

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into A Breach of Privacy Complaint

June 9, 2000

City of Edmonton

Investigation #1763

The Complaint

On December 1, 1999, the Office of the Information and Privacy Commissioner received a privacy complaint concerning the Kinsmen Sports Centre, which is owned and operated by the City of Edmonton.

The Complainant is an annual pass member at the Kinsmen Sports Centre. In October 1999, the Complainant received a telephone call from an employee ("the Employee") of the Kinsmen Sports Centre. During the telephone conversation, the Employee attempted to sell a product to the Complainant and made comments regarding the Complainant's medical history. In the letter to the Commissioner, the Complainant wrote:

"...I was very distressed and concerned that a Kinsmen staff person had my phone number and was citing my medical history to me over the phone....I was also disturbed regarding this flagrant abuse of personal information..."

The Commissioner's Authority to Investigate

The *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") was extended to municipalities on October 1, 1999. Therefore, the City of Edmonton is subject to the provisions of the FOIP Act.

Under section 51(1)(a) of the FOIP Act, the 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.

Complainant's Personal Information Used In Violation of the FOIP Act

Under the FOIP Act, a public body may use personal information only for the purpose for which the information was collected or for a use consistent with that purpose (section 37(1)(a)). Personal information may be used for other purposes with the consent of the individual the information is about (section 37(1)(b)).

The Employee used the Complainant's personal information to promote a product that the Employee was selling as a private business venture. The investigation found that the use of the

Complainant's information for the Employee's personal business is not for the purpose that the information was collected and is therefore, not in accordance with section 37(1)(a) of the FOIP Act. As the Complainant did not consent to this use, the Employee's use of the Complainant's personal information is not authorized under section 37(1)(b) of the FOIP Act.

Based on the findings of the investigation, I conclude that the Complainant's privacy was breached. The City of Edmonton acknowledged the Employee's use of the Complainant's personal information is inappropriate. The City of Edmonton advised that this is an isolated case, and it is addressing the Employee's actions through the employee relation process.

Issue

The Complainant requested that the investigation focus on the overall practices and procedures of the Kinsmen Sports Centre regarding its handling and protection of personal information, as opposed to the specifics of the situation with the Employee. The Complainant wanted to ensure that appropriate safeguards and measures are in place to protect personal information from unauthorized use and disclosure.

Section 36 of the FOIP Act states:

36 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

Therefore, the issue of this investigation is:

Did the City of Edmonton make reasonable security arrangements to protect personal information against risks as unauthorized access, collection, use, disclosure or destruction?

Investigation Conducted

The investigation included meetings and discussions with representatives of the City of Edmonton and the Kinsmen Sport Centre. In addition, an on-site visit at the Kinsmen Sport Centre was conducted.

Review of Security Arrangements

In determining whether the City of Edmonton made reasonable security arrangements to protect personal information at the Kinsmen Sport Centre, the investigation asked the following questions:

- What information does the Kinsmen Sports Centre collect?
- Is the information collected "personal information" as defined in the FOIP Act?
- Is the collection in accordance with section 32 and 33 of the FOIP Act?
- Are policies and procedures established concerning the collection, use and disclosure of personal information?
- Are safeguards established to protect personal information?

What information does the Kinsmen Sports Centre collect?

The application for annual membership pass is a dual system i.e. there is a paper process and an electronic process.

To purchase an annual pass, an individual may complete a hard copy membership application form. Alternatively, individuals may provide the required information verbally to Kinsmen Sport Centre staff to enter directly into the computerized member management database. The City of Edmonton indicated that the paper process (hard copy application form) is being phased out, and all applications would eventually be electronically processed.

The following information is collected when an individual applies for annual membership:

- Name, address and gender
- Home telephone number and business telephone number
- Birthdate or child, youth, adult or senior designation
- Information on other family members living in the same household (i.e. name, gender, birthdate)
- Date of purchase, payment amount and payment type
- Digital picture of pass holder (neck up).

Each annual pass is assigned a unique bar code number, which is linked to the information about the pass member in the computerized membership database.

Annual pass members are allowed two extensions for each membership year. The extensions are granted for vacation, illness or other long-term absences lasting two weeks or more. The reason for the extension (i.e. vacation, medical, other) is recorded and retained in the computerized database. For extensions due to medical reasons, pass members may be asked to provide documentation from their doctor. The City of Edmonton advised it does not want detailed medical information about the pass member, only a note from the doctor to confirm that the pass member was/is on medical leave.

Is the Information Collected “Personal Information”?

Section 1(1)(n) of the FOIP Act defines “personal information” as “recorded information about an identifiable individual”. The information collected by the Kinsmen Sports Centre is “personal information” in accordance with section 1(1)(n) of the FOIP Act and is therefore, subject to the privacy provisions set out in Part 2 of the FOIP Act.

What are the requirements for a public body when collecting personal information?

To fulfill the collection provisions of the FOIP Act, the City of Edmonton must:

1. Have the authority to collection the information under section 32 of the FOIP Act; and
2. 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.

