

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into the Collection of Personal Information

April 20, 1999

Alberta Municipal Affairs and Alberta Health

Investigation #1530

Background

On January 5, 1999, the National Post published an article about the collection of prenatal information by Vital Statistics. Specifically, the article questioned the amount of information collected by Vital Statistics from the "Notice of Live Birth" form which physicians complete subsequent to a birth.

Based on the information presented in the National Post article, the Commissioner decided to conduct an investigation on this matter. Subsequently, a member of the Legislative Assembly also requested that the Commissioner investigate this matter.

Commissioner's Authority to Investigate

The *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") authorizes the Commissioner to conduct investigations on his own initiative (section 51(1)(a)) or in response to complaints (section 51(2)).

Under section 51(1)(a) of the FOIP Act, Commissioner may conduct investigations to ensure compliance with any provision of this Act. In addition, section 51(2) of the FOIP Act states:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

Application of Freedom of Information and Protection of Privacy Act to Vital Statistics and Alberta Health

Vital Statistics is part of the Registries Division of Alberta Municipal Affairs. Alberta Municipal Affairs is a public body as defined under section 1(1)(p) of the FOIP Act and is therefore, subject to the provisions of the FOIP Act. However, section 4 of the FOIP Act excludes certain records. Section 4(1)(h)(iv) of the FOIP Act states:

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:

(h) a record made from information

(iv) in an office of a district registrar as defined in the Vital Statistics Act.

Therefore, while the FOIP Act applies to the collection of information by Vital Statistics, the use and disclosure of information in the Vital Statistics Registry is outside the FOIP Act.

Alberta Health is a public body as defined under section 1(1)(p) of the FOIP Act, and is therefore, subject to the provisions of the FOIP Act.

Issues

Both Vital Statistics and Alberta Health must comply with the FOIP Act in their collection of personal information. Therefore, the issues of this investigation are:

1. Has Vital Statistics complied with the collection provisions under Part 2 of the FOIP Act?
2. Has Alberta Health complied with the collection provisions under Part 2 of the FOIP Act?

What is the “Notice of Live Birth” Form?

The full name of the form used by physicians to record births is the “Notice of Live Birth or Still Birth and NewBorn Record”. The form is commonly referred to as the “Physician Notice of Birth” or the “PNOB”.

The PNOB is a multi-page form that serves different functions for a variety of users. The top copy of the PNOB (Section 1) is completed by the delivery care provider and is sent to Vital Statistics. Subsequently, Vital Statistics forwards the PNOB to Alberta Health.

The information on the PNOB (Section 1) is “carbon copied” onto the pages behind Section 1. The remaining pages of the PNOB are subsequently separated as follows:

- One copy is retained on the Newborn’s chart at the hospital – additional information may be recorded on this page relating to the health and care of the newborn during the hospital stay. This copy becomes part of the hospital’s records for the newborn. No other information from this record is provided to Vital Statistics.
- One copy is retained on the birth mother’s chart at the hospital – additional information may be recorded on this page relating to the health and care of the birth mother during the hospital stay. This copy becomes part of the hospital’s records for the birth mother. No other information from this record is provided to Vital Statistics.
- One copy is retained by the delivering Physician. If the physician who delivered the child is not the mother’s family doctor, a copy of the form is sent to the family doctor. The physician may record additional information relating to the health and care of the patients. This copy becomes part of the physician’s records. No other information from this record is provided to Vital Statistics.
- One copy is sent to the local health unit – additional information may be recorded relating to health care follow-up. This copy becomes part of the Regional Health Authority public health records. No other information from this record is provided to Vital Statistics.

The issue of concern raised in the National Post article is related to the information that is collected by Vital Statistics. Therefore, the investigation is limited to the information contained on Section 1 of the PNOB.

What The National Post Reported

In its January 5th, 1999 article, the National Post indicated that Vital Statistics collected the following information from the PNOB:

- The mother's consumption of cigarettes, alcohol and drugs;
- How many stillbirths and miscarriages the mother has had; and
- How many prenatal classes the mother has attended.

The National Post also claimed that Vital Statistics collected information relating to whether the mother was breastfeeding or formula feeding the baby and if the mother was giving the baby up for adoption.

What Information is Collected on the PNOB Form?

A review of the PNOB confirms that information about a mother's consumption of cigarettes, alcohol and drugs during the pregnancy is collected.

The PNOB also collects information relating to the number of pregnancies, the number of live births and stillbirths, the number of abortions (including Ectopics), the number of children still living, and the number of neonatal/infant deaths the mother has had.

