ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-41

October 7, 2016

SERVICE ALBERTA

Case File Numbers F7599 and F7600

Office URL: www.oipc.ab.ca

Summary: The Canada Revenue Agency (the CRA) made a request to Service Alberta (the Public Body) for the Applicant's physical address. The Public Body provided the address it had on file; however, this address proved to be a mailing, rather than residential, address.

When the Applicant applied to renew her motor vehicle registration, the Public Body required her to provide proof of the address of her residence (the Applicant's "physical address" within the terms of the Operator Licensing and Vehicle Control Regulation). When she provided the requested proof, an investigator of the Public Body contacted the CRA to inform it that the Applicant had provided a new physical address and supporting documentation.

The CRA then requested the physical address and the Public Body provided it. After the CRA obtained the physical address, the CRA obtained a Court order to obtain the physical address and the supporting documentation the Applicant had provided.

The CRA subsequently initiated legal proceedings against the Applicant.

The Applicant made a request for her file from the Public Body under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The Public Body refused access to the file on the basis of sections 4 (Application) and 20 (Disclosure Harmful to Law Enforcement). The Applicant sought review of this decision.

The Applicant complained that the Public Body had contravened the FOIP Act when it disclosed her personal information to the CRA.

The Adjudicator determined that section 4 applied to some records, as these records were created from information in the office of the Registrar of Motor Vehicle Services. However, she found that section 20 did not authorize the Public Body to withhold any of the information to which it had applied this provision and she ordered disclosure of this information.

The Adjudicator determined that the Public Body had two purposes for collecting the Applicant's physical address: the first was for ensuring that the Registrar had sufficient information to make a determination as to whether the Applicant was a resident of Alberta and the second was to assist the CRA. The Adjudicator determined that assisting the CRA was not a purpose for which the Public Body was authorized by the FOIP Act to collect personal information.

The Adjudicator determined that the Public Body had disclosed the Applicant's personal information on four occasions. She found that the first three disclosures were not authorized by the FOIP Act, but that the fourth disclosure, which was made to comply with a Court order, was authorized.

The Adjudicator ordered the Public Body to disclose the information to which it had applied section 20 and ordered it to cease collecting, using, and disclosing the Applicant's personal information in contravention of the FOIP Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 20, 33, 34, 39, 40, 41, 72; Operator Licensing and Vehicle Control Regulation Alberta Regulation 320/2002 ss. 10, 20, 53, 150; Access to Motor Vehicle Information Regulation Alberta Regulation 140 / 2003 ss. 1, 2; *Traffic Safety Act*, R.S.A. 2000 c. T-6, ss. 8, 86 CA: *Criminal Code of Canada*, R.S.C. 1985 c. C-46, s. 718; *Privacy Act,* R.S.C. 1985, c. P-21 ss. 3, 8; *Personal Information Protection Act,* S.A. 2003 c. P-6.5, s. 20; *Interpretation Act*, R.S.A. 2000 c. I-8, s. 28; *Provincial Offences Prosecution Act* R.S.A. 2000 c. P-34, s. 4

Authorities Cited: AB: F2008-030, F2009-048, F2012-D-02, F2013-06

Case Cited: *R v Eddy*, 2016 ABQB 42

I. BACKGROUND

[para 1] On July 8, 2010, a CRA Investigator provided the Public Body with two forms entitled "Request for Disclosure to Federal Investigative Bodies" with an accompanying letter signed by the Director General, Enforcement and Disclosures Directorate of the Canada Revenue Agency. One of the forms contained the Applicant's name, while the other contained the name of another individual. The form requested the Applicant's address. The letter requested the Public Body's assistance in determining the

Applicant's physical address. This form indicates that the request for disclosure is made in accordance with paragraph 8(2)(e) of the *Privacy Act*, R.S.C. 1985, c. P-21.

[para 2] The Public Body disclosed the address information it had on file for the Applicant once it received the form.

[para 3] The CRA investigator discovered that the address he had received was an office building with mail boxes for rent. He noted that this address, in his view, was "not compliant with provincial legislation". This reference is in relation to the Operator Licensing and Vehicle Control Regulation (OLVCR).

[para 4] An employee of the Public Body who is part of the Public Body's own investigation unit then decided that Service Alberta should obtain the Applicant's physical address for the Registry. The Public Body describes this process as beginning "its own investigation into the address and residency issues in the [Applicant's] file". A note was put on the file to provide this information to the CRA once it was obtained. (Records 2 and 11)

[para 5] In August 2010, when the Applicant went to a registry office to renew her registration, she was informed she needed to provide physical proof of her address as set out in section 10(1) of the Operator Licensing and Vehicle Registration Control Regulation (OLVCR). The Applicant provided three Epcor Utility Bills, a Shaw invoice, and a letter confirming that she had been a tenant at a particular address for the past year and a half.

[para 6] Paragraphs 14 – 16 of the affidavit of the Director of the Audit and Investigation Branch of the Public Body provided a synopsis of subsequent events:

> In his notes, Mr. […] indicated that copies of all of the documents discussed [three Epcor Utility Bills, a Shaw invoice, and a letter confirming that she had been a tenant at a particular address for the past year and a half] would be forwarded to him in an SIU evidence envelope.
>
> <u>Mr. […] noted that the manual restriction was removed from the [Applicant's] file upon the updating of the physical address</u>. [my emphasis]
>
> Mr. […], in his SIU file notes, indicated that on August 26, 2010 he received copies of the letter referenced in paragraph 13 of this affidavit as well as the EPCOR and SHAW hard utility statements from the AMA registry agent office and that those documents were placed into the SIU file concluding the MOVES matter.
>
> The SIU file indicates that on August 23, 2010 SIU Investigator […] had a conversation with CRA investigator […] regarding the [Applicant's] physical address that had been updated as stated in paragraph 15 of this Affidavit.

[para 7] Once the Applicant provided the required proof, the employee from the Public Body's Service Alberta's Special Investigation Unit (SASIU) contacted the CRA to inform it that the Applicant had gone to a Registry and provided proof of her physical address.

[para 8] Paragraph 27 of the materials the Applicant submitted for the inquiry indicate that the CRA spoke with a SASIU officer and was told that the Applicant had provided a new physical address which was being forwarded to the officer.

[para 9] Paragraph 28 of the materials the Applicant submitted for the inquiry establishes that the CRA, after receiving information from the Public Body that it had obtained the Applicant's physical address, made another request for the Applicant's address information and was provided with her physical address. The CRA then obtained a Court order to obtain the records the Applicant had submitted to the Registry regarding her physical address in addition to a screen print from the Alberta Motor Vehicle System (MOVES) database. The Court order required the SASIU to produce:

> […] All applications and documents submitted by [the Applicant] in respect of her physical address and licence to operate a motor vehicle in Alberta during the period from August 1, 2010 to August 31, 2010, inclusive.

[para 10] Service Alberta produced records as required by the production order. The CRA subsequently instituted proceedings against the Applicant.

[para 11] The Applicant made a request for access to Service Alberta for her file. She requested a copy of her "entire file that is currently held by your department specifically the Service Alberta – Special Investigations Unit". The time frame for the requested records was January 1, 2000 – July 26, 2013.

[para 12] The Public Body searched for the requested records. On August 26, 2013, the Public Body responded to the Applicant. The Public Body stated:

> Service Alberta conducted a search of its record holdings with the Special Investigations Unit based on the search parameters you provided to this office. The information you requested is part of an ongoing investigation, therefore access to the information is denied at this time under the following sections of the FOIP Act:
>
> - Section 20(1)(a) - release of the records could harm a law enforcement matter,
> - Section 20(1)(c) - release of the records could harm the effectiveness of investigative techniques and law enforcement procedures,
> - Section 20(1)(f) - release of records may interfere with or harm an ongoing law enforcement investigation,
> - Section 20(1)(i) - release of the records could reveal a record that has been confiscated by a peace officer in accordance with the law.
>
> There were also Registry records included in the investigation records. Under Section 4(1)(1)(i), the FOIP Act does not apply to record made from information in Registries, therefore that information cannot be disclosed as part of a response to a FOIP request.

