ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2012-28

November 30, 2012

EDMONTON POLICE SERVICE

Case File Number F5277

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Summary: An individual brought a complaint under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act or the Act) that his name and licence plate number had been used to run queries on police information systems by various members of the Edmonton Police Service (EPS) in 2008 and 2009. The Complainant alleged that for some of the queries that had been conducted, the EPS had lacked the authorization required by section 39 of the FOIP Act.

The Adjudicator reviewed the evidence in relation to the individual queries. She found that the EPS had demonstrated the case-specific law enforcement purposes for running many of the queries. While for many others, in particular many of the 'licence plate and 'plate and name' queries, it could not show the case-specific reasons for conducting them, the Adjudicator accepted that the evidence showed they had been done (or on a balance of probabilities that they had been done) for routine law-enforcement purposes. For the queries that could not be associated with particular facts or circumstances demonstrating a law enforcement purpose, since there was nothing in the evidence to suggest the queries had been improper, the Adjudicator accepted affidavit evidence of officers of their usual and invariable practice as satisfying the onus to show authority. She also found that queries with respect to which a particular constable had given evidence of a specific purpose did not meet the test for a law enforcement purpose.

With respect to reasonable security arrangements, the Adjudicator conducted an oral component of the inquiry to review the EPS systems for documenting reasons for queries.

While this evidence showed that there were some inadequacies in the processes and practices in this regard, it also showed that the EPS is committed to continued improvement. Since the queries in relation to the Complainant had been shown to be authorized for all but one occasion, and the EPS systems had operated adequately for the most part in relation to him, the Adjudicator found that the case did not raise a concern regarding EPS's general compliance with section 38 of the Act. She held that in these circumstances, it was not necessary for her to make a determination about this issue.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, 33, 38, 39, 39(1)(a), 39(4), 41, 72; Police Service Regulation, AR 356/90, s. 5(1)(i).

Orders Cited: AB: Orders F2006-033, F2008-024.

I.   BACKGROUND

[para 1]   This inquiry arises in consequence of information provided to the Complainant by the Edmonton Police Service (the EPS or the Public Body) that his name and car licence plate number had been run through police information systems by various members of EPS, on numerous occasions in 2008 and 2009. (There were 72 queries in all; however, for many of these, two queries occurred on a single occasion, in the sense that a licence plate query was followed immediately by a registered owner query, so that the number of occasions for the queries is somewhat lower.) The Complainant says that many of these queries were done without the authorization required by section 39 of the *Freedom of Information and Protection of Privacy Act*, ("the Act"). (The Complainant does not question the authority for running a limited number of the queries, in particular, queries that were numbered in the EPS response to his access request as numbers 1 to 8, 11 to 15, 64 and 65.)

II.   ISSUES

[para 2]   The Notice of Inquiry sets out the issues as follows:

Issue 1:   Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?
Issue 2:   Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?
Issue 3:   Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 3]   The first two of these issues pertain to the EPS's collection of the Complainant's personal information (or access of information about him it already had) to run CPIC (Canadian Police Information Centre) queries, and its use for that purpose. It may be presumed that when the checks were run, the EPS accessed any information pertaining to the Complainant that was present on the system; however, it is not known

what this information was, and it is not possible in the present inquiry to make determinations as to whether there was authority for this collection (or re-collection) or use of any such information. As well, the facts do not raise the issues of disclosure of any information that was collected. Thus I will focus on the collection and use of the Complainant's information for the purpose of running the queries, which I have termed "Issue A", as set out below.

[para 4]   The evidence of the EPS indicated that in relation to a large proportion of the queries, there was no documentation as to the specific reasons why they had been conducted. In view of this, I decided to add the issue of whether the EPS has reasonable security arrangements in place in relation to information it has collected about the Complainant (which is stated as Issue B below). I received additional written submissions from the parties about this issue, and in addition, an oral component of this inquiry was held to further explore the matter of documenting the reasons for queries, and how this relates to the EPS's performance of its obligations under section 38 of the Act.

III.   DISCUSSION OF ISSUES

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

[para 5]   Under section 33 of the Act, a public body has the following authority to collect information:

> 33   *No personal information may be collected by or for a public body unless*
>
> (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 6]   Under section 39(1)(a), a public body may use personal information for the purpose for which it was collected or compiled, or for a use consistent with that purpose. Section 41 clarifies that, for the purposes of section 39(1)(a), a use of personal information is consistent with the purpose for which the information was collected or compiled if the use:

> (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 7]   Thus, section 39 is met where the personal information is used for the purposes of law enforcement, or is necessary for an operating activity or program of the public body. As well, by reference to section 39(4), a public body may use the

personal information only to the extent necessary to carry out its purpose in a reasonable manner.

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

[para 9]   I must now consider whether the EPS has shown that the various instances in which it collected and used the Complainant's personal information was for a law enforcement purpose (or for a purpose relating to and necessary for an operating program of the EPS). I must also consider whether the extent of its use was necessary to enable the EPS to carry out its law enforcement purposes in a reasonable manner.

[para 10]   The information on these questions was given by the EPS through its written submissions as well as through affidavit evidence of some of the members of the EPS who had conducted the individual queries, as well as of the EPS Disclosure Analyst and an external consultant who was retained to obtain additional information relative to the query audit log. I will deal with each of the individual queries below.

[para 11]   The EPS initially divided the queries into categories, as follows:

  i.   Licence plate queries
  ii. Licence plate and name queries
  iii. Queries conducted in Case File 08-062618; and
  iv. Queries conducted for other purposes.

In answer to further questions I posed to the EPS, it was determined that there were in fact no queries that were of licence plates alone, as in each case in which a licence plate query was run, the "R.O" feature had been enabled, which meant that some information about the registered owner of the vehicle was also provided. On the basis of this determination, the EPS withdrew an argument it had initially made that the 'licence plate alone' queries did not involve collection or use of the Complainant's personal information.

Queries for which a specific reason was provided

[para 12]   I will deal first with the queries for which the evidence revealed a specific situation-based reason why the query was conducted. I will then consider the remaining queries, for which there was no specific evidence of purpose, but reliance was placed instead on an account of the usual purposes for queries in particular contexts as well as evidence as to the "invariable practice" of officers.