Information collected relating to prenatal classes attended by the mother is limited to a "yes" or "no" response as opposed to the number of prenatal classes attended.

The investigation found that the PNOB (Section 1) does not record whether the mother is breastfeeding or formula feeding the baby and it does not record whether the baby will be given for adoption. This information may be recorded on the sections/pages of the PNOB that is retained and used in the hospital. However, this information is not provided to Vital Statistic and is not collected by Vital Statistics.

Is the Information Collected "Personal Information?"

"Personal information" is defined in section 1(1)(n) of the FOIP Act. The relevant portions of section 1(1)(n) read:

1(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,...

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,...

(vi) information about the individual's health and health care history, including information about a physical or mental disability,...

The information collected on the PNOB is personal information in accordance with section 1(1)(n) of the FOIP Act.

Issue #1: Has Vital Statistics Complied with the Collection Provisions Under Part 2 of the FOIP Act?

In order to fulfill the collection provisions of the FOIP Act, Vital Statistics must:

- A. Have the authority to collection the information under section 32 of the FOIP Act.
- B. Collect the information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 33(1) of the FOIP Act. One of the listed exceptions is the authorization of indirect collection under an Act or a Regulation.

Vital Statistics' Authority to Collect under section 32(a) of the FOIP Act

Section 32(a) of the FOIP Act states:

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

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

The PNOB is a notice of birth and a notice of stillbirth. As such, Vital Statistics must have the authority to collect both type of information. Birth and stillbirth are defined in section 1 of the *Vital Statistics Act* as follows:

- Birth - there is “breathing, beating of the heart, pulsation of the umbilical cord or unmistakable movement of voluntary muscle” (section 1(a)); and
- Stillbirth - there is “no breathing, beating of the heart, pulsation of the umbilical cord or unmistakable movement of voluntary muscle” (section 1(v)).

Vital Statistics claimed its authority to collect the notice of birth/ stillbirth is pursuant to section 2 of the *Vital Statistics Act*, which states:

2 Every person who assists in the birth of a child in Alberta shall, within 24 hours thereafter, deliver or mail to the district registrar of the registration district in which the birth occurs a notice of the birth in the prescribed form.

Section 2 of the *Vital Statistics Act* refers only to a notice of birth. However, Vital Statistics claimed that section 2 also applies to stillbirths. Section 8(8) of the *Vital Statistics Act* states:

8(8) Subject to this section, sections 2 to 4 and sections 14 to 19 apply, with all necessary modifications, to stillbirths.

Therefore, section 2 of the *Vital Statistics Act* applies to both the notice of birth and the notice of stillbirth.

Section 2 of the *Vital Statistics Act* requires that a notice of birth/stillbirth be sent to “the district registrar of the registration district”. Section 1(1) of the *Vital Statistics Act* provides the following definitions:

1(1)(g) “Director” means the Director of Vital Statistics under this Act; ...

1(1)(h) “district registrar” means a district registrar appointed under this Act; ...

1(1)(t) “registration district” means an area for which a district registrar has been appointed under section 26;...

Under section 26 of the *Vital Statistics Act*, the Director of Vital Statistics appoints district registrars and deputy district registrars. Vital Statistics advised that every hospital in Alberta is a district registrar.

Vital Statistics indicated that the “district registrar of the registration district” includes the Director of Vital Statistics as section 26(5) of the *Vital Statistics Act* states:

26(5) The Director may carry out any of the duties of the district registrar of any registration district.

The investigation finds that Vital Statistics is authorized to collect the notice of birth under section 2 of the *Vital Statistics Act*. Section 8(8) of the *Vital Statistics Act* extends the application of Section 2 of the *Vital Statistics Act* to the notice of stillbirth. Therefore, the collection of the notice of birth/stillbirth by Vital Statistics is in accordance with section 32(a) of the FOIP Act.

Vital Statistics’ Authority to Collect Information under section 32(c) of the FOIP Act

Section 32(c) of the FOIP Act states:

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

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

The mandate of Vital Statistics is to register all Alberta births, stillbirths, deaths, marriages, adoptions, and legal change of names.

Vital Statistics claimed its collection of the PNOB is a necessary part of the birth/stillbirth registration process:

1. The PNOB validates a birth/stillbirth registration

Under section 3 of the *Vital Statistics Act*, Vital Statistics requires that parents complete a Registration of Birth form within 10 days of the birth of their child. Many parents complete the Registration of Birth form at the hospital or facility where the birth occurred. As a result, the hospital or facility would submit the Registration of Birth form along with the PNOB to Vital Statistics.

