

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

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

**April 2<sup>nd</sup>, 2003**

**City of Calgary  
Calgary Taxi Commission**  
(now known as Livery Transport Services)  
**Investigation F2002-IR-009**

**INTRODUCTION**

[1] The Information and Privacy Commissioner received a privacy complaint on March 8<sup>th</sup>, 2002, concerning the City of Calgary Taxi Commission (now known as Livery Transport Services). The complainant alleged that the Taxi Commission's practice of requiring that he authorize a criminal record check as part of a livery licence renewal process was a breach of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act"). Further to section 61(1) of the Act, the Commissioner assigned me to investigate the matter. This is my investigation report.

**BACKGROUND FACTS**

[2] Before an applicant receives a new or annually renewed livery (taxi and limousine) licence, the Calgary Taxi Commission considers the recommendation of the Chief of Police of the Calgary Police Service. The Chief of Police conducts a criminal record check of each applicant before providing his recommendations to the Taxi Commission. The complainant authorized a criminal record check to obtain his renewal; however, he felt that the requirement to do so was a breach of his privacy under the Act.

**ISSUE**

[3] The investigation set out to answer this question.

Did the Calgary Taxi Commission collect the complainant's personal information in contravention of Part 2 of the Act?

## **ANALYSIS**

### *Collection Under Section 33(a)*

[4] Section 33 of the *Act* states that:

- 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.*

[5] I will deal with sub-sections 33(a) and (c) only. Section 33(b) deals with law enforcement and neither the Taxi Commission nor I believe the application process is a law enforcement matter as defined in the *Act*.

[6] Section 33(a) provides that public bodies such as the Taxi Commission may collect personal information from an individual if an enactment of Alberta or Canada authorizes the collection. I had to determine if an enactment expressly authorized the collection of criminal record information of persons employed in the taxi/livery industry. Criminal record information is “personal information” under the *Act*.

### *Provisions in the Municipal Government Act*

[7] The *Municipal Government Act (MGA)*, section 7 gives municipal councils the general jurisdiction to pass bylaws for certain matters. The provisions that appear to be applicable in this case are:

**7** *A council may pass bylaws for municipal purposes respecting the following matters:*

- (a) *the safety, health and welfare of people and the protection of people and property;*
- (b) *people, activities and things in, on or near a public place or place that is open to the public;*
- ...
- (d) *transport and transportation systems;*
- (e) *businesses, business activities and persons engaged in business;*

[8] Section 8 of the *MGA* then goes on to identify the powers council may put in a bylaw it passes. The list is extensive and all relate to this case, though some only peripherally.

**8** *Without restricting section 7, a council may in a bylaw passed under this Division*

- (a) *regulate or prohibit;*
- (b) *deal with any development, activity, industry, business or thing in different ways, divide each of them into classes and deal with each class in different ways;*
- (c) *provide for a system of licences, permits or approvals, including any or all of the following:*
  - ...
  - (iii) *prohibiting any development, activity, industry, business or thing until a licence, permit or approval has been granted;*
  - (iv) *providing that terms and conditions may be imposed on any licence, permit or approval, the nature of the terms and conditions and who may impose them;*
  - (v) *setting out the conditions that must be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them;*
  - (vi) *providing for the duration of licences, permits and approvals and their suspension or cancellation for failure to comply with a term or condition or the bylaw or for any other reason specified in the bylaw; ...*

[9] In summary, the MGA gives the City of Calgary the ability to pass bylaws that deal with:

- regulating the taxi/livery business and the people engaged in the industry (“a business or business activity”);
- licensing, permits and approvals of people in the industry; and,
- the terms and conditions that may be imposed on a licence, etc. and who can impose them.

[10] One other section of the MGA provides further guidance.

- 9** *The power to pass bylaws under this Division is stated in general terms to*
- (a) *give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and*
  - (b) *enhance the ability of councils to respond to present and future issues in their municipalities.*

[11] The taxi business operates under Bylaw 91/77 passed by the Council of the City of Calgary. The bylaw provides for the following:

*9.(7) No person shall operate a taxi unless he is a licensed taxi driver.*

[12] This clearly falls under the allowable types of bylaws and under the allowable types of powers under those bylaws. The section deals with a

business and licensing. Another section in the bylaw deals with the crux of this complaint and it states that:

*9.(18) The Chief Taxi Inspector shall consider the written recommendation of the Chief of Police prior to the issuance of a licence pursuant to this Bylaw.*

[13] This too clearly complies with sections 7 and 8 of the *MGA*. It deals with a business and persons engaged in the business along with setting out the conditions that must be met before a licence is granted or renewed, the nature of the condition, and who may impose the condition.

*Is a Bylaw an Enactment?*

[14] Yes, section 9.(18) of Bylaw 91/77 falls under the definition of “an enactment”. Both section 1(3) of the Regulation to the *FOIP Act* and section 28(1)(m) of the *Interpretation Act* state that enactment “... means an *Act* or a regulation...”. Section 1(1)(c) of the *Interpretation Act* defines a regulation to mean “a ... *bylaw* ... enacted in the execution of a power conferred by or under the authority of an *Act*”.

