ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-021

January 31, 2011

CALGARY POLICE SERVICE

Case File Number F5084

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Summary: The Complainant made a complaint to the Calgary Police Service ("the CPS") stating that he believed his personal information had been leaked by the CPS. In the course of investigating the complaint, the Complainant states that the CPS collected and disclosed his personal information (statements made by him to the CPS and a psychologist's opinion about him) contrary to the *Freedom of Information and Protection of Privacy Act* ("the Act").

The Adjudicator found that any personal information collected by the CPS was collected for the purposes of law enforcement and in accordance with section 33(b) of the Act.

The Adjudicator also found that the CPS disclosed the Complainant's personal information to his co-workers and a member of security at his place of employment. The Adjudicator found that the disclosure of the Complainant's personal information was done either to investigate the Complainant's complaint to the CPS (in the case of his statements) or to ensure the safety of the Complainant's co-workers (in the case of the psychologist's opinion). Both of these purposes were why the information was collected. As section 40(1)(c) of the Act permits disclosure of information for the purpose for which it was collected, and as these disclosures were for the same purpose as that for which the information was collected, the disclosures were permitted by the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(n), 33(b), 40(1)(c), 40(4), and 72.

Authorities Cited: AB: Orders F2006-002, and F2009-022.

Cases Cited: *The Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 19.

I. BACKGROUND

[para 1] The Complainant initiated two complaints with the Calgary Police Service ("the CPS"). First, he stated he believed that information in a police report had been leaked to his co-workers. Secondly, he alleged that he had been harassed by a co-worker on June 17, 2008. In addition, the Complainant had made a previous, similar complaint about a specific CPS member leaking the Complainant's personal information. This complaint was made June 3, 2008, investigated, and withdrawn by the Complainant on August 11, 2008. It is not clear if the Complainant knew that there were two investigations into his accusations of leaked information ongoing. It appears as though he knew of only one and thought it had been withdrawn on August 11, 2008.

[para 2] In any event, in support of his complaint regarding leaked information, the Complainant provided the CPS with two statements ("statements"), dated July 17, 2008 and August 5, 2008, in which he details several interactions with various co-workers which he felt proved that the co-workers had been made aware of information in police files relating to him. The Complainant's letters went into detail about relationships he had with current and former co-workers, as well as his suspicion that someone had entered his home without authority and put a key logging program on his computer for surveillance purposes.

[para 3] In June of 2008, the CPS began an investigation into the Complainant's complaints. Two CPS members interviewed some of the Complainant's co-workers that were mentioned in his statements. They discovered that the co-workers with whom the Complainant claimed to have personal relationships denied any personal relationships with the Complainant and, in fact, were barely aware of the Complainant. One of the CPS members disclosed the Complainant's statements to the co-workers who were, in the opinion of the member, "…very alarmed, fearful and concerned for their safety, and that of their families."

[para 4] On the basis of this information, one of the CPS members investigating the Complainant's complaint provided the Complainant's statements to a forensic psychologist employed by the CPS so that the psychologist could assess if the Complainant was paranoid and a threat to his co-workers. The psychologist provided the investigating member with the following opinion:

> …I offer my opinion that [the Complainant] is more likely to pose a nuisance than a threat, though, given his paranoid beliefs, the threat of violence cannot be ruled out. (The two most significant factors in escalating the risk for violence by a person with a mental illness are substance abuse and psychotic beliefs, particularly paranoid beliefs. If you have any information that suggests [the

> Complainant] drinks excessively or uses any street drugs, then please consider his level of risk for violence to be at least moderate and quite possibly high.)

[para 5] After consulting with the psychologist, the investigating member informed the Complainant's co-workers, and a member of security at the place of employment the Complainant shared with his co-workers ("security"), that the Complainant had paranoid beliefs, but was likely more of a nuisance than a threat. He also suggested that the Complainant and the co-workers avoid contact with each other.

[para 6] On August 17, 2009, the Complainant complained to the Office of the Information and Privacy Commissioner ("this office") that various persons had violated the *Freedom of Information and Protection of Privacy Act* ("the Act") and the *Health Information Act*. The Commissioner authorized a portfolio officer to investigate this matter and attempt to resolve the issues between the parties; however, the issues were not resolved. On December 15, 2009, the Complainant requested an inquiry be held regarding his complaints concerning the CPS' conduct.