However, on some occasions, the Registration of Birth form is sent directly to Vital Statistics by the parents. Vital Statistics uses the PNOB as a check to ensure that all Registration of Birth forms are received within the time period specified in section 3 of the *Vital Statistics Act*.

Vital Statistics indicated that part of the birth/stillbirth registration process involves confirming the birth event via the PNOB. Confirmation is achieved by reviewing the data elements common between the PNOB and Registration of Birth form (e.g. name of child, birth date, time of birth, weight, parents’ names, sex of child and address of the mother) to ensure that the same information has been recorded. The matching of the PNOB with the Registration of Birth form confirms that a birth occurred and can be registered as a permanent legal event record.

Vital Statistics indicated it would not register a birth unless a corresponding PNOB is received to confirm the birth.

2. The PNOB is needed to ensure accuracy of information collected

Vital Statistics claimed that the comparison of the two forms from different sources (i.e. PNOB from a physician and the Registration of Birth from the parents) assists Vital Statistics in ensuring the information collected is accurate and complete.

Vital Statistics acknowledged that not all information on the PNOB is required for the registration of a birth/stillbirth. Vital Statistics collects the PNOB for three purposes:

1. to validate information pertaining to the registration of a birth/stillbirth;
2. to confirm that a birth/stillbirth event has occurred in the Province of Alberta; and
3. to collect information on behalf of Alberta Health.

Vital Statistics stated that it does not retain the information from the PNOB on its Vital Statistics database. Once the information on a Registration of Birth or Stillbirth has been validated by the PNOB, Vital Statistics will use the information recorded on the Registration of Birth or Stillbirth form to enter the data required to register the birth/stillbirth. Information from the PNOB that is collected on behalf of Alberta Health is not inputted or retained on the Vital Statistics database.

Under section 32(c) of the FOIP Act, Vital Statistics is authorized to collect information from the PNOB if that information is necessary for the birth/stillbirth registration process. However, the collection of information that is not necessary for the birth/stillbirth registration process by Vital Statistics is not in accordance with section 32(c) of the FOIP Act.

Vital Statistics' Authority to Indirectly Collect Information Under Section 33(1) of the FOIP Act

Section 33(1) of the FOIP Act outlines the manner in which a public body may collect personal information. The relevant portions of section 33(1) read:

33(1) A public must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(ii) another Act or a regulation under another Act.

Section 2 of the *Vital Statistics Act* authorizes a person who assists in the birth of a child to deliver or mail the notice of birth to the district registrar. Section 8(8) of the *Vital Statistics Act* extends the application of section 2 of the *Vital Statistics Act* to the notice of stillbirth.

As section 26(5) of the *Vital Statistics Act* authorizes the Director of Vital Statistics to carry out any of the duties of the district registrar of any registration district, Vital Statistics' authority to indirectly collect personal information is pursuant to section 2 of the *Vital Statistics Act*.

Issue #2: Has Alberta Health Complied with the Collection Provisions Under Part 2 of the FOIP Act?

As a public body subject to the FOIP Act, Alberta Health must also comply with the collection provisions of the FOIP Act, that is:

- A. It has authority to collect the information under section 32 of the FOIP Act; and
- B. It collects the information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 33(1) of the FOIP Act. One of the listed exceptions is the authorization of indirect collection under an Act or a Regulation.

Alberta Health's Authority to Collect under section 32(a) of the FOIP Act

The data elements collected by Alberta Health from the PNOB include: birth hour, apgar score, head circumference, length, gravida (number of pregnancy), abortions (therapeutic, spontaneous, ectopic pregnancy), onset of labour (spontaneous, induced), number of prenatal visits, type of delivery, alcohol consumption, prenatal class attendance, smoking status, and use of street drugs.

Alberta Health indicated the above information is collected for the purposes of improving health outcomes, compiling medical statistics, medical research and public health surveillance in the public interest, and that the information is reported only in statistical or aggregate form.

Section 32(a) of the FOIP Act allows Alberta Health to collect information if an enactment of Alberta or Canada expressly authorizes the collection of that information. Alberta Health stated it is authorized to collect information under section 40(2) of the *Hospitals Act*, which states:

40 (2) For the purposes of assessing the standards of care furnished to patients, improving hospital or medical procedures, compiling medical statistics, conducting medical research, enforcing the Crown's right of recover under Part 5, or for any other purpose considered by the Minister to be in the public interest, the Minister, or a person authorized by the Minister, may require that all or any of the following to be sent to him or a person designated by him:

- (a) medical and other records of any patient;*
- (b) extracts from and copies of any medical or other records of any patient;*
- (c) diagnoses, charts or any information available in respect of a patient.*

Section 40(2) of the *Hospitals Act* authorizes Alberta Health to collect information for a variety of purposes e.g. assessing patient care, improving hospital or medical procedures, compiling medical statistics, conducting medical research, and for any other purpose considered by the Minister of Health to be in the public interest. Therefore, the investigation finds that the collection of information from the PNOB by Alberta Health is in accordance with section 32(a) of the FOIP Act.

