ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-027 and P2010-020

March 31, 2011

ALBERTA TRANSPORTATION SAFETY BOARD
GUARDIAN INTERLOCK SERVICE (CANADA) LTD.

Case File Numbers F4780 and P1200

Office URL: www.oipc.ab.ca

Summary: An individual complained that Alberta Transportation Safety Board ("the Public Body") collected, used, and disclosed his personal information contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* ("the Act" or "FOIP"). He also complained that Guardian Interlock Service (Canada) Ltd. ("Guardian Interlock"), the contracted service provider for the Public Body's ignition interlock program, collected, used, and disclosed his personal information contrary to the *Personal Information Protection Act* ("PIPA").

The Adjudicator found that Guardian Interlock had collected and used the Complainant's personal information and had also disclosed his personal information to the Public Body. However, a contract between Guardian Interlock and the Public Body specifically stated that any information collected or generated by Guardian Interlock in the course of the performance of the contract was in the custody and control of the Public Body and subject to FOIP and not PIPA. Therefore, the Adjudicator found that Guardian Interlock's collection, use, and disclosure of the Complainant's personal information was governed by FOIP and not by PIPA.

The Adjudicator found that the Public Body had collected the Complainant's personal information from both Guardian Interlock and the Interprovincial Records Exchange ("IRE"). However, the Adjudicator found that the Public Body was authorized to collect such information because it related directly to and was necessary for an operating program of the Public Body.

The Adjudicator also noted that the information collected by the Public Body was accurate and complete in that the Complainant was prohibited from driving or holding a driver's licence in British Columbia due to a court order.

The Adjudicator also found that the Public Body used the Complainant's personal information to make a determination that he was no longer allowed to participate in the ignition interlock program it administered. The Adjudicator found that this use was consistent with the reason the information was collected.

Finally, the Adjudicator found that although the Public Body disclosed the Complainant's personal information to Guardian Interlock in accordance with section 40(1) of the Act, it disclosed more of the Complainant's information than was necessary contrary to section 40(4) of the Act.

Statutes Cited: AB: *Criminal Code* R.S.C. 1985 c. C-46 ss. 254, and 259; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e) , 1(h), 1(n), 33, 34(1)(g), 35, 39, 40, 41, and 72; *Personal Information Protection Act* S.A. 2003, c. P-6.5 s. 4(2); *Traffic Safety Act,* R.S.A. 2000 c. T-6 ss. 30(1), 31, 51(r), and 94.

Authorities Cited: AB: Orders F2006-018, F2006-027, and F2007-019; **BC:** Order F06-01 [2006] B.C.I.P.C.D. No. 2 as cited in *Business Watch International v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 10.

I. BACKGROUND

[para 1] On June 4, 2008, the Complainant was convicted of failing to provide a breath sample contrary to section 254(3)(a) of the *Criminal Code*. According to the Court's "Order of Driving Prohibition", the Complainant was not allowed to operate a vehicle for one year. However, pursuant to section 259(1.1) and 259(1.2) of the *Criminal Code*, after 3 months, the Complainant could operate a vehicle with an alcohol interlock device ("ignition interlock program") if he registered in and was accepted into "…a program established by a province."

[para 2] According to the Complainant, on August 25, 2008, he completed a "Planning Ahead" course and was issued a restricted Alberta driver's license by the Alberta Transportation Safety Board ("the Public Body"). On September 4, 2008, an ignition interlock device was installed in the Complainant's motor vehicle by Guardian Interlock, the company contracted by the Public Body to install and maintain ignition interlock devices.

[para 3] According to the Complainant, on September 9, 2008, he wrote to the Office of the Superintendant of Motor Vehicles of British Columbia ("B.C. Motor Vehicles") and inquired about getting a driver's licence in British Columbia. He explained that he held a restricted licence in Alberta and that until June 4, 2009 he could operate only vehicles with an ignition interlock device. On October 10, 2008, B.C. Motor Vehicles wrote the Complainant a letter and indicated that it required further information before

the Complainant could apply for a licence. It also stated that it honours all current licence suspensions in other provinces.

[para 4] On October 23, 2008, the Complainant provided B.C. Motor Vehicles with a certificate showing he had completed the "Planning Ahead" course. On November 7, 2008, B.C. Motor Vehicles wrote the Complainant a letter noting that he had been convicted of an alcohol related offence on December 28, 1995 but that he had completed the "Planning Ahead" course, and was allowed to operate only a motor vehicle with an interlock device until June 4, 2009. The letter stated that the Complainant was now free to apply for a B.C. driver's licence, but the licence would be subject to the same conditions as those that had been imposed on his Alberta driver's licence – that he drive only vehicles with an ignition interlock device.

