

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2017-49

May 24, 2017

SUMMER VILLAGE OF WEST COVE

Case File Number F8391

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that the Summer Village of West Cove (the Public Body) breached the *Freedom of Information and Protection of Privacy Act* (the Act or the FOIP Act) when it reviewed her past expense claims and provided those claims to the RCMP for investigation.

The Adjudicator found that the information about the Complainant that the Public Body had used was her personal information. The Adjudicator also found that the Public Body had the authority under sections 39 and 40 of the Act to use and disclose that information.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 39, 40, 41, and 72. *Municipal Government Act* R.S.A. 2000 c. M-26 ss. 3, 5, and 248.

Authorities Cited: AB: Orders F2006-08, and F2015-10

I. BACKGROUND

[para 1] The Complainant was formerly a Councilor for the Summer Village of West Cove (the Public Body). After the Complainant was no longer on Council, the Council announced that a current Councilor had reviewed expense claims of previous Councilors because there was an anonymous complaint made about inappropriate expense claims. The Public Body's current CAO has no recollection of what had transpired at the time the

Complainant alleges her personal information was improperly used or disclosed. However, it is the recollection of a current Councilor of the Public Body that there was concern that there was excessive mileage, time was claimed for meetings that exceeded actual meeting time, and there were claims for expenses that were not allowed. According to the Public Body's Councilor, there was a meeting between the then CAO and the then council and it was decided that these anomalies should be referred to the RCMP for further investigation.

[para 2] A Councilor announced at the next Council meeting that the former Mayor's expense claims were all legitimate, and that the other claims for the previous 3-5 years had been forwarded to the RCMP for a fraud investigation. It is my understanding that aside from the Mayor, and the Complainant, there was only one other councilor on the Public Body's Council in the previous 3-5 years.

[para 3] The RCMP investigated the matter and found that there was no criminal fraud and did not lay charges.

[para 4] On August 14, 2014, the Office of the Information and Privacy Commissioner (this Office) received a complaint from the Complainant that the Public Body had breached the *Freedom of Information and Protection of Privacy Act* when a current Council member reviewed her expense claims and when those claims were submitted to the RCMP. Mediation was authorized but did not resolve the issues between the parties and on July 2, 2015, the Complainant requested an inquiry. I received submissions from both parties.

II. ISSUES

[para 5] The Notice of Inquiry dated April 14, 2016 states the issues in this inquiry as follows:

1. Did the Public Body use and/or disclose the "personal information" of the Complainant as that term is defined in section 1(n) of the Act?
2. If the answer to question 1 is yes, was the Public Body authorized to use and/or disclose the personal information by Part 2 of the FOIP Act? (Sections 39 40, and 41 of the FOIP Act may be relevant provisions.)

[para 6] In her submissions, the Complainant asks for a public apology and for the minutes of the Council meetings to be amended. These are not things that I have the authority to order.

[para 7] In her submissions, the Complainant makes a reference to her expense claims being posted on the bulletin board and Public Body's website. Her comments seem focused on whether the information was properly safeguarded rather than being a complaint about the disclosure itself. If the Complainant means to complain about these postings as a disclosure of her information, I believe that this is a separate complaint from

the disclosure to the RCMP that the Complainant complained about to our Office initially. Therefore, I will not deal with it in this Order.

[para 8] In addition, the Complainant makes several arguments about what is and is not allowed when conducting audits under the *Municipal Government Act* (MGA). The Public Body does not argue that it was following the MGA when it reviewed the expense claims. My jurisdiction in this Order is restricted to the FOIP Act. I cannot make findings on whether the Public Body contravened the MGA or its adherence to the audit procedures in the MGA.

[para 9] Finally, the Complainant mentions in her submissions that records that were submitted to this Office were provided by the Public Body's former FOIP coordinator to her sister, who is engaged in litigation with the Complainant. That alleged disclosure is not the subject of this inquiry. Therefore, I will not make any findings regarding it.

III. DISCUSSION OF ISSUES

1. Did the Public Body use and/or the “personal information” of the Complainant as that term is defined in section 1(n) of the Act?

[para 10] The Complainant acknowledges that her expense claims were part of the “public record” and could be used by the Public Body for review. However, she believes that the Public Body had no authority pursuant to the *Municipal Government Act* (MGA) to allow a current Council member to re-audit a previous Council's expense claims. Further, she argues that it was not necessary for the new Council to review previously approved expense claims and it was also not necessary for the new Council to announce that the expense claims were being referred to the RCMP for a fraud investigation.

[para 11] It is the Public Body's position that expense claims are not personal information as that term is defined in section 1(n) of the Act. In the alternative, the Public Body argues that if expense claims are personal information, the Public Body had the ability to use or disclose those claims because it would not be unreasonable invasion of the Complainant's personal privacy.

