

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on Investigation into Complaint
Regarding Unauthorized Disclosure of Personal Information**

August 13th, 2002

**City of Calgary
Investigation #2363**

I. INTRODUCTION

[para 1] On February 7th, 2002, a complainant wrote to this office asking the Information and Privacy Commissioner to investigate a possible breach of his personal privacy. His concern was in regards to the disclosure of personal information contained on a building and construction permit the City of Calgary had granted for his property. Specifically he wanted to know whether or not the release of his home address, and ~ to a lesser but still important degree ~ his name, constituted a breach of the *Freedom of Information and Protection of Privacy (FOIP) Act*.

[para 2] Section 53(2) of the *Freedom of Information and Protection of Privacy Act* (“the FOIP Act”) allows the Commissioner to investigate complaints that personal information has been collected, used or disclosed in contravention of Part 2 of the FOIP Act. Accordingly, the Commissioner authorized me to investigate this matter. This report outlines my findings.

II. INVESTIGATION FINDINGS

[para 3] The complainant raised two sections in the *Act* that he felt were applicable to his situation; sections 16 and 17. Section 17 will require the greater analysis so before I discuss that I will dispense with section 16.

Section 16

[para 4] The complainant pointed out that section 16 compels public bodies to refuse to disclose information if the information was supplied in confidence and if it created one of four harms, two of which he felt applied:

- ◆ if it would result in similar information no longer being supplied; or,
- ◆ if it would result in undue financial harm.

[para 5] Section 16, however, has three parts, all of which must be met before a public body can (or must) refuse to disclose information on a record.

[para 6] Sub-section 16(1)(a) identifies the first part of the test; i.e., the type of information that is being considered for disclosure must be a trade secret, or it must be the commercial, financial,

labour relations, scientific or technical information of a third party. None of the information released by the City of Calgary was this type of information.

[para 7] All that said, section 16 does not apply because the release of personal information outside of the formal FOIP application process is dealt with under section 40 of the *Act*. (I wanted to provide that explanation to the complainant as a matter of interest since he had clearly made an effort to construct a line of reasoning for me.) The applicable portion of section 40 states that:

40(1) A public body may disclose personal information only...

(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17

]para 8] So, to continue the analysis, one turns to section 17.

Section 17

[para 9] Section 17 deals with personal information as opposed to general information. Personal information includes, among other things, an individual's name, home or business address or home or business telephone number. The text of section 17(1) reads:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 10] The City of Calgary sells a document referred to as the "Building Permit Application Report". (As an aside, the City is not alone in doing this. Many municipalities release information relating to building and development permits. This does not affect my conclusion but it is an interesting aside.) The information listed on the Report is: the permit number, the applicant's name, the construction location, the intended use (e.g. single family house), the type (e.g. new, alteration, etc.), the estimated value of construction; and, the number of residential units created.

[para 11] In many instances, no personal information appears on the Report as the "applicant" category is the name of the builder (e.g. ABC Construction Ltd. or XYZ Interior Design Inc.) and the "address", then, does not identify an individual. For purposes of this discussion, however, the personal information contained on the Report is the applicant's name (when it is an individual) and the construction location. The question that must be answered is:

Is the disclosure of an applicant's name and the construction location an unreasonable invasion of an individual's personal privacy?

[para 12] To answer that, another provision contained within section 17 must be examined ~ section 17(2)(g). The text of section 17(2)(g) reads:

*17(2) A disclosure of personal information is **not** an unreasonable invasion of a third party's personal privacy if*

...

(g) *the information is about a licence, permit or other similar discretionary benefit relating to*

...

(ii) *real property, including a development permit or building permit, that has been granted to the third party by a public body,*

and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,...

[para 13] Clearly, *under section 17(2)(g)(ii) of the Act*, the release of someone's name in relation to being granted a building permit is not considered to be an unreasonable invasion of personal privacy. Though less clear, the disclosure of the location of the work site is also likely *not* an unreasonable invasion of someone's personal privacy because of the wording "real property" and "nature of the ... permit".

[para 14] The provincial government department responsible for the administration of the *Act* ~ Alberta Government Services ~ has prepared a document referred to as Frequently Asked Questions (FAQ) for Municipalities. It is used routinely by municipalities to assist them with the administration of the Act.

[para 15] In reference to this issue, the FAQ states that the:

"nature of the permit" ... "would likely include all the information related to what the permit allows the permit holder to do (e.g. location of work site, the kind of structure, its size, value of the project, etc.). It may not include other personal information of the permit holder, such as their home phone number, or home address if different than the location of the work site."

[para 16] That description, though I do not quibble with its meaning, can be expanded. Building permits are granted to persons for specific sites. Put another way, permits are not granted to a person for any site not specified, or to be chosen randomly by the permit holder. Rather, the construction site is the reason the permit is issued. Along with the type of construction, the site specification forms part of the "nature of the permit" particularly in reference to "real property".

[para 17] The complainant raised some further issues. He was concerned that:

- ◆ fees should not drive the reason for sale;
- ◆ the sale of this data may encourage people not to purchase permits;
- ◆ it would allow for theft at construction sites; and,
- ◆ the disclosure should not be done without consent.

[para 18] Partly prompted by those concerns but also as part of the standard review process, I looked at another part of section 17 that deals with the release of personal information. Section 17(5) provides a list of circumstances relevant to the determination of unreasonable invasion. The preamble of subsection 17(5) states that:

17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether...

and it goes on to list the circumstances.

[para 19] Though the list is not exhaustive, it does not include any of the reasons provided by the complainant. The more significant point, however, is that subsection (5) is only invoked and used as a determining factor “under subsections (1) and (4)”. The release of the personal information in this case was allowed for under subsection (2). What this means is that, though I am not unsympathetic to his concerns, neither can they be used as a determining factor under the Act to refuse disclosure.

[para 20] (Ironically, the “sale” may be a protective measure in itself. Attaching a price to data routinely acts as a disincentive to the frivolous use of personal information.)

III. CONCLUSION

[para 21] My conclusion is that the sale of building permit information ~ when the personal information disclosed is limited to the name and construction site address ~ is an allowable disclosure under the *Freedom of Information and Protection of Privacy Act*.

Respectfully submitted by,

Catherine Taylor
Portfolio Officer