[para 13]   Before turning to the queries themselves, it is useful to set out the following background information, which gives context to some of the queries. The Complainant in this case was involved in an incident, on May 12, 2008, in which a police officer (Constable Mishio, who was at the time the School Resource Officer at Eastglen High School) observed the Complainant driving in manner which the Constable regarded as inappropriate, near Eastglen High School. Shortly thereafter, the Constable approached

the Complainant, who by then was outside his vehicle and was engaged in an interaction with other individuals in the area of the high school. The Constable made a remark to the Complainant about his driving. After some further verbal exchanges, a physical altercation occurred between the constable and the Complainant, in which a third individual also became involved.

[para 14]   The Complainant was charged with assault of the police officer. (The third individual was also so charged.) The Complainant was arrested and granted bail, with specific conditions (to keep the peace and be of good behavior; to have no direct contact with three named individuals , including his co-accused in the assault charge except in the presence of counsel, and not to be within a five-block radius of Eastglen High School). An "Officer Safety Alert" was posted on the North Division Police Station Watchboard, and was also maintained on an electronic watchboard, indicating the offence with which the Complainant had been charged, and the conditions that had been imposed on him. The Complainant's trial for this offence took three days and concluded on July 23, 2009. Constable Mishio testified at this trial. The Complainant was acquitted of the charge on the final day of the trial.

[para 15]   During the period in which these events were taking place an EPS Standard Operational Plan was put into in place (in December, 2008), for the area between 118 and 122 Avenues and between 50 and 71 Streets, titled "HEAT - Hard Enforcement on Active Targets". Part of the purpose of the plan was to strictly enforce traffic rules in the areas of 120 Ave / 121 Ave due to an increase in traffic complaints, as well as to stop and identify occupants of "all vehicle traffic not associated to the areas", the latter possibly associated with a concern about increased drug trafficking and auto theft. It appears that information about the Complainant (and possibly other individuals) was appended to this plan, including the statement that he was "Belligerent to PO", the conditions attached to his recognizance, and a description and licence plate number of the Complainant's vehicle. The Complainant resided within the project area at the time.

[para 16]   The EPS Disclosure Analyst required the members conducting the queries at issue in this case to provide memoranda to her in relation to the queries. Some of them also swore affidavits relative to their reasons for conducting queries. As well, the EPS provided documentary evidence in relation to case file 08-062618, relating to the incident above, as well as to other instances of encounters between the Complainant and the police.

[para 17]   Some of the queries were conducted via the EPS internal information systems (EPROS or EPROS Gateway), while some were conducted through the 'CAD' system (computer-aided dispatch). These systems and how they are used are discussed more fully later in the order. Briefly, the internal system has an available 'reasons' field, which members are required to fill in. A CPIC query done via the 'CAD' system has a 'remarks' field which automatically fills in information relative to the person making the query. The 'remarks' field has a limited amount of additional space, but there was no requirement at the time the queries were done to fill in this field with the reasons for the query. The CPIC screen also has a 'reason for access' field that has a drop-down

menu, which fills in with 'investigative', unless one of two other available choices is made.

Queries associated with case file 08-062618

[para 18]   I turn first to the queries at issue that were related to the incident and events described in paras 14 and 15 – the queries related to EPS case file 08-062618, and its aftermath. The EPS submission states that a number of the queries were done in connection with the investigation and follow up of the incident, in particular, the following:

> Query 16 was a name query by a non-sworn member, L. Frevel. The documentary evidence provided by the EPS demonstrates that this person added onto CPIC a court-ordered recognizance in relation to the Complainant relative to case file 06-062618. This accounts for the query, and is a law-enforcement purpose.
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> Queries 20 and 21, which were nearly-concurrent licence plate queries, done via EPROS Gateway, were by Cst. Belzevick, who was the lead investigator in the case. The "remarks" column in the audit log shows that Cst. Belzevck entered the case file number when he conducted the queries. I am satisfied the investigation was the reason for the query, and that it is a law-enforcement purpose.
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> Query 36 was a name query by a non-sworn member, M. Camarta, who noted case file 08-062618 in her Memorandum together with a note that "court files were brought forward". The EPS explained that the CPIC warrant unit, to which this individual was assigned, queries names on the daily "brought forward list" to determine the next scheduled court date, and amends CPIC accordingly. I am satisfied the reason for the query was in relation to the file, again, a law enforcement purpose.

[para 19]   For some of the queries, the officers conducting them tied their purpose to the bail release conditions that had been set for the Complainant, and the Officer Safety Alert that had been posted in North Division:

> Query 9 was a name query performed on EPROS on May 13, 2008 by Cst. Chwok, Acting Staff Sergeant in North Division at the time. Cst. Chwock's Memorandum in response to the Disclosure Analyst's request states that he conducted the query to determine if any conditions had been set when the Complainant was released, and whether there was any need for a "C.I.S. Detective" to follow up on the conditions. The 'reasons' field was completed by Cst. Chwok with a notation consisting of what appears to be his payroll and regimental numbers together with the words "North CIS". I accept that this was the purpose of the query, and that it was a law enforcement purpose.
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> Concurrent 'plate and name' queries 22 and 23 were conducted from a mobile unit (via the 'CAD' system) in which Cst. Dascavich and Cst. Morrison were

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partnered, on June 1, 2008. Cst. Morrison's Memorandum indicates that the query was in relation to file 09-062618, that the Complainant's name had been posted on the North Division Watchboard in an Officer Safety Alert, and that the query was to learn what conditions the Complainant was bound by, and to be aware of information for possible file maintenance of the Complainant's and co-accused's files. I accept that this was the purpose of the queries, and that it was a law enforcement purpose.

Query 33 was a name query conducted via the 'CAD' system on September 25, 2008 by Cst. Abbott, who was assigned to North Division patrol. Cst. Abbot says in his affidavit that he did not actually recall the reason for the query, and could not locate any documentation about it, but he does say he saw the Officer Safety Alert, and lists the possible reasons why in view of this he would have conducted a query, including to see whether the bail conditions were in place to enable him to respond appropriately if he were to encounter the Complainant, and to identify the Complainant if he saw someone who looked like him in the vicinity of Eastglen High School. Given the circumstances and the Constable's duties at the time, I accept it is more probable than not that the query he conducted was for a purpose such as he describes, and was for a law enforcement purpose.