[para 5] On the copy of the letter from B.C. Motor Vehicles the Complainant provided to me, he noted that the B.C. Motor Vehicles department was incorrect when it stated that he completed the "Planning Ahead" course for his 1995 conviction. However, it is not clear to me if or when he brought this apparent error to the attention of the B.C. Motor Vehicles department.

[para 6] On November 10, 2008, the B.C. Motor Vehicles department sent a letter addressed to the Complainant and to "Guardian Interlock". The letter was in follow up to the department's November 7, 2008 letter. It stated that on further review of the Complainant's driving record, it had noted there was an alcohol-related conviction dated June 4, 2008. The letter then stated:

> As a result of this conviction you will be subject to a one (1) year driving prohibition and an automatic one (1) year licence suspension under the *Motor Vehicle Act*. You will receive notification of your prohibition and licence suspension under separate cover.

[para 7] The Complainant had not yet received a copy of this letter when he attended the Edmonton, Alberta office of Guardian Interlock on November 13, 2008 to have his ignition interlock device serviced. On entering the office, he was informed by an employee of Guardian Interlock that because he had applied for a B.C. driver's licence (which does not appear to be the case in fact), he was now prohibited from driving until June 4, 2009. The Complainant was shown a copy of the November 10, 2008 letter from B.C. Motor Vehicles.

[para 8] The Guardian Interlock employee contacted the writer of the November 10, 2008 letter to determine why the November 10, 2008 letter was sent when earlier letters from B.C. Motor Vehicles to the Complainant (one of which the Complainant had provided to the Guardian Interlock employee) had indicated that the Complainant could apply for and receive a B.C. driver's licence. B.C. Motor Vehicles informed the Guardian Interlock employee that the writer of the October 10, 2008 and November 7, 2008 letters had not performed a "Canada Search" and therefore had not discovered the June 4, 2008 conviction.

[para 9] After discovering the more recent conviction, B.C. Motor Vehicles suspended the Complainant from driving or applying for a B.C. driver's licence for a year, and made note of this on the Interprovincial Records Exchange ("IRE"), a database which reflects driver information. Information on this database is entered by each province and is accessible by other provinces.

[para 10] The Guardian Interlock employee then contacted an employee at the Public Body and provided copies of the October 10, 2008 and November 10, 2008 letters to the Public Body. The Public Body's employee conducted a search of the IRE and discovered that the Complainant was suspended from driving and applying for a driver's licence in B.C.

[para 11] A British Columbia Driving Record search which was provided to me by the Complainant indicates the following:

- the Complainant was assessed a penalty under section 254.5 of the *Criminal Code* for failure or refusal to provide a sample of breath or blood;
- from June 4, 2008 to June 4, 2009, there is a prohibition by operation of section 259(1) of the *Criminal Code* (prohibition from operating a motor vehicle for one year as the result of being guilty of an offence under section 254 of the *Criminal Code*);
- from June 4, 2008 to June 4, 2009, there is an automatic 12 month prohibition under section 99 of the *British Columbia Motor Vehicles Act* ("MVA")(driving prohibition); and
- from June 4, 2008 to June 4, 2009, there is a 1 year suspension under section 232(3)(a) of the MVA (suspension from applying for a B.C. drivers licence).

[para 12] Although I do not know what B.C. Motor Vehicles entered on the IRE, I assume that it would have been some or all of the information above. Based on the information on the IRE, the Public Body instructed the Guardian Interlock employee to remove the ignition interlock device. A letter dated November 13, 2008 was also sent to the Complainant and copied to the "supplier" (Guardian Interlock) advising that:

> The [Public Body] has received information which indicates that [the Complainant is] currently serving a Court Ordered Prohibition Suspension in British Columbia from June 4, 2008 to June 4, 2009.
>
> In accordance with the terms and conditions on the reverse of the Ignition Interlock Program application which you signed, your participation is revoked effective immediately.

[para 13] The letter went on to explain, in detail, what the Complainant must do including surrendering his restricted licence and ignition interlock device.

[para 14] On January 16, 2009, the Complainant wrote to the Office of the Information and Privacy Commissioner ("this office") and requested that this office investigate Guardian Interlock's collection and use of his personal information under PIPA, and the Public Body's disclosure of his personal information to Guardian Interlock under FOIP. Both complaints will be dealt with in this Order

[para 15] The Commissioner authorized a portfolio officer to investigate and attempt to resolve the issues between the parties but this was unsuccessful and this matter was set down for an inquiry. I received initial and rebuttal submissions from the Complainant and Public Body. As well, I named Guardian Interlock as an affected party and received initial submissions from that organization. I also requested and received additional information from the Public Body regarding the content of the application agreement signed by the Complainant.

