

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2015-42

December 23, 2015

### ALBERTA HUMAN SERVICES

Case File Number F7908

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

**Summary:** The Complainant made a complaint to the Commissioner that Alberta Human Services (the Public Body) had collected his personal information from the JOIN database. He complained that the Public Body had collected information about an offence taking place when he was a youth and historical allegations about him that did not result in convictions. The Complainant alleged that Human Services then used the information it obtained from the JOIN database to make decisions regarding his employment. He complained that the Public Body disclosed his personal information to its human resources department and to a member of the Edmonton Police Service (EPS). He complained that the Public Body's use and disclosure of his personal information are in contravention of Part 2 of the FOIP Act.

The Adjudicator found that the Public Body had contravened Part 2 of the FOIP Act when it collected the Complainant's personal information from the JOIN database, when it had used this information, and when it disclosed this information to its Human Resources Division. She also found that the Public Body had not established that its disclosure of the Complainant's personal information to the EPS member was in compliance with Part 2 of the FOIP Act.

The Adjudicator ordered the Public Body to stop collecting, using, and disclosing the Complainant's personal information in contravention of the Part 2 of the FOIP Act.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 39, 40, 41, 72; *Child, Youth, and Family Enhancement Act*, R.S.A. 2000, c. C-12, ss. 6, 22, 31, 34, 40, 105.4, 126; Residential Facilities Licensing Regulation A.R. 161/2004 s. 18

**Authorities Cited: AB:** Orders P2006-008, F2012-07

## **I. BACKGROUND**

[para 1] The Complainant made a complaint to the Commissioner that Alberta Human Services (the Public Body) had collected his personal information from the JOIN database. He complains that the Public Body searched for historical information regarding allegations that did not result in convictions and collected information from the database about a historical allegation that did not result in a conviction. The Complainant alleged that Human Services then used the information it obtained from the JOIN database to make decisions regarding his employment and disclosed his personal information to a member of EPS. He complains that the Public Body's use and disclosure of his personal information are in contravention of Part 2 of the FOIP Act.

[para 2] The Commissioner authorized mediation to resolve the dispute. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

## **II. ISSUES**

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

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

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

## **III. DISCUSSION OF ISSUES**

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

[para 3] Section 33 of the FOIP Act prescribes the circumstances in which a public body may collect personal information. It states:

*33 No personal information may be collected by or for a public body unless*

*(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*

*(b) that information is collected for the purposes of law enforcement,  
or*

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

[para 4] Section 34 establishes the circumstances in which a public body may collect personal information indirectly. It states, in part:

*34(1) A public body must collect personal information directly from the individual the information is about unless*

*(a) another method of collection is authorized by*

*(i) that individual,*

*(ii) another Act or a regulation under another Act, or*

*(iii) the Commissioner under section 53(1)(h) of this Act,*

*(b) the information may be disclosed to the public body under Division 2 of this Part,*

*[...]*

*(g) the information is collected for the purpose of law enforcement,*

[para 5] The Public Body argues:

2. Was the Complainant's personal information "Collected" by the Public Body when it carried out a JOIN Database search?

*Yes, the Complainant's personal information was "collected" by the Public Body when it carried out a JOIN Database search.*

The JOIN Database does not belong to the Public Body; it belongs to Alberta Justice and Solicitor General (Alberta Justice) who is responsible for the custody and maintenance of it. Access is granted by way of a Memorandum of Understanding (MOU) between Alberta Justice and the Public Body. The Public Body has access to the information as read only and pursuant to the terms of the MOU. The Public Body does not have the ability to add any information into the Database.

*[...]*

The Public body submits that the Public Body accessed the JOIN Database and "collected" the Complainant's personal information that had previously been entered by another agency.

3. Was the Public Body authorized to collect the Complainant's personal information?

*The Public Body submits that it was authorized to collect the Complainant's personal information pursuant to sections 33(a) and (c) of the FOIP Act.*

Section 33(a) provides that a public body may collect personal information where that collection is expressly authorized by an enactment of Alberta or Canada.

The Public Body submits that section 126 of the CYFEA expressly authorizes the collection of personal information. Section 126(3) of the CYFEA reads:

*A director or a person acting on behalf of a director, including an agency providing services on behalf of a director, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or providing services under this Act.*

The Public Body submits that it was conducting an investigation into an allegation of abuse against the Complainant to ensure the safety of youths in the care and custody of the Director under the CYFEA. Section 126(3) of the CYFEA expressly provides authority for the Public Body to collect and use the Complainant's personal information.

Section 33(c) of the FOIP Act provides that a public body may collect personal information if that information relates directly to and is necessary for an operating program or activity of the Public Body.

The Public Body submits that it needed to determine the risk to multiple youths in the care and custody of the Director under the CYFEA, as a result of an allegation raised against the Complainant. The Public Body further submits that section 6(1) of the CYFEA states that if a Director receives information in the form of a report under section 4 or 5 of the CYFEA, the Director must assess the child's need for intervention, unless the Director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable or probable grounds.

In addition, the Public Body submits that given that it licenses and is responsible for the safety, care, maintenance and well-being of the youth residing at the Yellowhead Youth Centre, pursuant to Part 3 of the CYFEA and Part 2 of the Residential Facilities Licensing Regulation, the Public Body is legislatively mandated to investigate the allegation of abuse against the Complainant.

The Public Body further submits that, in this instance, the Public Body's collection of the Complainant's personal information from the JOIN Database was necessary for the purpose of ensuring a safe environment for youth in the care and custody of the Director under the CYFEA. Given that this investigation activity is mandated by the CYFEA, the Public Body submits the collection of the Complainant's personal information from the JOIN Database is consistent with and authorized by section 33(c) of the FOIP Act.

Section 34(1) of the FOIP Act requires that a public body collect personal information directly from the individual the information is about. However, section 34(1) also allows a public body to collect personal information about an individual from other sources in particular circumstances.

The Public Body submits that they had authority to collect the Complainant's personal information pursuant to section 34(1) (a) (ii), (b) and (g). The Public Body submits it was expressly authorized to collect the Complainant's personal information pursuant section 126(3) of the CYFEA. Consequently the Public Body was also authorized to collect the information pursuant to, sections 40(1) (f); 40(1) (h) and 40(1) (ee) (i) of the FOIP Act. Moreover, as the Public Body was conducting an investigation under the provisions of the CYFEA, the Public Body submits it was engaged in a "law enforcement" activity within the meaning of section 1(h) (ii) of the FOIP Act.

[para 6] In its arguments relating to its use of the Complainant's personal information, the Public Body argues:

In this instance, the Public Body was responsible for the safety of youths in the care and custody of the Director under the CYFEA. The Director was legislatively mandated to investigate the allegation of abuse against the Complainant from a youth in the Director's care. Complainant's personal information was disclosed to ensure the Public Body maintained the safety of the youths in the Director's care of the Director from potential risks and dangers in accordance with sections 21, 31 and 34 of the CYFEA; as the custodian and/or guardian of these youths per these provisions of the CYFEA, the Director has a legislated mandate to ensure the safety of the youths in his care and custody.