Query 40 was a name query conducted via EPROS (or EPROS Gateway) by Cst. Jacobs on October 29, 2008. Cst. Jacobs was the EPS member who created the Standard Operational Plan "Project HEAT" described above at para 15. He states in his Memorandum that the Complainant was one of the subjects of the plan, that at the time the Complainant had several conditions, and that he noted in the plan that the Complainant was to be checked as to whether he was abiding by his conditions. The 'reasons filed' entry made by Cst. Jacobs appears to consist of his regimental number. I accept that the purpose of the query was related to the creation of the plan, and that it was a law enforcement purpose.

Query 41 was a name query conducted from a mobile unit (via 'CAD') in which Cst. Smart and Cst. Hoogenberg were partnered, on November 4, 2008. Cst. Hoogenberg's Memorandum indicates that the query was in relation to file 09-062618, that he had been advised that the Complainant had been identified as an Officer Safety concern, and that he had conducted the query to determine the conditions for the Complainant's release and in case he was to deal with the Complainant in his regular course of duty. I accept that this was the purpose of the query, and that it was a law enforcement purpose.

Two name queries fairly proximate in time (Queries 38 and 39) were conducted via EPROS (or EPROS Gateway) by Cst. Paulino, a patrol officer in North Division, on October 25, 2008. Cst. Paulino had been involved in the investigation of file 08-062618, and noted the Officer Safety Alert that had been posted in the station. Cst. Paulino filled out the 'reasons' field with a regimental number and the word "work". The constable could not locate any documentation about these queries, but recalls them, and that they were performed to check for

warrants or outstanding conditions. I accept that this was the purpose of the queries, and that it was a law enforcement purpose.

Query 57 was a name query conducted via the 'CAD' system on March 19, 2009 in a mobile unit occupied by Cst. Junio and Cst. Tagg. Cst. Tagg recalled conducting a curfew check on the Complainant's co-accused in case file 08-062618, at the home of the co-accused, who at the time was also subject to a bail release condition, to have no contact with the Complainant. Cst. Tagg said that the query of the Complainant would have been to view a picture of the Complainant to ensure that he was not one of the persons present at the home of the co-accused, and thus that the co-accused was complying with the court-ordered conditions of his bail. I accept as more probable than not that this was the purpose of the query, and that it was a law enforcement purpose.

Queries 70, 71 and 72 are those which the Complainant regards as most contentious. They were name queries conducted via EPROS or EPROS Gateway by Cst. Mishio on the morning of July 23 (just after 9:00 a.m.), the day that the Complainant was acquitted of the charge in which Cst. Mishio had been the alleged victim of an assault by the Complainant. Cst. Mishio had testified in that trial. On the date the queries were conducted, Cst. Mishio was assigned to the Surveillance Unit, but he states in his affidavit that there was a possibility that he would be returning to Eastglen High School as the Resource Officer, and that the query was done to determine if there were any ongoing conditions on the Complainant, including any restrictions as to his attendance at the high school.[1]

[para 20]   Cst. Mishio's decision to make this query on the date and time in question is somewhat puzzling. He states that at the time he made the query he was not yet aware of the outcome of the trial because it had not yet concluded. It seems likely that the outcome of the trial would be a determining factor as to whether existing conditions would continue or be removed, or new ones imposed. Thus his action seems somewhat premature. (On the other hand, I have no evidence as to whether he would have known that the verdict would be given on the concluding day of the trial.) Regardless, in my view, the query was premature as an action for a law enforcement purpose. There is no suggestion that the answer to the question would in some way determine his reassignment to the School Resources post. I do not see that until he was certain that he would be assuming the post, or indeed until he had in fact assumed it, there would be any law enforcement reason for ascertaining the status of the Complainant's court-ordered conditions. I understand that Cst. Mishio also swore that he conducted queries only for reasons relating to his duties as a police officer. However, assuming these queries were conducted for the reasons the constable gave, I do not accept that it was, in the circumstances and at the time, reasonable for him to conduct this query for this purpose. Therefore, it was, in my view, neither done for a law enforcement purpose, nor done only to the extent necessary to carry out a law enforcement purpose in a reasonable manner.

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[1] Information as to whether Cst. Mishio filled in the 'reasons' field is not available, as the record of this query could not be located by the outside consultant who had been retained to determine the content of the 'reasons' fields for all the EPROS queries.

[para 21]   In making this finding I have noted the Law Enforcement Review Board decision (presented to me by the EPS) that considered Cst, Mishio's testimony in the context of an LERB decision regarding a disciplinary complaint by the Complainant of an unnecessary or unlawful exercise of authority under section 5(1)(i) of the Police Service Regulation. The LERB upheld the Chief's first-level finding that he had insufficient evidence to support a charge. I note in this regard first, that I do not believe that the appropriate considerations and the standard of proof for whether there is sufficient evidence to support a charge of violation of the Police Service Regulation are the same as that for deciding whether lawful authority under section 39 of the FOIP Act has been demonstrated on a balance of probabilities. Further, the LERB reviewed the Chief's decision on a standard of reasonableness; it did not find that his decision was correct. As well, the LERB did not specifically say, and I do not see that it necessarily follows from its conclusions, that it regarded Cst. Mishio's explanation for the queries he conducted to be a satisfactory. It set this explanation out, but commented only that "in the absence of specific allegations of misconduct or evidence in support" the Chief had enough information to determine there was insufficient evidence to support a charge. I am, in any event, not bound by the decisions of the LERB.

[para 22]   Four of the queries related to other interactions between the Complainant and the police:

> Name queries 18 and 19 were conducted by Cst. Ellet to enable him to personally serve the Complainant with a parking ticket.

> Plate query 25 was conducted by Cst. Steward, who was conducting an investigation in relation to EPS case file 08-084763, a motor vehicle accident involving the Complainant.

> Queries 50, 51 and 52 were concurrent 'plate and name' queries conducted by Cst. Mitchler in connection with the issuance of a violation ticket for parking in an emergency access lane.

