

ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER

Report on an Investigation Regarding the Collection of Personal Information  
by the  
City of Edmonton  
(Investigation #F3841)

January 17<sup>th</sup>, 2007

Investigation Report F2007-IR-001

I. INTRODUCTION

[1] On October 11<sup>th</sup>, 2006, the Commissioner received notification from an anonymous individual that the City of Edmonton was collecting information through a survey entitled the City of Edmonton Employee Census Survey.

[2] Given the significance of the issue, the Commissioner decided to initiate an investigation on his own motion under section 53(1)(a) of the Freedom of Information and Protection of Privacy Act (the "Act").

[3] The significance of the issue was determined by: the number of data elements collected; the number of individuals potentially affected by the collection; the generally perceived heightened sensitivity of some of the data; and, the likelihood that investigating the issue could provide some helpful information for public bodies who embark on a similar path. Section 53(1)(a) of the Act authorizes the Commissioner to conduct investigations to ensure compliance with any provision of the Act.

[4] The Commissioner authorized me to investigate this matter. This report outlines my analysis of the issues and the findings of my investigation.

## II. INVESTIGATION ISSUES

[5] The issues are:

1. Did the City of Edmonton collect personal information in compliance with sections 33 and 34 (purpose for and manner of collection) of the Act?
2. Did the City of Edmonton protect the personal information by making reasonable security arrangements against the risks of unauthorized access, collection, use, disclosure or destruction as required by section 38 of the Act?

## III. INFORMATION AT ISSUE

[6] The survey was sent to every regular employee of the City, about 7,500 people. (The term 'regular employee' does not include temporary or seasonal employees.) Participation in the survey was voluntary. The rate of surveys returned was less than 100%.

[7] There were 33 categories of information: department of employment; group position (union, management, out of scope); type of work (clerical, trades or labour, professional or technical, etc.); whether the employee supervises anyone; the number of years of employment; opinions about how valued an employee feels; language(s) spoken including language spoken as a child; level of education including out of country education if that is applicable; religion; marital status; household composition (number of adults and children); disability(ies); sex; year of birth; years lived in Edmonton and where the employee lived earlier if previous residency is less than five years; identity based on appearance (Aboriginal Canadian, Arab/West Asian, Chinese, White/Caucasian, etc.); identity based on sexual orientation (heterosexual, bisexual, homosexual, other); identity based on an identifiable group (left to the employee to provide); and opinions about potentially disadvantaged groups, the need for more inclusive services, employee respect of human diversity; and, any other suggestions the employee may have.

[8] Employee names were not requested; however, a unique authorization number was part of each survey. The unique authorization number was linked to each employee name.

## IV. APPLICATION OF THE Freedom of Information and Protection of Privacy Act

[9] Personal information is defined in the Act as "recorded information about an identifiable individual". Besides identifiers such as ethnic origin, sex, education, physical or mental disabilities and employment history, the definition also

includes “the individual's personal views or opinion, except if they are about someone else”.

[10] The Act allows for the collection of personal information by public bodies under three limited circumstances (section 33) and requires that the information be collected directly from the individual to whom the information is about unless another provision allows for an indirect collection (section 34).

[11] Additionally, the Act places a duty on public bodies to protect personal information against certain risks such as unauthorized access, use and disclosure (section 38).

[12] The City of Edmonton is a public body subject to the Act.

[13] The investigation conducted by the Commissioner's Office included discussions with representatives from the City, a review of the Privacy Impact Evaluation prepared by the City and a review of the agreement between the City and the consultant hired to assist in the preparation of the survey and to collect and analyze the data.

## V. BACKGROUND

[14] All of the information collected in the survey, when linked to a name, is the personal information of an identifiable individual. Therefore, the Act applies to the information collected.

[15] As part of the City Council's Special Initiative to ensure Edmonton is a “culturally rich and welcoming city”, the Senior Management Team directed administration to embark on programs that would lead to achieving that aim. Goals related to that aim were: that the City should have a culturally and otherwise diverse workforce in order to ensure the employees reflected the community it served and thus be able to offer city services that are as inclusive as possible and, to enhance the City's ability to attract and retain employees.