[para 7] The Complainant argues:

There was no youth in care making an allegation and the allegation made was by an adult offender (of a historical nature over 20 years ago) which the Public Body was aware of; nor did the "Director receive information in the form of a report under section 4 or 5 of the CYFEA: requiring the "Director to assess the child's need for intervention". Without the aforementioned criteria (i.e. an allegation) the Complainant genuinely fails to understand how the Public Body could proceed with its investigation and access any information in good faith, nor how such information could not be considered a privacy breach. The Public Body had no right to access information under the guise of an investigation, which appeared to be more of a confirmation, given this investigation appears to have only involved accessing a database and not interviewing the particulars involved. Furthermore, the Public Body was accessing a database and not interviewing the particulars involved. Furthermore, the Public Body was very much aware that the Complainant had no criminal record. Certainly any questions the Public Body posed to the Complainant in this pseudo-investigation was directed towards obtaining a physical copy of information already egregiously provided to them by an external agency (Edmonton Police Service). The Public Body also suggests they wished to ensure that the Complainant had no criminal record but as alluded to in previous submissions; they were aware, and had multiple documents indicating that no such record existed. With this knowledge, the Complainant is unclear as to the true motives of the Public Body.

[para 8] The Public Body submitted the terms of its memorandum of understanding with Alberta Justice that govern its ability to access the JOIN database. This agreement states, in part:

## **2. Access to Information**

Subject to the conditions set out in the MOU, the JOIN Security Policy, and any applicable legislation, Justice will allow the Stakeholder access to information in the locations listed in Schedule "A", and for the purposes listed in Schedule "B". These schedules can be amended at any time by mutual agreement.

Access to information will be provided through electronic means using equipment and systems compatible to access JOIN. Justice will supply the Stakeholder with one or many user ID(s) as required to allow access. The Stakeholder is responsible for:

- The security of the user ID(s) issued
- Maintaining accurate records of all employees or agents who have access or who have had access to the user ID(s);
- Ensuring that access to the user ID(s) is only given to employees or agents who require access for the purposes outlined in Schedule "B".

### 3. Use of Information

The Stakeholder agrees it will only use the information for purposes set out in Schedule "B".

All information obtained through Justice shall be used solely by the Stakeholder.

The Stakeholder will not use the information to create a new database or expand an existing database, to market, resell, or distribute the information received.

[para 9] Schedule B, referred to in the memorandum of understanding, above, states:

Purpose of Access and Use of Information  
(JOIN Access Request can be attached for reference)

[para 10] The Public Body's request to Alberta Justice for access to the JOIN database states:

#### Issue

Edmonton and Area Child and Family Services Authority (CFSA) must constantly evaluate potential risks to clients and staff. In order to make accurate assessments, timely access to client criminal histories including current potential involvement with the justice system is essential. [my emphasis] CFSA intervention staff require access to the JOIN database in order to use information related to a client's criminal history, current charges and/or release provisions when completing client and staff safety assessments. More specifically, database information would be used when assessing the suitability of caregivers in an extended family (kinship care) placement of clients after-hours or in emergency situations and when assessing potential risks posed to staff by clients when conducting home visits. [my emphasis]

#### Background

Formal criminal record checks processed by police using the Canadian Police Information Centre (CPIC) are required prior to the approval of potential placement resources for children and youth in the care of the Director. Although staff will be expected to continue this practice in accordance with current policy, access to a client's criminal history information in order to make an immediate safety assessment is required. This need is currently met through informal requests made to the Royal Canadian Mounted Police (RCMP) and the Edmonton Police Service (EPS) (via the Zebra Child Protection Centre) during daytime hours and after hours through the Child at Risk Response Team (CARRT). Challenges with the current arrangement include:

- Formal criminal record checks take several weeks on average to process.
- Up-to-date information on CPIC (within 24 hours) is not available; the system usually takes weeks to refresh.
- Information on CPIC only reflects criminal convictions and not current charges or release conditions.
- Accessing limited police resources to conduct informal checks often results in significant delays especially in rural areas.
- The information provided by police may not have sufficient detail or may not be provided at all, as it depends on the police agency and individual who receives the request.

#### Current Status:

If the request to access JOIN is approved, the Edmonton and Area CFSA intends to limit direct access to three Edmonton Crisis Unit supervisors and one manager. The Crisis Unit supervisors will process staff requests for information, ensuring the request is appropriate and will only provide information necessary to complete an immediate safety assessment. [my emphasis] The

Edmonton Crisis Unit provides after-hours intervention services coverage for the province of Alberta[...]

[para 11] From the foregoing, I conclude that Human Services requested access to the JOIN database so that Crisis Unit supervisors and one manager could process staff requests for up-to-date information when assessing the suitability of caregivers in an extended family (kinship care) placement of clients after-hours or in emergency situations, and when assessing potential risks posed to staff by clients when conducting home visits. Alberta Justice granted the Public Body authorization to access the database only for the limited purposes set out in the Public Body's request (*supra*). Alberta Justice prohibited the Public Body from accessing the database for any other purpose.

[para 12] I turn now to the Public Body's arguments regarding its authority to collect the Complainant's personal information.

***Was the Public Body's collection of the Complainant's personal information from the JOIN database expressly authorized an enactment of Alberta or Canada within the terms of section 33(a)?***

[para 13] The Public Body points to section 126(3) of the *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 (CYFEA) as containing express authority for its collection of the Complainant's personal information from the JOIN database.

*126(3) A director or a person acting on behalf of a director, including an agency providing services on behalf of a director, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or providing services under this Act.*

[para 14] As set out above, the Public Body argues that it was investigating an allegation of abuse made against the Complainant to ensure "the safety of youths in care" and that collecting personal information for an investigation of this kind is authorized by section 126(3) of the CYFEA.

[para 15] The Complainant states that the allegation against him was made by an adult offender and that the allegation related to a time period twenty years prior. He also states that the Public Body was aware of the allegation when it was made and knew that it did not result in a criminal conviction. The Complainant also states that he has no criminal record. The Public Body did not contradict or challenge these statements in its submissions. Record 182 of the materials the Complainant submitted for the inquiry, which contains an email exchanged between employees of the Public Body, supports finding that the allegation was historical and that the Public Body knew it to be so at the time it searched the JOIN database.

[para 16] Record 3 of the Complainant's rebuttal submissions contains an email prepared by the employee of the Public Body who directed the search for the Complainant's personal information on the JOIN database. This email, dated January 4, 2013, at 2:58 indicates that JOIN was accessed by an employee of the Public Body to

find the status of charges against the Complainant from 1992, 2003, and 2006, as an EPS member who was preparing a report for the Public Body did not have access to JOIN to find this information.

