

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-29

August 5, 2021

EDMONTON POLICE SERVICE

Case File Number 008410

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to this Office under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that the Edmonton Police Service (the Public Body) collected, used and disclosed his personal information in contravention of the Act.

The Complainant states that the Public Body collected medical information from him without his consent, and subsequently disclosed it without authority. The Complainant also complained that the Public Body collected personal information about him from a third party and used it in its file, without authority.

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

The Adjudicator found that the Public Body had authority to collect the Complainant's personal information, to collect it indirectly, and to use the personal information for the purpose of investigating a complaint made by the Complainant's neighbour about his behavior. This investigation fell within the definition of "law enforcement" in the Act. The Adjudicator found that the Public Body was also authorized to use the personal information to respond to complaints made by the Complainant about the officers who investigated the neighbour's complaint. This response also fell within the definition of "law enforcement". The Adjudicator found that the Public Body was authorized to disclose the Complainant's personal information for the purpose of responding to the Complainant's complaint about the officers for the same reason.

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

Authorities Cited: AB: Orders F2008-029, F2011-013, F2015-01, F2015-07, F2015-14, F2019-05, F2019-42

Cases Cited: *Alberta (Director of Child Welfare) v. C.H.S.*, 2005 ABQB 695 (CanLII)

I. BACKGROUND

[para 1] The Complainant made a complaint to this Office under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that the Edmonton Police Service (the Public Body) collected, used and disclosed his personal information in contravention of the Act.

[para 2] In his complaint to this Office, the Complainant states:

I ask the OIPC to investigate my complaint regarding the medical information collected by the police officers from me and without my consent and against my wish and request not to be disclosed those medical information the public Body choose to disclosed those medical informations.

I ask the OIPC to investigate may complaint regarding the manner of information's collection (a third party story) and transform those information into records and reports but basically are only reproduction of a subjective story of a third party; no police officers have been present or witness to any event or facts what they report and record.

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

II. ISSUES

[para 4] The Notice of Inquiry dated May 11, 2021, states the issues in this inquiry as follows:

1. 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?
2. 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?
3. 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(1) and (4) of the Act?

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.

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

III. DISCUSSION OF ISSUES

1. 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 5] 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 6] 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 7] The information collected about the Complainant includes information about his medical status, and information about his ongoing disputes with his neighbour. This is his personal information.

[para 8] The Public Body states that it received a report about a dispute between the Complainant and his neighbour. The report was made by the Complainant's neighbour, who said the dispute had been going on for several years. The neighbour told the Public Body that the Complainant had made numerous complaints about the neighbour to police and bylaw. The neighbour said that bylaw officers had investigated the complaints and determined they were unfounded. The neighbour said the Complainant had said he would call the police on the neighbour and her family for trespassing. The neighbour told the Public Body that they wanted to get a peace bond.

[para 9] The Public Body states that it determined that officers would talk to the Complainant about the neighbour's report.

[para 10] Two Public Body officers spoke with the Complainant about this report, at his home. The officers discussed the disputes between the Complainant and his neighbour. After this conversation, the Public Body states that no further action was taken by the Public Body with respect to the report. However, the officers did inform the Complainant that continuing to call the police and bylaw with unfounded complaints could lead to criminal harassment charges against him.

[para 11] The Public Body states that the only personal information collected about the Complainant was from him directly, and from the neighbour who reported the dispute. The Public Body states that this information was collected for the purpose of law enforcement, under section 33(b) of the Act.

[para 12] Law enforcement is defined in section 1(h) of the FOIP Act:

(h) "law enforcement" means

(i) policing, including criminal intelligence operations,

(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or

(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred,

[para 13] The definition of law enforcement includes the complaint that leads to the investigation or proceeding (see Order F2019-42, at para. 34).

