's submission. This table combines a concurrent query of both PROBE and CPIC under a single number. There are two additional queries (one of which was of CPIC only, and the other of which was concurrently of both databases) that are not in the Table under Tab 8 of the Public Body's submission, but were included in the original response to the Complainant

the individual. This member provided sworn evidence that he conducts such checks on hundreds of names daily, and that he has no recollection of running a query relative to the Complainant on that day. However, he swears that he has not queried any names on the Public Body's information system other than to complete his duties within the Police Information Check Unit.

[para 14] Queries #25 and #26, both conducted on February 3, 2000, were conducted by the same sworn member who had conducted query #23, in order to ascertain information regarding the aforementioned violation tickets, in response to the Complainant's Internal Affairs complaint [IA-1999-0198] and a Law Enforcement Review Board hearing.

[para 15] Query #27, conducted on April 14, 2000 using the Complainant's full name, was conducted by a sworn member of the EPS who was working at the time in the Crime Scenes Investigation Unit. (The April 14 query on the PROBE database is the same as the query conducted on April 15, 2000, on the CPIC database.) This member's position involves overseeing the investigation of crime scenes. The member provided sworn evidence that he has no recollection of running the Complainant's name in any EPS information system. The Public Body's submission indicates that the member could find no notation in relation to the Complainant in his police notebook, and the submission contains no reference to any file relating to the Complainant that might have given rise to this query. However, the member who conducted the check also provided sworn evidence that he has not queried any names on any EPS information system other than to complete his employment duties.

[para 16] Query #28, conducted on December 27, 2000, and Query #31, conducted on December 31, 2002, were both conducted by a non-sworn (civilian) member working at the time as a Fingerprint Technician in the Police Information Check Unit. This member swore that she conducts such checks on hundreds of names daily, and that she has no recollection of running a query relative to the Complainant on those days. However, she swears that she has not queried any names on the EPS information system other than to complete her duties within the Police Information Check Unit.

[para 17] Query #29, conducted on August 7, 2001, was conducted by a sworn member who was at the time assigned to the EPS Spousal Violence Intervention Unit. This member's position routinely involved accessing EPS information systems to obtain or confirm information relating to the discharge of his duties. The member provided sworn evidence that he has no recollection of running the Complainant's name in any EPS information system. The Public Body's submission contains no reference to any file relating to the Complainant that might have given rise to this query. However, the member who conducted the check also provided sworn evidence that he has not queried any names on any EPS information system other than to complete his duties.

[para 18] Query #30 was conducted by a sworn member on December 1, 2002, in relation to EPS case file 02-147485, a traffic stop. The Public Body provided a copy of this file that indicated the nature of the member's involvement with the Complainant.

[para 19] An additional query conducted on December 13, 2002 (included in the original response to the Complainant but inadvertently omitted from the Table at Tab 8 of the Public Body's submission) was conducted by a non-sworn member working at the time as a Fingerprint Technician in the Police Information Check Unit. This member swore that she conducts such checks on hundreds of names daily, and that she has no recollection of running a query relative to the Complainant on that day. However, she swears that she has not queried any names on the EPS information system other than to complete her duties within the Police Information Check Unit.

[para 20] Query #32, conducted on January 4, 2002, was conducted by a non-sworn member working at the time as a Fingerprint Technician in the Police Information Check Unit. This member swore that she conducts such checks on hundreds of names daily, and that she has no recollection of running a query relative to the Complainant on that day. However, she swears that she has not queried any names on the EPS information system other than to complete her duties within the Police Information Check Unit.

[para 21] Query #33 was conducted by a sworn member on January 31, 2003, in relation to EPS case file 02-147485, an incident involving a dispute between neighbours. The Public Body provided a copy of this file that indicated the nature of the member's involvement with the Complainant.

[para 22] With respect to the query conducted on September 24, 2003 (not in the Table under Tab 8 of the Public Body's submission, but included in the original response to the Complainant), the Public Body's submission indicates the query originated from an investigation by the EPS Hate Bias Crime Unit, and that the Complainant was interviewed on several occasions in relation to this investigation.