[para 13] The Applicant requested that the Commissioner review the Public Body's response to her access request. She also made a complaint that the Public Body had disclosed her address information to the Canada Revenue Agency in contravention of Part 2 of the FOIP Act.

[para 14] The Commissioner authorized mediation. As mediation was unsuccessful in resolving the issues, the matter was scheduled for a written inquiry.

[para 15] After I reviewed the submissions of the parties I determined that the Applicant's complaint was not limited to the disclosure of her personal information by the Public Body, but extended to its collection and use of her personal information. I informed the parties that the issues of collection and use had been added to the inquiry.

II. RECORDS AT ISSUE

[para 16] The records contained in the Applicant's file held by the Public Body are at issue.

III. ISSUES

ACCESS REQUEST F7599

Issue A: Does section 4(1)(l)(i) apply to the records the Public Body has not provided in reliance on this provision?

Issue B: Did the Public Body properly apply section 20(1)(a), (c), (f) and (i) of the FOIP Act to the records?

COMPLAINT F7600

Issue C: Did the Public Body collect the Applicant's personal information in compliance with, or contravention of, section 33 of the FOIP Act?

Issue D: Did the Public Body collect the Applicant's personal information for purposes for which it may collect personal information directly or indirectly within the terms of section 34? If it was required to collect the Applicant's personal information directly, did it do so in compliance with, or in contravention of, section 34 of the Act?

Issue E: Did the Public Body use the Applicant's personal information when its investigator accessed the Applicant's physical address after she provided it? If yes, did it do so in compliance with or in contravention of, section 39 of the Act?

Issue F: Did the Public Body disclose the Applicant's personal information in contravention of Part 2 of the FOIP Act?

IV. DISCUSSION OF ISSUES

ACCESS REQUEST F7599

Issue A: Does section 4(1)(l)(ii) apply to the records the Public Body has not provided in reliance on this provision?

[para 17] The Public Body did not provide records 21 – 26, 32, and 40 – 43 to the Applicant on the basis of section 4(1)(l)(ii) of the FOIP Act. Section 4(1)(l)(ii) states:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> *(l) a record made from information*
>
> *(ii) in the office of the Registrar of Motor Vehicle Services [...]*

[para 18] If a provision of section 4 applies to a record, then the FOIP Act does not impose any duties on a public body in relation to that record. For example, if a requestor seeks to obtain access to a record under the FOIP Act that is subject to section 4, the public body is not required or authorized by the FOIP Act to provide the record to, or withhold the record from, the requestor.

[para 19] In this case, the Public Body has elected not to provide records made from information in the MOVES database to the Applicant. The MOVES database is a database containing personal driving and motor vehicle information for the province of Alberta. It also contains the names and addresses of Albertans who have applied for licenses or identification cards.

[para 20] The records the Public Body has opted not to provide to the Applicant through the application of section 4 are records made from information in the MOVES database. As discussed in Decision F2012-D-02, *records made from information* in the MOVES database are exempt from the application of the FOIP Act, although the *information in the database* is not. As a result, while a complaint may be made about the collection, use and disclosure of personal information in the MOVES database, an access request cannot be made for records made from it.

[para 21] In this case, the Applicant has made an access request that encompasses records that were made from information in the MOVES database. The FOIP Act does not apply to these records and so the Public Body is not under a duty to include them in its response, although it is not precluded by the FOIP Act from doing so.

Issue B: Did the Public Body properly apply section 20(1)(a), (c), (f) and (i) of the FOIP Act to the records?

[para 22] The Public Body withheld records from the Applicant on the basis that disclosing them would harm an investigation conducted by the Canada Revenue Agency. The provisions of the FOIP Act on which it relies to withhold records from the Applicant are the following provisions of section 20:

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

> *(a) harm a law enforcement matter,*
>
> *[…]*
>
> *(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,*
>
> *[…]*
>
> *(f) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation,*
>
> *[…]*
>
> *(i) reveal a record that has been confiscated from a person by a peace officer in accordance with a law […]*

[para 23] The Public Body argues:

> The FOIP Act's section 1 (h)(ii) defines law enforcement as "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 proceeding or by another body to which the results of the proceedings are referred."
>
> The records responsive to the Applicant's request made up an SIU investigation file regarding the Applicant. The SIU's investigation of this matter met this definition of law enforcement under the FOIP Act and referral of this information for the CRA's investigation resulted in the Federal Prosecutors seeking a penalty or sanction against the Applicant through criminal proceedings that concluded on February 22, 2016. Although it may not be immediately recognizable that any particular record identified as responsive to the Applicant's request is a law enforcement record in and of itself, the records were identified in one SIU investigation file and as a whole the records within that file came under section 20(1). Specific details for each subsection follows.
>
> The Applicant's access request was denied under section 20(1)(a) as the disclosure could "harm a law enforcement matter'". This is a fairly broadly worded exception to access and the harm that was evident impacted broader law enforcement matters. At the time of the access request, the SIU investigation was closed but the CRA investigation, to which the SIU investigation records were referred, was ongoing. Both are law enforcement agencies and all were engaged in a law enforcement matter.
>
> All investigators assigned to the Public Body's SIU are peace officers appointed by the Director of Law Enforcement, Alberta Justice & Solicitor General. The appointment provides authority to enforce a significant number of provincial statutes and associated regulations as well as authority to enforce the Criminal Code of Canada. Furthermore, the Public Body's SIU office is recognized as a Category 2 Law Enforcement Agency by both the Royal Canadian Mounted Police and the Alberta Association of Chiefs of Police.

The CRA has similar authority. The CRA's investigators are "public officers" as defined by the Criminal Code of Canada and thus are officers engaged in enforcing laws. The Public Body records were a component of an ongoing CRA investigation and the disclosure of these records by the Public Body when originally requested could have harmed both the ongoing CRA investigation and the Federal Crown Prosecutor's criminal case resulting from this investigation.

Until February 22, 2016, when the criminal proceedings concluded, the disclosure of the records to the Applicant by the Public Body fell under law enforcement matters and court processes not FOIP processes. The denial of the Applicant's access request included section 20(1)(c) because many of the records, both singularly and taken as a whole, identify the investigative techniques and procedures of the Public Body's SIU, such as the identification of contacts and professional relationships, investigation processes, and sources of information integral to the investigation.

The harm caused by the disclosure of this information has farther reaching consequences than any one investigation. Dissemination and knowledge of these techniques and procedures could compromise this and any future investigations; potentially put investigators, contacts, and sources at risk; and harm the effectiveness of the use of these techniques, contacts and procedures for conducting investigations and resolving law enforcement matters.

Section 20(1)(c) of the FOIP Act applies whether an investigation is open or closed. Any subsequent review of the records for disclosure undertaken after the conclusion of the investigations and court proceeding would still consider the protection this section is intended to convey in order to prevent the harms identified

Section 20(1)(f) applied to the records because at the time of the original request for access to information there was an ongoing law enforcement investigation by the CRA. The Public Body received confirmation of this fact from the CRA and understood the Crown Prosecutor was already involved in development of the case. This investigation ceased with charges being laid, and resulted in criminal proceedings against the Applicant under federal law. The criminal proceedings against the Applicant concluded on February 22, 2016.

Section 20(1)(i) was applied because the records, taken together, constitute what was confiscated by the CRA in its investigation against the Applicant. The confiscation of these records did form a component of the CRA investigation which did ultimately lead to criminal charges and proceedings against the Applicant. As stated above, the CRA's investigator is a "peace officer" as defined by the Criminal Code of Canada and thus an officer engaged in enforcing laws.

In her submission of September 7, 2013, the Applicant argued that the records were not "confiscated" because she provided some records to the Public Body without duress. This is not the context by which confiscation is intended in citing this section. The Public Body argues the records were "confiscated" or "seized with authority" by the CRA from the Public Body, and the CRA had the necessary lawful authority to confiscate those records from the Public Body as the CRA was actively investigating the Applicant.

Did the Public Body conduct a "law enforcement investigation" within the terms of section 1(h)(ii) of the FOIP Act?