The City of Edmonton’s authority to collect 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.

Member's Name, Gender and Address

The City of Edmonton advised that the collection of a pass member's name, gender and address is necessary for the administration of the membership program. In my view, these data elements are the basic requirements in identifying who the pass member is. Therefore, the collection of this information is in accordance with section 32(c) of the FOIP Act.

Member's Digital Picture

When pass members enter the facilities, they swipe their pass card on a scanner and an electronic version of the pass card, along with the digital picture, appears on a computer screen. This allows Kinsmen Sport Centre staff to verify that the person using the card is the person who was granted the pass. I find that the collection of the digital card is in accordance with section 32(c) of the FOIP Act.

Member's Home and Business Telephone Numbers

The City of Edmonton advised that home and business telephone numbers are optional. As this information is not necessary for the administration of the membership program, the collection of home and business telephone numbers is not authorized under section 32(c) of the FOIP Act.

The City of Edmonton advised that the telephone numbers assist in narrowing and identifying the correct pass member in cases where there are several individuals with the same first and last names. However, I believe there are other data elements that could serve this purpose e.g. barcode, address, etc.

Birth Dates

The City of Edmonton advised that many of the activities and programs for children and youths are age specific. Therefore, the collection of birth dates for children and youth is authorized under section 32(c) of the FOIP Act.

The City of Edmonton indicated birth dates for adult members are not necessary for the membership program. Therefore, the collection of this information would not be in accordance with section 32(c) of the FOIP Act.

To qualify for senior membership, an individual must be 65 years old. Seniors may be asked to verify their age with supporting documentation such as driver licence, birth certificate, etc. However, the City of Edmonton stated it does not record the senior's birth date in its computerized database.

In my view, birth dates for adult and senior pass members should not be collected. A designation of "adult" or "senior" on the computerized database is sufficient for the purposes of the membership program.

Recommendations on Collection

Under section 32(c) of the FOIP Act, the City of Edmonton is authorized to collect personal information if that information is necessary for the administration of the membership program. However, the collection of information that is not necessary for the membership program is not in accordance with section 32(c) of the FOIP Act.

I recommend that the City of Edmonton review the personal information it collects to determine those that are necessary for the administration of the membership program. This will enable the City of Edmonton to clarify and reinforce the purpose of its collection of personal information.

The City of Edmonton may also wish to review its practice of recording whether a membership extension is granted for medical or vacation purposes. The retention of such information can reveal information about an individual member – for example, a member shows a pattern of being on vacation leave during certain time periods or a member has had a series of medical extensions, which may indicate a chronic medical problem. Although the City of Edmonton advised that it only require a note from the doctor confirming that a member is on medical leave, sometimes the doctor's letterhead may reveal the doctor's specialty. This would, in turn, reveal some information about the member's medical situation.

Is the manner of collection in accordance with section 33(1) of the FOIP Act?

Section 33(1) of the FOIP Act requires that the City of Edmonton collect the information directly from the individual the information is about unless the collection falls within one of the exceptions listed under section 33(1) of the FOIP Act.

The City of Edmonton collects information directly from the pass member. Therefore, the collection is in accordance with section 33(1) of the FOIP Act.

Did the collection meet the requirements set out in section 33(2) of the FOIP Act?

Section 33(2) of the FOIP Act states:

33(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or an employee of the public body who can answer the individual's questions about the collection.

The hard copy membership application form currently used by the City of Edmonton does not contain a notification statement respecting the purpose of collection, legislative authority for collection, and to whom questions on collection can be referred. No notification statement was found on the Kinsmen Sport Centre "Annual Pass Holder Information Sheet" and the "Terms and Conditions of Use" handout.

There is no evidence that when individuals verbally provide information for the electronic processing of their membership applications that the Kinsmen Sport Centre staff advise them of the

purpose of collection, legislative authority for collection, and to whom questions on collection can be referred.

In my view, the City of Edmonton's collection practices does not meet the requirements set out in section 33(2) of the FOIP Act.

The following information is from the FOIP Policy and Practices Manual produced by the Alberta Government (dated August 1998):

Forms are a major way of collecting personal information. For that reason, it is important to bring forms (paper and electronic) into compliance with the privacy protection provisions of the FOIP Act. In doing so, public bodies will

- *Support the right of individual citizens to know what personal information public bodies collect about them and how this information is used;*
- *Support the right of individuals to access information about themselves; and*
- *Help maintain confidence among individuals that public bodies are protecting their personal information from unauthorized collection, use and disclosure....*

The notification may be printed on the collection form itself, on a separate or covering document which explains the form and how to fill it out, including the privacy requirements, or may be given verbally (e.g. when collection takes place over the telephone).

When the privacy statement is provided verbally, care must be taken to provide the individual with a copy of the privacy statement either at the office where the collection takes place or attached to the documentation sent to an individual to confirm collection of information over the telephone or electronically...

[Excerpts taken from pages 233 and 234 of the FOIP Policy and Practices Manual].