[para 14] The Public Body cites Order F2008-029, in which the Director of Adjudication states (at para. 30):

Although the Act does not define “policing,” in Order 2000-027, the former Commissioner defined policing as “...those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime or the enforcement of law.” (para 16). Police officers are charged by statute with the preservation and maintenance of the public peace and the prevention of crime.

[para 15] The Public Body argues (initial submission at para. 44):

In any event, an investigation to determine whether to lay a charge for an offence and to determine whether the possible future commission of such offences needs to be addressed, is both “policing” and a “police investigation” within the terms of s. 1(h) of the FOIPP Act. This investigation does not need to be for a criminal offence. An investigation into an alleged contravention of a bylaw falls within the scope of law enforcement.

[para 16] The Public Body also notes that “law enforcement” includes bylaw enforcement. In Order F2011-013, former Commissioner Work concluded that conducting an investigation into the alleged contravention of a City bylaw falls within the scope of law enforcement, specifically within section 1(h)(ii) (see paras. 16-23 of that Order). An investigation into bylaw compliance also falls within the scope of section 1(h)(ii) (see Order F2015-07, at para. 34).

[para 17] The Public Body states that the Complainant’s personal information was collected in officers’ notes, which include details of the initial report from the neighbour, the steps taken by the officers to look into the matter, and the decision whether or not to pursue charges against the Complainant.

[para 18] I agree that the collection of the Complainant’s personal information from the neighbour and the Complainant himself was for the purpose of law enforcement. The Complainant’s neighbour made a report that the Complainant was harassing her and her family, and she was seeking a peace bond as a result. The officers then went to discuss the matter with the Complainant, including a discussion of the various bylaw complaints that had been made by the Complainant over the years and the possible remedies the Complainant could pursue.

[para 19] The Complainant has argued that the Public Body collected information about his medical conditions, without his consent or authority. The Public Body states that this information was volunteered by the Complainant when he was speaking with the two officers. The Public Body states that it was appropriate to collect “any information that could reasonably be said to be related to the matter under investigation and be potentially relevant” (initial submission, at para. 54). It cites Order F2019-42 in support, which states (at para. 33):

The allegations made by the neighbour about the Complainant’s behaviour could reasonably have influenced the way the bylaw officer approached the Complainant. If true, the behaviour alleged by the neighbour could have affected the safety of the bylaw officer when investigating the animal control complaint. The allegations were not recorded as “true facts”, but as opinions of the individual who complained. I disagree with the Complainant that these allegations should not

have been recorded by the Public Body; the Public Body must ensure the safety of its bylaw officers in responding to complaints and alerting officers of alleged behaviour that might affect their safety falls within that responsibility. Further, it is difficult for a public body to immediately assess what information being provided by a complainant will ultimately be relevant when investigating the complaint. For this reason, public bodies have been granted latitude when determining what personal information to collect in the course of an investigation. In Order F2012-05 I said (at para. 30):

Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager's job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.

[para 20] The medical information collected by the officers from the Complainant seems to have been provided as rationale for some of the disputes between the Complainant and his neighbour. I agree that this information is reasonably related to the matter being investigated.

[para 21] Finally, the Complainant argues that his information was not collected for the purpose of law enforcement, as no proceedings, penalties, or sanctions resulted. An investigation needn't necessarily result in charges, proceedings, penalties or sanctions to fall within the definition of "law enforcement"; those outcomes need only be possible.

[para 22] I find that the Public Body had authority to collect the Complainant's personal information.

2. 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 23] Collection from a source other than the individual the personal information is about is authorized in the circumstances set out in section 34(1). The Public Body has cited section 34(1)(g) as authority to collect the Complainant's personal information indirectly. That provision states:

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 24] As I have found that the Public Body was authorized to collect the Complainant's personal information for the purpose of law enforcement, it follows that it was permitted to collect his personal information indirectly, for the same purpose.

3. 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 25] 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 26] The Notice of Inquiry states the following with respect to this issue:

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.