[para 17] The CYFEA does not define “investigation”. However, the terms of section 126(3) of the CYFEA state that the investigation to which it refers must be one that is conducted under the CYFEA. Section 6 of the CYFEA gives a director the authority to conduct investigations. It states:

*6(1) If a director receives information in the form of*

- (a) a request for intervention services,*
- (b) a report under section 4 or 5, or*
- (c) any other allegation or evidence that a child may be in need of intervention,*

*the director must investigate the child’s need for intervention unless the director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds.*

[para 18] Section 4 of the CYFEA, referred to in section 6, cited above, authorizes any person who has reason to believe that a child is in need of intervention to make a report to the director, while section 5 authorizes a peace officer to do so.

[para 19] The only other reference to an investigation under the CYFEA lies in section 64. Section 64 authorizes the Minister to conduct an investigation with respect to a proposed adoption.

[para 20] Under the CYFEA, a director may investigate whether a child is in need of intervention and the Minister may investigate an adoption proposal.

[para 21] I do not accept that Public Body’s argument that the investigation it conducted in relation to the Complainant was an investigation within the terms of the CYFEA. First, as the Complainant points out, there was no allegation made to a director that a child was in need of intervention. Moreover, the director did not form the opinion that a child was in need of intervention. Rather, an adult provided information regarding an incident alleged to have taken place in the past and which had been investigated by the police at the time of the alleged incident.

[para 22] The emails the Public Body provided to the Complainant in response to an access request he had made that is not the subject of this inquiry indicate that it decided to investigate his continued suitability for his position working with youths, once it obtained information regarding a historic incident. I do not agree that this investigation is an investigation as to whether a child is in need of intervention. As the Complainant notes, the allegation did not relate to a child in need of intervention but to an allegation



made by an adult about a matter that had been investigated in the past. Section 6 of the CYFEA refers to “a child in need of intervention”, which suggests that there must be reason to believe that there is 1) a child, and 2) a present need for intervention regarding the child before an investigation may take place. The Public Body collected information regarding allegations made in relation to an adult, and not a child in need of intervention under the CYFEA.

[para 23] The records before me, in particular, the emails originating from the Public Body that the Complainant submitted for the inquiry, indicate that the Public Body collected the Complainant’s personal information to investigate his ongoing suitability as an employee working with youth in the care of the province. This purpose is consistent with the Public Body’s statement that it collected his personal information to “ensure the safety of youths in the care and custody of the Director”. However, an employment investigation of the kind documented in the records and described by the Public Body and the Complainant is not the same thing as an investigation into a report of a child in need of intervention within the terms of section 6 of the CYFEA. Moreover, the Public Body gathered information about an historical allegation and not current information relating to children in the Complainant’s care. I am therefore unable to find that the investigation into the Complainant was an investigation regarding a report of a child in need of intervention within the terms of section 6 of the CYFEA.

[para 24] The investigation was clearly not an investigation by the Minister in relation to a request for adoption within the terms of section 44, which is the only other type of investigation authorized by the CYFEA.

[para 25] For the reasons above, I conclude that the investigation conducted by the Public Body is not an investigation within the terms of either section 6 or 44 of the CYFEA. As a result, I find that section 126(3) of the CYFEA does not provide express authority for the Public Body to collect the Complainant’s personal information. As section 126(3) was the only statutory provision to which the Public Body referred as a source of express legislative authority, and as I find that section 126(3) does not provide such authority to the Public Body, it follows that I find that section 33(a) does not authorize the Public Body’s collection of the Complainant’s personal information from the JOIN database.

***Was the Body authorized to collect the Complainant’s personal information from the JOIN database by section 33(c) of the FOIP Act?***

[para 26] Cited above, section 33(c) authorizes a public body to collect personal information if that personal information relates directly to, and is necessary for, an operating program or activity of a public body.

[para 27] The Public Body’s position is that because it is responsible for the care and safety of youths, it was necessary for it to obtain the Complainant’s personal information from the JOIN database to ensure a safe environment.

[para 28] I agree with the Public Body that it has a responsibility for ensuring a safe environment for youths in its custody or care and that there are circumstances in which it is necessary for it to collect personal information to meet its responsibilities. I also agree that requiring employees who work with youths to obtain criminal record checks and vulnerable sector checks and to provide them to an employer is necessary for the Public Body's function of providing youth a safe environment.

[para 29] However, for the reasons below I am unable to find that the Public Body's collection of the Complainant's personal information from the JOIN database was necessary for an operating program or activity of the Public Body within the terms of section 33(c).

[para 30] In reviewing the Public Body's request for access to the JOIN database, I note that the request does not refer to conducting background checks or collecting information regarding historic allegations made against its employees or the youth records of employees. Rather, access to the database was requested to ensure the safety of the Public Body's staff by authorizing certain supervisors and a manager to obtain *clients'* criminal history. The request for access to the database extends to information about *caregivers* only to the extent that the caregiver is in an extended family (kinship care) placement, which was not the Complainant's situation.

[para 31] It was open to the Public Body to request that Alberta Justice provide it access to the JOIN database so that it could research its employees' histories. However, it did not do so, but restricted its request for access to the database to information that would assist it to assess employee safety and to obtain information about caregivers involved in kinship care placements. The memorandum of agreement indicates that the Public Body may obtain access to information in the database for purposes other than those set out in Schedule B if Alberta Justice and the Public Body mutually agree to the new purpose. However, the records the Public Body provided for my review indicate that no agreement has been entered to allow the Public Body to gain access to information for purposes other than those in Schedule B. Given that conducting employee background checks is not listed as a purpose under Schedule B, the terms of the memorandum of understanding indicate that the Public Body is prohibited from collecting personal information from the JOIN database for the purposes it has stated for the inquiry.

[para 32] The inference I draw from the fact that the Public Body has not requested access to the JOIN database to conduct background checks of its employees is that collection of this information is unnecessary for its operating programs or activities. While I appreciate that the Public Body must ensure that employees who work with children are subject to satisfactory criminal record and vulnerable sector background checks, records 48 and 109 of the records the Complainant provided for the inquiry indicate that the Public Body had exercised the option of not providing the Complainant with shifts until he produced a criminal record check and a vulnerable sector search it considered satisfactory. Given that the Public Body has this means of ensuring safety open to it, the reasons for its decision to gain access to information in the JOIN database in contravention of its agreement with Alberta Justice, so that it might conduct its own

investigation into the Complainant's history, rather than waiting for the Complainant to obtain the requested criminal record and vulnerable sector searches, are unclear. In any event, conducting a search of the JOIN database and collecting the Complainant's personal information from this database was unnecessary for the Public Body's programs and activities, given that the Public Body had the power to require the Complainant to submit to a criminal record and vulnerable sector search before it permitted him to return to work.

[para 33] For the reasons above, I find that the Public Body's collection of the Complainant's personal information was not authorized by section 33(c) of the FOIP Act.