[para 16] As noted above, the Complainant asked that Guardian Interlock's treatment of the information be addressed under PIPA. An inquiry under PIPA is called for only in the event that PIPA applies to the collection, use, and disclosure of some or all of the information in question. Under section 4(2) of PIPA, information that is under the custody or control of a public body is not subject to the terms of PIPA. Thus, in order to determine whether to conduct a separate inquiry under PIPA, I must first determine if the information in question is under the custody and control of a public body and therefore subject to FOIP, rather than PIPA. I will, therefore, address this question as the first question in this inquiry.

II. INFORMATION AT ISSUE

[para 17] The information at issue is any of the Complainant's personal information relating to the suspension of his Alberta Driver's Licence that was collected, used, or disclosed by the Public Body, whether directly or through the agency of Guardian Interlock.

III. ISSUES

[para 18] A Notice of Inquiry dated April 28, 2010 that was sent to the Public Body, the Complainant and Guardian Interlock (as an Affected Party) sets out the issues in this inquiry as follows:

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

Issue B:

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

Issue C:

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

[para 19] As a consequence of the Complainant's request to have Guardian Interlock's treatment of his information under PIPA adjudicated, another Notice of Inquiry dated April 28, 2010 was sent to Guardian Interlock, the Complainant, and the Public Body (as an Affected Party). This Notice of Inquiry set out the issues that would arise if PIPA applied to Guardian Interlock's handling of the Applicant's personal information.

[para 20] I will first consider if Guardian Interlock collected, used, and disclosed the Complainant's personal information and if so, if that collection, use, and disclosure is governed by FOIP or by PIPA. As I will find for the reasons given below that only FOIP applies to the collection, use, and disclosure of the information in question, I will not address the issues set out in the April 28, 2010 Notice of Inquiry for P1200.

[para 21] As well, as I mentioned above, I asked for further information from the Public Body. Although the Public Body did provide a response to my request, it also questioned my jurisdiction to ask these questions. Therefore, as another preliminary issue, I will also respond to the Public Body's arguments regarding my jurisdiction.

IV. DISCUSSION OF ISSUES

Preliminary Issue: Does PIPA apply to any information collected, used, or disclosed by Guardian Interlock?

[para 22] Section 4(2) of PIPA states:

> *4(2) Subject to the regulations, this Act does not apply to a public body or any personal information that is in the custody of or under the control of a public body.*

[para 23] As I will explain in greater detail below, the ignition interlock program is a program that is authorized by the *Traffic Safety Act* ("TSA") and is administered by the Public Body. On January 2, 2003, the Minister of Transportation (the Ministry responsible for the Public Body) entered into an agreement with Guardian Interlock to, "supply, install and service Ignition Interlock Devices on motor vehicles as directed by the Ignition Interlock Program of Transportation Safety Services Division…" ("the Agreement").

[para 24] The Agreement goes on to state:

> Any information collected or generated by the Consultant in the course of the performance of the Agreement is the sole property of the Minister and is subject to the Freedom of Information and Protection of Privacy Act as well as all other regulatory requirements governing the management of Personal Information.

[para 25] The information that the Complainant alleges was collected, used, and disclosed by Guardian Interlock was the content of the letter sent to the Complainant and Guardian Interlock by B.C. Motor Vehicles dated November 10, 2008. As well, he complains that the letter sent to the Complainant by B.C. Motor Vehicles, dated October 10, 2008, which he had given to Guardian Interlock on November 13, 2008, which sets out what the Complainant must prove in order to apply for a British Columbia driver's licence, was disclosed by Guardian Interlock to the Public Body.

[para 26] The Public Body argues that the information that Guardian Interlock collected, used, and disclosed is governed not by PIPA but by FOIP. The Complainant argues that since the information collected, used, and disclosed by the Guardian Interlock employee was beyond the scope of work in the Agreement – which was to supply, install and service the devices – Guardian Interlock was acting outside the Agreement and is thus subject to PIPA.