[para 24] The records indicate that in 2010, the Public Body asked the Applicant to confirm whether she was a resident of Alberta and to provide proof of her physical address. It is these activities that the Public Body characterizes as an "investigation" or "law enforcement investigation" by its employees.

[para 25] Under section 10(3) of the OLVCR, when an applicant makes an application for a driver's license, the applicant must include the applicant's physical address in the application. Under section 10(9) of the OLVCR, when considering whether an applicant for a license is a resident of Alberta, the Registrar may consider "the nature of accommodations in Alberta that are set out in the application form as being the applicant's physical address." Under section 20 of the OLVCR, if a licensee's physical address changes, the licensee shall apply to the Registrar for the licensee's operator's license to be reissued with the new address. The Public Body points to the OLVCR as its authority to investigate the [Applicant's] physical address.

[para 26] The Public Body argues that the records created by its investigator contain information pertaining to a law enforcement investigation within the terms of section 20 of the FOIP Act.

[para 27] Section 1(h) of the FOIP Act defines "law enforcement". It states:

> *1 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 28] The FOIP Act does not define the terms "penalty" or "sanction", which appear in sections 1(h)(ii) and (iii). However, I note that the Director of Adjudication interpreted these words in Order F2008-030, where she said:

> In my view, the provisions in the child welfare legislation for ordering supervision or removing a child from the custody of a guardian are not properly characterized as "penalties or sanctions". The fundamental purpose of imposing penalties or sanctions is to denounce unlawful conduct and to deter offenders. The provisions cited by the Public Body address the needs of the child, rather than the need to penalize or sanction the parents or care-givers. While the result of the investigation may be that a parent is prohibited from having access to the child, the legislation does not, in my view, permit this to be done in order to punish the parent, but rather to ensure the well-being of the child. In this regard, I do not agree with the conclusions of the adjudicators in Ontario, cited by the Public Body, to the effect that prohibiting a parent from having access to a child amounts to a penalty or sanction for the parent. (Ontario Order MO-1416, citing Order M-328).

> I turn to whether section 1(h)(ii) of the Act (which defines "law enforcement") is met because an investigation by the director could, if he or she were to discover the elements of an offence in the course of conducting an investigation, lead to the imposition of a penalty or sanction. In this regard, I acknowledge that if the director were to discover facts which amounted to an offence, and were to refer the matter to the police, any investigation or proceeding that followed could lead to the imposition of penalties or sanctions. I also note that section 1(h)(ii) contemplates an investigation that could lead to a penalty or sanction imposed by another body to which the results of the investigation are referred. As well, I note that the director is empowered under the child welfare legislation to take whatever action he or she thinks is appropriate after concluding an investigation, which could conceivably be interpreted to include the power to refer the matter for a possible charge and prosecution, and that in any event, section 40(1)(q) of the Act permits public bodies to disclose personal information to assist in investigations from which a law enforcement proceeding is likely to result. Finally, I note that the child welfare legislation, both current and former, makes it an offence to willfully cause a child to be in need of protective services or intervention. Thus it is arguable that a director's investigation could meet the definition of "law enforcement" under section 1(h)(ii) of the Act by reference to all of these factors.
>
> However, there is another possible interpretation of section 1(h)(ii), which is that it is limited such that the purpose of the administrative investigation must be to enforce compliance with a law, and does not cover an investigation which has other primary purposes but which might incidentally uncover an offence, which can then be referred to police for further investigation or prosecution. Under this interpretation, since a director's investigations are for the purpose of taking steps to protect children, and the uncovering of offences is not among the director's expressed duties, a director's investigation is not "law enforcement" under the Act. Support for this interpretation may be found in the fact that many statutory powers of investigation could lead to the incidental discovery of an offence, from which it would follow that all such statutory investigative powers are "law enforcement" under the Act – arguably a result that is broader than was intended.

[para 29] In the foregoing case, the Director of Adjudication also referred to section 718 of the *Criminal Code of Canada*, RSC 1985 c. C-46, in which the purpose of sanctions under that Act is established. This provision states:

> *s. 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:*
>
> *(a) to denounce unlawful conduct;*
>
> *(b) to deter the offender and other persons from committing offences;*
>
> *(c) to separate offenders from society, where necessary;*
>
> *(d) to assist in rehabilitating offenders;*
>
> *(e) to provide reparations for harm done to victims or to the community; and*
>
> *(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.*

A sanction in the foregoing provision is a punitive measure intended to result in any of the six outcomes listed in the provision.

[para 30] In the *Dictionary of Canadian Law* 4th Edition, a "sanction" is defined as "a punishment or penalty used to enforce obedience to law." [1]

[para 31] The *Canadian Oxford Dictionary* defines penalty as "a punishment"[2] and "sanction" as "a penalty or reward enacted to enforce obedience to a law or rule."

[para 32] I note that the Public Body took steps to confirm the Applicant's address under the authority of the Operator Licensing and Vehicle Control Regulation (OLVCR) and I also note that section 150 of the OLVCR makes failure to comply with section 20(1) and (2) of the OLVCR an offence, referred to above. Under section 86 of the *Traffic Safety Act* the Court may suspend an operator's license for failure to comply with the provisions specified in section 150 of the OLVCR for a period of up to three months. A suspension of up to three months for a failure to comply with the requirements of section 20 is a penalty or sanction.

[para 33] However, the records do not support finding that the Public Body was conducting an investigation into an offence under section 150. Instead, the SASIU investigator put a hold on her file so that she could not renew her registration until she had provided an updated physical address. Once she provided the address with supporting documentation, the SASIU investigator lifted the hold and the Applicant was provided with services. No steps were taken to prosecute the Applicant or to refer the matter to prosecution. The affidavit of the Director of the Audit and Investigation Branch states that MOVES matter was *concluded* once the Applicant's supporting documentation for her physical address was placed in an SIU file (paragraphs 14 – 16). From this affidavit, and from the evidence contained in the records at issue, I conclude that the process the Public Body followed to obtain the Applicant's address was not an investigation within the terms of section 1(h) of the FOIP Act, as there was no possibility of the matter resulting in a penalty or sanction. Rather, the only consequence to the Applicant that the Public Body intended was a denial of motor vehicle services until the Applicant provided a physical address and supporting documentation.

[para 34] In my view, refusing to renew registration until the Public Body is provided with satisfactory proof of an applicant's physical address is not a penalty or sanction intended to compel obedience with the law, as discussed above. The Public Body will not issue licenses or renewals to anyone who fails to provide satisfactory proof of their physical address, whether the applicant is in violation of the OLVCR or not. For example, the Public Body would not issue a license to someone who failed to provide a physical address in their first application for a license. Here, the Public Body would not renew the Applicant's registration until she provided a new physical address and supporting documentation.

---

[1] Dukelow, *The Dictionary of Canadian Law*, 4th Edition (Toronto; Thomson Reuters Canada Ltd. 2011) p. 1158

[2] *Canadian Oxford Dictionary* (Don Mills; Oxford University Press, 2004) p. 1150

[para 35] I note too, that the limitation period for bringing a prosecution in relation to failing to provide a physical address appears to have expired by the time the SASIU investigator decided to obtain the Applicant's physical address.[3]

[para 36] The Public Body makes reference to its investigators being peace officers as another basis for finding that their investigations are law enforcement investigations. However, the application of section 1(h)(ii) of the FOIP Act does not rely on the credentials or classification of the person who is conducting the investigation, only the nature of the investigation, which must be a police, security or administrative investigation that could lead to a penalty or sanction. As discussed above, there is no evidence that the process by which the Public Body obtained the Applicant's address and supporting documentation could result in a penalty or sanction. Rather, it appears to be the case that it was always intended that the process would end once the physical address was obtained.

[para 37] The Public Body provided the Applicant's physical address to the CRA to enable it to locate the Applicant's residence and the CRA subsequently commenced a prosecution; however, this action on the part of the CRA does not transform the Public Body's decision to obtain the Applicant's physical address into a law enforcement investigation by the CRA, given that the CRA would have no power to issue a penalty or sanction in relation to the Applicant's provision of her physical address to the Public Body. Moreover, the Public Body has no authority to conduct investigations under the *Income Tax Act*, on its own, or at the request of the CRA. This is not a case where "the results of the investigation" are referred to another body to impose a penalty or sanction in relation to them, as set out in section 1(h)(ii).

