

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2011-008**

July 21, 2011

**MEDICINE HAT POLICE SERVICE**

Case File Number F5490

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant had applied for a position as a peace officer at the Northern Alberta Institute of Technology (“NAIT”). Pursuant to the *Peace Officer (Ministerial) Regulation*, the Minister of Alberta Solicitor General and Public Security (“SolGen”) performed a background check to determine the Complainant’s eligibility for an appointment as a peace officer. The Complainant signed a disclosure form permitting SolGen to conduct the background check.

Prior to applying for the position at NAIT, the Complainant had been employed by the Medicine Hat Police Service (“the Public Body”). At the request of SolGen, the Public Body disclosed the Complainant’s personal information to SolGen, specifically information relating to internal investigations. SolGen found that the Complainant did not meet the requirements for a peace officer appointment, and consequently the Complainant’s employment with NAIT was terminated.

The Complainant complained that the Public Body disclosed more personal information to SolGen than he had consented to in the disclosure form, and that the disclosure was in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Complainant also complained that the Public Body failed to make a reasonable effort to ensure that the information it used to make a decision about the Complainant was accurate and complete.

The Adjudicator determined that the Public Body had authority to disclose the Complainant's personal information. The Adjudicator also found that the Public Body did not have a duty under the Act to ensure the information disclosed to SolGen was accurate and complete, since it was SolGen and not the Public Body that made the decision at issue about the Complainant.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 35, 40, 72, *Peace Officer Act*, S.A. 2006, c. P-3.5, *Peace Officer (Ministerial) Regulation*, Alta. Reg. 312/2006, s. 5, *Police Act*, R.S.A. 2000, c. P-17.

**Authorities Cited: AB:** Order F2006-019.

## **I. BACKGROUND**

[para 1] An individual made a complaint to this Office that the Medicine Hat Police Service ("the Public Body") disclosed his personal information in contravention of the FOIP Act. He also complained that the personal information disclosed by the Public Body was inaccurate and/or incomplete.

[para 2] The Complainant was formerly employed by the Public Body as a police officer. In April 2010, the Complainant accepted a position as a Community Peace Officer with the Northern Alberta Institute of Technology ("NAIT"). Under the *Peace Officer Act*, S.A. 2006, c. P-3.5, "authorized employers" may apply to the Minister of Alberta Solicitor General and Public Security ("SolGen") to have an individual appointed as a peace officer. SolGen performed a background check pursuant to the *Peace Officer (Ministerial) Regulation*, Alta. Reg. 312/2006, which included a request for information from the Public Body. The Public Body provided the information, which consisted of summaries of internal investigations and dispositions relating to the Complainant.

[para 3] SolGen concluded from information obtained as a result of the background searches that the Complainant was ineligible to hold the peace officer appointment as he did not meet the standards set out in the *Peace Officer (Ministerial) Regulation* (section 5(2)). The Complainant's employment with NAIT was therefore terminated. According to the Complainant, the outcome of the background check initially resulted in a lifetime ineligibility from the Peace Officer program, which was later overturned on an appeal (the Complainant did not indicate by what person or body the appeal was heard and decided).

## **II. INFORMATION AT ISSUE**

[para 4] The information at issue is the Complainant's personal information disclosed by the Public Body to SolGen, including summaries of three files related to disciplinary and misconduct matters involving the Complainant.

## **III. ISSUES**

[para 5] The Notice of Inquiry, dated April 18, 2011, listed the following as issues:

1. **Did the Public Body disclose the Complainant’s personal information in contravention of Part 2 of the Act?**
2. **Did the Public Body make every reasonable effort to ensure that the Complainant’s personal information was accurate and complete as required by section 35(a) of the Act?**

#### **IV. DISCUSSION OF ISSUES**

1. **Did the Public Body disclose the Complainant’s personal information in contravention of Part 2 of the Act?**

[para 6] NAIT is an “authorized employer” for the purposes of the *Peace Officer Act*, and had applied under that Act to have the Complainant appointed as a peace officer. Peace officers are appointed by the Alberta Solicitor General and Public Security (“SolGen”). Section 5(3) of the *Peace Officer (Ministerial) Regulation* permits the Director of Law Enforcement within SolGen to conduct background checks:

*5(3) In considering an application under subsection (1), and for the purpose of determining the eligibility and suitability of the person concerned, the Director may, with the written consent of that person, conduct*

- (a) a criminal record check,*
- (b) a background check, and*
- (c) a review of information held by police services, law enforcement agencies within Alberta and outside Alberta, and government agencies within Alberta and outside Alberta.*

[para 7] The Public Body argues that the disclosure of the Complainant’s personal information to SolGen was authorized under sections 40(1)(c), (d), (e) and (f). These provisions read as follows:

*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,*
- (d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,*
- (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*
- (f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure*

...