[para 27] I acknowledge that according to the terms of the Agreement, the role of Guardian Interlock was to supply, install, and service the devices rather than to make decisions as to whether the devices should be installed or removed. That is, it appears the Organization was to perform its duties relative to the devices at the direction of the Public Body rather than on its own motion. It is not clear to me, therefore, why B.C. Motor Vehicles chose to address its correspondence respecting the Complainant's status to Guardian Interlock, rather than to the Public Body. It is possible that the B.C. entity did not understand the nature of the relationship between Guardian Interlock and the Public Body, or possibly, it did so because the Complainant had referenced Guardian Interlock when he corresponded with the B.C. body. I have also noted that Guardian Interlock took on a somewhat substantive role as to the Complainant's entitlements under the program when it contacted the B.C. Motor Vehicles to inquire why the latter had changed its position about the Complainant's entitlement to apply for a B.C. licence (which it did at the request of the Complainant). Possibly this was outside the role assigned to it by the terms of its Agreement with the Public Body, but even if that is so, I cannot derive from this that its role was other than that assigned to it by the Agreement.

[para 28] Nonetheless, were it not for its role as supplier, installer, and servicer of the Complainant's ignition interlock device, the information about the Complainant would not have been sent to Guardian Interlock. Furthermore, it came into possession of the information at a time at which it was still engaged with the Complainant in the sense that it was continuing to service the device. Thus, regardless of the limitations of the role assigned to it under its contract with the Public Body, and even if Guardian Interlock was not the proper recipient of the information in the sense that the information was usable by

it for its assigned purposes, in my view, Guardian Interlock received the correspondence about the Complainant, including correspondence the Complainant had himself provided to it, *in the course of performing the work* which it had contracted to do under the Agreement.

[para 29] In my view, had the parties to the Agreement wanted to restrict the application of the clauses pertaining to information that was *necessary* to supply, service, or install the devices, they would have used language more restrictive than, "in the course of the performance of the Agreement", such as "necessary for" or "for the purpose of". Given the language that was used, in my view, because the information came to Guardian Interlock as a function of, and during the time it continued to be engaged in, its performance of the Agreement, the information collected by Guardian Interlock became the sole property of the Minister of the Public Body. Thus, the Public Body had control of the information in the hands of Guardian Interlock.

[para 30] Another way to analyze these transactions, with the same result, is that Guardian Interlock was acting as agent for the Public Body in receiving and conveying the information. Again, even if collecting the information was not essential to its assigned function, Guardian Interlock received the information because of its contract with the Public Body and its associated involvement with the Complainant. Thus, even if its receipt was, and was understood by Guardian to be, not essential to its assigned functions, and if the Public Body would have been the more proper initial recipient of such information, Guardian Interlock's collection of information that was provided to it without solicitation, and its conveyance of that information to the Public Body that had the decision-making power to which the information was potentially relevant, can be said to have been done *on behalf of* the Public Body. Under this analysis, the Public Body had both custody and control of the information

[para 31] Given the wording of the Agreement, I find that the information collected by Guardian Interlock was under the control of the Public Body and therefore, in accordance with section 4(2) of PIPA, PIPA does not apply to the information collected. However, as the information was collected by Guardian Interlock in the course of its performance of the Agreement and is in the control of the Public Body, FOIP does apply.

Preliminary Issue: Did the Adjudicator have jurisdiction to ask for more information in her letter of January 11, 2011?

[para 32] The only "burden of proof" of which the Act makes mention is as to where the burden lies in situations where an Applicant has been denied access to all or part of a record. However, prior orders from this office have established that in inquiries relating to a complaint about the collection, use, or disclosure of personal information, the initial, or evidential, burden lies with the complainant, and if he or she has met that burden, the public body then has the burden to prove that it collected, used, or disclosed the complainant's personal information in accordance with the Act (see Order F2007-019).

[para 33] Neither the Public Body nor Guardian Interlock deny that the Public Body, on its own and through the agency of Guardian Interlock, collected, used, and disclosed the Complainant's personal information. Therefore, the burden of proof rests with the Public Body to establish that it collected, used, and disclosed the Complainant's personal information in accordance with the Act.

[para 34] I agree that I lack jurisdiction to review the decisions of the Public Body in administering its own program. However, as explained above, the Public Body has a burden to meet, and providing a legal basis on which it claims to have authority to collect, use, and disclose the Complainant's personal information is necessary to meet that burden. In this case this means that the Public Body must be able to point to an enactment which expressly allowed it to collect the information (section 33(a) of the Act) or the reason that the information was necessary to carry out its operating program or activity (section 33(c) of the Act).

[para 35] As the original submissions of the Public Body gave me insufficient information for determining if the personal information collected, used, or disclosed by the Public Body relates directly to and is necessary for an operating program or activity of the Public Body, and as the Public Body relied on section 33(a) of the Act without mentioning the section of an enactment that expressly allowed it to collect information, I decided to give it a further opportunity to provide this information. The questions I posed in my letter of January 11, 2011 were meant to try to solicit information from the Public Body that would help me to make my decisions under the Act. Therefore, I find that it was fully within my jurisdiction to ask the Public Body questions in order to determine if it complied with the Act.