Alberta Health's Authority to Indirectly Collect Information Under Section 33(1) of the FOIP Act

Section 33(1)(a)(ii) of the FOIP Act allows a public body to indirectly collect information if another Act or a regulation under another Act authorizes another method of collection. Under section 40(2) of the *Hospitals Act*, Alberta Health is authorized to collect information indirectly from hospital, medical or other records as opposed to directly from the patient.

Alberta Health's Authority to Designate Vital Statistics to Collect on Its Behalf

Section 40(2) of the *Hospitals Act* allows the Minister of Health to designate the Director of Vital Statistics to collect information on behalf of Alberta Health. The designation would resolve Vital Statistics' collection problem under section 32(c) of the FOIP Act.

Summary of Investigation Findings

1. Vital Statistics is authorized to collect the notice of birth and notice of stillbirth under section 2 and section 8(8) of the *Vital Statistics Act*.
2. Vital Statistics' collection of information on the PNOB that is necessary for the birth/stillbirth registration process would be consistent with section 32(c) of the FOIP Act. However, Vital Statistics' collection of information on the PNOB that is not necessary for the registration of birth/stillbirth is not in accordance with section 32(c) of the FOIP Act.
3. Section 2 of the *Vital Statistics Act* authorizes a person who assists in the birth of a child to deliver or mail the notice of birth to the district registrar. Section 2 of the *Vital Statistics Act* also applies to the notice of stillbirth. As the *Vital Statistics Act* allows the Director of Vital Statistics to carry out the duties of the district registrar of any registration district, Vital Statistics' authority to indirectly collect personal information is under section 2 of the *Vital Statistics Act*.
4. Alberta Health is authorized to collect the PNOB under section 40(2) of the *Hospitals Act*.
5. Section 40(2) of the *Hospitals Act* allows Alberta Health to collect information from sources other than the individual the information is about.
6. Under section 40(2) of the *Hospitals Act*, the Minister of Health can designate the Director of Vital Statistics to collect information on behalf of Alberta Health

Interim Solution

Alberta Health has confirmed that the Director of Vital Statistics, Alberta Municipal Affairs was formally designated on February 11, 1999 to collect information on behalf of Alberta Health under section 40(2) of the *Hospitals Act*.

Both Alberta Municipal Affairs and Alberta Health acknowledge this is an interim solution to ensure ongoing program and data continuity. Alberta Municipal Affairs and Alberta Health has agreed to work together to find a solution that will eliminate the need for Vital Statistics to receive information beyond that which is necessary and authorized for the registration of a birth or stillbirth.

Vital Statistics' Authority to Prescribe Forms

The investigation identified an issue that was not raised by the National Post article. This issue relates to Vital Statistics' authority to prescribe forms under the *Vital Statistics Act*.

Sections 2 (notice of birth), 3 (registration of birth), and 8 (stillbirths) of the *Vital Statistics Act* requires that information submitted to Vital Statistics be "in the prescribed form". Section 49(m.1) of the *Vital Statistics Act* authorizes the Minister to make regulations respecting the forms used for the purposes of the *Vital Statistics Act* and its regulations.

However, section 2(1) of the *Regulation 134/95* under the *Vital Statistics Act* further delegates the discretionary power granted to the Minister in prescribing forms to the Director of Vital Statistics.

If legislation authorizes a delegate (such as the Minister) to make regulations, then the delegate must make the regulations. The delegate cannot further delegate a discretionary power on another person without the statutory authority to do so.

Vital Statistics was informed that the Director of Vital Statistics may be given too much discretion to draft the forms. Since the *Vital Statistics Act* or the Regulations do not prescribe the criteria or guidelines as to the content of the forms, the Director has an unlimited discretion in creating the forms.

This issue was discussed with Vital Statistics and Vital Statistics indicated that it is reviewing this matter.

Closing Comments and Recommendation

The cooperation of representatives from Alberta Municipal Affairs and Alberta Health during this investigation is acknowledged and appreciated. I recommend that this file be closed.

Submitted by,

Marilyn Mun
Portfolio Officer