[para 12] Personal information is defined in section 1(n) of the Act as follows:

1(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 13] I do not have a copy of the expense claims that were reviewed by the Public Body and provided to the RCMP. However, I assume that those claims include the Complainant's name, which is, by definition her personal information and her signature, which has been found in previous orders issued by this Office to be personal information (see Order F2006-008).

[para 14] In support of its argument that expense claims are not the Complainant's personal information, the Public Body cited Order F2015-10. In Order F2015-10, an applicant had made an access request for a public body employee's expense claims. There had been media coverage and other unfounded allegations that indicated that there were inappropriate expense claims made by the employee. The Director of Adjudication found that the expense claims being requested by an applicant were not a third party's personal information. However, she found that the third party's name was his personal information. Further, she found that there could be an instance, such as when there is an allegation of wrongdoing, where an expense claim takes on a personal dimension and is, therefore, personal information. Specifically, the Director said:

This statement supports the view that the expense information contained in the records at issue is a record of, or a record of an aspect of, the Third Party's fulfillment of his employment responsibilities, acting in a representative and not a personal capacity and simply conducting the business of government, and hence is not his personal information. If this is the proper characterization of the information, section 17 does not apply to the parts of the records that record these activities. (Likewise, section 17(5)(g) and (h) on which the Third Party relies, which apply only to the balancing of factors relative to *personal* information under section 17, do not apply in considering whether this information should be disclosed.)

Despite this, possibly it is more true to say in this case that the legitimacy of the Third Party's expense claims has been cast into doubt, in that he is one among several

executives of the Calgary Health Region whose expenses have come under scrutiny. To this extent, the information might be more properly considered to [be] the Third Party's personal information...

(Order F2015-10 at para 28-29)

[para 15] She then went on to find that there was not enough evidence before her to make the expense claim itself (aside from the employee's name) personal information:

I believe the better characterization in this case is that the expense claim information is not the Third Party's personal information. The Public Body shows that there is broad public and media interest in such information generally. However, despite this and the second-hand allegation just quoted, which has not been substantiated and is lacking in detail, there has been nothing put before me to show that the Third Party's practices in this regard were inappropriate such as would make the information personal to him.

(Order F2015-10 at para 32)

[para 16] In the case at hand, there was an anonymous and unsupported allegation that the Complainant had made inappropriate expense claims. I agree that, as in Order F2015-10, there is nothing before me to show that allegations of wrongdoing were substantiated. Indeed, the conclusions of the RCMP (as evidence by a letter from it clearly stating that it found, "...the claims made fall within the guidelines set forth by the [Public Body]"), indicate clearly that this was not the case. However, in contrast to the situation in Order F2015-10, in which it was not clear that there was a concern about the expense claims of the particular third party whose expenses were at issue (in contrast to a more generalized concern about the claims of the Public Body's executives) in the present case, as the Complainant's expenses were given over to the RCMP, her expenses were clearly targeted as the cause for concern about illegitimate claims.

[para 17] Therefore in my view, although the information before me indicates that there was no inappropriate conduct on the part of the Complainant, the allegation that there was fraud makes her expense claims in the present case her personal information. Therefore, I find that both the Complainant's name and signature, and the content of her expense claims, are her personal information in this case.

2. If the answer to question 1 is yes, was the Public Body authorized to use and/or disclose the personal information by Part 2 of the FOIP Act?

Use of the Complainant's personal information:

[para 18] When the Public Body reviewed the Complainant's expense claims, it used her personal information. Use of the Complainant's personal information is governed by section 39 of the Act. The relevant portions of section 39 of the Act state:

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 19] The Public Body argues that if the Complainant's expense claims were her personal information that it used that information for the purpose for which that information was collected (section 39(1)(a) of the Act). The Public Body states that its purpose in collecting the information in the expense claims was the same as the reason the information was used. In its initial submissions, it stated:

...the information was collected and used for routine financial administration. Of particular note is the obvious purpose of tracking expenses and reimbursing councilors for expenses incurred in the context of their official duties.

(Public Body's initial submission at page 11)

[para 20] While I agree that the purpose of the collection was to track and reimburse the Complainant, I believe that the purpose of the review by the current Councilor was to determine if, on its face, there were possible improper expense claims being made. Evidence of this purpose is found in the Council meeting minutes provided to me which indicate that after an anonymous complaint, a current Councilor (who was also an accountant) reviewed the expense claims and the RCMP was contacted. I do not believe that this was a *routine* review of the expense claims. So, I do not believe that the purpose of the collection, stated by the Public Body to be "routine financial administration", was the same purpose as that for which the information in the expense claims was being used. I believe that the purpose of the use was to determine if public funds had been administered appropriately.

