

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into A
Complaint Regarding Part 1 and Part 2 of the
*Freedom of Information and Protection of Privacy Act***

October 23, 2000

**City of Calgary
and
City of Calgary Taxi Commission**

Investigation #1743

The Complaint

On November 12th, 1999, the Information and Privacy Commissioner received a written complaint against the City of Calgary and the City of Calgary Taxi Commission (the "Taxi Commission"). The Complainant alleged the following:

1. The City of Calgary did not respond to the Complainant's access application in accordance with the provisions outlined in Part 1 of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act").
2. The City of Calgary breached the Complainant's privacy when it disclosed to an external legal firm and to the Taxi Commission that the Complainant had applied under the FOIP Act for access to information.
3. The Taxi Commission breached the Complainant's privacy when it disclosed at a public meeting that the Complainant had applied under the FOIP Act for access to information.

The Commissioner's Authority to Investigate

The FOIP Act authorizes the Commissioner to conduct investigations on his own initiative to ensure compliance with any provisions of the FOIP Act (section 51(1)(a)). In addition, the Commissioner may conduct investigations pursuant to section 51(2)(e) of the FOIP Act, which 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.

Accordingly, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations.

Application of the FOIP Act

Under the FOIP Act, the City of Calgary and the Taxi Commission are separate and independent bodies. The City of Calgary is a local government body as defined under section 1(1)(i)(i) of the FOIP Act, while the Taxi Commission is a local government body pursuant to section 1(1)(i)(xviii) of the FOIP Act. Therefore, both the City of Calgary and the Taxi Commission are subject to the provisions of the FOIP Act.

Issues

In conducting this investigation, I considered the following issues:

1. Did the City of Calgary respond to the Complainant's access application in accordance with the provisions set out in Part 1 of the FOIP Act?
2. Did the City of Calgary disclose personal information in violation of Part 2 of the FOIP Act?
3. Did the Taxi Commission disclose personal information in violation of Part 2 of the FOIP Act?

Issue #1: Did the City of Calgary respond to the Complainant's access application in accordance with the provisions set out in Part 1 of the FOIP Act?

The Complainant had applied to the City of Calgary under the FOIP Act for access to all documentation and reports related to an investigation conducted by the City of Calgary.

Subsequently, a lawyer (the "Lawyer") with the City of Calgary's law department wrote to an external legal firm regarding the Complainant's access request. The legal firm had represented the Complainant on a legal matter. In the letter to the legal firm, the Lawyer advised that the information requested by the Complainant would not be releasable under the FOIP Act.

The Complainant complained that the Lawyer is not the appointed head of the City of Calgary for the purpose of the FOIP Act. Therefore, the Complainant claimed that the Lawyer's letter to the legal firm was not in accordance with the provisions set out under Part 1 of the FOIP Act.

What are the requirements for responding to an applicant under Part 1 of the FOIP Act?

The FOIP Act places the responsibility for responding to an applicant's access request on the head of the public body. However, section 80(1) of the FOIP Act allows the head of a public body to delegate to any person any duty, power or functions of the head under the FOIP Act except the power to delegate.

Findings of the Investigation

The Complainant is correct in the assertion that the Lawyer is not the appointed head of the City of Calgary for the purposes of the FOIP Act. The Lawyer is also not authorized to respond to access requests on behalf of the City of Calgary.

The City of Calgary has designated the City Clerk as the "head" for the purposes of the FOIP Act and the FOIP Coordinator has been delegated the authority to respond to access requests.

The City of Calgary also appointed a contact person in each of its departments to liaise with the City of Calgary's FOIP office (the "Calgary FOIP Office"). When an access application for general information is received, the Calgary FOIP Office would distribute copies of the access request (with personal information of requestors removed) to the appropriate contact persons to search for responsive records.

In my investigation, I confirmed that the Calgary FOIP Office had severed information about the Complainant from the access request. The Calgary FOIP Office then distributed copies of the severed access request to various program areas, including the City of Calgary's law department and the Taxi Commission, for the purpose of searching for responsive records.

I was informed that when the law department contact person (the "Contact Person") received the severed access request from the Calgary FOIP Office, the Contact Person made an enquiry throughout the law department for responsive records.

The Contact Person approached the Lawyer for responsive records as the Lawyer was working on a legal matter between the City of Calgary and the Complainant. Given the nature of the access request, both the Contact Person and the Lawyer made an assumption that the Complainant was the requestor.

The Lawyer was concerned that the Complainant was attempting to obtain access to information through the FOIP Act that the Complainant was unable to obtain through the court process. The Lawyer thought it was "outrageous that people request information through the back door", and wrote to the legal firm to convey this view.

In my view, the Lawyer's actions had the potential of placing the City of Calgary in a position of breaching Part 1 of the FOIP Act. The wording of the Lawyer's letter to the legal firm could have been construed as the City of Calgary's response to the Complainant's access request. As the Lawyer is not delegated to respond to access applications on behalf of the City of Calgary, the Lawyer had no authority to write to the legal firm on this matter.

However, this matter was rectified by the actions of the Calgary FOIP Coordinator, who wrote to the Complainant shortly after the Lawyer sent the letter to the legal firm. In the letter to the Complainant, the Calgary FOIP Coordinator advised that the Complainant's access request would be processed according to the requirements of the FOIP Act.

The Calgary FOIP Office then proceeded with its processing of the Complainant's access request. Subsequently, the Calgary FOIP Office released some records in their entirety and granted partial access to others. The Calgary FOIP Office also withheld some records on the basis that the FOIP Act did not apply to those records (section 4(1)(h)(ii) of the FOIP Act).