[para 8] At the request of NAIT, the Complainant signed a Consent for Disclosure of Information form (“Disclosure form”), which permits SolGen to perform a background check under the *Peace Officer (Ministerial) Regulation*. The Disclosure form states:

I consent to a search of records held by police services, law enforcement agencies within Alberta and outside Alberta, and government agencies within Alberta and outside Alberta for the purposes of conducting a background check in accordance with section 5(3) of the Peace Officer (Ministerial) Regulations.

I understand that as a result of giving this consent I am authorizing any police services, law enforcement agencies within Alberta and outside Alberta, and government agencies within Alberta and Outside Alberta to share any and all information with the Government of Alberta, Solicitor General and Public Security for the purpose of determining my suitability to hold a Peace Officer Appointment in Alberta.

[para 9] The Complainant does not deny having signed this form. However, he argues that the form, in referring to law enforcement and police services, could be interpreted to mean that only information regarding criminal investigations or criminal involvement is being sought. Since the form is misleading as to the information that may be disclosed, he states that he did not supply an informed consent to the disclosure of the employment records or other internal documents (presumably internal investigation documents) by the Public Body. He argues that since the particular information to be disclosed was not identified to him, the requirements of section 40(1)(d) were not met. He also states that the Public Body had a duty to contact and advise him that the information at issue would be disclosed.

[para 10] The Public Body argues that the phrase “share any and all information” in the consent form is sufficiently clear to permit a reasonable person to know what the consent entailed. I agree with the Public Body. There is no reference in the consent form to criminal investigations or involvements. Additionally, the form does not refer only to a search of records held by law enforcement and police services but also by government agencies; it does not seem reasonable in this context to infer that the search of records would be limited to records related to criminal matters. I do not think that section 40(1)(d) requires a public body to identify the exact information that is to be disclosed in order to meet the standard for consent. In this case, the consent form was clear; *any* and *all* information the listed bodies had, could be disclosed (providing that the disclosure would be reasonable to meet the stated purpose of allowing SolGen to conduct a background check for a peace officer appointment). It is reasonable to expect that as the Complainant had been employed by a law enforcement agency in Alberta, his disciplinary and other employment information would be included in the disclosure.

[para 11] The purpose of SolGen obtaining the an individual’s consent on the Disclosure form is to allow the listed bodies, including the Public Body, to disclose the information to SolGen without having to contact the subject individual and obtain consent themselves; it is intended to streamline the process for all parties, including the individual. I do not agree with the Complainant that the Public Body had a duty to

contact the Complainant and obtain consent to disclose his personal information when he had already consented to the disclosure by signing the Disclosure form.

[para 12] The Complainant submitted a screenshot of the Police Information Portal (PIP), which lists incidents relating to the Complainant as “private.” I assume that information about these incidents designated as private was disclosed to SolGen by the Public Body. The Complainant argues that such private information should not have been recorded in the PIP, nor disclosed to SolGen.

[para 13] The Public Body also made arguments concerning the information in the PIP. How and when information should be included in the PIP is not at issue in this order and so I will not comment on the appropriateness of information recorded in that database. That said, I disagree with the Complainant that information designated as “private” in the PIP cannot be disclosed to SolGen in the context of background check under the *Peace Officer (Ministerial) Regulation*.

[para 14] Lastly, the Complainant argued that the information related to his job performance was the property of the City of Medicine Hat – Human Resources, and should not have been disclosed by the Public Body on that ground. The Public Body has responded that disciplinary misconduct matters are regulated under the *Police Act*, R.S.A. 2000, c. P-17, which clearly recognizes the Public Body as the responsible body, and not the City. Even if the City had a copy of the information at issue (and I have no evidence of that), the evidence shows that the Public Body maintained its own records, and it was information in the Public Body’s records that the Public Body disclosed to SolGen.

[para 15] For these reasons, I find that the Disclosure form signed by the Complainant authorized the Public Body to disclose the Complainant’s personal information to SolGen under section 40(1)(d). As such, there is no need for me to consider the application of sections 40(1)(c), (e) or (f).

**2. Did the Public Body make every reasonable effort to ensure that the Complainant’s personal information was accurate and complete as required by section 35(a) of the Act?**

[para 16] Section 35(a) 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*

...