The 10 queries reviewed above were all conducted for law enforcement purposes. With the exception of Constable Mishio's query, they were, in my view, also conducted to an extent reasonable for the purpose, in the sense that the name was used to run the query.

[para 23]   The foregoing queries, together with queries the Complainant did not put into issue in this inquiry, total 38 queries (or 24 if concurrent queries of licence plate followed by name are counted as a single one). This accounts for approximately half the total number of queries of the Complainant in the time period at issue.

Queries for which no specific reason was provided

[para 24]   The remaining 31 queries (or 21 if concurrent queries of licence plate followed by name are counted as a single one) are all either licence plate queries (with

the R.O. feature enabled) (these were queries 10, 17, 24, 26, 29, 30, 37, 42, 49, 53, 55, 62, and 63), or are concurrent licence plate and name queries (these were queries 14, 15, 27, 28, 34, 35, 45, 46, 47, 48, 60, 61, 66, 67, 68, and 69).[2]

[para 25]   For all of these remaining queries, the officers who conducted them were unable either to recall them, or to provide any documentation relative to them which would indicate the purpose for which they were conducted. Rather, for each of them, the EPS member in question provided an affidavit attesting to the following: that they were assigned to a patrol unit or a canine unit at the time of the query, that they were not acquainted with nor did they know of the Complainant; the usual reasons why such queries are conducted, and; that their usual and invariable practice was to conduct queries only for police purposes.

[para 26]   As the EPS points out, former orders of this office have accepted evidence of this nature as adequate evidence of a police purpose, as long as there are no circumstances raised by the Complainant which suggest that there may be some reason to doubt the legitimacy of the queries. There is also a former order saying that a large number of queries does not necessarily in itself raise a suggestion of impropriety (Order F2008-024).

[para 27]   I must ask whether anything about the circumstances of the present case raises doubt as to whether the affidavits provided by the EPS members who conducted them as to their likely purposes and the members' invariable practice can be accepted as evidence of the police purpose for the queries.

[para 28]   The Complainant says in his submission that he has been the subject of police harassment. However, leaving the file 08-026218 incident aside, he does not point to specific instances in which police have approached him, or dealt with him in a harassing fashion. I might agree that harassment was an appropriate descriptor if the queries were related to unwarranted vehicle stops. However, I do not have evidence as to whether they involved stops at all, and I may presume that the Complainant would have put forward evidence of any stops he regarded as unwarranted, to support his claim of harassment. Further, there was a suggestion in the oral inquiry that any vehicle stops would show up in accessible "unit histories". As well, an EPS witness in the oral component of the inquiry (whose testimony is described more fully below) stated that any vehicle stop that was conducted properly would be documented as an 'event'. However, the members conducting the unexplained queries all stated there was no documentation to which they could refer to find the reasons for their queries. In view of the foregoing, I believe I may conclude that none of the queries at issue resulted in vehicle stops.

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[2] Two queries, by Constables Lawczynski (#56) and Krzcziu, (#53) appear on the query log as they were name-only queries, but it was later determined that in fact, the officers also concurrently queried a licence plate for a vehicle also registered to the Complainant that was not mentioned in his access request. Thus they are in fact 'licence plate and name' queries.

[para 29]   Possibly the Complainant would regard his information as it appears in "Project HEAT", and the "Officer Safety Alert" document, as well as the ensuing queries discussed above, to constitute 'harassment' such as could lead me to doubt the validity of undocumented or unexplained plate and 'plate-and name' queries. However, I am in no position to judge the propriety of identifying a person who has been charged with assault of a police officer as a targeted person in such a project plan, or of the posting of the safety alert. Despite the fact the Complainant was ultimately acquitted of the charge of assaulting the officer, I do not have enough knowledge about him, or about police practices and processes concerning such cases and what may or may not be appropriate, to make such judgments. Further, though the Complainant raised the idea of being "targeted" in a general sense, he did not specifically argue that steps taken by the police (that were just described) were, given the outstanding charge against him, themselves inappropriate. As to whether the queries that ensued from these police actions constitute possible evidence of harassment, again, given that the Complainant was charged with assault within or near the project area, and that the safety alert arose from the fact of this charge, I will not dispute that queries that were based on or related to the project plan and the safety alert were in relation to law enforcement and were to the extent reasonable for that purpose.

[para 30]   I must also consider the possibility that when the Complainant speaks of harassment, he is referring simply to the large number of queries that have been done relative to him. Explanations which I regard as satisfactory were provided for all but three of the queries of the Complainant that used only *his name* (in contrast to plate number), (the exception being the three queries by Cst. Michio discussed above at para 20). Thus, leaving that query aside, if by "harassment" the Complainant is referring to the queries themselves, such harassment, if it occurred, could consist only of the 21 licence plate or 'plate and name' queries that are not explained on a case-by-case basis.

[para 31]   I agree that such a large number of licence plate queries over a small period of time (14 months) raises the question of whether the Complainant was being singled out in some way when his licence plate was queried. In this regard, the evidence has shown that this was overtly the case for the 'Project HEAT' target area. However, the largest number of unexplained queries were in fact not conducted by EPS members assigned to patrol in that area (five of them were conducted by someone assigned to North Division patrol, leaving 15 that were not). This means that a large number of licence plate and 'licence plate and name' queries remain for which there is no suggestion of a particular fact-specific explanation.

[para 32]   However, 13 of the 21 queries that were initiated using the licence plate number of the Complainant's vehicle – numbers 10, 17, 24, 26, 29, 30, 37, 42, 49, 53, 55, 62 and 63 - were of the Complainant's licence plate *alone* (though with the R.O. feature not de-selected). As a query that is initiated by a licence plate suggests that the name of the driver is unknown to the querant, and as no further action – not even a further query of the registered owner's name (as returned on a plate query) – appears to have been taken even once the registered owner's name was known, it follows that querant did not identify and then query the Complainant as someone already known to him. Thus, in my

view, the explanation offered by the police officers who conducted the queries can be accepted – that is, that they were simply routine licence plate queries of the kind commonly carried out by members on patrol, for the various purposes, stated in their affidavits, for which such queries are conducted, such as whether vehicles have been reported as stolen, flagged as being under surveillance, and so on.