[para 38] I turn now to the question of whether the Public Body has established that the records to which it has applied provisions of section 20 could result in the various harms to law enforcement it has claimed would result if the records are disclosed.

20(1)(a)

[para 39] Section 20(1)(a) authorizes a public body to withhold information from an applicant where disclosing the information could reasonably be expected to harm a law enforcement matter.

[para 40] As I have found that the Public Body's inquiries regarding the Applicant's physical address are not a law enforcement investigation within the terms of the FOIP Act, it follows that I find any projected harm to such an investigation does not fall within the terms of section 20(1)(a).

[para 41] From my review of the records, I am unable to say that a law enforcement matter could reasonably be expected to suffer harm should the information in the records be disclosed.

---

[3] Section 4 of the *Provincial Offences Procedure Act,* R.S.A. 2000 c. P-34 requires prosecutions for provincial offences to be commenced within 6 months of the date of the offence.

[para 42] The Public Body states in its submissions that section 20(1)(a) is broad and that the harm that would result from disclosure of the records is evident, such that the provision clearly applies. It suggests that investigators and their contacts will be placed in danger through dissemination of the information in the records. I am unable to identify information about persons conducting an investigation or their contacts in the records, with the exception of the fact that the Applicant herself supplied some of the information to which the Public Body has applied section 20(1)(a).

[para 43] The Public Body has also not explained how the CRA investigation could reasonably be expected to be harmed (or to have been harmed given that the proceedings against the Applicant have concluded), if the records in its custody are disclosed to the Applicant. From my review of the records, I am unable to identify anything that might be revealed about the CRA's investigation that is not contained in the document the Director of the Audit and Investigation Branch refers to as "the Information to Obtain Search Warrant" which was submitted for the inquiry by the Applicant. As the CRA has disclosed to the Applicant all the steps it took to obtain her physical address that are documented in the records at issue, it is unclear how disclosure of the records would harm the investigation.

20(1)(c)

Section 20(1)(c) authorizes a public body to withhold information from an applicant if disclosure would harm the effectiveness of investigative techniques and procedures used in law enforcement.

[para 44] As reproduced above, the Public Body argues that disclosure of the records would serve to identify the investigative techniques and procedures of the Public Body's SIU, such as the identification of contacts and professional relationships, investigation processes, and sources of information integral to the investigation. It states that dissemination and knowledge of these techniques and procedures could compromise this and any future investigations; potentially put investigators, contacts, and sources at risk; and harm the effectiveness of the use of these techniques, contacts and procedures for conducting investigations and resolving law enforcement matters.

[para 45] The Public Body does not explain how disclosure of the records would reveal investigative techniques or procedures or disclose the identity of contacts and sources, nor does it point to any information, which, if disclosed, would reveal such techniques, contacts or sources. If it is referring to denying motor vehicle services to the Applicant until she provided satisfactory evidence of her physical address, it would appear that this practice was discussed with her when she attended the Registry.

[para 46] In addition, asking the Applicant for her physical address, which she was required by the OLCVR to provide in order for the Registrar to renew her registration, was not an investigation within the terms of section 1(h)(ii). Therefore, section 20(1)(c) cannot be applied so as to protect the effectiveness of techniques used to obtain her

physical address, even if it could be said that investigative techniques were used, or would be revealed, by disclosure of the records.

20(1)(f)

[para 47] Section 20(1)(f) authorizes a public body to withhold information from an applicant if disclosing the information would interfere with or harm an ongoing or unsolved law enforcement investigation.

[para 48] Even though the investigation for which the Court order was issued has concluded, there is nothing in the evidence before me to support finding that disclosing the contents of the records to the Applicant could have interfered with an ongoing or unsolved law enforcement investigation at any time.

20(1)(i)

[para 49] Section 20(1)(i) authorizes a public body to withhold information that would reveal a record confiscated or seized from a person in accordance with a law.

[para 50] The Public Body argues that the file it has made of the Applicant's information constitutes information that was confiscated by the CRA. As I understand the Public Body's argument, it takes the position that the records it produced to the CRA were "confiscated" by the CRA within the terms of section 20(1)(i) when it provided records to the CRA after being served with a court order requiring it to do so.

[para 51] The Applicant's evidence establishes that the records the Public Body produced were the following:

1. 3 Epcor utility bills in the name of the Applicant
2. A Shaw invoice
3. A letter from a landlord indicating that the Applicant had lived at a specific address
4. A screen print, certified as a copy of the Applicant's physical address

[para 52] I will first address the question of whether the CRA could be said to have confiscated the foregoing information "from a person" within the terms of section 20(1)(i).

[para 53] The term "confiscate" has a similar meaning to "seize". Both terms refer to depriving a person of property or appropriating it with legal authority. In the case of recorded information, "confiscating records" would refer to seizing records from a person.

[para 54] Although obtaining a Court order to obtain records might be construed as confiscation in the sense that the CRA took records away that were in the custody and control of another, the CRA did not confiscate the Applicant's personal information

within the terms of section 20(1)(i). I make this finding on the basis of the production order, which is directed to "Service Alberta – Special Investigations Unit". The CRA's officer did not obtain the records it sought "from a person" as section 20(1)(i) contemplates, but from the Public Body.

[para 55] Section 28(1)(nn) of the *Interpretation Act* defines the term "person" where it is used in enactments of Alberta, such as the FOIP Act. It states:

> *28(1) In an enactment,*
>
> > *(nn) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;*

Under this definition, an individual is a person, and so is a corporation, and the legal representatives of a person. The definition relies on the usual meaning of the word "person" as referring to a "human being" but expands the meaning of the term to include corporations and legal representatives. However, this definition does not include the Government of Alberta or its branches. The Public Body is therefore not a "person" within the terms of the FOIP Act and the CRA's collection of the information from the Public Body does not fall within the terms of section 20(1)(i).

[para 56] In addition, if it is the Public Body's theory that its own act of obtaining the Applicant's address was a confiscation or seizure of that information, I find that this is not the case. Rather, the Applicant voluntarily submitted her address information to a registry for the purpose of renewing her registration. The OLVCR does not contain any provisions authorizing the confiscation of address information and so the requirement of section 20(1)(i) that the confiscation of information be authorized by law is not met for that reason as well. Requiring an applicant to submit physical address information satisfactory to the Registrar of Motor Vehicles as a condition of providing services is not the same thing as seizing or confiscating records. In addition, the records the Applicant submitted for the inquiry were not taken from her by a peace officer but by a Registry employee.

[para 57] Finally, I note that section 20(1)(i) refers to information that would "reveal a record that has been confiscated". In this case, disclosure of the records that were the subject of the production order would not reveal a record that has been confiscated. The word "reveal" means "allow to appear" or "make known". In this case, the records that were the subject of the production order were provided to the Applicant in the proceedings for which the production order was issued. In other words, disclosure at this time would not serve to *reveal* records that were seized or confiscated, even if it could be said that the records were confiscated from a person.

Conclusion

[para 58] To conclude, I find that section 20 contains no authority for the Public Body to withhold information from the records. I will therefore order the Public Body to disclose the information it has withheld from the Applicant under this provision.

COMPLAINT F7600

Issue C: Did the Public Body collect the Applicant's personal information in compliance with or in contravention of section 33 of the Act?

[para 59] The Public Body's states in its submissions of July 8, 2016:

> The original reason and purpose for the collection of the [Applicant's]personal information, specifically her physical address, was to ensure that the [Applicant's] personal driving and motor vehicle information, as defined in the TSA, was complete and accurate for vehicle licensing privileges under the OLVCR.

[para 60] Section 33 of the FOIP Act authorizes a public body to 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 61] The collection of the physical address of an applicant as a condition of obtaining or maintaining a driver's license is expressly authorized by sections 10 and 20 of the OLCVR, which is a Regulation of Alberta. The Public Body collected the Applicant's physical address when she sought renewal of her registration.