[para 34] Although the Public Body did not argue that its collection of the Complainant's personal information was authorized by section 33(b), I note that it argues that its indirect collection of the Complainant's personal information was authorized by section 34(1)(g). Section 34(1)(g) permits a public body to collect information from sources other than the individual who is the subject of the information if the information is collected for law enforcement purposes. I conclude that the Public Body considers its collection to have been for a law enforcement purpose within the terms of section 33(b), given its reference to the information having been collected for this purpose in its arguments under section 34. I will therefore consider whether section 33(b) authorizes the Public Body's collection of the Complainant's personal information from the JOIN database.

[para 35] "Law enforcement is defined by section 1(h) of the FOIP Act. This provision states:

*I In this Act,*

*(h) "law enforcement" means*

*(i) policing, including criminal intelligence operations,*

*(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

*(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

[para 36] The Public Body argues:

Moreover, as the Public Body was conducting an investigation under the provisions of the CYFEA, the Public Body submits it was engaged in a “law enforcement” activity within the meaning of section 1(h)(ii) of the FOIP Act.

[para 37] I have already found that the Public Body was not conducting an investigation within the terms of the CYFEA, as the investigation was not one contemplated by either section 6 or 44 of that Act.

### ***1(h)(ii)***

[para 38] Section 1(h)(ii) establishes that an investigation, including one that is administrative in nature, is a law enforcement investigation if it leads or could lead to a penalty or sanction. Given that the CYFEA does not authorize the Public Body to conduct an investigation of the kind it conducted, and as it has not provided any other authority for conducting the investigation it did, or explained how the investigation could result in a penalty or sanction so as to bring it within the terms of section 1(h)(ii), I find that the investigation was not a law enforcement investigation and that information collected in the course of the investigation was not collected for the purposes of law enforcement within the terms of section 33(b) of the FOIP Act.

[para 39] As I find that none of the provisions of section 33 authorizes the Public Body’s collection of the Complainant’s personal information from the JOIN database, it follows that I find the Public Body contravened Part 2 of the FOIP Act when it accessed this database and collected the Complainant’s personal information.

### ***Section 34***

[para 40] Section 34, cited above, requires a public body to collect personal information directly from the individual the information is about except for specific purposes.

[para 41] I have already found that the Public Body’s collection of the Complainant’s personal information contravened the FOIP Act. Turning to sections 34(1)(a), (b), and (g), as discussed below, I find that none of these provisions authorize the Public Body to collect the Complainant’s personal information from the JOIN database, rather than from the Complainant.

#### ***Section 34(1)(a)***

[para 42] Section 34(1)(a), reproduced above, permits a Public Body to collect personal information from a source other than the individual the information is about, if authorized to do so by an Act or regulation. I have already found that the CYFEA did not authorize the Public Body’s collection of the Complainant’s personal information from the JOIN database. It follows that I find that the CYFEA did not authorize the Public Body to collect this same information indirectly.

#### ***Section 34(1)(b)***

[para 43] Section 34(1)(b), reproduced above, authorizes a public body to collect personal information from a source other than the subject of the information if there is authority under section 40 for the information to be disclosed to the public body. The Public Body argues that sections 40(1)(f), (h), and (ee) provide the necessary authority for the Complainant's personal information to be disclosed to it. These provisions state:

*40(1) A public body may disclose personal information only*

*[...]*

*(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,*

*[...]*

*(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,*

*[...]*

*(ee) if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize*

*(i) a risk of harm to the health or safety of a minor, or*

*(ii) an imminent danger to the health or safety of any person[...]*

*Section 40(1)(f)*

[para 44] Section 40(1)(f) provides authority for a public body to disclose personal information if it is authorized or required to do so by an Act or regulation. If a public body is authorized or required to disclose personal information by an Act or regulation to another public body, then section 40(1)(f) authorizes the disclosure, while section 34(1)(b) authorizes indirect collection by the public body receiving the information.

[para 45] The Public Body has not pointed to an Act or regulation authorizing Alberta Justice (the public body responsible for maintaining the JOIN database) to disclose the Complainant's personal information from this database to the Public Body. As I am unable to find that section 40(1)(f) would authorize disclosure of the Complainant's personal information in the circumstances of this case, it follows that I find this provision does not authorize indirect collection of the information by the Public Body.

*Section 40(1)(h)*

[para 46] Section 40(1)(h) authorizes the disclosure of personal information to an officer, employee of a public body or a member of the Executive Council if the information is necessary for the performance of their duties. Section 34(1)(b), in turn, authorizes indirect collection of personal information by these persons when information is disclosed to them under the authority of section 40(1)(h).

[para 47] As discussed above, the Public Body has never requested access to the JOIN database for the purpose of investigating its employees, but rather, has requested access to client information for the purpose of conducting timely safety assessments to protect its employees.

[para 48] The Public Body has not sought or obtained permission to collect the personal information of its employees from the JOIN database, nor has it sought or obtained permission to collect personal information for the purposes for which it collected the Complainant's personal information. Alberta Justice has not given permission for this collection. Given the foregoing, it cannot be said that Alberta Justice disclosed the Complainant's personal information to the Public Body so that the Public Body's employees could perform their duties, given that it was contrary to the memorandum of understanding for the Public Body's employees to gain access to the JOIN database in the circumstances and collect the Complainant's personal information. Moreover, it cannot be said that Alberta Justice could disclose the information to the Public Body on the basis that it was necessary for the Public Body's employees to perform their duties, as both Alberta Justice and the Public Body had mutually agreed that personal information in the JOIN database must not be accessed by the Public Body for purposes other than ensuring employee safety or evaluating caregivers in kinship care arrangements.

*Section 40(1)(ee)*

[para 49] Section 40(1)(ee) authorizes *the head* of a public body to disclose personal information if the head forms the opinion, on reasonable grounds, that the disclosure will avert or minimize a risk of harm to the health or safety of a minor, or a risk of imminent harm to any person. Section 34(1)(b) authorizes a public body to collect personal information indirectly if it is being disclosed by a public body as a result of its head forming an opinion described in section 40(1)(ee).

[para 50] In this case, the Minister of Justice and Solicitor General is the head of the public body responsible for the JOIN database. There is no evidence before me that the Minister of Justice and Solicitor General formed the opinion that it was necessary to disclose personal information from the JOIN database to the Public Body. Rather, the terms of the memorandum of understanding between Alberta Justice and the Public Body support finding the contrary, as the memorandum of understanding *prohibits* employees of the Public Body from collecting personal information from the JOIN database for the purposes for which the Complainant's personal information was collected.

[para 51] As I find that the Complainant's personal information could not have been disclosed to the Public Body under the authority of the provisions of section 40 to which the Public Body refers as authorizing disclosure, it follows that I find that section 34(1)(b) does not authorize the Public Body's indirect collection of the Complainant's personal information.

*Section 34(1)(g)*

[para 52] Section 34(1)(g) authorizes a public body to collect personal information from a source other than the individual the information is about when the information is collected for the purpose of law enforcement.

[para 53] I have already found that the Public Body did not collect the Complainant's personal information for the purposes of law enforcement, as there is no evidence before me that its investigation could lead to a penalty or sanction.