[para 17] The Complainant argues that the summaries provided to SolGen by the Public Body were not an accurate reflection of the disciplinary matters being described.

[para 18] The decision that was made about the Complainant that is relevant to this case is whether he was eligible to be appointed as a peace officer. That decision was not made by the Public Body, but rather by SolGen. Section 35 places the onus for ensuring the accuracy and completeness of the information on the public body that *uses* the personal information to make a decision about an individual. Since SolGen was using the information to make a decision, the duty to ensure that the Complainant's personal information was accurate and complete was SolGen's duty. The Public Body's role in the decision was only to disclose the information requested by SolGen.

[para 19] The Public Body had previously used the Complainant's personal information to make decisions about disciplinary matters involving the Complainant. At that time, the Public Body would have had a duty to ensure the information was accurate and complete. However, those decisions are not at issue here. Additionally, it is not the disciplinary records *per se* that the Complainant is concerned with, rather the summaries of certain incidents provided by the Public Body to SolGen.

[para 20] In Order F2006-019, the Adjudicator considered a similar situation, in which a public body disclosed an employee's personal information to the Workers' Compensation Board, which then used the information to make decisions about the employee's eligibility for benefits. The employee had complained that the public body disclosed inaccurate information to the Workers' Compensation Board. The Adjudicator found:

While public bodies should certainly always endeavour to use and disclose personal information that is accurate and complete, the Act imposes the duty under section 35(a) on a public body only if it used or will use the information to make a decision that directly affects the individual. Here, I do not believe that the Public Body's disclosure of the Complainant's personal information to the WCB amounts to a decision of the Public Body that directly affected her. At most, a decision to disclose may be a decision that *indirectly* affects her. With respect to the adjudication of her claim for workers' compensation, it is the WCB that makes the decisions that *directly* affect her.

I recognize that section 35 of the Act incorporates a fundamental principle of fair information practices and emphasizes the importance of data quality because its absence may lead to serious consequences (Order 98-002 at para. 86). I also recognize that in providing information to the WCB, an employer is in a position to influence a decision that the WCB makes. However, when an employer provides information to the WCB in order for the latter to make a decision that directly affects an individual, section 35(a) of the Act imposes the duty regarding accuracy and completeness on the WCB.

[Order F2006-019 at paras. 87-88]

[para 21] I agree with the Adjudicator's analysis, and I find that it applies to the situation in this case as well. The Public Body's past decisions about these disciplinary matters (i.e. whether the matter should result in a warning, or whether the incident should be recorded in the PIP) are not at issue here. Following the reasoning above, the information disclosed by the Public Body likely influenced SolGen's decision about the

Complainant's eligibility and thereby had an indirect effect on the Complainant; however, it was SolGen that made the decision that directly affected the Complainant.

[para 22] For similar reasons, even if the Public Body made a decision that had an effect on the Complainant when it determined what information to include in the summary given to SolGen, I do not believe that this would be a decision that *directly* affected the Complainant. Although the Public Body would have known the purpose for which SolGen was collecting the personal information when creating the summaries, and therefore the possible impact on the Complainant, it was ultimately only SolGen that made the decision that directly affected the Complainant.

[para 23] In its submission, the Public Body stated that it "recognizes that not all records relating to all three files were reviewed in meticulous detail." However, it argues that the records it relied on to create the summaries were prepared by police officers who are under a duty to accurately prepare documents and records, and that reasonable effort and practicable means were used to ensure the accuracy and completeness of the information.

[para 24] As stated by the Adjudicator in the quoted order, accuracy of information is a fundamental principle of fair information practices and the absence of data integrity may lead to serious consequences for an individual. The summaries created by the Public Body in response to SolGen's request for information obviously had the potential to have a significant impact on the Complainant's career.

[para 25] The Complainant chose not to bring a complaint against SolGen so it is outside the scope of this inquiry to examine whether, by requesting only summaries of disciplinary or misconduct matters, SolGen fulfilled its duty to ensure the accuracy and completeness of the information it used to make a determination about the Complainant's eligibility for a peace officer appointment.

## **V. ORDER**

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

[para 27] I find that the Public Body had the authority to disclose the Complainant's personal information to Alberta Solicitor General and Public Security. I also find that the Public Body did not have a duty to make every reasonable effort to ensure that the disclosed information was accurate and complete under section 35(a) of the Act, as it did not make a decision directly affecting the Complainant in the circumstances presently being considered.

Amanda Swanek  
Adjudicator