[para 62] Section 1(n) defines personal information. It states:

> *1 In this Act,*
>
> *(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 63] The home or "physical" address of an identifiable individual is the individual's "personal information" within the terms of section 1(n)(i) of the FOIP Act.

[para 64] I find that the Public Body collected the Applicant's personal information when it collected her physical address for the purpose of making a decision under the OLVCR. I find that collection of this information for the purpose of renewing her registration under the OLVCR is a purpose authorized by section 33(a) of the FOIP Act.

[para 65] However, the records at issue also indicate that prior to the collection of the Applicant's physical address and supporting documentation, the SASIU investigator noted that this information would be given to the CRA for the purpose of the CRA's investigation, once the Applicant provided it. (record 2)

[para 66] The Public Body has not acknowledged in the inquiry that it had any other purpose in collecting the Applicant's personal information other than ensuring that it had a physical address for the purposes of the OLVCR; however, information in records 2, 27, and 28 support finding that providing the Applicant's physical address to the CRA to assist it in an investigation was one of the SASIU investigator's purposes in putting a hold on the Applicant's file until the Applicant supplied her physical address.

[para 67] The Public Body states:

> Section 10(3)(c) of the OLVCR requires applicants for Alberta driver's licenses to provide a physical address as a condition of the licence application. Section [53(2)(c)(ii)] of the OLVCR requires applicants seeking to register a motor vehicle for operation on Alberta highways to provide a physical address as a condition of the vehicle registration application.

> The original reason and purpose of the collection of the [Applicant's] personal information, specifically her physical address, was to ensure that the [Applicant's] personal driving and motor vehicle information, as defined in the TSA, was complete and accurate for vehicle licensing privileges under the OLVCR.
>
> […]
>
> As discussed above, the SASIU's own internal investigation must not be confused with the CRA's investigation under the Income Tax Act and Excise Tax Act.
>
> SASIU *used* the [Applicant's] personal information for the purpose of its own investigation to ensure compliance with the OLVCR. This use was in accordance with the collection of personal information under the OLVCR ss. 10 and [53] and the FOIP Act s. 39(1)(a). [emphasis in original]
>
> SASIU disclosed the [Applicant's] personal information for the CRA's investigation.

[para 68] The Public Body's position is that the purpose of assisting the CRA in an investigation was its purpose only in relation to the disclosure of the Applicant's personal information. It reasons that this disclosure is authorized by section 2(1)(j) of the Access to Motor Vehicle Information Regulation (AMVIR).

[para 69] The Public Body's argument fails to address the content of records which indicates the SASIU investigator's intention of disclosing the Applicant's information to the CRA once the information was received. The SASIU investigator's notes on record 2 indicate that he planned to notify the CRA as soon as the Applicant provided an updated physical address. This intention with regard to the Applicant's personal information is an additional purpose for *collecting* the Applicant's personal information, and one that is not authorized by the OLVCR. To put it differently, the notes of the SASIU investigator indicate that a purpose in collecting the Applicant's physical address was to disclose it to the CRA.

[para 70] I agree with the Public Body that the process by which it collects information under the authority of the OLVCR should not be confused with an investigation under the CRA. However, the SASIU investigator's notes support finding that he had both compliance with the OLVCR *and* assisting the CRA as purposes when he put the manual restriction on the Applicant's account.

[para 71] Cited above, section 33 of the FOIP Act authorizes a public body to collect personal information if authorized to do so by statute, if the personal information is collected for the purpose of law enforcement, or if collecting the personal information relates directly to, and is necessary for an operating program or activity of the public body.

[para 72] With respect to section 33(b), this provision gives a public body that is conducting a law enforcement investigation of the type described in section 1(h)(ii), pursuant to its authority to conduct such an investigation, the authority to collect information for this investigation purpose. However, this provision does not provide

authorization for public bodies to engage in investigations in which they are not authorized to engage by reference to either their own legislation, or some other legislation specifically authorizing them to conduct investigations. In other words, section 33(b) *assumes* the authority in a public body to conduct the kind of investigation described in section 1(h)(ii), and authorizes information collection for that authorized purpose.

[para 73] There is nothing before me to suggest that the Public Body here has authority to conduct police, security, or administrative investigations that could lead to penalties or sanctions imposed by the CRA or under the CRA's provisions. (The Public Body does say that its investigators have authority to investigate provincial offences, and *Criminal Code* matters, but says nothing about CRA matters.) In other words, the SASIU has pointed to no statutory authorization for it to act as an arm of the CRA.

[para 74] I acknowledge that on their face, the words of section 33(b), as informed by section 1(h)(ii), might be read as indicating that any body may conduct section 1(h)(ii) law enforcement investigations as long as the body refers the results of its investigations to some other body that can impose a penalty or sanction. However, this idea overlooks that bodies created by statute can do only the things they are specifically authorized by statute to do; authorizing information collection cannot be taken as authorizing the broader activity of which information collection is only a part. There appears to be no statutory authority for the SASIU to engage in investigations that are intended to assist the CRA.

[para 75] To summarize, I find that the Public Body's collection of the Applicant's physical address and supporting documentation for the purpose of ensuring that the Registrar had sufficient information regarding the Applicant's residence in Alberta in order to issue a registration renewal is a purpose for which the Public Body was authorized to collect this information under section 33(a). However, I find on the evidence before me that the Public Body also collected the Applicant's physical address and documentation for the purpose of assisting the CRA. This purpose is not one authorized by section 33. I therefore find that the Public Body contravened section 33 when it collected the Applicant's personal information for this unauthorized purpose.

Issue D: Did the Public Body collect the Applicant's personal information for purposes for which it may collect personal information directly or indirectly within the terms of section 34? If it was required to collect the Applicant's personal information directly, did it do so in compliance with or in contravention of section 34 of the Act?

[para 76] Section 34 requires a public body to collect personal information directly, unless an exception to this requirement applies. Section 34 states, in part:

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

(g) the information is collected for the purpose of law enforcement […]

(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

[para 77] Section 34(2)(a) of the FOIP Act requires a public body to inform an individual of the purpose for which it is collecting the individual's personal information and its legal authority to do so unless a provision of section 34(1) applies.

[para 78] The Public Body also explains that it collected the Applicant's personal information for this purpose directly within the terms of section 34:

> The registry agent called an SASIU investigator, and the SASIU investigator and [the Applicant] spoke. The SASIU advised that the [Applicant] was required to provide proof of her actual physical address, the sections of the OLVCR that authorized that collection, and read to the [Applicant] sections from the OLVCR to discuss what type of proof was acceptable.
>
> The [Applicant] provided the registry agent with proof of the [Applicant's] actual physical address later that day. The registry agent collected the proof directly from the [Applicant].
>
> The registry agent provided the SASIU investigator the proof of the [Applicant's] physical address to close the SASIU investigation and lift the alert in the MOVES database.
>
> The collection of the [Applicant's] physical address was a direct collection inasmuch as the collection was done through the use of a registry agent (the Registrar's agent carrying out registration activities as authorized pursuant to Schedule 12 of the *Government Organization Act*, RSA 2000 c. G-10) who serves as the interface between the public and Registrar for the purposes of managing all face to face motor vehicle registration services under the OLVCR.

[para 79] Record 7 indicates that the SASIU investigator informed the Applicant that her physical address and supporting documentation were being collected under the authority of the OLVCR and because the Registrar required proof of her physical address. The SASIU investigator answered the Applicant's questions regarding the collection. To the extent that the Applicant's physical address was collected to enable the Registrar to make a decision regarding issuing the Applicant a renewal and to ensure compliance with the OLVCR, the requirements of section 34 were met.

[para 80] However, as discussed above, the SASIU investigator also collected the Applicant's physical address and documentation for the purpose of providing it to the

CRA. However, the SASIU investigator did not inform the Applicant of this purpose when the Applicant spoke to him and submitted her physical address and supporting documentation. If an exception to section 34(1) applies to this information, then the Public Body need not comply with section 34(2). However, I am unable to say that any of the exceptions set out in section 34(1) applies to this aspect of the Public Body's collection, given that collection for the purpose of providing the information to the CRA is not authorized by section 33 of the FOIP Act.

