

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2020-27**

September 8, 2020

**ALBERTA JUSTICE AND SOLICITOR GENERAL**

Case File Number 002268

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

**Summary:** The Complainant made a complaint to the Commissioner that Alberta Justice and Solicitor General (the Public Body) collected, used, and disclosed his personal information in contravention of the Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), when it posted an internal security bulletin containing a picture of the Complainant and the statement that the Complainant was gathering information about employees.

The Adjudicator found that the Public Body's collection and use of the Complainant's personal information was authorized by Part 2 of the FOIP Act. She found that it was not established in the inquiry that the Complainant's personal information had been disclosed outside the Public Body.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 39, 40, 41, 72

**I. BACKGROUND**

[para 1] January 20, 2016, the Commissioner received the Complainant's complaint that Alberta Justice and Solicitor General (the Public Body) had collected, used, and disclosed his personal information in contravention of *the Freedom of Information and Protection of Privacy Act* (the FOIP Act). He alleged the following:

On today's date of January 19th, 2016, I received correspondence by registered mail which states that the Respondent, herein after is referred to as the public body, was to comply with an Order rendered by an OIPC Adjudicator in decision number F2015-34. Further, I was shocked to learn that the correspondence portrayed that a security bulletin had been relayed about me on or around April of 2012 by the Public Body indicating and suggesting, among other disparaging information, that I was deemed a security threat. Coincidentally, this occurred right after I had filed FOIP requests of internal email correspondence pertaining the public body. There was also a photo posted about me on such security bulletin, and I was at all time, portrayed in false light and defamed, and I only discovered this at this time. I believe the security bulletin, the photograph and all other information pertaining this matter about me (Please see attached) was collected, used and disclosed in contravention of, *inter alia*, privacy legislation, and I respectfully ask and pray that it please be rescinded and that the government please send out a memo to all of its staff indicating that the security bulletin was relayed in error and in contravention of the law. Lastly, I reserve and preserve my rights, including to request other remedies at a later date. Thank you kindly for your time.

The Complainant attached a copy of the security bulletin to which he referred in his complaint.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter pursuant to section 68 of the FOIP Act. At the conclusion of this process, the Complainant requested an inquiry on the basis that the senior information and privacy manager had erred in fact and law.

[para 3] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

## II. ISSUES

**ISSUE A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?**

**ISSUE B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?**

**ISSUE C: 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?**

**ISSUE D: Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under section 40(1) and 40(4) of the Act?**

## III. DISCUSSION OF ISSUES

**ISSUE A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?**

[para 4] The Complainant argued the following in his initial submissions:

Further to this matter and in response to the released security bulletin and the public body's response, please know that in this instance, the public body, as the executive, also breached the doctrine of separation of powers because such security bulletin disseminated about me, including to the judiciary, has tainted or could have had the potential of tainting the judiciary's view of me, or any other Alberta provincial tribunal body, should I ever have appeared in front of them pertaining any matters or cases, including where the Public body was Defendant/ Respondent. Such bulletin has or could have influenced the judiciary's perception of me. I respectfully maintain that this was an egregious breach, including of my privacy and the doctrine of separation of powers. Further, this bulletin warns that I am apparently collecting information about members of the Alberta government or public body, simply due to the fact I exercised my rights permitted to me by parliament and provincial privacy legislation to petition to request my own personal information from the public body as permitted under the Freedom of Information and Protection of Privacy ("FOIPP") Act. This action appears retaliatory in nature and in contravention of provincial privacy legislation, including the FOIPP Act. I adopt my previous initial letter, materials, submissions and evidence, and wish to rely upon such.

[para 5]           The Complainant also stated the following in his submissions:

Further to the correspondence relayed pertaining the complaint against Alberta Justice and Solicitor General ("the Public Body") pursuant to the Freedom of Information and Protection of Privacy ("FOIPP") Act, please know I have no additional arguments or evidence to provide for the inquiry beyond the request for review/complaint and request for inquiry forms and any attachments and I am relying on the attachments already initially submitted. I also wish to politely reiterate that apart from exercising my rights to commence FOIPP requests in a lawful manner, I have done nothing to warrant such security bulletin to be disseminated about me by the Public Body which drastically and negatively affected me and which caused or may have caused or could cause bias to be imposed unto me by members of the Public Body and Alberta Public Service. My understanding was and is that there is and was to be no retaliation against anyone who exercises their rights to make FOIPP requests; however, for reasons I don't understand, a very unwarranted, disparaging, negative and inappropriate security bulletin which is false was disseminated against me by the Public Body after I had made such FOIPP requests. I believe and respectfully submit that such above conduct on behalf of or by the Public Body towards me has the chilling effect of acting as a precluder in curtailing people and members of the general public from exercising their rights, under provincial privacy legislation such as the FOIP Act pertaining the Public Body and other organizations. It may also relay an indirect message to employees of the public bodies as to what can occur if the processes, orders or decisions of the Public Body are in any way challenged by employees or former employees. The perception from such bulletin disseminated by the Public Body is that I appear to be some sort of "enemy of the state" all which may bring, among other things, bias towards me and my family members by Alberta Public Service and other Public Body decision makers should I ever need to approach any statutory decision makers. In addition, the photograph is from my previous employment as a correctional peace officer for the Public Body and it was disseminated and used without my consent. I had never consented that such photograph be disseminated, nor did I fathom or think such was possible at the time the photograph was taken. In addition, I have done nothing criminal as confirmed by the public bulletin itself, so it could not have been done for law enforcement purposes. I respectfully and politely ask and pray that the OIPC please kindly issue an order addressing all the above in keeping with the principles the FOIPP Act and provincial privacy legislation and deter the Public Body's conduct. I also ask, if possible, that the Public Body be ordered to relay a memo retracting the security bulletin if contingent, among such further and other remedies/relief the OIPC deems just. Other concerns exist or may exist and I reserve and preserve my rights.

[para 6]           In answering the question of whether the Public Body contravened the FOIP Act when it posted the security bulletin giving rise to the complaint, I must first

determine which of the issues the Applicant has raised, and which remedies he seeks, are within my jurisdiction under the FOIP Act to address.

[para 7] Section 65 of the FOIP Act gives an individual the ability to make a complaint that the individual's own personal information was collected, used, or disclosed in contravention of Part 2 of the FOIP Act.

[para 8] The Complainant's arguments are focused on what he considers to be incorrect or slanderous information in the bulletin, which he considers to be based on inadequate evidence. He requests an order directing the Public Body to retract the security bulletin and to release another stating the first bulletin was in error.

[para 9] I have no power to direct the Public Body to retract its security bulletin or to require it to admit to errors in the bulletin, assuming that there are any. My only authority in this inquiry is to determine whether the Public Body collected, used, or disclosed personal information about the Complainant in compliance with, or contravention of, Part 2 of the FOIP Act. Determining whether personal information is false or misleading is not part of the analysis in determining whether a public body has the authority to collect, use, or disclose personal information.

[para 10] In his submissions, the Complainant refers to the fact that the Public Body included a photograph in the bulletin that was taken when he was a correctional services employee. He states that he did not consent to the Public Body's inclusion of this photograph in the bulletin, or contemplate that it would be used in the bulletin, when the photograph was originally taken. As the Applicant does not challenge the right of the Public Body to take the photograph originally, his complaint is one of the subsequent use of the photograph in the bulletin. I will therefore address that complaint when I address the question of whether the Public Body use of the Complainant's personal information complied with the FOIP Act.

[para 11] As the security bulletin refers to the Complainant as gathering information about particular employees, and as the Complainant does not deny doing so, it can also be inferred that the Public Body collected information about the Complainant's actions in gathering information. If so, then this is a collection of personal information. I say this because section 1(n) of the FOIP Act defines personal information as "information about an identifiable individual". Information about the Complainant's activities with the added context provided by his name and photograph is information about him as an identifiable individual.

[para 12] Section 33 of the FOIP Act sets out the circumstances in which personal information may be collected by a public body.

*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 13] The Public Body argues that as part of its role in managing personnel and its own programs, it must advise employees of persons of interest. I understand it to argue that it collected the information about the Complainant's information gathering activities as doing so relates directly to, and is necessary for an operating program or activity of the Public Body. In this case, the collection related directly to and was considered necessary for an operating program or activity, as the Public Body's purpose in collecting the information was to assess whether the Complainant posed a risk to its programs.

[para 14] I conclude that to the extent to which it can be demonstrated that the Public Body collected information about the Complainant's information gathering practices, that it did so under the authority of section 33(c) of the FOIP Act.

