

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-88**

December 20, 2017

**EDMONTON POLICE SERVICE**

Case File Number F8141

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

**Summary:** The Complainant made a complaint that the Edmonton Police Service used and disclosed his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the Act) when it obtained his personal information from the JOIN database and from the EPROS database and used and disclosed it in addressing a complaint he had made against an EPS member to the Professional Standards Branch under the *Police Act*.

The Adjudicator held that some of the personal information was excluded from the scope of the Act, and that for the remainder, the use and disclosure of the personal information was authorized by sections 39(1)(a) and 40(1)(c).

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1)(a), 39, 39(1)(a), 39(4), 40, 40(1)(c), 40(4), 72.

**Orders Cited:** **AB:** F2006-029

**I. BACKGROUND**

[para 1] The Complainant made a complaint that the Edmonton Police Service (EPS or the Public Body) used and disclosed his personal information in contravention of Part 2 of the Act when it obtained his personal information from the JOIN database and from

the EPROS database and used it in addressing a complaint he had made against an EPS member to the Professional Standards Branch under the *Police Act*.

[para 2] This matter was not resolved at the investigation/mediation stage, and proceeded to inquiry.

[para 3] The facts giving rise to the complaint are as follow.

[para 4] On October 18, 2012, the Complainant filed a complaint against an EPS member to the Professional Standards Branch (PSB). This complaint was dismissed in December, 2013. The Complainant filed an appeal to the Law Enforcement Review Board in January, 2014. The Complainant received an appeal package which disclosed that during the investigation of his complaint, the EPS had collected, used and disclosed his information from the JOIN database and from its internal police information system EPROS.

[para 5] The Adjudicator who was initially delegated to hear this matter held an oral part to this inquiry to assist her in determining whether the records accessed by the EPS from the JOIN database fell within the exemption from the FOIP Act under section 4(1)(a) – information in a court file. She invited Alberta Justice and Solicitor General to participate in the oral part of the inquiry, as an entity that could provide information in relation to the contents of the information in JOIN, and whether the records accessed from it in the present case are records in a court file. EPS also attended, but the Complainant chose not to participate in this portion of the inquiry.

[para 6] The previous adjudicator is no longer working in this office, and I have been delegated to complete the inquiry.

[para 7] I received written submissions from the EPS. The Complainant elected to rely on the documents he had supplied with his complaint, and also submitted a rebuttal on May 31, 2016. A transcript was created from the oral proceeding, but I have not relied on this transcript, since it is possible for me to decide the issues in this inquiry without reference to it.

## II. ISSUE

[para 8] The issues stated in the Notice of Inquiry are:

- 1. Did the Public Body use the Complainant's personal information in compliance with, or in contravention of section 39 of the FOIP Act?**
- 2. If the Public Body used the Complainant's personal information, did it do so in compliance with section 39(4)?**
- 3. Did the Public Body disclose the Complainant's personal information in compliance with, or contravention of, section 40 of the FOIP Act?**

**4. If the Public Body disclosed the Complainant's personal information, did the Public Body disclose the Complainant's personal information in compliance with section 40(4)?**

[para 9] The EPS also raised the issue in this case that the records it accessed from the JOIN database are court records within the scope of section 4(1)(a) of the FOIP act, and are accordingly exempt from the Act and from my jurisdiction. I will deal with this issue as a preliminary matter.

**III. DISCUSSION OF ISSUES**

*The exemption under section 4(1)(a) – information in a court file*

[para 10] Section 4(1)(a) of the Act provides:

*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:*

*(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record of a justice of the peace other than a non-presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause; ... .*

[para 11] Information provided by Alberta Justice and Solicitor General describes the content of the JOIN records that were accessed as follows:

The records at issue in this matter are four JOIN screen shots, each concerning the same individual and setting out details about charges laid against the individual, court appearances and dispositions by the court.

With respect to *Traffic Safety Act* violation tickets, the charging agency (EPS in this case) is responsible for the information on the ticket, which is subsequently delivered to the courts. Delivery occurs via system interface or direct entry to the JOIN system.

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Record A "JOIN - TICKET DETAIL INQUIRY"

This is a read-only screen. The purpose of this screen is to show details of the violation ticket information and events (such as fine payment) and court appearances scheduled. The ticket information on this record was delivered by EPS to the courts through a system interface. The court event information was entered by clerks in Edmonton Traffic Court.

Record B "JOIN - DISPOSITION INQUIRY"

This is a read-only screen. This screen allows an authorized user to view the details associated with the disposition (court decision) including fine amount.

This particular record shows that the ticketed individual was adjudicated and sentenced on January 20, 2012. The final disposition, May 30, 2012, was the date on which the fine was paid, which completed the sentence. The disposition information was entered by clerks in Edmonton Traffic Court.