[para 33]   The position might be somewhat different with respect to the eight queries that were initiated using a plate number, but that were accompanied by a name query of the registered owner (queries 14/15, 27/28, 34/35, 45/46, 47/48, 60/61, 66/67 and 68/69). Three of these were in the North Division, and therefore within or near the area in which the Complainant had specifically been targeted for observation, but five were conducted in other patrol areas, including Downtown, West Division, and Southeast Division.

[para 34]   I note, however, that for all eight of these queries the entry of the name and birth date of the registered owner was within the same minute as the entry of the plate number. (This includes a query conducted by Cst. Parker on one of the dates of the Complainant's trial.) This suggests that the name query was routine in the same way as the plate queries were. In other words, it was not a case of the officer having run the plate, discovering that the registered owner was the Complainant (who was sufficiently notorious to the police to be known to the querant) and consequently taking some further police action in relation to him, including querying his name.[3] This understanding is supported by the fact that no further interactions between any of the officers doing these queries and the Complainant seem to have ensued. Thus even if (which I have not concluded) it would be inappropriate for a police officer to run a licence plate query relative to the Complainant because of what the officer knew about him, it does not appear that that is what was happening for these queries.

[para 35]   To summarize with respect to all the queries initiated by a plate number, the manner in which they were done suggests they were innocuous in a way that refutes the suggestion that the Complainant was being specifically and inappropriately targeted. I say this despite the unique circumstances of the present case that during the period in which these queries were run, the Complainant was the subject of an outstanding charge of having assaulted a police officer. I have no basis on which to conclude, even on a balance of probabilities, that the large number of queries outside the target area of 'Project HEAT' was related to this fact. As the evidence before me does not support the theory that the queries conducted relative to the Complainant singled him out as such a person, this cannot form a basis for rejecting the officer's attestations of routine purposes and invariable practices with respect to these queries. In saying this I am mindful of the onus on the EPS to demonstrate authority for conducting the queries. My conclusion here is that the affidavit evidence regarding likely purposes and invariable practice cannot be doubted *on the basis* that there is evidence the Complainant was being inappropriately singled out for licence plate queries.

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[3] If, on the other hand (though it was not suggested to me) there was some automatic link to the "Officer Safety Alert" or to some other information about the Complainant as a person subject to an outstanding charge of assault, a further query would, in my view, be a law enforcement purpose.

[para 36]   Thus I find that the EPS has demonstrated that the queries initiated by licence plate numbers were conducted, in accordance with Part 2 of the Act, for a legitimate law enforcement purpose.

[para 37]   The fact that a large number of the queries in this case were conducted without any documentation about their purpose is the subject of the second part of this order, which deals with reasonable security arrangements under section 38 of the Act.

Issue B: Did the Public Body protect the Complainant's personal information by making reasonable security arrangements against such risks as unauthorized use, as required by section 38 of the Act?

[para 38]   As already discussed at length above, my review of the initial evidence submitted by the EPS suggested that for many of the queries at issue, there was no documentation, that was in existence prior to the Complainant's access request, as to why they had been conducted. In written correspondence with the EPS, I asked it to explain whether and why this appeared to be the case in spite of the fact, as indicated in earlier orders of this office that canvassed the evidence of the EPS about recent innovations in its systems, it appeared that the systems had a 'reasons' field that was to be filled in for every CPIC query.[4]

[para 39]   The EPS took the position that the presence or absence of a 'reasons' field, and whether it had been filled in, was not determinative of whether a given query was legitimate. It said that for this reason it had not taken steps to determine whether 'reasons' fields had been filled in.

[para 40]   However, I asked it to take such steps because, in my view, whether a 'reasons' field existed for a given query and in fact had been filled in was a very relevant factor, particularly for queries in which no specific reason could be determined by the querant either from their recollection, or from other documentation such as a notebook entry or investigation file number. Clearly if a 'reasons' field had in fact been filled in, this would be superior evidence to that of a plausible explanation as to why such a query might have been conducted, together with an attestation of usual or invariable practice of conducting queries for authorized purposes.

[para 41]   The EPS responded that many of the queries in this case were conducted using the 'CAD' system (computer-aided dispatch), which is used by the dispatch unit, and by officers engaged in front-line police work, including patrol work, in their mobile units. While there is a 'reasons' field available for querants to fill in when using the EPS internal database "EPROS", there is no such field for queries performed using the 'CAD' system. For the latter, there is only a 'remarks' field. This field autofills certain information relating to the querant. It does leave some limited space for additional remarks, but at the time of the queries at issue, this 'remarks' field did not have to be filled out by reference to the specific reason for the query.

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[4] See, for example, Order F2008-024.

[para 42]   The EPS explained that'CAD'is a front-line tactical policing tool which members use when engaged actively in police work. It said that members engaged in active responses do not have time to articulate a police purpose and fill in a 'reasons' field, and that public and officer safety would be jeopardized if members had to fill in the field for each query. It also explained that after officers have attended an incident and need to do further investigative work, they will then shift to EPROS, the internal records management system, which contains more information, and which does have a 'reasons' field (which, since 2009, must be filled in in order to gain entry to the system).

[para 43]   In view of the information I had received regarding 'reasons' fields and related issues, I thought the question of reasonable security arrangements merited further examination. Therefore, I decided to conduct an oral hearing to address the adequacy of the EPS's security provisions when using personal information to conduct CPIC searches, in particular, searches using the'CAD'system.

The oral inquiry evidence

[para 44]   The witnesses for the EPS in the oral portion of the inquiry were Ms. McCloskey, Disclosure Analyst, and Superintendent Keller of the Informatics Division.

[para 45]   Ms. McCloskey's testimony related primarily to training on the appropriate use of the EPROS internal system. She explained that members are trained on recruitment and in an ongoing way, that they may access information systems only for police purposes, that they must ensure that they can clearly articulate these police purposes, and that entries into the 'reasons' field should be as specific as possible. She pointed to case file numbers, standard operational plan numbers, and event numbers as the optimal kinds of written recording, and that notebook recording could be used after the fact if there was no opportunity to record contemporaneously. She said that while the training was primarily in relation to EPROS rather than the 'CAD' system, the principles as to appropriate use applied in relation to all information systems.