*Conclusion in relation to section 34*

[para 54] I find that none of the provisions of section 34 on which the Public Body relies to support its collection of the Complainant's personal information from a source other than the Complainant, apply. I therefore find that the Public Body contravened the requirements of section 34, in addition to the requirements of section 33, when it collected the Complainant's personal information from the JOIN database.

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

[para 55] Section 39 of the FOIP Act establishes the circumstances in which a public body may use personal information. It states, in part:

*39(1) A public body may use personal information only*

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

[...]

*(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 56] Section 41 of the FOIP Act establishes when a use or disclosure is consistent with the purpose for which information is collected or compiled. It states:

*41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*

*(a) has a reasonable and direct connection to that purpose, and  
(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 57] The Public Body argues:

The Public Body submits that the access was necessary to establish whether the Complainant had any past police involvement or a criminal record in relation to the allegation of abuse from the youth. The JOIN Database was accessed by the Public Body for the purpose of investigating the Complainant's criminal history in order to take appropriate safeguards to protect the children in the Director's care and custody, as required by section 6(1) and Part 3 of the CYFEA. The Public Body submits that this use was consistent with the purpose for which the information was initially collected or compiled in the JOIN Database.

[...]

The Public Body submits that it used the personal information only to the extent necessary to conduct its investigation into the allegation of abuse against the Complainant; the information was not used for any other purpose.

[para 58] The Public Body argues that its use of the Complainant's personal information was consistent with its purpose in collecting the information from the JOIN database within the terms of section 39(1)(a).

[para 59] I have already found that the Public Body collected the Complainant's personal information from the JOIN database without authority, in contravention of both Part 2 of the FOIP Act and its memorandum of understanding with Alberta Justice. I found that it was unnecessary for the Public Body to collect the Complainant's personal information from the JOIN database, and that it lacked legal authority for the collection.

[para 60] In my view, section 39(1)(a) cannot be interpreted as authorizing use of personal information that was collected in contravention of the FOIP Act. It is not sensible to interpret section 39(1)(a) as authorizing use of personal information for purposes for which a public body is prohibited from collecting the information. Rather, I interpret section 39(1)(a) as authorizing a public body to use personal information for those purposes for which it collected the personal information provided that the collection was authorized by the FOIP Act. This view is supported by section 41, which establishes



that a use is consistent with the purposes of collection only if the use has both a reasonable and direct connection to the purpose of collection *and if it is necessary for performing the statutory duties of a public body or for operating a legally authorized program.*

[para 61] As I have found that the Public Body was not authorized to collect the Complainant's personal information from the JOIN database for the purposes for which it states it collected the information and that it was unnecessary for the Public Body to do so, it follows that I find that its use of the information for these purposes does not meet the requirements of section 41 and is therefore not authorized by section 39(1)(a).

[para 62] As I find that section 39(1)(a) does not authorize the Public Body's use of the Complainant's personal information for its stated purposes, I need not consider whether its use complied with section 39(4). However, if I am wrong in my finding that the Public Body's collection and use of the Complainant's personal information from the JOIN database was not authorized by the FOIP Act, it would be necessary for me to address the question of whether its use complied with section 39(4) of the FOIP Act.

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

[para 63] Section 40 of the FOIP Act establishes the circumstances in which a public body is authorized to disclose personal information. The provisions of section 40 the Public Body argues authorize disclosure of the Complainant's personal information are the following:

*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,*

*[...]*

*(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,*

*[...]*

*(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,*

*[...]*

*(ee) if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize*

*(i) a risk of harm to the health or safety of a minor, or*

*(ii) an imminent danger to the health or safety of any person*  
*[...]*

[para 64] The Public Body states:

The Public Body submits that it was specifically authorized to disclose the Complainant's personal information pursuant to section 40(1) (c), (e), (f), (h) and (ee)(i) of the FOIP Act.

In this instance the Public Body was responsible for the safety of youths in the care and custody of the Director under the CYFEA. The Director was legislatively mandated to investigate the allegation of abuse against the Complainant from a youth in the Director's care. The Complainant's personal information was disclosed to ensure the Public Body maintained the safety of the youths in the care of the Director from potential risks and dangers in accordance with sections 22, 31 and 34 of the CYFEA; as the custodian and/or guardian of these youths per these provisions of the CYFEA, the Director has a legislated mandate to ensure the safety of the youths in his care and custody.

The Public Body further submits that its Human Resources Division was advised of the existence of a police report and was requested to address the need for the Complainant to provide a vulnerable sector search, in accordance with the provisions of Part 3 of the CYFEA and Part 2 of the Residential Facilities Licensing Regulation, specifically section 105.4 of the CYFEA and section 18 of the Residential Facilities Licensing Regulation, and to deal with any related employment issues.

Section 40(1)(h) provides that a public body may disclose personal information to an officer or employee of the public body if the information is necessary for the performance of the duties of the officer, employee or member. Human Resources required the information in order for them to address the need to request further details from the Complainant with respect to a vulnerable sector search, as well as, any other employment related issues. In this instance, the Public Body submits it was authorized to disclose the Complainant's personal information to Human Resources pursuant to section 40(1) (h) of the FOIP Act.

In addition the Public Body submits that there was no disclosure of the Complainant's personal information to the EPS. The only disclosure of information was between the Regional Manager and a Crisis Unit Supervisor who conducted the search of the JOIN Database and to specific and limited staff in the Human Resources Division for employment purposes. In his submission, the Complainant alleges that his personal information was also disclosed to the EPS. The Public Body did not disclose any information with respect to the Complainant's alleged past or current criminal history to the EPS. The Public Body submits that the Complainant has provided no evidence of the Public Body disclosing the Complainant's personal information in relation to the JOIN Database search to the EPS in this instance.

[para 65] The Public Body confirms that it provided information it collected from the JOIN Database to its Human Resources Division. However, the Public Body states in the foregoing excerpt that it did not disclose information about the “Complainant’s alleged past or current criminal history” to the Edmonton Police Service. (Subsequently, in response to my questions, the Public Body conceded that it disclosed the Complainant’s personal information to a member of the Edmonton Police Service.)

*Disclosure to the Human Resources Division*

*Section 40(1)(c)*

[para 66] The Public Body states that it collected the Complainant’s personal information from the JOIN database in order to investigate allegations made against him and to ensure a safe environment for children in care. The Public Body states that it disclosed the Complainant’s personal information to the Human Resources Division to ensure a safe environment for children in care and argues that this disclosure falls within the terms of section 40(1)(c), as the information was disclosed for the same purpose as that for which it was collected.

[para 67] Section 41, as discussed above, establishes the circumstances in which disclosure of personal information is consistent with the purposes for which the information was collected. This provision provides that disclosure will be consistent with the purposes of collection when there is a reasonable and direct connection to the purpose in collecting the information and the disclosure is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body.

[para 68] I have found that the Public Body was not authorized to collect the Complainant’s personal information from the JOIN database for its stated purposes and that this collection was unnecessary. It follows that I find that disclosing the information for the same purposes was unnecessary and lacks legal authority.