#### Record C "JOIN - INQUIRY FILE LIST"

This is a read-only screen. This screen shot shows the results of an inquiry on a named individual. The results are dependent on the particular user's security access. If the user does not have access to certain types of files, the user's search would result in an empty or incomplete list.

The list on this screen shot shows the court file number (which is the same as the ticket number on a violation ticket issued under the *Traffic Safety Act*), the name of the ticketed individual, and charges pertaining to the court files.

Record C shows the results of an inquiry conducted by an EPS user with the ID of "MATTD" (see upper left hand corner of screen shot). This list shows information about eight different court files, six of which relate to *Traffic Safety Act* violations. As explained above, original information about the tickets was delivered to the courts by the charging agency.

#### Record D "JOIN - FILE DETAIL INQUIRY"

This is a read-only screen. This screen shot shows the filtered results of an inquiry on a specific ticket/court file number. The filter is used to limit the information shown on the screen to show the date the court file was created on JOIN, appearance dates, the name of the assigned prosecutor, and if the file has been flagged as a high threat priority.

Record D shows that the ticketed individual was not flagged as high threat and he was scheduled to appear in court on this matter on five different dates. This summary conviction file was created on JOIN on February 17, 2012.

[para 12] I accept these descriptions, and find, based on this information, that these records are records in a court file, exempt from my jurisdiction. (I have reached no conclusion as to whether all records in the JOIN database are records in a Court file because it is not necessary for me to decide this in the present case.) Therefore I have no authority to decide if their use was or was not in accordance with the FOIP Act.

[para 13] It is not entirely clear to me whether Event Chronology numbers 11470420 and 11532497 are JOIN records or EPROS records. I believe they are the latter because they are not listed among the records in the EPS's submission of September 9, 2016. It is not necessary to be clear about this in the present case, however, because even if they are JOIN court file records and are exempt, because I find the EPS had authority to use them if they are EPROS records, the result is the same. (That is, either way, EPS is not held to be in violation of the Act in using these records).

[para 14] Most of the accesses complained of were via EPROS, and these accesses are the subject of the part of this order dealing with use of personal information.

- 1. Did the Public Body use the Complainant's personal information in compliance with, or in contravention of section 39 of the Act?**
- 2. If the Public Body used the Complainant's personal information, did it do so in compliance with section 39(4)?**

[para 15] Section 39 includes the following provisions:

*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,...*

*(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 16] The EPS says:

Section 39 is met and a public body may use personal information where personal information collected for the purposes of law enforcement is used for a law enforcement purpose.

[para 17] The EPS explains the information was collected by the EPS for the following reasons:

- as part of the EPS' investigation and issuance of the Ticket to the Complainant;
- as part of the EPS' investigation into a separate allegation of criminal conduct based on a Crime Stoppers tip; or
- from the Complainant as part of the Complainant's allegations of improper conduct by the Officer.

[para 18] Section 39(1)(a), upon which the EPS relies, does not authorize use of information for a law enforcement purpose. Rather, it requires that the use of the personal information be for the same purpose as that for which the information was collected, or a consistent purpose.

[para 19] As described in the first two bullets of the list above, the information in the EPROS system was collected for law enforcement purposes, but in the present circumstances, it was not collected for the same law enforcement matter as that for which it was being used by the investigators of the Complainant's PSB complaint.<sup>1</sup>

[para 20] Despite the way the provision is worded, however, I accept that use of the information in the EPS's internal data base for a law enforcement purpose in this case

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<sup>1</sup> Order F2006-029, on which the EPS relies, involved a *collection of the complainant's name*, and the use of that name to run queries. That is not quite the same as a complaint about use of information about a complainant that is stored in the internal database.

falls within section 39(1)(a) regardless. This is because it is essential for a police service to collect and preserve law enforcement information for a great many reasons, not the least of which is that subsequent law enforcement matters may well be associated with former ones, and the former ones can be essential to create a complete picture. In other words, I believe information is collected and retained in the EPROS system not only for the purpose of dealing with the particular law enforcement matter for which it is collected, but also for dealing with subsequent matters that arise to which it is related. As will be seen below, that is precisely what was happening in this case.

[para 21] The EPS stated that it accessed the personal information of the Complainant from the two databases for the following purposes:

EPS used the Complainant's personal information in order to investigate the Complaint made by the Complainant against the Officer.

[The two] members of PSB [Professional Standards Branch] were investigating the Complainant's allegation that the Officer had issued a frivolous, vexatious and specious violation and that the Officer had lied in court. This investigation was carried out pursuant to the *Police Act* and *Police Service Regulation* and, if the Complaint had been substantiated, the Officer would have been subject to sanctions and penalties for his non-compliance with the standards and duties imposed by the statutes.