[para 46]   Superintendent Keller, Informatics Division, gave testimony as to what information can be obtained from CPIC regarding both people and vehicles. He said that a licence plate query returns, among other things, the name of the registered owner, as well as whether the vehicle has been registered, has been stolen, or is a vehicle of interest. If the registered owner information is then separately submitted by pressing a button, it returns information such as any criminal history, outstanding warrants, bail release conditions, and violent nature. Queries of names can also be performed.

[para 47]   The Superintendent explained that 'CAD', which accesses CPIC, is used by the dispatch unit to build information about a request for service, which is packaged by a dispatcher to send to a responding mobile unit. "CAD' is also used by police officers in mobile units to gather information directly in responding to a call. In either case, it is a tool to manage an active event.

[para 48]   Superintendent Keller explained a document which was entered into evidence (Exhibit 12) which showed a "CAD CPIC Vehicle Query" screen. This screen contains a REM ('remarks') field, which autopopulates with the querant's regimental number, and allows room for additional comments up to 40 characters in total. This CAD/CPIC screen also contains a field entitled 'query reason' which has a drop-down menu with a limited number of choices, including 'investigative' (only three menu items have been installed by EPS for 'CAD' though apparently others were available in CPIC that had not been included). "Investigative' is the choice among the three available that in Superintendent Keller's view would be most suitable for the work of dispatch units and police officers on patrol described above.

[para 49]   The Superintendent also provided information, including by way of reviewing a series of screenshots, policy manual excerpts and service directives, respecting EPROS Gateway, which can be accessed by officers in mobile units to provide deeper or 'richer' information, and information for reports, which are completed through Gateway. This would typically be accessed after all risks in a response had been managed and the situation had been normalized, for the purpose of conducting a more purposeful and thorough part of an investigation.

[para 50]   EPROS Gateway has since 2006 been subject to a requirement to fill in the reasons field. Since 2009 (which post-dates most of the queries here at issue) the system requires the 'reasons' field to be filled (in writing rather than through a menu) in order to gain access to the system. The login screen also contains a reminder and warning regarding the appropriate use of the system, that inappropriate use constitutes misconduct under the Police Service Regulation and is potentially also a criminal offence, and is a breach of the conditions of EPS employment. (There is no parallel warning for accessing CPIC through 'CAD", although Superintendent Keller indicated that consideration is being given to bringing the 'CAD' system into conformity in this regard).

[para 51]   A 2008 Service Directive respecting completion of the 'reason for access' field in EPROS and EPROS Gateway (Exhibit 27) states that "the reason for access shall include the factual reason for access, i.e. occurrence numbers and/or any comments as to why the query is being made". Exhibit 8, an EPS newsletter, contains a highlighted textbox entitled "Accessing information through EPROS/CPIC: are you doing it correctly?" which states: "… be as specific as you can … and include the occurrence number. If you need to access more than one name at a time fill in the reason for access query for each name." The space available in the field is 100 characters.

[para 52]   Superintendent Keller noted that when investigating using EPROS Gateway, reasons for access might need to be updated continuously on a per-query basis, and that though this could be burdensome, it can and should be done.

[para 53]   This service directive also contains a section indicating that exceptions can be sought for filling in the field for police activities involving large numbers of queries as part of the responsibilities of an assigned role. However, such exceptions are to be conditional on members recording the reasons for their queries in their notebook or on an

electronic archiving system accessible for audit purposes. Superintendent Keller indicated that no such exceptions had been granted.

[para 54]   The requirements for filling in a reasons field when accessing EPROS or EPROS Gateway are, as already noted, in contrast to those for EPS's 'CAD' system. For the latter, filling in is not required, nor is there any opportunity for filling in the field after an incident is over, since the system closes and cannot be re-opened.

[para 55]   However, Superintendent Keller indicated that the local CPIC field officer in Edmonton had informed him recently that the policy for CPIC queries, regardless how accessed, is that the 'remarks' field be filled in. He stated he was surprised and concerned to learn this, as he felt EPS should be in compliance with the CPIC policy, yet that there are situations in front-line policing in which compliance is impossible, in that an officer's refocusing to articulate a purpose could compromise their own and public safety and the effectiveness of policing. Superintendent Keller provided a hypothetical illustration of a policing situation in which the need to pay close attention to developing events would make it impossible to record police purposes as the situation was still evolving.

[para 56]   Superintendent Keller stated in this regard that he intended to seek a ruling from CPIC National Policy Office, for which he would make his concerns known. He would then strive to bring EPS practice in line with CPIC policy, looking for enhancements in the system and to training to enhance accountability. He noted, for example, the possibility of drop-down menus for common policing activities, and the possibility that the system would record the fact that a registered-owner query follows a plate query. He also noted the solutions might be different for activity-specific reasons that for individual-specific ones (the latter presumably necessarily involving a name query). The Superintendent also agreed that after-the-fact recording in notebooks might achieve the reason-recording objective for some circumstances.

[para 57]   The Superintendent's attention was drawn by counsel for the Complainant to the manner in which some of the 'reasons' fields had been filled in (as determined by the outside consultant retained by the EPS to retrieve this information) for the queries that had been conducted via EPROS or EPROS Gateway. A review of the log of queries containing this added information shows that of the 13 such queries, no information was available for five of them[5], two indicated precise reasons relating to a file, one stated "PSVU daily activities", one indicated what Superintendent Keller thought might be a payroll number, a regimental number, and the words "North CIS", three indicated a regimental number together with "work", "police", or "police work" (though two of these were clearly associated with case file 08-062618), and one indicated just a regimental number (though, again, this was shown to be associated with the creation of the standard operational plan 'Project HEAT'). Of the thirteen queries, it was possible to ascertain a

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[5] This was not because the field had not been filled in, but because the queries could not be located at all by the outside consultant in the part of the system from which the reasons as filled in in the 'reasons' field could be derived. However, two of these five queries did have the associated file number entered in the 'remarks' field, and the remaining three were the queries conducted by Cst. Mishio, relative to which he had a specific recollection.

precise reason by reviewing the 'reasons' field for only two of them. In response to questions from counsel for the Complainant, Superintendent Keller agreed that for the most part, given what had been entered in the 'reasons' field, the practice of the officers involved had been inadequate and not in conformity with EPS requirements. He also suggested that the case file numbers should have been entered. As I have already noted, however, a number of these queries were not in issue, and for others, the reasons were available through other means.