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

i. Was the collection authorized under section 33 of the Act?

[para 36] The collection I discuss in this section can be viewed, with the same result, either as collection from Guardian Interlock, or as collection from B.C. Motor Vehicles, through the agency of Guardian Interlock.

[para 37] Section 33 of the Act limits the information that a public body is allowed to collect. Section 33 states:

> *33 No personal information may be collected by or for a public body unless*
>
> > *(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*
> >
> > *(b) that information is collected for the purposes of law enforcement, or*

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

[para 38] The Public Body is created by and operates under the authority of the TSA. Section 30(1) of the TSA authorizes the Public Body to conduct reviews. It states:

30(1) The Board may conduct reviews into a person's ability or attitude respecting the operation of a motor vehicle

(a) where the Board is concerned as to the person's ability or attitude regarding the operation of a motor vehicle, or

(b) where the Minister, a court or the Registrar has advised the Board as to a concern respecting the person's ability or attitude regarding the operation of a motor vehicle.

[para 39] Section 31 of the TSA sets out what remedy the Public Body may impose on conducting a review. This includes disqualifying a person from driving a motor vehicle in Alberta, issuing a conditional licence, and, where that person has been convicted of an offence under section 254 of the *Criminal Code*, making it a condition that the person operates only a vehicle with an ignition interlock device. Section 31 states:

31 On conducting a review or considering an application under section 30 the Board may,

(a) where a person's ability or attitude regarding the operation of a motor vehicle has been considered by the Board,

(i) disqualify the person from driving a motor vehicle in Alberta for a definite or indefinite period of time;

(ii) with respect to that person, prescribe any measure or course of remedial education or treatment as a condition of acquiring or holding an operator's licence;

(iii) prescribe terms and conditions governing that person's operator's licence;

(b) where the suspension of a person's operator's licence or the disqualification of a person to hold an operator's licence arises out of that person being found guilty under section 253 or 254 of the Criminal Code (Canada),

(i) on the expiration of a suspension or disqualification

> *imposed by a court, set aside the operation of the suspension or disqualification imposed under this Act on the condition that the person who is subject to the suspension or disqualification*
>
> > *(A) does not operate a motor vehicle unless the vehicle is equipped with an alcohol-sensing device that meets the approval of the Board, and*
> >
> > *(B) complies with any terms or conditions imposed by the Board;*
>
> *(ii) on the expiration of the suspension or disqualification imposed under this Act, direct that the reinstatement or issuance of an operator's licence to the person who was subject to the suspension or disqualification be on the condition that the person, in addition to complying with the requirements imposed under this Act,*
>
> > *(A) does not operate a motor vehicle unless the vehicle is equipped with an alcohol-sensing device that meets the approval of the Board, and*
> >
> > *(B) complies with any terms or conditions imposed by the Board.*

[para 40] Neither section 30 nor 31 of the TSA "expressly authorize" the Public Body to collect the Complainant's personal information.

[para 41] However, as I explained above, the Public Body was responsible for administering the ignition interlock program contemplated by the TSA. The TSA also allows the Public Body to determine if an individual can participate in the program.

[para 42] In order to participate in the ignition interlock program, the Complainant completed an application form which set out terms and conditions of participation in the program including the following note:

> Use of the [Ignition Interlock System] and participation in the Program shall be subject to such conditions as may be prescribed from time to time by the Administering Body.

[para 43] The "Administering Body" referred to is the Public Body. According to the Public Body's submissions, "Alberta adheres to the Canadian Driver Licence Compact ("CDLC) Agreement which sates that Alberta will honour all other jurisdictions' licence suspensions or disqualifications." The Public Body further submits that:

> An individual may only be licensed in one jurisdiction at a time; therefore, if an individual has a suspension of their driving privileges in another jurisdiction Alberta is unable to be issued a Restricted Operator's Licence jurisdiction (*sic*) until all the suspension requirements for the other jurisdiction(s) have been satisfied.