[para 69] I draw support for this conclusion from Order F2012-07, in which the Adjudicator found that because the collection of a complainant’s personal information was unnecessary for the purposes of an investigation, disclosure for the same purposes was also unnecessary. The Adjudicator stated:

The Public Body also argues that the disclosure to the HR consultant was necessary for the performance of her duties, specifically, to investigate the Complainant’s workplace conduct. The Public Body argues that the HR consultant was obliged to consider any and all available evidence concerning the allegations.

As I have found that the collection of the photographs was not necessary for the purpose of the investigation into the Complainant’s conduct at work, it would be an inconsistent and unreasonable result to find that the disclosure of the photographs to the HR consultant, or any other Public Body employee, was necessary for her to perform that investigation. Although the Public Body did not argue the application of section 40(1)(h) to the disclosure of the

photographs to the other employees involved in the investigation and subsequent grievance process, I note that the result would have been the same with respect to those disclosures.

As I find that the terms of section 41 of the FOIP Act are not met in relation to the Public Body's disclosure of the Complainant's personal information from the JOIN database, it follows that I find that section 40(1)(c) does not authorize this disclosure.

*Sections 40(1)(e) and (f)*

[para 70] The Public Body argues that sections 22, 31, 34, and 105.4 of the CYFEA and section 18 of the Residential Facilities Licensing Regulation provide authority for its disclosure of the Complainant's personal information to its Human Resources Division. It also argues that the information was disclosed to the Human Resources Division so that this Division would be aware of a need to require the Complainant to provide a vulnerable sector search.

*22 If a child has been apprehended, a director has exclusive custody of the child and is responsible for the child's care, maintenance and well-being until the director has returned the child to the custody of the child's guardian or an application under section 21 has been disposed of.*

[para 71] Section 31 of the CYFEA states, in part:

*31(1) The Court may make an order appointing a director as a guardian of a child if it is satisfied that*

- (a) the child is in need of intervention, and*
- (b) the survival, security or development of the child may not be adequately protected if the child remains with the child's guardian,*

*but it can be anticipated that within a reasonable time the child may be returned to the custody of the child's guardian or, if the child is 16 years of age or older, the child will be able to live independently [...]*

[para 72] Section 34 of the CYFEA states:

*34(1) The Court, on application pursuant to this Division by a director, may make a permanent guardianship order appointing the director as guardian of the child if it is satisfied that*

*(a) the child is in need of intervention or is the subject of a temporary guardianship order,*

*(b) the survival, security or development of the child cannot adequately be protected if the child remains with or is returned to the child's guardian, and*

*(c) it cannot be anticipated that the child could or should be returned to the custody of the child's guardian within a reasonable time.*

[para 73] Section 105.4 of the CYFEA states:

*105.4 A holder of a residential facility licence must ensure that the residential facility meets the requirements of the regulations, and the residential facility licence holder may not charge more for residential facility services than the rates provided for by the regulations.*

[para 74] Section 18 of the Residential Facilities Licensing Regulation A.R. 161/2004 states:

*18(1) A licence holder shall ensure that each staff member who works directly with or has unsupervised access to children residing in the facility and each volunteer who has unsupervised access to children residing in the facility*

- (a) is an adult,*
- (b) provides character references satisfactory to the licence holder,*
- (c) provides a criminal record check, including a vulnerable sector search, and an intervention record check to the licence holder, both dated not earlier than 6 months prior to commencing work at the facility, and every 3 years thereafter,*
- (d) has, within 3 months of commencing work at the facility, completed a first aid course that includes CPR training, including administering CPR to children,*
- (e) maintains the first aid certification referred to in clause (d), and*
- (f) has received information with respect to safety precautions to be followed when working alone.*

*(2) In subsection (1)(c), “intervention record check” means a review of records by a director to determine if an individual has caused a child to be in need of intervention.*

[para 75] The Public Body did not explain why it takes the position that the statutory provisions it cited authorize its disclosure of the Complainant’s personal information it obtained from the JOIN database to the Human Resources Division. None of these provisions refer to, or can be interpreted as encompassing, obtaining information about allegations contained in the JOIN database and providing them to the Human Resources Division.

[para 76] I am unable to interpret any of these provisions as authorizing an employee of the Public Body to disclose personal information obtained from the JOIN database to the Human Resources Division. With the exception of section 18 of the

Residential Facilities Licensing Regulation, these provisions refer to general duties, but do not describe the personal information that may be disclosed or the circumstances in which personal information may be disclosed, to meet these duties.

[para 77] Section 18 of the Regulation does describe the kinds of information that must be reviewed in order to permit staff and volunteers to work in facilities. However, this provision refers to a license holder requiring *staff and volunteers* to provide a criminal record check, including a vulnerable sector search, and an intervention record check to the licence holder. It does not refer to the Public Body gaining access to the JOIN database and providing the information it obtained from doing so to its Human Resources Division so that it could determine whether to obtain a vulnerable sector search. Moreover, none of the information the Public Body obtained from the JOIN database consists of a “criminal record check” a “vulnerable sector search” or an “intervention record check” within the terms of section 18 of the Regulation.

[para 78] The Public Body clearly has authority to require staff and volunteers to provide criminal record checks, vulnerable sector searches and intervention records. However, I am unable to find that this authority extends to accessing the JOIN database so that it may determine a need for a vulnerable sector search (which section 18 of the Regulation makes mandatory in any event), or that accessing the JOIN database would assist it to determine this need. I am also unable to find that its authority extends to disclosing the results of the unauthorized search of the JOIN database to the Human Resources Division.

*Section 40(1)(h)*

[para 79] Section 40(1)(h) authorizes a public body to disclose personal information to an officer or employee of a public body or to a member of the Executive Council, if the information is necessary for the performance of the person’s duties.

[para 80] The Public Body reasons that it was necessary to disclose the information gathered from the JOIN database to the Human Resources Division so that the Human Resources Division “could address the need to request the need further details from the Complainant with respect to a vulnerable sector search” as well as “any other employment related issues.”

[para 81] The Public Body does not explain why it would be necessary to provide the information collected from the JOIN database so that the Human Resources Division could request a vulnerable sector search. It appears from the records before me that the Human Resources Division had the power to request the vulnerable sector search, and had done so, in the absence of the information obtained from the JOIN database. The records submitted by the Complainant also establish that it was open to the Human Resources Division not to provide the Complainant with shifts until he provided a vulnerable sector search that satisfied its requirements.

[para 82] As discussed above, the Public Body did not request access to the JOIN database for the purpose of permitting the Human Resources Division to decide whether to request a vulnerable sector search. The fact that it did not request access for this reason, and agreed not to access the database for this reason (given that it agreed not to access the database for reasons other than those it provided in its request for access to the database) supports finding that the information collected from the JOIN database and disclosed to the Human Resources Division was unnecessary for employees in the Human Resources Division to perform their functions.

[para 83] I find that section 40(1)(h) does not authorize the Public Body's disclosure of the Complainant's personal information to the Human Resources Division.