*Is the Collection of the Criminal Record Information Expressly Authorized by Section 9.(18) of the Bylaw?*

[15] When the Taxi Commission receives an application for a licence along with the applicant’s authorization to approach the Calgary Police Service (CPS), the documents are sent to the Chief of Police/CPS. If the response from the CPS is a “recommended”, the Taxi Commission receives that statement and the application is finalized. If the response is a “not recommended”, the Taxi Commission is provided with that statement along with the criminal record check documents that identify why the Chief of Police did not recommend the application.

[16] The CPS will not consider recommending without conducting a criminal record check. Therefore, as a written recommendation necessarily includes criminal record information, section 9.(18) of the Bylaw expressly authorizes the collection of that information.

*Conclusion Under Section 33(a)*

[17] Bylaw 91/77 containing section 9.(18) was passed by Calgary City Council under the authority of the *Municipal Government Act* and Council did not stray from the boundaries of its powers. The bylaw requires the Taxi Commission to obtain the written recommendation of the City of Calgary Chief of Police.

[18] A “written recommendation” entails a criminal record check. This is the express authorization required under section 33(a).

### *Collection Under Section 33(c)*

[19] I also examined if a collection of the information obtained by a criminal record check can be done under the criteria established under section 33(c) of the *Act* as additional evidence to the complainant that all components were examined. Section 33(c) states that:

33 *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.*

[20] The operating program or activity of the Taxi Commission is the regulating of the livery industry through licensing and enforcement measures. It can be summed up by its mandate:

#### **The safety of the travelling public.**

[21] The Taxi Commission meets this mandate by licensing, and by regulating and enforcing municipal and provincial legislation applicable to the livery industry. In reference to the matter before this office the Taxi Commission must ensure that drivers and brokers do not pose a risk to the public riders they serve. Part of the way the Commission works to avert or minimize that risk is by checking the background of drivers to determine whether or not a past criminal offence would likely increase the risk to the public.

[22] Some of the reasons individuals are denied licensing include:

- Possession of stolen credit card
- Assault causing bodily harm
- Assault with a weapon
- Fraud
- Impaired driving
- Sexual assault
- Theft
- Forgery
- Traffic in controlled substances
- Possession of controlled substances
- Hit and run
- Dangerous driving causing death
- Outstanding warrants for arrest (various issues)

[23] Individuals with criminal records have applied for licences to operate taxis in the past. The denial of a licence for the reasons above has a clear link to the

travelling public's safety. The only way to obtain the information is through a criminal record check of each applicant. Were licences granted to such individuals a risk to the public would result. Given that drivers:

- are often alone in their vehicles with clients;
- are in, or are able to drive to, areas with little traffic (and few people); or,
- are driving at night

the safety of the public may be in jeopardy if criminal record check measures were not taken.

#### Conclusion Under Section 33(c)

[24] It is for these reasons that the criteria in section 33(c) is met. The information relates directly to and is necessary for Taxi Commission's operations. The safety of the travelling public vis a vis the livery industry is a responsibility of the Taxi Commission. To fulfill that responsibility the Commission must undertake certain precautions to ensure the licensee has not committed offences that may endanger the public.

#### *Manner of Collection*

[25] Section 34 of the *Act* requires a public body to collect information directly from the individual unless the individual consents to another method or, when the other circumstances in section 34 apply. This includes collecting information from another source with the individual's consent such as was done in this case. (Though other circumstances may apply, I did not analyze them because consent had been provided.)

[26] The Taxi Commission advises each applicant about the requirement and has the applicant sign an authorization form allowing the collection from the Calgary Police Service. Should an applicant not wish to have the information collected and provided to the Commission, he or she need not apply. The Licence Review Hearing also provides applicants with the opportunity to explain any issue, including issues that arise following a criminal record check.

#### *Source of Collection and Accuracy of Information*

[27] There are no explicit restrictions limiting from where the information may be collected. There are, however, conditions of accuracy, which is why the Commission must insist upon having the information come from a policing agency rather than from the applicant.

[28] The Taxi Commission "must make every reasonable effort to ensure that the information is accurate and complete..." further to section 35(a) of the *Act*.

To ensure accuracy and completeness, a criminal record check from a policing agency is required rather than simply the word of an applicant.

[29] That it chooses the Calgary Police Service (CPS) rather than the RCMP ~ or any other policing agency ~ is entirely up to the Taxi Commission. Unless there was some concern over the accuracy between RCMP data and CPS data ~ and there is none ~ then this office has no jurisdiction to delve into that decision. I raise this because it was of particular concern to the complainant.

[30] I note that the Taxi Commission also has an appeal body to handle licensing denials. By allowing applicants the ability to explain an item on their criminal record or even perhaps show the information to be faulty (e.g. the wrong person was checked) further identifies the public body's fulfillment of section 35 ~ the accuracy and completeness component of the *Act*.

[31] Criminal record check documents may contain highly sensitive information about a person. No explanation is needed from a complainant to justify his or her request that the collection and security of the information be thoroughly scrutinized ~ particularly since it is becoming more and more common in the workplace. It may be that occasions exist where the collection is frivolous. This is not one of those occasions.

## **CONCLUSION**

[32] I conclude that the Calgary Taxi Commission likely has the express authority to collect criminal record information from the Calgary Police Service about the complainant under section 33(1)(a) of the *Act*. If necessary, I also conclude that the Calgary Taxi Commissioner does have the authority to collect criminal record information about the complainant under section 33(1)(c) of the *Act*.

[33] I recommend that this file be closed.

Respectfully submitted by,

Catherine Taylor  
Portfolio Officer