[para 58]   Counsel for the Complainant suggested that unit histories, which appear to be readily available to EPS, would demonstrate for a given plate query whether it was one of a sequence of such queries, if so, lending support to the idea that the officer was engaged in routine 'random' queries at the time.[6] Similar information could be derived by obtaining queries conducted just before and just after the queries at issue: that is, if these were also plate or 'plate and name' queries for other vehicles or registered owners, it could be assumed the querant was engaged in routine queries rather than that he was focused on a particular vehicle and its driver for other reasons.

[para 59]   The evidence in the oral part of this inquiry also focused to some extent on the ability of the EPS to conduct audits on the use of its systems. The oral evidence and documents showed that members are warned that random audits will be conducted and that inappropriate uses will be penalized. The witnesses stated that internal audits are done, and that EPS can audit the way 'reasons' fields are filled in (with the help of an external consultant with expertise in retrieving such information) though as the evidence showed, there is not necessarily an ability to find this information, since some of the individual queries could not be located at all through this process.

[para 60]   As well, at my request, the EPS provided some supplementary information concerning their audit processes. It did not, however, give any information concerning any actual audit results or any difficulties that may have been encountered in conducting audits in relation to the presence or absence of 'reasons' fields or how they had been filled in.

[para 61]   In terms of the ability to discern the reasons for access apart from 'reasons' fields, the witnesses indicated that this was by way of 'sleuthing' on the part of the disclosure analyst, involving pulling files in which the Complainant was involved, determining which officers were involved and inquiring of them whether they could determine the reason, and using the identity-based records management systems in any ways that would yield the required information.

Discussion re reasonable security arrangements

[para 62]   I note that some earlier orders of this office have been based on an incorrect assumption about the facts, that arose from evidence given by the EPS with respect to its

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[6] It may be inaccurate to describe such queries as necessarily truly random, as it seems likely members rely on intuition informed by experience, as to what a given query might yield, depending on factors such as the nature of the vehicle, its location and its occupants.

practices in conducting queries – notably that according to EPS policies, the 'reasons for access' field is available and is to be filled in for all CPIC queries. In Order F2008-024, former Commissioner Work said (at para 32):

> The EPS … provided a Service Directive requiring that members enter a reason for access when conducting queries of the EPS records management system (in EPROS an EPROS Gateway). The EPS did not provide an explanation in its submission as to the relationship between the "EPS records management system" and CPIC (which is a national database), other than to note that before June, 2006, searches using PROBE (as the EPS system was then called) defaulted automatically to also conduct CPIC queries. However, as the latter Service Directive states that "[i]n keeping with EPS *and CPIC requirements***,** members shall complete the mandatory fields in the EPROS - Reason for Access", *I take the EPS submissions on this point to mean that "reason for access" information is also required for CPIC queries.* [emphasis added] …

Possibly in this and other similar cases, queries conducted via 'CAD' simply did not arise for discussion because no queries at issue in those cases had been conducted in that manner. In any event, the true state of affairs, as discussed above, is that there is no requirement imposed by EPS on its members to provide written reasons for a CPIC query when using the 'CAD' system (though, as discussed, there appears to be such a requirement imposed by the CPIC Policy Office, with which EPS policy is presently not in line).

[para 63]   The earlier orders of this office have also said that the requirement to record the specific reasons for a query is an important element of reasonable security measures, in that it both requires the reason to be formulated clearly before the query is done (which could dissuade inappropriate queries), and enables an audit after the fact that can draw on direct evidence of the reasons, as opposed to conjecture. Audit capability can be an important element of reasonable security arrangements. That this is so formed part of the EPS's own submissions in Order F2006-033, as shown in Appendix C, which is attached to the Order. In particular, paras 133 to 135 of Appendix C (excerpted from the EPS submission) state:

> 133. In May of 2008, the EPS issued a further Service Directive concerning Completion of Reason for Access/Use in EPROS and EPROS Gateway […]. The Service Directive specifies that the reason for access must be specified when logging onto the system and/or when initiating a new search or query, subject to certain limited exceptions.

> 134. Each of the members who testified during the course of this Inquiry were asked whether they were now aware that queries could only be conducted in accordance with the Service Directive pertaining to Accessing Police Information, and whether the Service Directive provided sufficient clarity regarding the rules that apply to use of police information systems. All of the witnesses who testified indicated that the Service Directive was clear, and provided appropriate guidance. In addition, the members all indicated that they were using the "reasons" field to assist them in being (sic) to articulate the reason for a particular query, if asked about it subsequently.

> 135. These policies, and the introduction of a "reasons" field in EPROS, are important

components of the "reasonable security" arrangements that are currently in place regarding use of police information systems.

If the reasons, or absence of reasons, cannot be determined, there is no disincentive for members to use the tool for inappropriate purposes.

[para 64]   In my view, the considerations as to what is required for reasonable security arrangements are different for different circumstances. I will consider each of the following separately: licence plate and contemporaneous 'plate and name' queries; name queries in CAD, and; queries using EPROS or EPROS Gateway.

[para 65]   With regard to licence plate and 'plate and name' queries, the evidence showed that it can be impracticable for a member on patrol conducting such queries in a routine manner to enter a distinct reason – for example, 'routine plate query' – for every instance, at least not given the features of the existing system. I note that in the video of Inspector Neufeld (Exhibit 8) concerning reasons requirements, the Inspector states that a member conducting multiple routine plate queries is not required to provide a reason for each, but he does recommend making a notebook entry if this endeavor is associated with a particular activity, for example, a standard operational plan.

[para 66]   I have noted Superintendent Keller's commitment to refining the system to make it easier to provide a reason for each such routine plate or 'plate and name' query, particularly if this is demanded by CPIC policy. I am not sure this would necessarily dissuade members from making inappropriate plate or 'plate and name' queries, such as those made to identify a person in whom the querant had a non-policing interest, because the same entry could be made for both appropriate and inappropriate queries. However, I agree that a requirement for documenting reasons even for multiple routine queries would be beneficial for audit purposes, and for the purpose of training members to provide reasons for queries without exception.