II. ISSUES

[para 7] The Notice of Inquiry dated August 13, 2010 lists the issues for this inquiry as follows:

> **Issue A:**
>
> **Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**
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> **Issue B:**
>
> **Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**

[para 8] The Complainant raises issues regarding his possible questioning with regard to an unrelated incident involving suggestive notes being left on vehicles. As I do not see the relevance of this incident to the collection or disclosure of his personal information, I will not comment on this incident.

[para 9] As well, the Complainant's submissions state how the information that he alleges was disclosed by the CPS was allegedly used against him by co-workers. While, if these allegation are accurate, this is somewhat connected to the issues in this inquiry, I will use this information only to assist me in determining whether the CPS collected and disclosed the Complainant's personal information, and, if it did, whether it did so in accordance with the provisions of the Act.

[para 10] Finally, as a preliminary issue, I will deal with the propriety of the CPS having put particular information before me – specifically the opinions of the portfolio

officer assigned to investigate and try to resolve this matter at the pre-inquiry stage of the process.

III. DISCUSSION OF ISSUES

Preliminary Issue:

[para 11] As I mentioned in the background section of this Order, when the Complainant's complaint was received by this office, the Commissioner authorized a portfolio officer to investigate and attempt to resolve the issues between the parties. Although the portfolio officer could not resolve the issues, she apparently provided her opinion of the CPS' conduct.

[para 12] The CPS provided the portfolio officer's opinions as part of its submissions in this inquiry.

[para 13] As several prior orders issued by this office state, the inquiry process is a *de novo* process. In the investigation stage (which has a mediation component), parties may be willing to concede certain facts or arguments in the interests of settling the matter. Therefore, it is not appropriate to put evidence gathered from the other party or the opinions of the portfolio officer before an adjudicator in an inquiry.

[para 14] As Justice Graesser stated in a recent Court of Queen's Bench decision:

> When an investigator is appointed, the investigator attempts to negotiate or mediate a settlement between the parties. If the process does not resolve the complaint, it would generally be inappropriate for the Commissioner to review the Investigator's process or materials before the Investigator, or the Investigator's report based on such materials…The Commissioner is entitled to (if not obliged to) look at the matter afresh if he is going to properly exercise a discretion without considering materials that are settlement oriented.
>
> (*The Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner)*, 2011 ABQB 19)

[para 15] This office has consistently stated that adjudicators will not consider opinions of portfolio officers in subsequent inquiries. An inquiry is not a review of a portfolio officer's investigation and opinions. Therefore, I will not consider the evidence provided to me by the CPS, found at paragraph 29 of the Affidavit dated October 1, 2010.

A: Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?

[para 16] The Complainant's request for inquiry stated that the CPS improperly collected his personal information. Specifically, the Complainant stated that the CPS collected an opinion about him expressed by a forensic psychologist to the effect that the Complainant had paranoid beliefs and was likely a nuisance and not a threat. In his

submissions, the Complainant also raises a possible collection of his personal information by way of police surveillance, and also that the CPS collected his personal information from his co-workers and security.

[para 17] Beyond totally unsubstantiated suspicion, the Complainant did not provide evidence that there was police surveillance done of him. The CPS denies any surveillance. Therefore, I find that there was no collection of the Complainant's personal information by the CPS as part of any surveillance.

[para 18] As stated above, members of the CPS did meet with some of the Complainant's co-workers and discussed the statements he had provided to the CPS in support of his complaints. It is possible that during the course of these interviews, co-workers revealed personal information about the Complainant; however, the information given to me (including "will say" statements from the Complainant's co-workers) state that the co-workers did not know the Complainant outside of work, and had only very casual, working relationships with him. Therefore, I believe that any personal information collected by the CPS from the Complainant's co-workers would be minimal, if there were any information collected at all.

[para 19] Finally, there was a passing mention by the Complainant that the CPS collected personal information about him from a member of security. He believes that the personal information was collected by security from one of his college instructors and was regarding his paranoia and marks. The investigating CPS member denies having collected information about the Complainant's schooling from any other source, other than the Complainant himself. As the Complainant did not provide any persuasive evidence that the CPS collected personal information from security, I find that the CPS did not collect this information as the Complainant alleges.

[para 20] As outlined in the background section of this order, the CPS did provide to one of its forensic psychologists copies of the statements the Complainant had provided to the CPS, and requested his opinion about whether the Complainant was a risk for "engaging in violence" towards his co-workers. The psychologist provided his opinion to the investigating CPS members that the Complainant had paranoid beliefs, but was likely more of a nuisance than a threat, though he could become a moderate to high threat if he abused alcohol or used illegal drugs, because substance abuse is a significant factor in escalating the risk for violence in a person with mental illness.