*Section 40(1)(ee)*

[para 84] Section 40(1)(ee) authorizes the head of a public body to disclose personal information if the head believes on reasonable grounds, that the disclosure will avert or minimize a risk of harm to the health or safety of a minor.

[para 85] The Public Body cited this provision as specific authority for its disclosure of the Complainant's personal information to the Human Resources Division. However, it did not explain its position that this provision provides specific authority to do so. There is no evidence before me that the head of the Public Body, in this case, the Minister of Human Services, formed the opinion that the Complainant's personal information, obtained from the JOIN database, should be provided to the Human Resources Division in order to avert or minimize a risk of harm to the health or safety of a minor.

[para 86] Moreover, the Public Body argues elsewhere that it provided the information to the Human Resources Division in order for that division to make a decision as to whether it would require a vulnerable sector check from the Complainant. There is tension between the explanation that the records were provided to the Human Resources Division so that it might make a decision to seek further information and the explanation that the information was disclosed to minimize a risk of harm. However, neither explanation is grounded by evidence. I am therefore unable to accept either explanation.

[para 87] As there is no evidence before me that the circumstances contemplated by section 40(1)(ee) were present when the Complainant's personal information was disclosed to the Human Resources Division, I find that this provision does not authorize the Public Body's disclosure of the Complainant's personal information to the Human Resources Division.

*Did the Public Body disclose the Complainant's personal information to EPS?*

[para 88] The Public Body states that it did not disclose the personal information it collected from the JOIN database to the Edmonton Police Service. However, the basis for this statement is unknown.

[para 89] Document 3 of the Complainant's rebuttal submissions contains an email sent on Friday January 4, 2013 at 3:31 by an employee of the Public Body. This email indicates that a "JOIN check" has been done. It also recommends that no formal decision be made in order to allow a member of the EPS the opportunity to "clarify the previous charges outcomes and persons involved".

[para 90] Document 1 of the Complainant's rebuttal submissions contains an email recounting a meeting with the EPS member on January 8, 2013 in which the member provided the clarification referred to in the email on Document 3. It is not clear to what extent the information obtained from the JOIN database was discussed or whether it was at all. However, it is clear from the email that the Public Body asked questions regarding the status of allegations against the Complainant. Moreover, document 1 contains reference to a discussion with the EPS member of details of the allegation obtained from the JOIN database, with additional information (the age of the Complainant at the time of the allegation.) The questions themselves would disclose that the Public Body was conducting a human resources investigation into the substance of the allegations. In other words, by asking the questions, the Public Body revealed that there was an allegation made about the Complainant in 1995 and that it was investigating the allegation with a view to terminating the Complainant's employment. This information is information about the Complainant as an identifiable individual and is his personal information within the terms of section 1(n) of the FOIP Act.

[para 91] I drew these documents to the Public Body's attention and asked the Public Body to provide submissions regarding them.

[para 92] The Public Body responded:

The Public Body did exchange personal information with a member of the Edmonton Police Service (EPS) as part of the Public Body's investigation in relation to an allegation of abuse made against the Complainant by a youth in the care and custody of the Director under the *Child, Youth and Family Enhancement Act (CYFEA)* and as part of its human resources investigation . The Public Body shared personal information with the EPS in order to ascertain the status of any EPS investigation regarding allegations of abuse against the Complainant and to determine whether the Complainant had submitted a request for a vulnerable sector check to EPS, in accordance with section 105.4 of *CYFEA* and section 18 of the *Residential Facilities Licensing Regulation*.

However, the Public Body did not share the outcome of this Human Resources Investigation with EPS, nor did the Public Body disclose any information with respect to the Complainant's alleged past or current criminal history.

*Is the information the Public Body shared with EPS in the course of its Human Resources investigation the Complainant's personal information?*



Yes, the information shared by the Public Body is “*personal information*” within the meaning of section 1(n) of the *Freedom of Information and Protection of Privacy Act (FOIP)*.

*Is the disclosure of the Complainant's information justified?*

The Public Body submits that it was authorized to disclose the limited information at issue to the EPS pursuant to the provisions of sections 40(1)(e), (f), (q) and (x) of the *FOIP Act* and section 126(6) of *CYFEA*.

In this instance the Public Body was responsible for the safety of youths in the care and custody of the Director under the *CYFEA*. The Director was legislatively mandated to investigate the allegation of abuse against the Complainant. The Complainant's personal information was disclosed to ensure the Public Body maintained the safety of the youths in the care of the Director from potential risks and dangers in accordance with sections 22, 31 and 34 of the *CYFEA*; as the custodian and/or guardian of these youths per these provisions of the *CYFEA*, the Director has a legislated mandate to ensure the safety of the youths in his care and custody.

The Public Body further submits that the information disclosed was disclosed to enable the Public Body to complete its human resources investigation.

[para 93] As the Public Body now takes the position that it disclosed the Complainant's personal information to the EPS, but that this disclosure was authorized by sections 40(1)(e), (f), (q) and (x) , I will address these arguments

*Was the disclosure to the EPS authorized by a provision of section 40(1) of the FOIP Act?*

*Section 40(1)(e)*

[para 94] Section 40(1)(e) authorizes a Public Body to disclose personal information for the purpose of complying with an enactment of Alberta or Canada. It states:

*40(1) A public body may disclose personal information only*

*(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 [...]*

The Public Body refers to its disclosure of the Complainant's personal information as having been done for the purpose of complying with section 105.4 of *CYFEA* and section 18 of the *Residential Facilities Licensing Regulation*.

[para 95] Cited above, section 105.4 of the *CYFEA* states:

*105.4 A holder of a residential facility licence must ensure that the residential facility meets the requirements of the regulations, and the residential facility licence holder may not charge more for residential facility services than the rates provided for by the regulations.*

[para 96] Again, as cited above, Section 18 of the Residential Facilities Licensing Regulation A.R. 161/2004 contains the requirements that a residential facility license holder must meet. This provision states:

*18(1) A licence holder shall ensure that each staff member who works directly with or has unsupervised access to children residing in the facility and each volunteer who has unsupervised access to children residing in the facility*

- (a) is an adult,*
- (b) provides character references satisfactory to the licence holder,*
- (c) provides a criminal record check, including a vulnerable sector search, and an intervention record check to the licence holder, both dated not earlier than 6 months prior to commencing work at the facility, and every 3 years thereafter,*
- (d) has, within 3 months of commencing work at the facility, completed a first aid course that includes CPR training, including administering CPR to children,*
- (e) maintains the first aid certification referred to in clause (d), and*
- (f) has received information with respect to safety precautions to be followed when working alone.*

*(2) In subsection (1)(c), “intervention record check” means a review of records by a director to determine if an individual has caused a child to be in need of intervention.*

It is unclear to me how the requirement that a license holder ensure that staff members provide criminal records checks, vulnerable sector searches, or character references, and receive first aid certification or safety training authorizes disclosure of the nature of the Public Body’s human resources investigation to the EPS.