[para 44] As well, section 94 of the TSA prohibits a person from driving a motor vehicle on a highway when that person is an unauthorized driver. Section 94(1)(d) defines "unauthorized driver" to include a person whose privilege to secure a licence is suspended in a jurisdiction outside of Alberta. Section 94 of the TSA states:

> *94(1) For the purposes of this section, a person is an unauthorized driver if*
>
> > *(a) that person's operator's licence is suspended or cancelled under this Act,*
> >
> > *(b) that person is disqualified from driving a motor vehicle in Alberta,*
> >
> > *(c) that person's licence or permit to operate a motor vehicle in a jurisdiction outside Alberta is suspended or cancelled, or*
> >
> > *(d) that person's privilege to secure a licence or permit to operate a motor vehicle in a jurisdiction outside Alberta is suspended or cancelled.*
>
> *(2) A person shall not drive a motor vehicle on a highway at any time during which that person is an unauthorized driver.*

[para 45] The Public Body has not expressly stated on what basis it made its decision to suspend the Complainant's participation in the program, nor has it demonstrated that it made the correct decision in doing so. However, the Public Body need not do so to prove compliance with the Act. In order to comply with section 33(c) of the Act, information collected by the Public Body must relate directly to and be necessary for an operating program of the Public Body.

[para 46] Under the Public Body's ignition interlock program, as authorized by section 31(b)(ii)(A) and (B) of the TSA, the Public Body has the ability to impose terms and conditions with which participants in the program must comply. On this account, the Public Body must be able to determine whether a participant is in compliance. If information is conveyed to the Public Body that is of such a nature generally that, depending on its precise content and an assessment of its relationship to the conditions of continued participation, it may impact the participant's continued eligibility, the Public Body has the responsibility to review it to make such an assessment. This includes information the Public Body collected from the IRE, the information sent to Guardian Interlock by B.C. Motor Vehicles and conveyed to the Public Body, and the letter the

Complainant had given to Guardian Interlock that Guardian Interlock then conveyed to the Public Body. With respect to the last of these items, this was significant because it provided information as to the nature of the exchange between the Complainant and B.C. Motor Vehicles on the subject of applying for a licence.

[para 47] The information in question was clearly of such a nature, and thus related directly to and was necessary for administering the program for the given case of the Complainant. Even had the outcome, after assessing the information, been that it had no bearing on the Complainant's ability to continue in the program, it would not follow that the Public Body should not have collected it. It was sufficient, to meet the requirements of the Act, that the information was of such a nature that it might reasonably have been considered as possibly leading to suspension.

[para 48] Furthermore, in this case, the suspension in British Columbia of the ability to apply for a licence arguably may have affected the Complainant's "ability" to drive in Alberta following a review under section 30(1)(a) of the TSA, as a function of the operation of section 94(1)(d) of the TSA. Potentially, this could give rise to a suspension of further participation in the program. While the Public Body did not say it had assessed the information in these terms, it could have done so. Hence, on this account, the collection of the information was justifiable from an objective standpoint.

[para 49] I find that, at the time of the collections, the Public Body was collecting information directly related to and necessary for the operation of the ignition interlock program, specifically, to determine the Applicant's eligibility to continue participation in that program. I find that when the Public Body collected the Complainant's personal information from B.C. Motor Vehicles, Guardian Interlock, and the IRE, it did so in accordance with section 33(c) of the Act.

ii. Was the information collected in accordance with section 34 of the Act?

[para 50] Personal information about a person must be collected directly from that person unless the information fits into the exceptions listed in section 34 of the Act. Section 34(1)(g) of the Act states:

> *34(1) A public body must collect personal information directly from the individual the information is about unless*
>
> …
> *(k) the information is necessary*
>
> *(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is*

about, or

(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,

[para 51] As I have found that the Complainant's personal information that was collected was of such a nature that it was necessary to review it in order to verify the Complainant's eligibility to participate in the ignition interlock program, I find that the Public Body was not required to collect the information directly from the Complainant.

iii. Was the information collected by the Public Body accurate and complete?

[para 52] Section 35 of the Act requires that when a Public Body uses information to make a decision that will affect an individual, it makes every reasonable effort to ensure that the information is accurate and complete. Section 35 of the Act states:

35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

(a) make every reasonable effort to ensure that the information is accurate and complete, and

(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by

(i) the individual,

(ii) the public body, and

(iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.

[para 53] The Complainant argues that the information collected by the Public Body was inaccurate. He states that B.C. Motor Vehicles was incorrect when it stated that the Complainant had "another" offence (being a conviction years prior) and that he had completed the "Planning Ahead" course as a condition of the older offence.

[para 54] As well, he states that the information on the British Columbia Driving Record search is incorrect because it makes mention of section 254.5 of the *Criminal*

Code, whereas, in his view section 254(3)(a) of the *Criminal Code* is the relevant section, and it does not include references to sections 259(1.1) and 259(1.2) of the *Criminal Code*, which allow for use of an ignition interlock device. Finally, he argues that there was no "Court Ordered Prohibition" existing in British Columbia, contrary to what was indicated in the letter of November 13, 2008.