I found no evidence that the Lawyer's actions impacted on the processing of the Complainant's access request by the Calgary FOIP Office, which was authorized to respond to access requests. As the Complainant has no issue with the Calgary FOIP Office's processing of the access request, I conclude that the City of Calgary did respond to the Complainant's access request in accordance with Part 1 of the FOIP Act.

Recommendations

Based on my findings, I recommend that the City of Calgary remind its employees that the Calgary FOIP Office has been delegated the responsibility of responding to access requests on behalf of the City of Calgary.

In my opinion, the Lawyer made a bad assumption and should not have written to the external legal firm. The Lawyer was approached for the purpose of identifying records responsive to an access application made under the FOIP Act. Information regarding an access application is not to be used for any other purpose.

Regardless of an employee's personal views on an access request, an employee should not correspond to an applicant on the matter unless that employee is authorized to do so.

An employee should not comment to an applicant on the validity of their access application. The FOIP Act grants individuals a right to access any record in the custody or under the control of a public body. The public body must disclose the records unless an exception to disclosure set out in the FOIP Act applies.

In Order 99-032, the Commissioner said that public bodies would be accountable under the FOIP Act for the actions of its employees. Therefore, it is important that the City of Calgary ensures its employees understand their respective roles and responsibilities under the FOIP Act.

Issue #2: Did the City of Calgary disclose personal information in violation of Part 2 of the FOIP Act?

The Complainant considers the processing of an access request to be "*private and confidential*", and believes that the disclosure of the identity of a requestor is a breach of privacy.

The Complainant claimed that the Lawyer breached the Complainant's privacy when the Lawyer wrote to the external legal firm and sent a copy of that letter to the Taxi Commission. The Complainant stated the legal firm was not designated as the "*proper contacts, agents or representatives*" with respect to the access request and the letter to the Taxi Commission was sent without the consent of the Complainant.

Privacy Provisions of the FOIP Act

The FOIP Act is comprised of two major components: Part 1 which deals with access to records held by public bodies and Part 2 which sets out the provisions under which a public body may collect, use, disclose and protect personal information.

Under Part 1 of the FOIP Act, section 6(1) grants an applicant a right of access to any record in the custody or under the control of a public body, including records containing personal information about the applicant. Section 1(1)(b) of the FOIP Act defines an applicant as "a person who makes a request for access to a record". In Order 96-019 and Order 97-003, the Commissioner said that "person" can include an individual or a corporation.

Section 62(1) of the FOIP Act states “a person” who makes a request for access to a record may ask the Commissioner to review the public body’s response to that request. Therefore, an individual, a corporation, a company, etc. could be an applicant and could request a review of a public body’s response to their access applications.

While Part 1 of the FOIP Act includes all records, including personal information, Part 2 of the FOIP Act only applies to personal information. In order for the provisions of Part 2 of the FOIP Act to apply, the information at issue must be “personal information”.

Under section 1(1)(n) of the FOIP Act, “personal information” is defined as “recorded information about an identifiable individual”. In Order 96-019 and 96-020, the Commissioner determined that “individual” means “a single human being” and that only individuals can have personal information. Corporations and other entities that are not single human beings cannot have personal information.

Findings of the Investigation

In reviewing this matter, I conclude that the Complainant was a corporation and not “an individual”. My conclusion is based on the following:

- The original access application to the City of Calgary listed the name, address, telephone number and fax number of the corporation as “the applicant”.
- The written complaint to the Commissioner was on corporation letterhead. The opening sentence of the letter states:

“Enclosed for your information and review, please find a copy of the City of Calgary’s request to the FOIPPA request [name of corporation] submitted to the City of Calgary...”

- The issues of concern detailed in the Complainant’s letter reference the corporation.

In my view, this clearly conveys the intent of the Complainant that the access application to the City of Calgary and the written complaint to the Commissioner were submitted by the corporation.

Both the original access application and the letter to the Commissioner include the name and signature of an individual. The name of an individual can be considered “personal information”. However, in this case, the individual is representing the corporation. Other than the name of the individual, there is no other personal information about the individual.

In Order 99-032, the Commissioner wrote:

[para 51.]...public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons....

I believe this same principle applies in this case. In other words, the corporation cannot act by itself. It can act only through its employees or officers. I find that the individual was acting in the capacity of a representative of the corporation, and not in a personal capacity.

Conclusion

As a corporation cannot have personal information, there can be no breach of personal privacy. Therefore, this Office can take no further action on this matter.

While the disclosure by the Lawyer may be wrong, it is not a violation of Part 2 of the FOIP Act in this case. If the circumstances had involved an individual, my conclusion on this matter may be different.

I was informed that the Calgary FOIP Office has issued a memo to all departments reminding employees of the need to limit disclosures to a “need to know” basis. In addition, I understand staff members in the City of Calgary’s law department were reminded of their obligations under the FOIP Act. I believe these actions are good, and will help prevent similar occurrences in the future.

Issue #3: Did the Taxi Commission disclose personal information in violation to Part 2 of the FOIP Act?

The Complainant alleged that a representative of the Taxi Commission “made a series of comments that my company had made a FOIPPA application at different times” during a public meeting.

Investigation Findings

As noted earlier, a corporation cannot have personal information. Therefore, there can be no breach of personal privacy and this Office can take no further action on this matter.

Having said this, I was informed that a comment was made about the Complainant’s access request during a public meeting. The Taxi Commission may wish to review the appropriateness of such comments. Had an individual made the access request and such comments were made during a public meeting, the Taxi Commission could have been in a position of disclosing personal information in violation of Part 2 of the FOIP Act.

Closing Comments

I believe the investigation conducted has addressed all of the Complainant’s concerns. I recommend that this case be closed.

Submitted by,

Marylin Mun
Portfolio Officer