I recommend that the City of Edmonton ensure that the membership application form contains a notification statement that is in accordance with the requirements of the FOIP Act. Alternatively, the City of Edmonton may incorporate the notification statement in its "Annual Pass Holder Information Sheet" or its "Terms and Conditions of Use" handout.

In addition, I recommend that the City of Edmonton develop a standard statement for its employees to give verbally when accepting information for applications over the telephone.

Are policies and procedures established concerning the collection, use and disclosure of personal information?

With the exception of its Code of Ethics, the City of Edmonton did not identify any other policies or procedures for civic employees regarding confidentiality and restrictions on use or disclosure of information by civic employees.

All city employees are required to read and sign a Code of Ethics (generally upon commencement of employment). The Code of Ethics establishes the principles of conduct for civic employees. The Code provided during the investigation is dated January 20th, 1995. The Code references the

“Right to Information Bylaw” which predated the FOIP Act. I was informed that a supplementary code is in progress.

I recommend that the Code of Ethics be updated to reflect the responsibilities and requirements of the FOIP Act. In addition, I recommend that the City of Edmonton develop policies or procedures on confidentiality or restrictions on disclosure of information obtained by civic employees in the performance of their duties.

The City may also wish to consider developing material to inform and educate civic employees of the requirements of the FOIP Act.

Are safeguards established to protect personal information?

Physical Security Measures

Completed hard copy membership applications are stored in a card box in the cashier wicket at the Kinsmen Sport Centre. When pass members surrender their pass cards during long-term absences, their pass cards are attached to their hard copy application forms and filed in the card box. The information is accessible to staff with authorization to enter the cashier wicket area.

When the facility is open, the facility director, booking coordinator, facility office manager, cashier supervisor, maintenance supervisor, fitness services supervisor and the cashiers have access to the cashier wicket. The cashier wicket is manned from 5:00 a.m. to 10:30 p.m. During the time when the facility is closed, the cashier wicket is accessible to custodian staff and staff who work after hours.

At the time of the complaint, the completed applications and any surrendered pass cards were stored in a card box that was left in an open cabinet in plain view. The card box was not locked at night. Although access to the cashier wicket is through a locked gate, there is no “cage” to secure the open counter space so anyone would be able to climb over the counter to enter the area and access information that was left unlocked.

During my on-site visit of the Kinsmen Sport Centre, I was informed that locked cabinets have been ordered but that they have not arrived yet. Subsequently, on April 14th, 2000, I received a letter from the City of Edmonton advising that locking doors have been installed on the cabinets and membership cards have been transferred to these cabinets and are locked when the facility is closed.

Electronic Security Measures

As an annual pass will permit a member to use other city owned recreational facilities, cashiers in all city-owned recreational facilities may access information in the computerized member management database. Each cashier has an individual log-in identification so that access into the computers can be traced.

The computerized member management system has only been operational since January 2000, and is one component of the overall "CLASS" computer data management program used by the City of Edmonton.

CLASS is a new system that is still being phased in. I recommend that the City of Edmonton incorporate privacy considerations in all future enhancements and modifications to the CLASS system. The City of Edmonton must be mindful of the implications for privacy in its technological advancements.

Retention of Information

Hard copy completed applications are retained for a period of 5 years after expiry. Subsequently, the applications are shredded at the facility site.

No decision has been finalized regarding the retention schedule for electronic information. Therefore, I recommend the City of Edmonton establish a retention schedule for the information in its computerized database.

Concluding Remarks

The complaint filed with this office has provided the City of Edmonton with an opportunity to review its practices and operations in the Kinsmen Sports Centre.

The following is a summary of the recommendations of this investigation:

1. That the City of Edmonton review the personal information it collects to determine those that are necessary for the administration of the membership program.
2. That the City of Edmonton review its practice of recording whether a membership extension is for medical or vacation purposes.
3. That the City of Edmonton ensure that the membership application form contains a notification statement that is in accordance with the requirements of section 33(2) of the FOIP Act. Alternatively, the City of Edmonton may incorporate the notification statement in its "Annual Pass Holder Information Sheet" or its "Terms and Conditions of Use" handout.
4. That the City of Edmonton develop a standard notification statement for its employees to give verbally when accepting information for applications over the telephone.
5. That the City of Edmonton update its Code of Ethics to reflect the responsibilities and requirements of the FOIP Act.

6. That the City of Edmonton develop policies or procedures regarding confidentiality or restrictions on disclosure of information obtained by civic employees in the performance of their duties.
7. That the City of Edmonton develop material to inform and educate civic employees of the requirements of the FOIP Act.
8. That the City of Edmonton incorporate privacy considerations in all future enhancements and modifications to the CLASS system.
9. That the City of Edmonton establish a retention schedule for the information in its computerized database.

The cooperation of representatives from the City of Edmonton during this investigation is acknowledged and appreciated. This file is closed upon receipt of the City of Edmonton's acceptance of the above recommendations.

Submitted by,

Marylin Mun
Portfolio Officer