[para 81] I find that the Public Body did not comply with the terms of section 34(2), as the SASIU investigator did not inform the Applicant of his intention of providing her personal information to the CRA when the information she provided was collected.

Issue E: Did the Public Body use the Applicant's personal information when its investigator accessed the Applicant's physical address after she provided it? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

[para 82] Section 39 limits the ability of a public body to use personal information. This provision states:

> *39(1) A public body may use personal information only*
>
> > *(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
> >
> > *(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*
> >
> > *(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*
>
> *[...]*
>
> *(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 83] Section 41 of the FOIP Act explains the circumstances in which section 39(1)(a) can be said to apply. 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 84] The Public Body argues:

> When it became aware of the [Applicant's] lack of physical address on file with the Registrar, the SASIU on behalf of the Registrar, used the [Applicant's] personal information to undertake its own investigation in accordance with and for the purposes for which the information was originally collected, [OLVCR] ss. 10 and 52, which therefor supports Service Alberta's compliance with FOIP Act's section 33.
>
> As discussed above, SASIU's disclosure of the [Applicant's] personal information to the CRA under AMVIR s. 2(1)(j) and the FOIP Act s. 40(1)(q) and 40(1)(g). The CRA is considered a law enforcement agency under AMVIR and the FOIP Act and was enforcing *The Excise Tax Act* and *The Income Tax Act*. Because the SASIU made a disclosure under AMVIR s. 2(1)(j), the disclosure was also in accordance with the FOIP Act s. 40(1)(f).

[para 85] The evidence before me establishes that after the Registry collected the Applicant's physical address and supporting documentation, the SASIU investigator obtained the information.

[para 86] Record 6 of the records at issue and paragraph 17 of the affidavit the Public Body submitted for the inquiry indicate that the SASIU investigator accessed the Applicant's personal information for two reasons. First, to remove the manual restriction he had put on her file in the MOVES database. The second purpose was to inform the CRA about the Applicant's attendance at the Registry and the information she had provided.

[para 87] Paragraph 27 of the affidavit evidence the Applicant provided for the inquiry also supports finding that the SASIU employee accessed the information for the purpose of using it to inform the CRA of the details of the Applicant's visit to the Registry, as this paragraph documents the message the SASIU employee left for an employee of the CRA.

[para 88] As discussed above, the physical address of the Applicant is her personal information. However, the fact that the Applicant went to the Registry and provided her physical address with supporting documentation is her personal information, given that it is about her as identifiable individual. Moreover, this information is recorded information, given that it is documented on the top half of record 6 and can be inferred from the content of records 33 – 47.

[para 89] The Public Body collected the Applicant's physical address in order to update the Registrar's records and to renew her motor vehicle registration. It collected information about the fact of her visit to the Registry, her purpose in going there and the information she provided in order to remove the manual restriction on her file and to receive motor vehicle services. However, the Public Body used this personal information

not only for the purpose of making decisions about providing motor vehicle services, but also for determining whether the information should be provided to the CRA.

[para 90] I note that in Order F2009-048, the Adjudicator held that reviewing a record to determine whether it may be disclosed under section 40 is not a "use" of information. She stated:

> Given that public bodies may use personal information in only the following circumstances: when the use is for, or consistent with, the purpose for which the information was collected; with the individual's consent; or for a purpose for which the information may be disclosed to the collecting public body under Part 2, the more extensive provisions permitting disclosure under section 40 could be thwarted if a public body required authorization to use any personal information in order to judge its appropriateness for disclosure. It would in fact be an absurd result if public bodies were permitted to disclose personal information under sections 40(1)(a)-(ff), 40(2), 42 and 43; to exercise discretion when determining whether to disclose; and to disclose only the minimum personal information necessary for the relevant purpose; but at the same time they were not permitted to review the personal information in order to do these things.
>
> Consequently, in my view, the correct interpretation of the Act is that a public body is not *using* personal information for the purpose of section 39 of the Act if it is only reviewing the personal information for the purpose of determining whether to disclose it under section 40.

[para 91] I agree with the Adjudicator's reasoning in Order F2009-048. When a public body accesses information for the purpose of determining whether to disclose it, the disclosure provisions in the FOIP Act govern this access, rather than the provisions governing "use" of the information. This is true, whether the disclosure is made at the request of another entity, or on its own accord. In this case, the Public Body used the Applicant's personal information for the purpose of lifting the hold that had been placed on the Applicant's file, which is a use consistent with its purpose in collecting the information. It then disclosed the Applicant's personal information to the CRA for purposes unrelated to the OLVCR. I will address the Public Body's disclosure of the Applicant's personal information to the CRA under Issue F, below.

Issue F: Did the Public Body disclose the Applicant's personal information in contravention of Part 2 of the FOIP Act?

[para 92] The Public Body disclosed the physical address it had on file for the Applicant initially in response to the CRA's request on July 8, 2010. According to paragraph 28 of the evidence submitted by the Applicant, after the SASIU Investigator contacted the CRA, a CRA investigator asked for another search of the Registry and learned the Applicant's address from the documents the Applicant had submitted as proof of her physical address. The Public Body disclosed the physical address for the third time when it was served with a production order to provide the supporting documents the Applicant had submitted for the Registrar's use under the OLVCR. Paragraph 27 of the Applicant's evidence also establishes that a SASIU officer disclosed to the CRA the fact that the Applicant had visited a Registry and provided a new physical address with supporting documentation.

[para 93] The Public Body argues that the CRA is a "law enforcement agency" within the terms of sections 2(1)(j) of AMVIR and 40(1)(q) of the FOIP Act. It reasons that initially when it provided the Applicant's address information to the CRA in the absence of a Court order, it was for the purpose of assisting the CRA in an investigation, and that authority to do so is contained in section 2(1)(j) of AMVIR and therefore, section 40(1)(f) of FOIP, or alternatively, section 40(1)(q) of the FOIP Act.

[para 94] Section 2(1)(j) of AMVIR states:

> *2(1) The Registrar may, on request, release information*
>
> > *(j) only 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 95] Section 40(1) of the FOIP Act states, in part:

> *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[…]*
> >
> > *(g) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,*
> >
> > *[...]*
> >
> > *(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 96] I turn now to question of whether any of the foregoing provisions authorizes the Public Body's disclosure of the Applicant's personal information to the CRA.

Does section 2(1)(j) of AMVIR authorize the disclosure of the Applicant's physical address and information about her visit to the Registry and the evidence she provided to the CRA prior to the Court Order?

[para 97] Section 2(1)(j) authorizes the Registrar to disclose driver information to a law enforcement agency for the purpose of assisting in an investigation that leads or could lead to penalties or sanctions. To meet the requirements of this provision, the investigation by the law enforcement agency must be undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result. If the information that was disclosed was from the motor vehicle registration system and the Registrar disclosed it for the purpose of assisting in an investigation undertaken with a view to a law enforcement proceeding, or, from which one was likely to result, then section 2(1)(j) of AMVIR, and therefore section 40(1)(f) of the FOIP Act, authorized the disclosure.

[para 98] Record 27 contains the July 8, 2010 request letter from the CRA. I note that this letter requests the information of two individuals, one of whom is the Applicant. The letter indicates that the tax affairs of the individuals are under investigation, for purposes *related to* the administration and enforcement of the *Income Tax Act*. The letter requests the physical addresses of the two individuals, but does not state the legal authority of the sender to obtain this information or indicate the statutory provision under which any investigations are being conducted. The Request for Disclosure to Federal Investigative Bodies Form, which was attached to this letter, explains that the request is made in accordance with section 8(2)(e) of the *Privacy Act* and indicates that the CRA is conducting an investigation.

[para 99] Assuming that the CRA is a law enforcement agency within the terms of AMVIR and the FOIP Act, to find that the Registrar's disclosure of the Applicant's personal information to the CRA is authorized by section 2(1)(j) of AMVIR and section 40(1)(f) of the FOIP Act, I must be able to find that the Public Body provided the Applicant's personal information to the CRA in order to assist the CRA in an investigation, and that it understood that the investigation was either being undertaken with a view to a law enforcement proceeding or that a law enforcement proceeding was likely to result from the investigation.

