

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2012-02

January 16, 2012

MEDICINE HAT POLICE SERVICE

Case File Number F5595

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint to this Office that a police officer employed by the Medicine Hat Police Service (“the Public Body”) disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

The Complainant, his estranged spouse (“spouse”), and his immediate family were involved in several incidents that were investigated by the Public Body and other police services.

During this time period, the Complainant was hospitalized for 24 hours. The Complainant alleges that the day after the Complainant’s hospitalization, an officer employed by the Public Body told both the Complainant’s sister and his spouse about the hospitalization. He argues that this disclosure of his personal information was not authorized under Part 2 of the Act.

The Public Body denied that the officer disclosed the Complainant’s personal information as alleged.

The Adjudicator determined that the Complainant did not provide sufficient evidence to conclude that the officer employed by the Public Body disclosed the Complainant’s personal information to his sister or spouse.

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

Orders Cited: AB: Orders F2007-019.

I. BACKGROUND

[para 1] An individual made a complaint to this Office that a police officer employed by the Medicine Hat Police Service (“the Public Body”) disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

[para 2] The Complainant, his estranged spouse (“spouse”), and his immediate family were involved in several related incidents that were investigated by the Public Body and other police services. One particular domestic incident between the Complainant and his spouse led to charges against the Complainant, and a trial.

[para 3] Following the trial on the same day, the Complainant was hospitalized for 24 hours. The Complainant alleges that the day after the trial and the Complainant’s hospitalization, the investigating officer (“Officer X”) told both the Complainant’s sister and his spouse about the hospitalization, as well as the reason for it, in separate phone conversations. He argues that this disclosure of his personal information was not authorized under Part 2 of the Act. He also states that his spouse included this information in an affidavit a few days later, which was used against the Complainant in another proceeding.

[para 4] The Public Body initially submitted its entire initial submission *in camera*; however, it subsequently agreed to exchange most of the submission. I accepted 9 pages of police reports *in camera*, as well as one page of a shift schedule for several named officers, as the information contained in these pages is such that the Public Body might be entitled to withhold under sections 17 and 20 if an access request were made for that information. I also accepted *in camera* two paragraphs of the Public Body’s written arguments, which would reveal the content of the 9 pages accepted *in camera*.

[para 5] The Complainant was represented in this inquiry by a family member who was authorized to act on his behalf pursuant to section 84(1)(f) of the Act.

II. INFORMATION AT ISSUE

[para 6] The information at issue is personal information about the Complainant, specifically about his hospitalization, allegedly disclosed by an officer of the Public Body.

III. ISSUES

[para 7] The Notice of Inquiry, dated July 22, 2011, listed the following issue:

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

IV. DISCUSSION OF ISSUES

[para 8] Where an inquiry involves an alleged unauthorized collection, use or disclosure of personal information, the complainant will normally have the initial burden of proof. This requires having some knowledge, and giving some evidence regarding what personal information was collected, used or disclosed, and the manner in which it was collected, used or disclosed. If this burden is fulfilled, the onus shifts to the public body to show that the collection, use or disclosure of the personal information was authorized under the Act (Order F2007-019, at paras. 8-9).

[para 9] Both parties have provided me with large amounts of background information concerning the incidents leading to the investigation, as well as information about the conduct of the investigation and Officer X. The only issue before me is whether Officer X disclosed information about the Complainant's hospitalization to the Complainant's sister and spouse, without authority for doing so under the Act.

[para 10] According to the Public Body's evidence, Officer X was off-duty on the day of the trial. The Public Body has provided me with statements of Officer X, in which she asserts that on the day of the trial, she contacted the Crown prosecutor's office to enquire about the outcome. The next morning, Officer X was still off-duty when she received a call from the spouse, who was at the time filing a complaint with the Red Deer RCMP regarding unwanted communications from the Complainant's family. Officer X spoke with an RCMP member about the matter. She then contacted another officer with the Public Body to follow-up, and at that time, heard about the Complainant's hospitalization.

[para 11] According to Officer X's statement, later that day she contacted the Public Body dispatch to obtain the spouse's phone number, which she did not have at home with her. The number she was given belonged to a cell phone that had been in the spouse's possession at one time, but which was now in the possession of the Complainant's sister. The sister answered Officer X's call. It is during this conversation that the Complainant alleges Officer X told the sister about the Complainant's hospitalization.