[para 55] The Complainant states that as a result of these inaccuracies, the Public Body used incorrect information in making its decision to suspend his restricted licence and remove him from the ignition interlock program.

[para 56] As I stated above, I do not know what information was made available to the Public Body on the IRE. The information I have indicates only that the Public Body, "…received information which indicates that [the Complainant is] currently serving a Court Ordered Prohibition Suspension in British Columbia from June 4, 2008 to June 4, 2009." Although B.C. Motor Vehicles may not have been correct in assuming that the Complainant had completed his "Planning Ahead" course for his most recent *Criminal Code* conviction, he was, "…serving a Court Ordered Prohibition Suspension in British Columbia…" The Complainant's conviction under the *Criminal Code* carried with it the penalty of being prohibited from operating a motor vehicle anywhere in Canada. B.C. Motor Vehicles prohibited the Complainant from operating a motor vehicle in British Columbia and suspended the Complainant's ability to apply for a driver's licence in British Columbia as the result of his conviction. Therefore, the information collected by the Public Body was accurate information. The Complainant was serving a "Court Ordered Prohibition Suspension in British Columbia."

[para 57] Also, there is no section 254.5 in the *Criminal Code*, therefore, it is reasonable to assume the section being referred to is section 254(5) of the *Criminal Code*. Section 254(3)(a) of the *Criminal Code* allows a police officer, if he or she has reasonable grounds to believe that an individual has operated a vehicle while under the influence of alcohol, to require the individual to provide a breath sample. The Court found the Complainant refused to comply with this requirement. Section 254(5) of the *Criminal Code* makes it an offence to refuse to provide a breath sample. The Order of Driving Prohibition Against an Offender issued by the Court on June 4, 2008, states that the Complainant acted contrary to section 254(3) of the *Criminal Code*. Therefore, this information on the Complainant's British Columbia Driving Record search is correct.

[para 58] As well, the Complainant notes that mention of sections 259(1.1) and 259(1.2) of the *Criminal Code* are missing from his British Columbia Driving Record search. It is true that these sections are not mentioned. However, the absence of these provisions does not make it any less the case that the Complainant could operate a vehicle with an ignition interlock if he was registered and accepted into the provincial program. Whether the Court mentioned it or not, by operation of sections 259(1.1) and 259 (1.2) of the *Criminal Code*, this is the case. Therefore, the information collected by the Public Body was also complete.

[para 59] On the evidence provided to me, the information collected and used by the Public Body was accurate and complete. The Complainant was prohibited from driving in British Columbia. I do not know why B.C. Motor Vehicles decided to prohibit the Complainant from driving, applying for a licence, or holding a driver's licence in British Columbia when he was able to hold a restricted licence in Alberta. It is not within the scope of this inquiry to question B.C. Motor Vehicles' decision. Similarly, as I mentioned above, whether the Public Body made the correct decision to suspend the Complainant's participation in the ignition interlock program, is a separate question from whether it collected accurate and complete information. The former question is one over which I have no jurisdiction. I simply have to decide if the Public Body made a reasonable effort to ensure the information collected and used by it to revoke the Complainant's restricted licence and withdraw his participation in the ignition interlock program was accurate and complete. I find that the information was in fact accurate and complete, and, therefore, I do not need to determine if the Public Body took reasonable steps to ensure the accuracy and completeness.

iv. Impact of the Canadian Driver Licence Agreement

[para 60] Before concluding this section I note that throughout his submissions, the Complainant refers to an agreement among various provinces called the Canadian Driver Licence Agreement ("CDLA") or Canadian Driver Licence Compact ("CDLC"). The Public Body submits that the CDLC, "…sets out guidelines for the way provinces administer drivers' licences and records when drivers move from one province to another." According to the Complainant, British Columbia is not a signatory to the CDLA which replaced the CDLC. According to the Public Body, British Columbia is a member of the CDLC (the relevant agreement) but exempt from Article 4, which deals with how provinces will use and protect the information on the IRE.

[para 61] The Complainant contends that the CDLA or CDLC prohibits British Columbia and Alberta from exchanging information. However, collection of information by a public body is governed by the Act, and not by an agreement which it may have entered into with some other entity or entities. Public Bodies cannot contract out of their obligations under the Act (Order F06-01 [2006] B.C.I.P.C.D. No. 2, cited with approval in *Business Watch International v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 10). Whether the Public Body properly collected information from British Columbia under the Act is determined by whether it complied with the Act's provisions.

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

i. Was the Complainant's personal information used in accordance was section 39 of the Act?