The Complainant's personal information was used in order to conduct a thorough and adequate investigation of the Complaint. The search of the information systems was necessary to confirm information about the Ticket underlying the Complaint and to determine what records the EPS had which were potentially relevant to the Complaint. All of the use of the Complainant's personal information was for the police purpose of attaining more information in furtherance of the PSB investigation into the Complaint.

As stated in paragraph 12 of [the first investigator's] Affidavit:

- a) "Tickets" was queried in EPROS to confirm that the Complainant had provided the correct traffic violation number and to confirm the traffic violation number;
- b) "Occurrences" was queried in EPROS to obtain information about any previous police files involving the Complainant in order to determine if the Complainant had any previous interactions with the Officer as previous interactions could establish a motive for the Complainant to make the complaint or could provide a reason for the Officer's conduct;
- c) Event Chronology #11470420 was obtained to provide further information about the incident giving rise to the complaint against the Officer; and
- d) Event Chronology #11532497 and Gateway Report #11-157679 were obtained to determine if there was a connection between the Complainant and Officer which may be relevant to the investigation of the Complaint.

Further, as stated in paragraphs 8 and 9 of [the second investigator's] Affidavit, the Complainant's personal information gathered prior to the file being assigned to her, including the information obtained from EPROS, was used as part of her investigation into the PSB complaint.

[para 22] I agree with the EPS that the investigators' access and use of the Complainant's personal information for the reasons stated above was for the purposes of investigating the Complainant's PSB complaint as a routine part of its PSB complaint investigation process, and that this was for a law enforcement purpose. The Complainant may be taking issue with the idea that information about him should be reviewed by virtue of his having brought a complaint, at the same time and as part of the investigation of his complaint about the police officer. I believe he is questioning whether this is proper.

[para 23] In my view, such an investigation is appropriate in the circumstances. The EPS explains that this was done because former interactions of the Complainant with the police service may well be relevant, for trying to understand the nature of and motivations for the complaint, as well as the motivations of the actions of the EPS member being complained of. Earlier matters may not be relevant, but equally they may be, and it was appropriate to review them to see if they were.

[para 24] As I have said in an earlier order to which the EPS refers (F2006-029), if police are clearly doing police work, they should not be second-guessed or circumscribed in how they use personal information to do it. Investigating a PSB complaint is police work, and I believe the current situation is covered by this statement.

[para 25] As well, I see nothing in what was accessed and used that was beyond what enabled the EPS to carry out its purposes of investigating the circumstances surrounding the complaint in a reasonable manner within the terms of section 39(4).

[para 26] I find that the EPS used the Complainant's information in accordance with section 39(1)(a) of the Act.

- 3. Did the Public Body disclose the Complainant's personal information in compliance with, or contravention of, section 40 of the FOIP Act?**
- 4. If the Public Body disclosed the Complainant's personal information, did the Public Body disclose the Complainant's personal information in compliance with section 40(4)?**

[para 27] Section 40 of the Act includes the following provisions:

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

*(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose, ...*

*(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 28] Similar reasoning applies to the disclosure of the Complainant's information to the Crown Prosecutor that a complaint had been received, and the basis of the complaint. The disclosure to the Prosecutor enabled the Prosecutor to provide the reasons to the investigator as to why the Ticket had been stayed. This information had been collected directly from the Complainant when he made the complaint. In this case, disclosing it to the Prosecutor in the course of and for the purpose of investigating the PSB complaint was for the same purpose as that for which it was collected – to deal with the complaint. It was an appropriate and reasonable part of the investigation into determining the circumstances surrounding the complaint, which alleged that the ticket had been issued for inappropriate reasons.

[para 29] I find that the EPS disclosed the Complainant's information in accordance with section 40(1)(c) and 40(4) of the Act.

[para 30] Before concluding this order I note that in his rebuttal submission, the Complainant asked that the EPS introduce into evidence for the purposes of the inquiry an audio recording of a conversation or conversations between himself and one of the PSB investigators. He did not explain, and I do not see, how this evidence would be relevant to the issues I have to decide in this inquiry, and for this reason I have not asked the EPS to provide this recording. The Complainant mentions that he believes recording the conversation may have breached his privacy. I am not aware of whether the Complainant has brought a separate complaint with respect to that matter, but in any event this also has no bearing on the issues in this inquiry.

#### **IV. ORDER**

[para 31] I make this Order under section 72 of the Act.

[para 32] I find the use and disclosure of the Complainant's personal information that was accessed from the JOIN database is not subject to the Act.

[para 33] I confirm the EPS acted in compliance with the Act when it used and disclosed the Complainant's personal information from the JOIN and EPROS databases.

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Christina Gauk, Ph.D.  
Adjudicator and Director of Adjudication