

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2018-05**

February 1, 2018

**CALGARY POLICE SERVICE**

Case File Number 001376

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

**Summary:** The Complainant made a complaint to the Commissioner under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) that a detective of the Calgary Police Service (the Public Body) had accessed his credit information from a credit reporting service. The Complainant complained that this access was in violation of the FOIP Act.

The Adjudicator found that the collection was authorized by the FOIP Act as the collection was made for the purpose of law enforcement. She also found that the collection was expressly authorized by the *Consumer Protection Act* [formerly the *Fair Trading Act*]. The Adjudicator also found that the Public Body was not required by the FOIP Act to collect the credit information directly from the Complainant, given that it was collected for the purpose of law enforcement.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 33, 34, 72; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3, ss. 44, 173

**I. BACKGROUND**

[para 1] On August 5<sup>th</sup>, 2015, the Complainant made a complaint to the Commissioner under the *Freedom of Information and Protection of Privacy Act* (the

FOIP Act) that a detective of the Calgary Police Service (the Public Body) had accessed his credit information from a credit reporting service.

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

## II. ISSUE

### **Did the Public Body collect the Complainant's personal information in contravention of, or in compliance with, the requirements of Part 2 of the FOIP Act?**

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

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

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

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

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

[para 4] Section 34 of the FOIP Act requires a public body to collect personal information directly from the individual who is the subject of the information unless an exception listed in this provision applies. It 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*

*[...]*

[para 5] The Complainant did not make submissions for the inquiry. However, it is clear from his complaint that he does not believe that the Public Body had authority to gain access to his credit information from a credit reporting service.

[para 6] The Public Body argues:

The credit check which is the subject of this Complaint related to an attempt to locate the Complainant and his girlfriend (or possibly she may have been his wife) after they absconded from Alberta with their two daughters and infant son. The CPS had concluded that the

Complainant and his girlfriend were attempting to avoid the police over fears their children would be apprehended. There was a significant and ongoing concern for the welfare of the children as a result of the criminal lifestyle of both parents.

There was a court application scheduled to deal with a guardianship order over the children in favor of either the Complainant's or his girlfriend's sister but neither the Complainant nor his girlfriend showed up for the appointed court date. At this same time, the infant son of the Complainant and his girlfriend had been hospitalized. He was born significantly prematurely and was suffering from anemia. The infant was taken from the hospital against the advice of doctors and the CPS's information was that the Complainant and his girlfriend fled to British Columbia with the children.

Against this backdrop the CPS was taking all available steps to try and locate the Complainant. There was a fear for the safety of the infant son because of his illness and a fear for the safety of all three children because of the criminal lifestyle of the Complainant [and] his girlfriend. A credit search is one police tactic that is used in investigations to locate people who have absconded or are trying to avoid the police. A credit check may provide information as to the whereabouts of individuals.

The investigating officer who was trying to locate the children in order to ensure their safety advises that they were doing everything they could to locate the Complainant and the children and the credit check was part of that investigative effort.

The Public Body submits that the use of the credit check to try and locate the Complainant falls within a law enforcement purpose. Law enforcement is broadly defined in the Act to include policing and investigations that could lead to a penalty or sanction. Policing has been interpreted to include the maintenance of public order, detection and prevention of crime or the enforcement of the law (see for example Order F2015-26 at para. 13). Part of the maintenance of public order includes the safeguarding of members of the public, particularly vulnerable members of society such as children. The investigation of which the credit check was a part was aimed at an attempt to ensure the welfare and protect the children of the Complainant from harm. It is therefore submitted that there was a valid law enforcement purpose for the collection of the Complainant's personal information.

Also applicable to this inquiry is 34(1) of the Act which requires collection of personal information directly from the individual the information is about unless one of the exceptions applies. In this case, the personal information about the Complainant was not collected from the Complainant but rather through the credit check. Section 34(1)(g) permits the collection of information from a source other than the individual the information is about for law enforcement purposes and section 34(1)(c) permits the collection of information from a source other than the individual where there is a health and safety emergency and direct collection is not possible. In the present case, the infant son of the Complainant who had been born prematurely was taken from the hospital against the advice of physicians.

There was grave concern regarding the health and safety [...] of the infant and the Complainant had absconded making direct collection of his whereabouts from him impossible.

Under the circumstances, it is submitted that collection of the Complainant's personal information was authorized by the Act and was required in order to address the pressing safety concerns regarding the infant boy.

[para 7] I agree with the Public Body that maintaining public safety is a policing function and that ensuring the safety of children is part of this function. Policing is an aspect of law enforcement. I also agree that collecting the address information of children

in order to ensure their safety is an example of collecting personal information for the purpose of policing, and therefore, serves the broader category of law enforcement.

[para 8] In addition, although it is not necessary that I do so, I note that the collection is also authorized under the *Consumer Protection Act* [formerly the *Fair Trading Act*] (CPA), which is a statute addressing the circumstances in which credit reporting information may be accessed. Section 173(4) of the CPA states:

*173(4) Every police officer as defined in the Police Act is an inspector for the purposes of this Act.*

[para 9] Section 44 of the CPA states, in part:

*44(1) A reporting agency, and an officer, agent or employee of a reporting agency, may furnish a report to a person only in the following circumstances:*

*[...]*

*(c) if the report is furnished to the Director or an inspector, the government of Canada or of a province or territory, a municipality in Canada or any of their agencies [...]* [my emphasis]

[para 10] Under section 44 of the CPA, it appears that a police officer may access a credit report for any reason. Although the Public Body relies on section 33(b) of the FOIP Act as its authority to access the credit report (and I agree, on the evidence before me), it appears that section 33(a) of the FOIP Act (reproduced above), which addresses collection under the express authority of an enactment, may also authorize the access.

[para 11] I also find that the Public Body's collection of the Complainant's personal information from a credit reporting service, rather than directly from the Complainant, is authorized by section 34(1)(g) of the FOIP Act.

### **III. ORDER**

[para 12] I make this Order under section 72 of the Act.

[para 13] I confirm that the Public Body met its duties to the Complainant as set out in Part 2 of the FOIP Act.

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Teresa Cunningham  
Adjudicator