[para 62] Section 39 of the Act governs the use of the personal information. It states:

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,*
>
> *(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*
>
> *(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*
>
> …
>
> *(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.*

[para 63] I found above that the Complainant's personal information collected by the Public Body was directly related to and necessary for an operating program of the Public Body. The information that the Complainant was prohibited from driving in British Columbia, applying for a B.C. driver's licence, or holding a licence was then used by the Public Body to determine that the Complainant's restricted driver's licence ought to be suspended and his participation in the ignition interlock program ended. This use is consistent with the purpose of the collection.

[para 64] As well, even if the Public Body collected all of the information on the Complainant's British Columbia Driving Record search (a question about which, as I mentioned above, I have some uncertainty), as well as the letters faxed to the Public Body by Guardian Interlock, this information was only what was necessary to carry out its purpose in a reasonable manner; that is, the potentially relevant information was reviewed to make the determination as to whether the Complainant's driving privileges ought to be suspended. Therefore, I find that the Public Body complied with section 39(1) of the Act.

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

[para 65] The Complainant also takes issue with the amount of information that was disclosed by the Public Body to Guardian Interlock.

[para 66] Based on the evidence before me, I find that the Public Body did disclose the Complainant's personal information to Guardian Interlock. A letter dated November 13, 2008 written by the Public Body to the Complainant was copied to "Supplier" who is Guardian Interlock. The letter sets out that the Complainant is serving a Court Ordered Prohibition Suspension in British Columbia and his participation in the ignition interlock program is revoked immediately. It also sets out what the Complainant must do, including returning his restricted licence and the ignition interlock device.

[para 67] Section 40 of the Act sets out circumstances where a public body may disclose personal information. Sections 40(1)(c) states:

> *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 68] Section 40(4) of the Act limits the amount of personal information a public body may disclose to only what is necessary to carry its purpose. Section 40(4) of the Act states:

> *40(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 69] Section 41 of the Act outlines what a consistent purpose is. It states:

> *41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*
>
> *(a) has a reasonable and direct connection to that purpose, and*
>
> *(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 70] I found above that the Complainant's personal information that was collected was directly related to and necessary for an operating program of the Public Body. Although the Public Body did not specifically advise this office of the purpose for disclosing the Complainant's personal information to Guardian Interlock, it is obvious that it was to inform Guardian Interlock that the Complainant was no longer able to participate in the ignition interlock program. This is information that Guardian Interlock, as the supplier of the ignition interlock system, would have needed to enable it to perform its role of removing the ignition interlock device from the Complainant's vehicle.

[para 71] As Guardian Interlock was the organization contracted to physically install, calibrate, and remove the ignition interlock device from the Complainant's vehicle, the disclosure of some of the Complainant's personal information by the Public Body to Guardian Interlock was necessary to operate the ignition interlock program. The ignition interlock program is a program authorized by the TSA and administered by the Public Body. Therefore, the requirements of section 41(b) of the Act are met and I find that the Public Body properly disclosed some of the Complainant's personal information to Guardian Interlock pursuant to section 40(1)(c).

[para 72] However, section 40(4) of the Act requires the Public Body to disclose personal information only to the extent necessary to meet its purpose. In my opinion, the only personal information that the Public Body needed to disclose to Guardian Interlock was the Complainant's name, date of birth, driver's licence number (for identification purposes) and that his participation in the ignition interlock program has been revoked, effective immediately. Simply copying to Guardian Interlock the letter, dated November 13, 2008, that the Public Body sent to the Complainant, disclosed far more personal information than was necessary to meet it purpose, for example, the Applicant's criminal conviction. Therefore, I find that when it copied the letter of November 13, 2008 to Guardian Interlock, the Public Body's disclosure of some of the Complainant's personal information was contrary to section 40(4) of the Act.

[para 73] The Complainant also takes issue with information that was disclosed to Guardian Interlock by B.C. Motor Vehicles in the form of a letter dated November 10, 2008, which was also sent to Guardian Interlock. I have no jurisdiction to deal with the disclosure of the Complainant's personal information by a body in British Columbia. Therefore, as the only evidence of a disclosure by the Public Body is the letter dated November 13, 2008, this is the only disclosure about which I make findings.

V. ORDER

[para 74] I make this Order under section 72 of the Act.

[para 75] I find that the Public Body collected the Complainant's personal information in accordance with Part 2 of the Act.

[para 76] I find that the Public Body used the Complainant's personal information in accordance with Part 2 of the Act.

[para 77] I find that the Public Body disclosed more of the Complainant's information than was necessary for its purpose, contrary to section 40(4) of the Act, and order that the Public Body stop disclosing the Complainant's personal information in contravention of the Act.

[para 78] I further order the Public Body to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

_____

Keri H. Ridley
Adjudicator