[para 23] The final query at issue (#34), conducted on November 5, 2005, was conducted in relation to EPS case file 05-133875, by a member of the EPS Spousal Violence Intervention Unit. This file was related to a domestic incident. The Public Body provided a copy of this file that indicated the nature of the Complainant's involvement with the EPS relative to this file.

Conclusions

[para 24] I must decide whether the Public Body has shown that it collected and used the Complainant's personal information for a law enforcement purpose, or for a purpose relating to and necessary for an operating program of the Public Body, and whether the extent of its use was appropriate for these purposes. If the Public Body shows that it has used the personal information in the context of a law enforcement matter, I will be satisfied that it used it for a law enforcement purpose.⁴ Without some specific reason to

⁴ Under the Act, "law enforcement" means:

- (i) *policing, including criminal intelligence operations,*
- (ii) *a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

do so, I will not inquire further into the precise reason for accessing further information about the person whose name was used for the query, or precisely how it intended to use the information it accessed. In other words, if I am clear that the police are doing police work, I will not try to second-guess them as to how they do it.

[para 25] I will deal first with the five queries that were conducted by non-sworn (civilian) members of the EPS who conducted them while working in the Police Information Check Unit. I understand that as there was no requirement to record the reasons for these queries, and as each such member conducts hundreds of queries daily, it could not be expected that the reasons for the queries could be recalled. However, as noted earlier, such checks are conducted in relation to individuals who themselves request them or consent to them, in order that the results may be provided to third parties such as employers or volunteer organizations who wish to obtain background information about the individual. The provision of this information is, in my view, an operating program of the Public Body. I accept the sworn evidence of the members conducting the queries that they conducted them for the purpose of fulfilling their employment duties of providing information to applicants. Thus I conclude the Public Body had authority to collect, and hence to use, the personal information, to conduct the checks for a purpose relating to and necessary for one of its operating programs. As it may be presumed the members used the Complainant's information to obtain the requisite results, the extent of the use was appropriate for this purpose.

[para 26] Seven of the remaining queries are explained. They relate either to identifiable EPS files, traffic violation tickets, or other known investigations. I accept that in each of these cases the Public Body has shown that it had collected and used the Complainant's personal information to conduct these checks for a law enforcement purpose or a purpose necessary for an EPS operating program. Thus the use was in accordance with section 39 of the Act. I also accept that the extent of the use – to obtain the database information - was appropriate.

[para 27] Two of the queries, #27 and #29, were not explained. They were conducted in 2000 and 2001, respectively, which is a considerable time lapse. I accept the sworn evidence of the police officers who conducted these queries that they cannot recall the reasons they conducted them. The Complainant did not provide a submission in this inquiry. While I have his originating complaint letters before me, there is nothing in them to suggest that these officers did, or would have had any motive to, conduct these checks for any purpose other than a law enforcement purpose or a purpose necessary for an EPS operating program. Thus the sworn testimony of these officers that they have not queried any names on any EPS information system - which includes the queries using the Complainant's name - other than to complete their police duties, is uncontradicted. Accordingly, I conclude that they conducted these queries in accordance with section 39 of the Act, for a law enforcement purpose or a purpose necessary for an EPS operating

(iii) *proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred.*

program. Again, I accept that the extent of the use – to obtain the database information - was appropriate.

[para 28] I note, finally, that the Public Body’s submission states at paragraph 5 that the Portfolio Officer approved the Public Body’s practice in this case. The results of mediations by this Office should not be included in the submissions. There is a directive in the Notice of Inquiry that records generated in a mediation are not to be provided in the submissions. The same point applies to descriptions of the results of the mediation process.

V. ORDER

[para 29] I make this Order under section 72 of the Act.

[para 30] I find the Public Body had the authority to use the Complainant’s personal information, in accordance with section 39 of the Act.

Christina Gauk, Ph.D.
Director of Adjudication