[para 21] The Act defines personal information in section 1(n). The relevant portions of section 1(n) state:

> *"personal information" means recorded information about an identifiable individual, including*
> …
> > *(viii) anyone else's opinions about the individual*
>
> …

[para 22] The information generated by the psychologist is the psychologist's opinion about the Complainant. According to the definition of personal information, this is the Complainant's personal information. I find, therefore, that the CPS collected the Complainant's personal information.

[para 23] The CPS argued that it was authorized to collect the Complainant's personal information from the psychologist pursuant to section 33(b) of the Act which states:

> *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 24] Law enforcement is defined by section 1(h) as follows:

> *"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*
> >
> > *(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;*

[para 25] In his initial submissions, the Complainant argued that the central issue to be decided is if he posed a threat to his co-workers. While this is a peripheral issue in determining the appropriate duration of an investigation (as I will explain below) it is not the central issue in this inquiry. The central issue is whether the CPS collected the Complainant's personal information for the purposes of law enforcement, as defined by the Act.

[para 26] While there will be many instances where the CPS collects information in the course of investigating a complaint and the collection is clearly for a police investigation, the facts in this inquiry are not so straightforward because the complaint that was being investigated at the time of the collection was the Complainant's complaint and not a complaint by his co-workers. An analogous situation was examined by the Commissioner in Order F2006-002, in which he stated:

> It seems to me that if a member of the EPS (or anyone else) "fears for their safety" and expresses that to a peace/police officer, section 33(b) of the Act is engaged, as the matter involves "policing" and therefore law enforcement. Regardless of whether the officer refers the matter to a more appropriate authority, that officer is allowed to collect personal information because "fears for safety" and threats are generally law enforcement matters. It must be assumed so.
>
> For example, if someone is chasing me and I run up to a police officer and tell that person, the police officer can ask "Who?", "Why?", etc., and collect the personal information. The officer does not have to do anything more to trigger the investigation. Even if the officer decides my fear is groundless or there is no breach of any law, the officer can collect personal information in order to make that determination.
>
> I cannot see inside police officers' heads to try to figure out if they bona fide believed there was a law enforcement matter at hand. There are other protections for wrongful prosecution (trial, Charter, civilian complaints).
>
> There is a point when there is no longer justification under section 33(b) to collect personal information. That point is reached when the officer knows or should know that there is no longer a law enforcement issue: no threat, no crime, no law broken. I cannot think of any prescriptive test to decide when that point is reached. This will not be very satisfying to some people. Peace/police officers must be free to act quickly, often instantaneously, to assess threats. At the particular moment, the public can only rely on the officer's training, judgment and professionalism to tell the officer when to stop. The officer is still accountable, but only after the fact. Internal discipline processes, peer review, civilian complaint review boards this Office, the courts, and the Charter remedies, all provide mechanisms to hold peace/police officers accountable for the misuse of their ability to collect personal information for the purposes of law enforcement. These mechanisms must be applied vigorously.
>
> (Order F2006-002 at paras 28-31)

[para 27] I find that situation described by the Commissioner in Order F2006-002 to be analogous to the facts in this inquiry. The CPS approached the Complainant's co-workers in the course of investigating the Complainant's complaint that the CPS leaked information about him to these co-workers. On interviewing these individuals the investigators found that the co-workers were, according the CPS member, "…very alarmed, fearful and concerned for their safety, and that of their families." At this point, given the information at the disposal of the CPS members, I find that it was reasonable for the members to assess the threat that the Complainant posed to his co-workers, and contacting the psychologist and obtaining his opinion was a reasonable step to take. I find that the CPS members' collection was, therefore, done as part of their role in "policing" and therefore was done for law enforcement purposes.

[para 28] That being said, it is true that whether the Complainant is an actual threat is a factor to consider as, as the Commissioner points out:

> There is a point when there is no longer justification under section 33(b) to collect personal information. That point is reached when the officer knows or should know that there is no longer a law enforcement issue: no threat, no crime, no law broken.
>
> (Order F2006-002 at para 31)

[para 29] However, if this "point" was reached at all – of which I am not convinced given the psychologist's assessment – it had certainly not yet been reached at the time of the collection of information from the Complainant's co-workers, nor at the time of the collection of the psychologists report – which was the first indication that the Complainant was likely more of a nuisance than a threat to his co-workers.

[para 30] On this basis, I find, pursuant to section 33(b) of the Act, that the CPS was permitted to collect the Complainant's personal information from the psychologist. As well, it was permitted to collect any of the Complainant's personal information which may have been collected from the Complainant' co-workers. All these collections were done for the purposes of law enforcement.