[para 100] The evidence of the contemporaneous notes taken by the Public Body's employees and the CRA's request for information indicates that the Registrar provided the Applicant's physical address to the CRA because the CRA requested it. The CRA's request for the Applicant's physical address does not describe the nature of the investigation for which it was seeking the record or explain how the information would assist the investigation. More significantly, the request for disclosure does not contain the CRA's authority to obtain the Applicant's personal information from Service Alberta.

[para 101] As noted in the background, above, the CRA's Request for Disclosure form indicates that its request is "in accordance with paragraph 8(2)(e) of the *Privacy Act*." This provision states:

> *8(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed*
>
> > *(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed […]*

[para 102] Section 3 of the *Privacy Act* defines "government institution" as

> *(a) any department or ministry of state of the Government of Canada, or any body or office, listed in the schedule, and*
>
> *(b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the Financial Administration Act;* (institution fédérale)

[para 103] Service Alberta is not a "government institution" as defined by the section 3 of the *Privacy Act*. As the *Privacy Act* applies only to government institutions, it does not apply to Service Alberta, which is part of the Government of Alberta.

[para 104] Section 8(2) of the *Privacy Act* authorizes a federal government institution to disclose information to an investigative body, such as the CRA, provided the CRA requests the information for the purpose of enforcing a law of Canada, or carrying out a lawful investigation, provided that the request specifies the purpose and describes the information. However, this provision does not address the situation in which the CRA requests information from a provincial entity, such as the Public Body; it cannot, given that the *Privacy Act* does not apply to provincial governments and is federal in application. As a result, this provision does not authorize the CRA to collect personal information from the Registrar (or the Public Body), or the Registrar (or the Public Body) to disclose personal information to the CRA.

[para 105] Section 8(1) of the *Traffic Safety Act* defines personal driving and motor vehicle information.

> *8(1) In this section, "personal driving and motor vehicle information" means*
>
> > *(a) any information supplied by an individual under this Act in order for that individual to be issued a motor vehicle document in that individual's name, or*
> >
> > *(b) any information contained in an individual's driving record*

> *that if released could identify or lead to the identification of an individual.*

Section 1(c) of AMVIR imports this definition to define "information" where that term is used in AMVIR. There is the potential for overlap between the definition of "personal information" under section 1(n) of the FOIP Act and "information" as defined by section 1(c) of AMVIR, as both may be viewed as referring to information about identifiable individuals.

[para 106] As discussed above, section 4(1)(l) of the FOIP Act excludes from the scope of the FOIP Act "a record made from information in the office of the Registrar". In Order F2013-06, I determined that this provision excludes records made from information in the office of the Registrar (the MOVES database) that the Registrar is authorized to create under AMVIR. However, I found that this exception did not apply to the information in the MOVES database itself. I said:

> The interpretation set out in Decision F2012-D-02/ P2012-D-01/ M2012-D-01 differs to that in the Audit Report, in that I found that information in the MOVES database is subject to Part 2 of the FOIP Act, and that the exception created by section 4(1)(l)(ii) applies to records that are made from this information, such as records made under the authority of the Access to Motor Vehicle Information Regulation (AMVIR). As a result, I found that the use and disclosure of personal information in the MOVES database is subject to Part 2 of the FOIP Act. In my view, section 4(1)(l) is not intended to exclude information from Part 2 of the FOIP Act, but to exclude the right of access to records made from this kind of information, such as a driver's abstract. In addition, it serves to exclude *records* made from information in the MOVES database from the scope of Part 2 of the FOIP Act, presumably because it would not be practically possible to monitor or limit the use to which clients may put records, such as driver's abstracts obtained under AMVIR.
>
> Section 6 of the FOIP Act states in part:
>
>> *6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.*
>>
>> *(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record [...]*
>
> Under section 6, the right of access extends to records. In contrast, the provisions of Part 2 of the FOIP Act apply to *personal information* in the custody or control of a public body. As a result, section 4(1)(l)(ii) may be interpreted as removing records made from information in the MOVES database from the scope of Part 1 Division 1 of the FOIP Act, but not as removing the information in the database from the scope of Part 2 of the FOIP Act.

[para 107] An individual may make a complaint to the Commissioner that the individual's personal information has been used and disclosed by the Registrar in contravention of the FOIP Act. To determine whether the complaint is founded, consideration will be given to whether the disclosure was made under the authority of AMVIR and therefore in compliance with the FOIP Act.

[para 108] As the Public Body notes, section 2(1)(j) of AMVIR and section 40(1)(f) of the FOIP Act, in conjunction, permit a public body to disclose information to law enforcement agencies to assist in an investigation undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result.

[para 109] It is not necessarily the case that this provision authorizes disclosure of personal information to a law enforcement agency in circumstances where the recipient law enforcement agency lacks legal authority to collect the personal information, or does not demonstrate that it has such authority. If an agency lacks legal authority to collect personal information for an investigation in the circumstances, it follows that giving it personal information for the purpose of conducting an investigation may not actually assist it, or reasonably be expected to assist it, in carrying out the investigation.

[para 110] In addition, I do not interpret section 2(1)(j) as authorizing disclosure of information to a law enforcement agency if the law enforcement agency does not establish that it is conducting the kind of investigation contemplated by section 2(1)(j). A request by a law enforcement agency must indicate the legal authority to conduct the investigation, the statutory provision under which any proceedings that are anticipated are held, and the statutory provision authorizing penalties or sanctions.

[para 111] The request letter from the CRA simply does not meet the standard set out in this provision, as it indicates only that it *relates* to the administration and enforcement of the Act in relation to two taxpayers and does not make reference to penalties or sanctions. It does not indicate anything about the nature of the investigation or any proceedings, or their potential consequences, or the Applicant's role in the investigation. Again, the request was for the information of two taxpayers, not one, and it is unclear to what extent either taxpayer was under investigation or that law enforcement proceedings within the terms of section 1(h)(iii) of the FOIP Act were anticipated as resulting from the investigation with respect to both taxpayers.

[para 112] While the Public Body argues that the Registrar provided the Applicant's physical address for the purpose of assisting the CRA in an investigation within the terms of section 2(1)(j) of AMVIR, or alternatively, under section 40(1)(q) of the FOIP Act, I am unable to find that it could reasonably come to this conclusion on the information that was before it.

[para 113] The Registrar did not ask about the nature of the investigation and did not ask about the authority of the CRA to obtain information from the Registrar's office or how obtaining the Applicant's personal information could assist in this investigation. The Registrar did not have any information establishing that the investigation was undertaken with a view to law enforcement proceedings as that term is defined in section 1(h)(iii) of the FOIP Act, or from which a law enforcement proceeding was likely to result. In addition, as the Registrar did not determine whether the CRA had authority to obtain the information, the Registrar had no means of determining whether the physical address information provided would assist the investigation, in the sense that it was not clear that

the CRA could make use of information obtained in this way. On the evidence before me, I am unable to conclude that the Registrar disclosed the Applicant's personal information from the motor vehicles information system for the purpose of assisting an investigation of the kind set out in section 2(1)(j) of AMVIR, given that no information was given as to the nature of the investigation and how it related to the Applicant, and no consideration appears to have been given to the authority of the CRA to obtain the information, such that it could be said the information would assist the investigation the CRA indicated it was undertaking.

[para 114] The records indicate the Applicant's physical address was disclosed on two occasions because the CRA requested it. Section 2(1)(j) of AMVIR does not authorize disclosure the purpose of complying with requests.

[para 115] I find that the disclosures of the Applicant's physical address and supporting documentation from the motor vehicle system were not authorized by section 2(1)(j) of AMVIR.

[para 116] Further, as noted above, AMVIR applies only to information supplied by an individual under the *Traffic Safety Act* in order for that individual to be issued a motor vehicle document in that individual's name, or to any information contained in an individual's driving record. AMVIR does not apply to the disclosure to the CRA of the recorded information regarding the Applicant's visit to the Registry to provide an updated physical address, given that this information appears in the SASIU investigator's notes and was not supplied by the Applicant for the purpose of obtaining a license. As a result, I find that section 2(1)(j) of AMVIR cannot authorize this disclosure. I must therefore address the question of whether another provision of the FOIP Act authorizes the disclosure.

