

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2020-20

July 21, 2020

CAPITAL REGION HOUSING CORPORATION

Case File Number 002112

Office URL: www.oipc.ab.ca

Summary: The Complainant lived in subsidized housing. The Capital Region Housing Corporation (Public Body) requested that the Complainant provide credit card statements, banking information, vehicle registration information, and proof of payment for an online course, in order to ascertain his eligibility for subsidized housing. The Complainant provided some, but not all, of this information.

The Complainant made a complaint to this Office, arguing that the amount of his personal information required and collected by the Public Body was excessive for the purpose, and was in contravention of the Act.

Subsequent to the investigation conducted by this Office, the Complainant requested an inquiry.

The Adjudicator found that of the information identified in the complaint, only the Complainant's banking information was ultimately collected and used by the Public Body. The Adjudicator found that this information was directly related to and necessary for the Public Body to determine the total income of the Complainant, in order to verify his eligibility for social housing.

Statutes Cited: **AB:** *Alberta Housing Act*, R.S.A. 2000, c. A-25, *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 39, 65, 72, *Housing Accommodation Tenancies Regulation*, Alta Reg. 242/1994, s. 4, *Social Housing Accommodation Regulation*, Alta Reg. 244/1994, s. 5

Authorities Cited: AB: Order F2011-007

I. BACKGROUND

[para 1] The Complainant lived in subsidized housing. The Capital Region Housing Corporation (Public Body) requested that the Complainant provide credit card statements, banking information, vehicle registration information, and proof of payment for an online course, in order to ascertain his eligibility for subsidized housing. The Complainant provided some, but not all, of this information.

[para 2] On November 19, 2015, the Complainant made a complaint to this Office, arguing that the amount of his personal information required and collected by the Public Body was excessive for the purpose, and was in contravention of the Act.

[para 3] Subsequent to the investigation conducted by this Office, the Complainant requested an inquiry.

II. ISSUES

[para 4] The Notice of Inquiry dated February 13, 2019, states the issues in this inquiry as follows:

1. Did the Public Body collect the Complainant's personal information? If yes, was the collection of this information in compliance with or in contravention of section 33 of the Act?

The parties should provide precise details as to the information that was collected by the Public Body.

2. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

The Public Body should provide precise details as to the information that was used by the Public Body.

If the Public Body is relying on section 39(1)(a), the parties should also make submissions as to whether the requirements of section 41 are met.

III. DISCUSSION OF ISSUES

Preliminary issue – scope of inquiry

[para 5] The Complainant points to the Public Body's request for certain personal information that he refused to provide.

[para 6] The ability to make a complaint about the collection, use and/or disclosure of an individual's own personal information is found in section 65(3) of the Act. That provision contemplates complaints only about the *actual* collection, use and/or disclosure of personal information by a public body. As noted in Order F2011-007 (at para. 8), I am bound by those limits.

[para 7] In his initial submission, the Complainant provided an additional letter from the Public Body (dated November 29, 2013), with a list of information it requested the Complainant to provide. Based on the notations made on that letter, the Complainant appears to be concerned about the Public Body's request for information about child tax benefits and family tax benefits. The Complainant states that he has attached this letter "to illustrate the issue" he has complained about.

[para 8] As this information was not included in the Complainant's initial complaint or his request for inquiry, it is too late to now include it within the scope of the inquiry. Perhaps the Public Body can explain to the Complainant why it is requesting this information. I note that section 1(3) of the Social Housing Accommodation Regulation (SHAR) deducts certain tax benefits from the calculation of total household income; it may be that the Public Body requests tax benefit information from tenants and applicants to ensure it is not inappropriately included in total income calculations. In any event, this information is not at issue in this inquiry.

[para 9] This inquiry will address the information that the Public Body did collect.

1. Did the Public Body collect the Complainant's personal information? If yes, was the collection of this information in compliance with or in contravention of section 33 of the Act?

[para 10] In his initial complaint, the Complainant states that the Public Body requested his banking records/statements, credit card records/statements, vehicle registration, and verification of an online course taken by the Complainant, as well as payment for that course.

[para 11] The Public Body states that it ultimately collected only the Complainant's pay stubs and banking statements. The Complainant did not dispute this claim. Therefore, I accept that the Public Body did not collect information regarding the credit card statements, vehicle registration, and online course information.

[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] Information on a pay stub and banking statements contain the Complainant's personal information.

[para 14] Section 33 of the FOIP Act places strict limits on personal information a public body can collect. 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 15] In its submission, the Public Body cited several provisions of the Housing Accommodation Tenancies Regulation and SHAR, both regulations made under the *Alberta Housing Act*. I have reviewed the legislation as it was at the time the information was requested by the Public Body in 2015; some amendments have occurred since that time, but none that substantively affected the outcome of the issues here.

[para 16] The Public Body cites section 5 of SHAR, which requires a management body to verify a household's total annual income on a yearly basis.