B: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 31] The Complainant states that the CPS disclosed his personal information to his co-workers and a member of security at his place of employment. The CPS states that it did interview the Complainant's co-workers and disclosed to them the content of the Complainant's statements; as well, it verbally disclosed the contents of the psychologist's findings to the Complainant's co-workers and to a member of security.

[para 32] The CPS suggests that because it did not provide a written copy of the psychologist's report to anyone, there was no disclosure of this record. I disagree. Verbally disclosing the contents of a written record is equivalent to disclosing the written record itself (see Order F2009-022 at para 11). Therefore, I find that the CPS disclosed the Complainant's personal information as contained in his statements, and the psychologist's opinion, to the Complainant's co-workers, and, in the case of the opinion, to a member of security as well.

[para 33] Section 40 of the Act allows a public body to disclose personal information in certain circumstances. The portions of section 40 of the Act relevant to this inquiry state:

> *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,*

…

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner

[para 34] The CPS argues that the collection of the statements from the Complainant was done in the course of investigating his complaints and that the subsequent disclosure of the statements to the Complainant's co-workers was also for the purpose of investigating the Complainant's complaint.

[para 35] Further the CPS argues that the purpose for collecting the psychologist's opinion was to assess, "…the risk the Complainant posed to his co-workers and to ensure the safety of the co-workers", and, the CPS argues that it was disclosed for the same purpose.

[para 36] Finally, the CPS argues that by disclosing only the psychologist's opinion and not the entire report, it satisfied the requirement stated in section 40(4) of the Act, as it disclosed personal information only to the extent necessary to enable it to carry out its purpose.

[para 37] The Complainant argues that the disclosure of his personal information was not necessary as he was not a threat to anyone, and his co-workers stated as much when they were interviewed by the CPS members.

[para 38] It is clear that the purpose for collecting the Complainant's statements was to investigate his complaint. The statements suggest that information was leaked by members of the CPS to his co-workers. These suggestions, and the evidence that the Complainant felt substantiated his accusations, are interwoven throughout his statements. As part of the investigation process, the content of the statements was disclosed to the Complainant's co-workers, presumably to attempt to assess the validity of the statements and accusations being made by the Complainant. Therefore, I find that the Complainant's personal information in the Complainant's statements was disclosed for the same purpose it was collected and, given the nature of the Complainant's statements, to the extent necessary to fulfill that purpose.

[para 39] As for the psychologist's opinion, I accept that the CPS collected this information for the purpose of assessing any potential risk that the Complainant may pose to his co-workers. This purpose is part of the CPS' more general purpose of policing. Had the psychologist's opinion been that the Complainant held no paranoid beliefs and there was no chance that he posed a threat, it might not be reasonable to conclude that disclosing the entire content of his opinion to the Complainant's co-workers and a member of security was for the purpose of ensuring the safety of the Complainant's co-workers. Even in such circumstances, however, disclosing that the Complainant was not a threat might reasonably be seen as a purpose consistent with the purpose of policing.

[para 40] However, while the Complainant points out that the psychologist's opinion was that he was likely more of a nuisance than a threat, and that there was no evidence that he abused drugs or alcohol (which, in the opinion of the psychologist, would make him more of a risk), the psychologist's opinion also states that, "…given [the Complainant's] paranoid beliefs, the threat of violence cannot be ruled out." As the psychologist's opinion was that the Complainant held paranoid beliefs and the risk of violence (while likely small) could not be ruled out, I find that CPS did disclose the contents of the opinion to the Complainant's co-workers and a member of security to ensure the safety of the Complainant's co-workers. With this knowledge, the co-workers and security, would be aware to monitor the situation to ensure that any further issues between the Complainant and his co-workers would be dealt with appropriately.

[para 41] I also find that the CPS complied with section 40(4) of the Act when it disclosed only a portion of the psychologist's opinion. The information disclosed made the Complainant's co-workers and security aware that the Complainant was likely a nuisance rather than a threat, but that the risk of his becoming a threat could not be ruled out given his paranoid beliefs, or if there was evidence that he was abusing drugs or alcohol. The information disclosed was necessary to ensure that the co-workers and security were aware of the risk, and that it was only a slight risk.

IV. ORDER

[para 42] I make this Order under section 72 of the Act.

[para 43] I find that the CPS collected and disclosed the Complainant's personal information in accordance with the Act.

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Keri H. Ridley
Adjudicator