[para 27] Section 41 defines what constitutes a "consistent purpose" under section 39(1):

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 28] To the extent that the Public Body used the Complainant's personal information to make its decision not to pursue the matter further, that purpose is clearly the same purpose for which the information was collected. Therefore, it is authorized under section 39(1)(a).

[para 29] The Public Body states that the Complainant's personal information was also used to address a complaint the Complainant made against the two officers who spoke with the Complainant at his home regarding the neighbour's report. This complaint was made by the Complainant under the *Police Act*.

[para 30] As pointed out by the Public Body, investigations into complaints made about officers under the *Police Act* fall within the definition of "law enforcement" under the FOIP Act (see Order F2015-14, at para. 18).

[para 31] Further, the complaint related to the actions of the officers when they spoke with the Complainant. The Public Body argues (initial submission, at paras. 72-73):

It was appropriate for the EPS to review the records of the EPS members interaction with [the Complainant] and to use the personal information that was collected by the EPS members to investigate and assess the *Police Act* complaint. The EPS was examining a specific related interaction that was relevant to the *Police Act* complaint and the information collected by the EPS members provided direct information about the nature of the complaint and the motivations and actions of both [the Complainant] and the EPS. It was appropriate for the EPS to use [the Complainant's] information to assess the very complaint he brought.

As the evidence demonstrates that the EPS used the personal information in the context of law enforcement matters, and there is no evidence to indicate any other use, the OIPC should be satisfied that it was used for a law enforcement purpose.

[para 32] Past Orders of this Office have found that where a public body is authorized to collect and use personal information for the purpose of one of its programs or services, that authority extends to include later proceedings that arose from the provision of the program or service (see *Alberta (Director of Child Welfare) v. C.H.S.*, 2005 ABQB 695 (CanLII), at para. 24; Order F2019-05, at para. 59). The general principle is that defending the way a program or service is provided is directly connected with providing that program or service.

[para 33] In this case, I agree that the personal information of the Complainant collected by the officers when they spoke with him about the neighbour dispute is directly connected to the Complainant's subsequent complaint about the officers' actions during that interaction.

[para 34] The Public Body also states that it used the Complainant's personal information only to the extent necessary to meet its purpose, as required by section 39(4). It states (initial submission, at para. 76-77):

[The Complainant's] personal information was then used only to the extent necessary to investigate the *Police Act* complaint in a reasonable manner. The information compiled by the EPS members was used to assess the merits of [the Complainant's] complaint. As the complaint against the EPS members was related to his interactions with the EPS members, it was appropriate to look at this information.

[The Complainant] has not identified any unreasonable use of his personal information. He has not adduced any evidence to demonstrate which information of his was used and has not identified any objectionable manner in which that information was used. There is no indication that the personal information used 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 s. 39(4).

[para 35] In Order F2008-029, the Director of Adjudication considered the meaning of the term "necessary" in section 41(b). In that case, the public body disclosed a police report containing an individual's personal information to a third party organization, pursuant to an

information-sharing agreement, for the purpose of enabling the organization to provide assistance to victims of domestic violence. The Director of Adjudication stated (at para. 51):

In the context of section 41(b), I find that “necessary” does not mean “indispensable” – in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 36] This analysis has also been applied to the standard of what is necessary under section 40(4) (see Order F2015-01, at paras. 25-26), and applies as well to the standard under section 39(4).

[para 37] I agree with the Public Body that the Complainant has not provided any reason to expect that the Public Body’s use of his personal information to deal with the neighbour dispute or his subsequent complaint about the officers extended beyond what was necessary for those purposes.

[para 38] I find that the Public Body was authorized to use the Complainant’s personal information to deal with the neighbour dispute, and to address the complaints he made about the officers. Nothing before me indicates that the Public Body used the Complainant’s personal information for any other purpose, or that it used the personal information beyond the extent necessary for its purposes.