[para 67]   Despite this, I do not think the absence of a mechanism for facilitating individual entries for the routine plate and contemporaneous 'plate and name' raises a concern relative to section 38 of the Act in this case. As explained above, all such queries about the Complainant appear to have been proper. As nothing about these queries suggests the system is failing, there is no reason to treat them as raising the question of whether the terms of section 38 are being met.

[para 68]   I turn to name queries that are conducted through'CAD'during active policing, which are initiated by a name (and possibly associated information) or first by a licence plate and subsequently, possibly after contact with the driver, by the driver's name.

[para 69]   I agree that entry of a reason for a query via 'CAD' while the officer is engaged in relation to the person being queried should not be required, for the reasons, already discussed, that the officer needs to be focused on the work at hand. As Superintendent Keller stated, for many such encounters, the police officer will thereafter

resort to EPROS and will then be required to document their reason to gain entry to the system.

[para 70]   However, possibly there is a gap for situations in which an encounter during active police work gives rise to a query, but there is no further investigation via EPROS, nor any occurrence number, file or other documentation. As already noted, there is no after-the-fact opportunity to document the reason in 'CAD'. In my view, unless some other demand immediately takes the officer's attention, a requirement that an after-the-fact notebook entry be made associating the name with the reason for the encounter would be highly beneficial for cases in which there will be no other documentation. Unless there is a requirement at least after the fact to record a reason for every query of a name in circumstances in which no other documentation will naturally ensue, EPS members will be less constrained, both in that their attention is not thereby focused on the need for a reason to run a query, and in terms of the deterrent effect of an audit that can show that no reason was recorded. As Superintendent Keller indicated, a way should be found to facilitate making such entries on a searchable system rather than manually.

 [para 71]   The same observation – the absence of the salutary effects of a requirement to record reasons – would hold true for any name query on 'CAD' that would have no associated documentation, whether or not there had been an encounter.

[para 72]   Further, the absence of documentation of this sort where name queries are done via 'CAD' means no concrete evidence is available where, as in the present case, it would be highly useful. A considerable number of the queries of the Complainant that were done in order to ascertain his bail release conditions and related information were done via the 'CAD' system, and had no associated documentation. This meant that for some of them, the officers had to rely on memory and to speculate to some degree (for example queries 33 and 57), as well as take the extra step of providing affidavits about their usual and invariable practices. Further, the circumstances for some of these queries may have been such as to permit contemporaneous recording. Put simply, the best possible evidence of purpose could have been created, either contemporaneously or after the fact, without being unduly burdensome, but it was not.

[para 73]   Despite this, however, all of the 'name alone' queries conducted about the Complainant on the 'CAD' system in the present case were shown to have had (or to have had more likely than not) a proper police purpose (and many of these queries were not at issue). Thus, again, I do not regard this as an appropriate case in which to make a determination as to whether section 38 of the Act is contravened by the absence of 'reasons' fields that would record the reason for a name query via the 'CAD' system, or by the absence of a strict requirement for recording by some other means.

[para 74]   I turn, finally, to the CPIC queries conducted via EPROS. As discussed above, there were 15 such queries, and the 'reasons' field could be used to ascertain the reason for only two of them.

[para 75]   However, for all but three of these queries (those conducted by Cst. Mishio), the EPS was able to demonstrate, in some cases conclusively and in others on a balance of probabilities, that the query was conducted for a police purpose, and was reasonable for the purpose. (Two of them, numbers 20 and 21, were not in issue in any event.) Thus, again, while the failure of EPS members to follow their own policies and the tenets of their training in terms of recording reasons is concerning, it does not follow that they are commonly conducting these queries for improper purposes. Further, the evidence in this case was that since 2009 (which post-dated most of the queries here at issue) for EPROS and EPROS Gateway, reasons must be filled in to make it possible to log on to the system. This inquiry has brought the failures regarding the content of the entries to light, and I presume that future training will make clear to members the position taken by Superintendent Keller that entries such as "police work" are inadequate responses. In view of the foregoing, I do not consider this to be an appropriate case for considering whether EPS's general processes respecting documenting reasons in the 'CAD' system violated section 38.

[para 76]   As discussed above, Cst. Mishio's purposes for conducting queries did not, in my view, meet the requirements of the Act. However, as this was exceptional relative to the rest of the queries, it does not, in my view, in itself raise a process concern under section 38.

[para 77]   In making these observations, I do not rule out the possibility that circumstances may arise showing that a significant number of queries are conducted for which no police purpose can be determined, or that this is commonly the case, or it is shown that EPS members are frequently conducting queries for improper reasons. Should this happen, it may be necessary to revisit the questions about which I have chosen to make no determination given the facts of the present case. In other words, my remarks about the EPS systems for documenting reasons in this case are not meant to be taken as a conclusion that they are necessarily entirely adequate.

[para 78]   Nor would it make sense for me to make a determination that the systems were adequate in relation to the Complainant alone. The queries were proper for the most part in this case, and could be demonstrated to be so by means other than a 'reasons' field. Thus the absence of documented reasons, or of a requirement for documenting reasons for some situations, did not raise a concern that the system is failing for these reasons in this case. However, this might not always be so under the same system. I cannot rule out the possibility that in other circumstances, these factors would be found to be key weaknesses in the processes that EPS has put in place to try to ensure appropriate use of police information systems by its members.

[para 79]   I encourage the EPS to take further steps to refine and enhance its systems to enable easier recording of reasons for access to police information systems and easier auditing of the reasons, and to ensure compliance with policies and training regarding recording of reasons.

IV.   ORDER

[para 80]   I make this Order under section 72 of the Act.

[para 81]   I find that for all but three of the queries at issue in this case (queries 70, 71 and 72), the EPS conducted the queries in accordance with section 39 of the Act.

[para 82]   I find that queries 70, 71 and 72 were conducted in contravention of section 39 of the Act. I order EPS to cease using the Complainant's information in contravention of section 39.

[para 83]   I find that the evidence relating to the queries conducted in this case does not raise a concern as to EPS's general compliance with section 38 of the Act, and it is not necessary in these circumstances for me to make a determination about this question.

Christina Gauk, Ph.D.
Director of Adjudication