[para 12] Officer X states that it was not until three days later that the spouse sent a text to Officer X with her new phone number; Officer X does not indicate when she next spoke to the spouse.

[para 13] With respect to the alleged disclosure to the Complainant's sister, Officer X states that during the phone conversation between her and the Complainant's sister that took place the day after the trial, it was the sister who brought up the Complainant's hospitalization, and not Officer X. A document provided to me by the Complainant clearly indicates that the sister already had knowledge of the Complainant's

hospitalization. This document, entitled “Statement of Complaint”, appears to be a copy of a document initially provided to the Public Body as part of a complaint made to the Public Body about Officer X, by the Complainant’s family. The author of the document (who is also representing the Complainant in this inquiry) states that the Complainant was “voluntarily taken to the hospital as a result of a family intervention by his sister.”

[para 14] Despite this, the Complainant argues, apparently based on his sister’s recounting of events, that Officer X disclosed the fact of his hospitalization to his sister during the phone conversation. The Complainant makes arguments affirming the credibility of his sister and her claim that Officer X disclosed information about his hospitalization to her. He also makes arguments regarding Officer X’s lack of credibility. Neither the Complainant’s nor Officer X’s version of the story appears to be incredible; it may be that Officer X mentioned the Complainant’s hospitalization to his sister during the phone conversation without having confirmation that the sister had knowledge of the event. However, it might be that the sister mentioned the hospitalization to Officer X. Essentially what is before me are two reasonably believable but opposing versions of events; information indicating that the Complainant’s sister had knowledge of the Complainant’s hospitalization from sources other than Officer X; and no tangible evidence that Officer X disclosed information about the Complainant’s hospitalization to his sister. Given this, I do not need to make a determination as to the credibility of either Officer X or the Complainant’s sister. I find that there is insufficient evidence for me to conclude that Officer X disclosed the Complainant’s personal information to his sister.

[para 15] Regarding the alleged disclosure by Officer X to the Complainant’s spouse, there is also no tangible evidence of this disclosure. The Complainant has provided me with a copy of the affidavit sworn by the spouse for a separate legal proceeding. In that affidavit, the spouse states that on the day following the trial, she made a complaint about the Complainant’s family member(s) to the Red Deer RCMP. She then states that “The Red Deer Police [presumably the spouse is referring to the Red Deer RCMP] investigated and advised me that [summary of findings]. [Officer X] investigated. The police file number is [...]. The police officer advised me that [the Complainant had been hospitalized]. [Named RCMP member] had contacted...”.

[para 16] The Complainant argues that this excerpt of the affidavit shows that Officer X disclosed the Complainant’s personal information to the spouse. The Complainant also argues that the spouse would not have been able to include information about the Complainant’s hospitalization in her affidavit had Officer X not told her about it.

[para 17] The Public Body argues that it is not clear which officer the spouse was referring to when she states that a police officer advised her of the Complainant’s hospitalization. The Public Body provided me with a copy of the RCMP general occurrence report, which shows that a member of the RCMP, in the course of investigating the spouse’s complaint, was advised by an officer of the Public Body (other than Officer X) that the Complainant had been hospitalized. This communication occurred on the day of the spouse’s complaint to the RCMP (the day after the trial). The RCMP report mentions that the RCMP member spoke to the spouse, but does not

mention having told her about the Complainant's hospitalization. (I note that the file number on the general occurrence report is a digit off from the police file number given by the spouse in her affidavit, but the details in the general occurrence report make it clear that this is the report referred to by the spouse.)

[para 18] I agree with the Public Body that it is not obvious from the spouse's affidavit whether it was Officer X or an RCMP member who told the spouse about the Complainant's hospitalization. I do not have any substantial evidence that Officer X told the spouse, and the sequence of events offered by Officer X is credible. The Complainant argues that Officer X has shown bias against him throughout the investigation leading to the trial. Even if this were true, it is not, by itself, sufficient to persuade me that Officer X made the alleged disclosure to the spouse. In my view it is equally likely that the information was disclosed by a member of the RCMP when updating the spouse about her complaint.

[para 19] I find that there is insufficient evidence for me to conclude that Officer X disclosed the Complainant's personal information to his estranged spouse.

V. ORDER

[para 20] I make this Order under section 72 of the Act.

[para 21] I have no basis on which to conclude that the Public Body disclosed the Complainant's personal information in contravention of the Act.

Amanda Swanek
Adjudicator