[para 15] I would add that while the Complainant takes the position that the reference to his gathering information in the bulletin is a reference to his access requests under the FOIP Act, there is no evidence before me to support finding that the Public Body did in fact collect this information by reviewing his access requests.

[para 16] On the evidence before me, I find that the Public Body's collection of the Complainant's personal information was authorized by section 33(c) of the FOIP Act.

**ISSUE B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?**

[para 17] Section 34 of the FOIP Act requires a public body to collect personal information directly for the individual who is the subject of the information, except in limited situations. It states, in part:

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

*[...]*

*(n) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body*

*[...]*

*[...]*

[para 18] As noted above, the Public Body states that it collected the Complainant's personal information for the purpose of managing or administering personnel. It was concerned that the Complainant was gathering information about its employees and decided to warn employees about this concern. Managing personnel may include such activities as protecting employees from potential harassment in their workplace. (Here, I do not mean to say that the Complainant actually intended to harass anyone, only that the Public Body had that concern, given that it understood him to be gathering information about employees.)

[para 19] As I find that the Public Body collected the Complainant's personal information for the purpose of administering personnel, I find that it was entitled to collect the personal information indirectly, without notification to the Complainant.

**ISSUE C: 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 20] The Public Body used the following information about the Complainant in the security bulletin: his name and photograph, and the information that the Complainant was gathering information about employees.

[para 21] Section 39 requires public bodies to use personal information only in a narrow set of circumstances. It states, in part:

*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 22] Section 41 of the FOIP Act describes the conditions precedent for finding that personal information has been used for a purpose consistent with the collection of the information.

*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 23] The Public Body states:

The Public Body is authorized to use the Complainant's personal information in the Security Bulletin pursuant to section 39(1)(a) of the FOIP Act. The information was compiled for the purpose of the Security Bulletin and the use was consistent with the purpose of the collection.

The Public Body's Sheriffs Branch, SBPS used the Complainant's personal information for the sole purpose of assessing the Complainant at the time as a person of interest in providing security services for government buildings, employees, judiciary, and members of government.

[para 24] I agree with the Public Body that its use of the Complainant's personal information for the security bulletin is authorized by section 39(a).

[para 25] The photograph of the Complainant was originally taken to identify him as a corrections employee. This identification ensured that he could be admitted into premises where corrections employees are entitled to be. The Public Body's use of the information for the security bulletin was for a related purpose: to indicate that the Complainant was no longer entitled to be in particular areas of the Public Body. In both cases, the purpose of the Public Body was to ensure that authorized personnel only were in specific areas of the Public Body.

[para 26] I also find that the information regarding the Complainant's gathering of information about employees was used in the bulletin for a purpose consistent with the Public Body's initial purpose in collecting the information. The Public Body collected the information out of a concern regarding Complainant's gathering of information about employees; it issued the security bulletin as a means to warn employees of the concern and to create a protocol to address the concern. In my view, these purposes for using the personal information were consistent with the purpose of collection, within the terms of section 41 of the FOIP Act.

[para 27] I find that the Public Body was authorized to use the Complainant's personal information in the security bulletin. I also find that the Public Body did not use any more personal information than was necessary for meeting its purpose.

**ISSUE D: Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under section 40(1) and 40(4) of the Act?**

[para 28] The Public Body states:

The Public Body respectfully maintains that the Complainant did not meet the burden of proof in alleging that a privacy breach occurred or was reasonably likely to occur. The Security Bulletin was limited and internal to GOA distribution. The Security Bulletin was never intended to be released outside of the GOA and clearly articulates **that it is a restricted document**.

[para 29] I note that the Public Body received the bulletin as a result of an access request, and not because the bulletin was posted publicly or otherwise available to the public. There is no evidence before me that the security bulletin was distributed outside the Public Body.

[para 30] The Complainant provided no evidence in support of his position that his personal information was disclosed outside the Public Body's premises or to persons other than the personnel of the Public Body. Moreover, he has not provided a clear explanation of his theory that the security bulletin was viewed by persons other than employees of the Public Body.

[para 31] I find that it has not been established in this inquiry that the Public Body disclosed the Complainant's personal information.

#### **IV. ORDER**

[para 32] I make this Order under section 72 of the Act.

[para 33] I confirm that the Public Body met its duties to the Complainant with regard to the personal information in the security bulletin.

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Teresa Cunningham  
Adjudicator  
/ah