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

[para 39] The Complainant’s initial complaint to this Office indicates that he believes his information was disclosed by the Public Body to his neighbour. He states:

I ask the OIPC to investigate my complaint regarding the medical information collected by the police officers from me and without my consent and against my wish and request not to be disclosed those medical information the public Body choose to disclosed those medical informations.

[para 40] It was not clear from this complaint what personal information the Complainant believes was disclosed by the Public Body. The Notice of Inquiry states the following with respect to this issue:

The Complainant has referred to his information being disclosed by the Public Body, but has not provided sufficient detail. If the Complainant believes the Public Body disclosed his personal information without authority, the Complainant should explain what personal information he believes was disclosed and to whom.

[para 41] The Complainant did not provide any additional detail in his submissions regarding the personal information he believes was disclosed by the Public Body.

[para 42] The Public Body states (initial submission, at paras. 80-83):

Specifically, there is no evidence that the EPS shared [the Complainant's] personal information with [the Complainant's] neighbour.

At the time of the complaint from the member of the public, the EPS did not have any of [the Complainant's] personal information. As such, it could not have disclosed any personal information to the member of the public during the discussion.

During the EPS' discussions with [the Complainant], the EPS did not disclose any of [the Complainant's] personal information. As set out in [the officer's] police report, the EPS only collected information from [the Complainant] about the neighbour dispute.

Once the EPS concluded its discussion with [the Complainant] on June 15, 2016, the neighbour dispute matter was concluded. The EPS took no further investigative steps and there was no disclosure of [the Complainant's] information as part of this policing activity.

[para 43] The Public Body has addressed the disclosure of the Complainant's personal information to the Law Enforcement Review Board (LERB), to which the Complainant appealed the outcome of his complaint made against the officers under the *Police Act*. The Public Body states that the disclosure of the Complainant's personal information to the LERB for the appeal was authorized under section 40(1)(c) of the Act. This provision, as well as section 40(4) states:

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 44] The Public Body states (initial submission, at paras. 86, 88-89):

Section 40(1)(c) of the FOIPP Act states that a public body may disclose personal information for the purpose for which the information was collected. For all of the reasons discussed above, the EPS collected [the Complainant's] personal information for a law enforcement purpose, and any disclosure of [the Complainant's] personal information in the *Police Act* investigation process was for a law enforcement purpose. For the same reasons discussed above regarding the reasonableness of the use of the information, the disclosure of the information as part of the *Police Act* investigation and appeal process was reasonable and appropriate. The disclosure was necessary to allow the EPS to carry out its law enforcement purpose, being the *Police Act* investigation, in a reasonable manner.

...

Any disclosure of [the Complainant's] personal information for the purpose of the LERB hearing was necessary as a result of [the Complainant's] appeal. The disclosure was only to the extent necessary to allow the LERB to perform its appellate body function.

As [the Complainant] has not provided any evidence or information regarding the disclosure of his personal information, there is no evidence that any disclosure of information by the EPS was unreasonable or unnecessary. Nothing indicates that the EPS disclosed information other than what was required for the access request and what was required by the LERB to make the necessary determinations regarding the appeal.

[para 45] For the same reasons I found the use of the Complainant's personal information was authorized for the purpose of responding to the complaint made against the officers, I find that the disclosure of the Complainant's personal information for the same purpose was authorized under section 40(1)(c) of the Act.

[para 46] Further, I agree with the Public Body that the Complainant has not provided any reason to believe that the Public Body disclosed more personal information than was necessary for that purpose.

[para 47] Regarding any disclosure by the Public Body to the Complainant's neighbour, nothing in the submissions before me indicates that the Public Body disclosed the Complainant's personal information to his neighbour, and the Complainant has not provided any reason to believe that any such disclosure occurred.

IV. ORDER

[para 48] I make this Order under section 72 of the Act.

[para 49] I find that the Public Body had authority to collect, use, and disclose the Complainant's personal information as it did.

Amanda Swanek
Adjudicator