[para 17] It cites section 4 of the Housing Accommodation Tenancies Regulation, which states that a tenancy agreement must include provisions to the effect that an individual signing a tenancy agreement will provide income and household information to the management body,

including household income and household assets (section 4(2)(a)); and to the effect that rent is based on household income and assets (section 4(2)(c)).

[para 18] It notes that SHAR defines “assets” as including cash and liquid assets.

[para 19] The Public Body’s submission did not provide much detail as to how these provisions apply in this particular case. Its submission states (at page 3):

Capital Region Housing did use the personal information that was collected so as to, in accordance with its duties, as a management body, under the foregoing regulatory requirements requiring that verify [the Complainant’s] total annual income, determine the rent payable pursuant to Schedule "A" of the *Social Housing Accommodation Regulation* with reference to his computed income, and confirm his household's continued eligibility under the *Regulations*.

[para 20] The Complainant did not raise the collection of pay stubs in his initial complaint or request for inquiry. The purpose for the collection of pay stubs is clearly intended to assess income, as required by the legislation cited above.

[para 21] By letter dated May 19, 2020, I asked the Public Body additional questions about its reasons for collecting the Complainant’s banking information. I said:

It is not clear to me why the Public Body collected bank statements if it used the personal information only to verify income. Were the pay stubs not adequate to verify income? If not, why not? Please be specific.

If the bank statements were not necessary to verify eligibility for housing, why were they collected? Were the bank statements necessary to serve a purpose other than verifying income? If so, please explain and be specific. Please also tell me what information was contained in the bank statements. For example, did the bank statements include information about specific transactions, or were they limited to the amounts contained in each account. If the Public Body used the information from the bank statements to verify eligibility, what information was relevant? Did the bank statements include more information than was relevant? Again, please be as specific as possible.

[para 22] The Public Body responded by letter dated June 11, 2020. It states:

As a housing management body exercising its responsibilities under the *Social Housing Accommodation Regulation*, Capital Region Housing (CRH) must verify all income from all sources. In some situations, bank and credit card statements have been requested from tenants to confirm that, in the case of bank statements, no regular payments are being deposited that would constitute income but was not declared...

[para 23] The Public Body did not provide a breakdown of what information is collected in banking statements. However, the reference to ‘regular payments’ indicates that the Public Body looks at deposits made to bank accounts. In any event, as “total income” includes income from all sources including employment income (and except for the income excluded from the

calculation per the legislation), it seems reasonable for the Public Body to collect banking statements to verify that a tenant has included all income relevant to the rent calculation.

[para 24] Under the cited legislation, the Public Body is responsible for calculating the rent to be paid by tenants based on household income. The Public Body is also responsible for determining the priority of each applicant for social housing. Priority is assigned in accordance with a formula set out in Part 1 of Schedule A of the SHAR. Income is a significant factor in that formula. Therefore, income is also a significant factor for the Public Body to determine who is in greatest need of social housing.

[para 25] Given the above, I find that the collection of the Complainant's banking statements by the Public Body relates directly to and is necessary for a program of the Public Body. It was therefore authorized under section 33(c) of the Act.

[para 26] In my May 19, 2020 letter, I asked the Public Body why it requested the additional information – credit card statements, vehicle registration and online course payments – from the Complainant, if it wasn't ultimately used for the purpose of determining his eligibility for social housing.

[para 27] The Public Body states that certain forms of income are excluded from the income calculation used to determine rent amounts. One exclusion is when certain household members are enrolled in school. This was the purpose of the request for information about the online course. It is not clear why this information was ultimately not collected if it was relevant. Possibly the income exclusion was simply not applied if the Public Body did not receive the course information.

[para 28] The request for vehicle registration was for parking purposes. The November 3, 2015 letter sent to the Complainant by the Public Body (provided by the Complainant with his initial complaint to this Office) supports this.

[para 29] The Public Body states that credit card statements are requested to verify that no unclaimed assets have been paid for. The Public Body states that this was the practice at the time of the complaint (2015) but that “[w]e have since restrained this practice and such requests are not rarely, if at all, done” (Public Body response dated June 11, 2020).

2. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

[para 30] 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.

[para 31] The Public Body states that the information collected about the Complainant was used for the same purpose for which it was collected: to determine his eligibility for subsidized housing.

[para 32] As stated above, the only information the Complainant has included in his complaint that the Public Body actually collected is his banking statements. As the Public Body did not collect the other information identified in the complaint, it could not have used that information. Therefore, only the banking statements need to be considered.

[para 33] In his initial complaint, the Complainant states that he is complaining about the collection and use of his information. The Complainant did not provide any indication that the banking statements were used by the Public Body for purposes other than the purpose for which they were collected.

[para 34] I found that the collection of the Complainant's banking statements was authorized under section 33(c) of the Act. The Public Body was therefore authorized to use the information for the same purpose, under section 39(1)(a) of the Act.

IV. ORDER

[para 35] I make this Order under section 72 of the Act.

[para 36] I find that the Public Body had authority to collect and use the Complainant's personal information (banking statements).

Amanda Swanek
Adjudicator