[para 21] That being said, I believe that the purpose of the use of the expense claims is consistent with the purpose of the collection. Section 41 of the Act outlines what is meant by consistent purpose as that terminology is used in section 39 of the Act. Section 41 of the Act 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 22] Reviewing past expense claims to ensure that expenses were paid properly and appropriately in light of an allegation of wrongdoing has a reasonable and direct connection to the purpose of collecting the information in order to determine the amount (if any) of reimbursement owed to the Complainant. Ensuring that public funds are paid out correctly and then double checking at a later date in response to an allegation to ensure this was done are directly connected and reasonable purposes. I believe that the purposes are also necessary for performing the statutory duties of the Public Body: the Public Body has a duty to ensure that public funds are properly expended. The Public Body's statutory duties in this regard are set out generally in sections 3 and 5 of the MGA and more specifically throughout the remainder of that act (see for example s. 248 of the MGA).

[para 23] Finally, pursuant to section 39(4) of the Act, the Public Body may use the information only to the extent necessary to carry out its purpose in a reasonable manner. Section 39(4) of the Act states:

39(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 24] I find that the Complainant's personal information was used by the Public Body only to the extent necessary to allow it to review her expense claims to determine if public funds had been used properly.

[para 25] Therefore, I find that the Public Body used the Complainant's personal information in accordance with section 39 of the Act. Because I have found that the Complainant's information was used when it was reviewed by the current Council and that use was authorized, I will not make any findings on the Public Body's alternative arguments pertaining to this use by reference to section 40.

Disclosure of the Complainant's personal information:

[para 26] When the Public Body provided the expense claims to the RCMP, it disclosed the Complainant's personal information to the RCMP. The Public Body argues that it had authority to disclose the Complainant's personal information to the RCMP pursuant to sections 40(1)(q) of the Act. The relevant portion of section 40 of the Act 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,

...
(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.

[para 27] In order for section 40(1)(q) of the Act to apply, the information disclosed by the Public Body must have been:

1. Disclosed to a law enforcement agency in Canada; and
2. Have been disclosed to assist in an investigation either:
 - a. undertaken with a view to a law enforcement proceeding, or
 - b. from which a law enforcement proceeding is likely to result.

[para 28] I find that the RCMP is a law enforcement agency in Canada, so the first criterion is met.

[para 29] I also find that the information was provided to the RCMP to assist in an investigation. So, the remaining question is whether the investigation was undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

[para 30] According to the information that I have before me, the information was disclosed to the RCMP to assist the RCMP in investigating a potential criminal code offence (fraud). So, when the information was disclosed, the view of the Public Body was that there was possibly a criminal code violation that needed to be investigated further by the appropriate authorities. Had the investigation led to the conclusion that criminal fraud charges ought to be laid, this likely would have resulted in charges and a court proceeding. I find that a court proceeding is a law enforcement proceeding.

[para 31] None of the information I have before me convinces me that the RCMP investigation was likely to result in a law enforcement proceeding. As already noted, the allegations were investigated and no charges were laid, so the law enforcement proceeding did not occur. However, I interpret the phrase, “with a view to a law enforcement proceeding” to mean something less than “from which a law enforcement proceeding is likely to result”. I believe that the former means that an investigation could result in a law enforcement proceeding.

[para 32] When the disclosure was made it was to assist in the investigation. The investigation was undertaken to determine if a law enforcement proceeding was necessary or not (that is, if charges ought to be laid). Therefore, I find that the information was disclosed to the RCMP with a view to a law enforcement proceeding, and that section 40(1)(q) of the Act is applicable.

[para 33] Although the disclosure to the RCMP was authorized under section 40(1)(q) of the Act, section 40(4) of the Act, requires the Public Body to disclose the Complainant's personal information only to the extent necessary to carry out its purpose. Section 40(4) of the Act 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.

[para 34] As noted above, a Public Body has a duty to ensure that public funds are appropriately expended, and where there is an allegation of impropriety, the Public Body cannot simply overlook this but has a duty to respond and to be transparent. The evidence indicates that there was some specificity as to the nature of the problems with the expenses. Therefore, I believe, on a balance of probabilities, that the better course for the Public Body in the circumstances was to disclose the Complainant's personal information to a body with the ability and resources to conduct an investigation as to whether the allegations were substantiated, and I find the Public Body's disclosure of the Complainant's expense information was done only to the extent necessary to carry out its purpose.

[para 35] As a result, I find that the Public Body was authorized to disclose the Complainant's personal information to the RCMP.

IV. ORDER

[para 36] I make this Order under section 72 of the Act.

[para 37] I find that the Public Body properly used/disclosed the Complainant's personal information pursuant to sections 39 and 40 of the Act.

Keri H. Ridley
Adjudicator