[para 97] The foregoing provisions operate to require license holders to ensure that their staff members obtain criminal record checks and vulnerable sector searches. These provisions do not refer to a public body conducting a human resources investigation, or to sharing information obtained from such an investigation with the EPS. As these provisions do not authorize or require the Public Body to disclose personal information in the circumstances that it did, I am unable to find that the Public Body’s disclosure of the Complainant’s personal information was done for the purpose of complying with either section 105.4 of the CYFEA or section 18 of the Regulation.

[para 98] I find that section 40(1)(e) does not authorize the Public Body’s disclosure to the EPS.

*Section 40(1)(f)*

[para 99] Section 40(1)(f), cited above, permits a public body to disclose personal information if authorized or required to do so by an enactment of Alberta or Canada. The

Public Body points to section 105.4 of the CYFEA and section 18 of the Regulation as authorizing or requiring disclosure of the Complainant's personal information to the EPS.

[para 100] As noted above, these provisions do not address the Public Body's human resources investigations or disclosure of them to a police service. I am therefore unable to find that these provisions authorize or require the Public Body's disclosure of the Complainant's personal information to the EPS.

*Section 40(1)(q)*

[para 101] Section 40(1)(q) states:

*40(1) A public body may disclose personal information only*

*(q) to a public body or a law enforcement agency in Canada to assist in an investigation*

*(i) undertaken with a view to a law enforcement proceeding, or*

*(ii) from which a law enforcement proceeding is likely to result  
[...]*

[para 102] Section 40(1)(q) authorizes a public body to disclose personal information to a public body or a law enforcement agency for the purpose of assisting in an investigation. In my view, to fall within the terms of section 40(1)(q), the public body disclosing the personal information must be doing so to assist the investigation of the recipient public body. I say this because the use of the term "assist" in this provision suggests that the act of disclosure is done for the purpose of providing assistance to the other public body. The use of the term "assist" would be strained if it is intended to refer to disclosures made for the purpose of furthering a public body's own investigation. Regardless, the application of section 40(1)(q) is restricted to investigations taken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

[para 103] The Public Body argues that the Director under the CYFEA was legislatively mandated to investigate the allegation of abuse and that the disclosure was made to ensure that the Public Body maintained the safety of the youths in the care of the Director. It is unclear from the facts asserted by the Public Body why it believes section 40(1)(q) authorizes its disclosure, as the factual situation contemplated by this provision does not appear to be present.

[para 104] I have already found that the Director of the CYFEA does not have a legislative mandate to conduct investigations of the kind conducted by the Public Body in this case. There is no evidence before me that the investigation it undertook in this case could possibly result in law enforcement proceedings within the terms of section 1(h)(iii) of the FOIP Act. Moreover, there is no evidence before me to enable me to find that the

Public Body provided the Complainant's personal information to the EPS in order to assist the EPS in conducting an investigation, that the information regarding the Public Body's human resources investigation had any bearing on such an investigation, or that the EPS was in fact conducting an investigation at the time the information was disclosed.

[para 105] I find that section 40(1)(q) does not authorize the Public Body's disclosure of the Complainant's personal information to the EPS.

*Section 40(1)(x)*

[para 106] Section 40(1)(x) states:

*40(1) A public body may disclose personal information only*

*(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body [...]*

[para 107] If information is disclosed for the purpose of managing or administering the public body's personnel, then the disclosure is authorized by section 40(1)(x).

[para 108] The Public Body concedes that it disclosed the Complainant's personal information to the EPS member "as part of the Public Body's investigation in relation to an allegation of abuse made against the Complainant by a youth in the care and custody of the Director", but states that "[it] did not share the outcome of this Human Resources Investigation with EPS, nor did the Public Body disclose any information with respect to the Complainant's alleged past or current criminal history." It explains that it provided information regarding its investigation into the Complainant (other than the outcome) in order to "ascertain the status of any EPS investigation regarding allegations of abuse against the Complainant and to determine whether the Complainant had submitted a vulnerable sector check to EPS".

[para 109] Section 40(4) of the FOIP Act limits the ability of a public body to disclose personal information with the result that a public body may disclose personal information only to the extent necessary to enable it to carry out its authorized purposes in disclosing the information. In other words, even if the Public Body disclosed personal information to the EPS member for the purpose of managing its personnel within the terms of section 40(1)(x), the Public Body must still demonstrate that it disclosed only the information necessary for meeting this purpose.

[para 110] I agree that learning the status of EPS investigations and vulnerable sector checks are purposes consistent with managing the Public Body's personnel. I also agree that there are circumstances in which it is necessary for the Public Body to obtain such information. However, it is unclear from the Public Body's explanation of its purpose in disclosing the Complainant's personal information to the EPS that it would be necessary to do so in order to obtain the information it states it was seeking, i.e. the status of

investigations conducted by the EPS and a vulnerable sector search. It is unclear from the Public Body's evidence why the Public Body could not simply have asked the EPS member if the vulnerable sector check on the Complainant had been completed in order to learn the status of any EPS investigations and the vulnerable sector check. It would not be necessary for the Public Body to disclose any details about the investigation it was conducting into the Complainant in order to obtain the information it states it was seeking from the EPS. Alternatively, if there was a reason to disclose the Complainant's personal information to the EPS member in order to obtain the status of EPS investigations and the vulnerable sector check, it has not been stated for this inquiry.

[para 111] As a result, while I accept that the Public Body may have disclosed the Complainant's personal information to the EPS member for the purpose of managing personnel, I am unable to find that the Public Body did so only to the extent necessary to enable it to carry out this purpose in a reasonable way.

### *Conclusion*

[para 112] I find that the Public Body's disclosure of the Complainant's personal information to the Human Resources Division and to the EPS member has not been demonstrated to be in compliance with section 40(4) of the FOIP Act.

## **IV. ORDER**

[para 113] I make this Order under section 72 of the FOIP Act.

[para 114] I order the Public Body to stop collecting the Complainant's personal information in contravention of Part 2 of the FOIP Act. Compliance with this portion of the order may be achieved by requiring employees who may be in a position to collect the Complainant's personal information as a function of their work duties to review the terms of the memorandum of understanding between Alberta Justice and the Public Body regarding access to the JOIN database, and to review the requirements of sections 33 and 34 of the FOIP Act.

[para 41] I order the Public Body to stop using the Complainant's personal information in contravention of Part 2 of the FOIP Act. Compliance with this portion of the order may be achieved by requiring employees who may be in a position to use the Complainant's personal information as a function of their work duties to review the requirements of sections 39 and 41.

[para 115] I order the Public Body to cease disclosing the Complainant's personal information in contravention of Part 2 of the FOIP Act. Compliance with this portion of the order may be achieved by requiring the employees who may be in a position to disclose the Complainant's personal information as part of their work duties to review the requirements of section 40 and 41 of the FOIP Act.

[para 42] I further order the head of the Public Body to notify me and the Complainant, in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

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Teresa Cunningham  
Adjudicator