[para 117] The disclosure of the Applicant's visit to the Registry was not made in response to a request for this particular information. As discussed above, it appears the SASIU investigator decided to contact the CRA on his own accord to inform it of the Applicant's visit. I infer from his notes and the evidence submitted by the Applicant that he notified the CRA for the purpose of informing it that it would receive the information it had originally sought, but did not obtain, if it made another request. When the SASIU investigator contacted the CRA, he did not ask whether the CRA had an ongoing investigation in relation to the Applicant, or whether any investigation being conducted was likely to result in proceedings of the kind described by section 1(h)(iii) of the FOIP Act. Further, he did not determine whether the information he provided would assist any investigation, but left all the details in a message.

[para 118] I am unable to find, on the evidence before me that the SASIU investigator disclosed the information about the Applicant's visit to the Registry for purposes authorized by section 40(1)(q) of the FOIP Act, given that it was unknown at the time of the disclosure whether the terms of this provision were met. The SASIU investigator did not know whether the CRA's investigation was ongoing in relation to the Applicant, whether the CRA still needed the Applicant's address and whether providing the

Applicant’s address would assist the CRA, and whether, assuming the CRA was still conducting an investigation, whether it was the kind of investigation that was undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding would be likely to result. Finally, the SASIU investigator was unaware as to the CRA’s legal authority to obtain the information he provided. Not only did the CRA not provide its authority to collect the Applicant’s personal information when it requested the physical address, but it did not request information about any visits the Applicant might make to the Registry and accordingly did not provide its authority to obtain such information. Authority to disclose information under section 40(1)(q) of the FOIP Act, like section 2(1)(j) of AMVIR, is circumscribed such that a public body must have a particular purpose when it discloses the information. In this case, there was no information before the Public Body to enable it to have assisting the CRA within the terms of section 40(1)(q) of the FOIP Act as its purpose in disclosing the Applicant’s personal information.

[para 119] With regard to the final disclosure, in which the Public Body disclosed the Applicant’s physical address in addition to the supporting documentation the Applicant had provided in response to a Court order requiring production of this information, I agree that this disclosure falls within the terms of section 40(1)(g) of the FOIP Act.

[para 120] In finding that the Public Body has not established that the terms of sections 2(1)(j) of AMVIR (and therefore section 40(1)(f) of the FOIP Act) or 40(1)(q) of the FOIP Act are met in relation to the two disclosures of the Applicant’s physical address in response to a request, and the disclosure of the fact that the Applicant went to a Registry and updated her physical address, I acknowledge that the Public Body stated in its initial submission:

> Additionally, consent is only one authority under section 40 of the FOIP Act that a public body may use to disclose personal information. Because the Public Body’s SIU did disclose the [Applicant’s] personal information using a different disclosure authority, specifically sections 40(1)(f), (q) and 40(1)(g), the Public Body did not need the [Applicant’s] consent. Associate Chief Justice Rooke has already affirmed the Public Body’s disclosure for the purposes of assisting a lawful investigation.

[para 121] In *R v Eddy*, 2016 ABQB 42, Rooke J. decided that the Applicant’s *Charter* rights were not violated by the CRA’s collection of the Applicant’s physical address. In arriving at this conclusion, he stated:

> The s 8 *Charter* prohibition against unreasonable search and seizure relates to initial taking of evidence. I have previously accepted the Crown’s arguments concerning application of *R v Serré* and the *Privacy Act*, and the *Personal Information Protection Act*. Once a government actor had Ms. Eddy’s residential address then that information is managed by personal information privacy legislation. As the Crown observed, *Privacy Act*, s 8(2)(e), and *Personal Information Protection Act*, s 20(f), explicitly permit government actors to share a person’s information where that sharing is to further a lawful investigation. That is what happened here when the CRA obtained Ms. Eddy’s residential address from the SASIU. As a consequence Ms. Eddy has no basis to claim a *Charter* breach.

In this decision, the Court concluded that the CRA obtained information from the SASIU in order to further a lawful investigation and that this collection did not violate the *Privacy Act* or the *Charter*.

[para 122] The fact that the investigation the CRA was undertaking prior to obtaining the Court order was subsequently determined to be a lawful investigation by the Court at a later date does not mean that the SASIU provided the Applicant's personal information to the CRA for the purpose of furthering an investigation of this kind. As discussed above, I find that Public Body did not have sufficient information about the investigation that the CRA was conducting in order to determine whether it was lawful, or whether it was undertaken with a view to a law enforcement proceeding, or was an investigation from which a law enforcement proceeding is likely to result when it provided the Applicant's personal information to the CRA.

[para 123] With the benefit of hindsight, it is clearly the case that the investigation was of the kind described by section 2(1)(j) of AMVIR, or section 40(1)(q) of the FOIP Act (or section 20(f) of the *Personal Information Protection Act*, cited by the Court). However, a public body cannot be said to disclose personal information for a particular purpose, unless, at the time of disclosure, it actually discloses personal information for this purpose. At the time of the first three disclosures, the Public Body had no information before it sufficient to determine whether disclosing the Applicant's personal information would serve the purpose for which 2(1)(j) of AMVIR or section 40(1)(q) of the FOIP Act authorize disclosure. The evidence before me is silent as to whether the Public Body ever considered whether it had authority to disclose the Applicant's personal information when it disclosed it.

Section 40(4)

[para 124] Section 40(4) of the FOIP Act limits the ability of a public body to disclose personal information for purposes authorized by a provision or provisions of section 40(1). It states:

> *40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

If I am wrong in my conclusion that the Public Body did not disclose the Applicant's personal information to the CRA for purposes authorized by section 2(1)(j) of AMVIR (and therefore section 40(1)(f) of the FOIP Act), or section 40(1)(q) of the FOIP Act, I must consider whether the Public Body disclosed the Applicant's personal information only to the extent necessary to enable the public body to carry out the purposes described in subsection 40(1) in a reasonable manner.

[para 125] I am unable to conclude that the Public Body's disclosures were made only to the extent necessary to carry out its purposes in disclosing the Applicant's personal information. Assuming that the Public Body had the purpose of assisting the

CRA in an investigation in mind when it disclosed the Applicant's personal information, its disclosure of the fact that the Applicant had attended the Registry and brought supporting documentation with her, was made, not at the CRA's request, but on its own accord. At that time, the SASIU officer did not know whether the CRA's investigation was ongoing and the CRA did not request information about any visits to the Registry the Applicant might make. While providing an address in response to a request for an address may be reasonable within the terms of section 40(4), I am unable to say that the disclosure of the information about the Applicant's visit to the Registry enabled the Public Body to carry out the purpose described in section 40(1)(f) or 40(1)(q) of the FOIP Act.

[para 126] To conclude, I find that the Public Body has not demonstrated that it was authorized by the FOIP Act to disclose the Applicant's physical address in response to the requests by the CRA. Further, I find that it has not demonstrated that it was authorized to inform the CRA that the Applicant had gone to a Registry and provided an updated physical address and supporting documentation. As a consequence of these findings, I will order the Public Body to cease disclosure of the Applicant's personal information. In addition, if I am wrong in my conclusion that the Public Body's first three disclosures of the Applicant's personal information were not authorized by section 40(1), I find that it has not been established that they meet the requirements of section 40(4). However, I accept that the final disclosure in response to a Court order was made under the authority of section 40(1)(g).

V. ORDER

[para 127] I make this Order under section 72 of the Act.

Access Request F7599

[para 128] I order the Public Body to provide the records to the Applicant in their entirety, with the exception of records to which it applied section 4.

Complaint F7600

[para 129] I order the Public Body to cease collecting the Applicant's personal information for purposes not authorized by the FOIP Act.

[para 130] I order the Public Body to cease disclosing the Applicant's personal information in contravention of Part 2 of the FOIP Act.

[para 131] I order the Public Body to notify me in writing, within 50 days of being given a copy of this order, that it has complied with this order.

____
Teresa Cunningham
Adjudicator