[16] To do that, the City determined that a benchmark was necessary first. A survey was settled upon as the tool to use to establish the benchmark.

## VI. ANALYSIS and FINDINGS

### Collection of Personal Information

[17] The collection of personal information is dealt with in section 33 of the Act.

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.

[18] The Act restricts the collection to those activities that are connected to one of the conditions in section 33; it does not restrict it altogether. If the collection meets one of the three criteria above, then the collection becomes allowable under the Act.

[19] The City's Privacy Impact Evaluation identified section 33(c) as the authority for collecting the information. Therefore, the personal information collected by the City must directly relate to (in this case) an activity of the City's and it must be necessary for that activity.

#### Purpose of Collection

[20] I quote directly from the Privacy Impact Evaluation (below) in identifying the purpose and business need of the activity, which is to:

"Determine the diversity of the City of Edmonton's workforce."

"The diversity and inclusion framework addresses a business case need to diversify and better include the City's workforce. The desired results are a workforce broadly reflective of the City's demographic composition, effective employee productivity, enhance the City's ability [to] attract and retain employees in an increasingly competitive job market and to utilize diversity and inclusion to better serve the citizens of Edmonton."

[21] Part of the purpose was identified as "Benefits". The benefits were to:

- "Establish a benchmark for the City to measure its future progress in diversifying its workforce.
- Provide a statistical profile of the City workforce's diversity in order to support the development inclusive workforce policies and practices.
- Provide a broad indicator as to possible barriers in the City's employment systems for particular identifiable groups. [and]
- Provide a broad indicator as to possible barriers in the City's customer service delivery for particular identifiable groups."

[22] The City indicated that a broad definition of diversity was intended, one that covered characteristics that would be meaningful to someone receiving a City service or characteristics that measure employee satisfaction in the workplace with respect to diversity.

[23] In Order F2005-003, the Commissioner raised the following point:

In my view information collected through surreptitious use would be considered “necessary” within the meaning of section 33(c) *only when the information needed for managing could not be obtained by other means.* (The emphasis is mine.)

[24] While the situation referred to above dealt with surreptitious collection, it has some relevance here as it also raised the condition that the information can not be gathered in other less intrusive ways (though in that case, gathered in other ways also included collection through less clandestine means). I can conceive of no other effective way of determining the broad diversity of the City’s workforce and certainly no way of doing that without going directly to the employees to whom the information is about. Similarly, when measuring whether an employee feels the City respects and values diversity in the workplace, asking the question directly is the most effective way to do that.

[25] The City advised that the survey is the starting point in determining how diverse its workforce is relative to the residents it serves and how inclusive it is for its employees. While those who do not relate to some of the more delicate or less visually recognizable categories may see less merit in them ~ compared to those who are part of those groups ~ that does not diminish the need to know. The results of the survey are intended to assist the City with being a more inclusive workplace and with more inclusively serving its clients.

[26] Thus, in my opinion, the personal information that was collected relates to the stated purposes and the collection is necessary to accomplish those goals. I find the collection is authorized under section 33(c) of the Act.

#### Manner of Collection

[27] Section 34(1) of the Act requires a public body to collect information directly from the person to whom the information is about unless another condition in section 34(1) applies. When information is collected directly from the individual, section 34(2) requires a public body to notify the individual about the purpose and authority of the collection and to provide contact information in case anyone has any questions.

[28] In this case, the City collected the information directly from the individuals to whom the information is about. The City provided the purpose, authority and

contact information with the survey. Therefore, the collection is also in accordance with section 34(1) of the Act.

### Protection of Personal Information

[29] The protection of personal information is dealt with in section 38 of the Act, which reads:

38 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.

### Contractual Protection

[30] The City hired a consultant for this project. Among other things, the Consultant assisted in the development of the survey questionnaire, administered the survey, collected and analyzed the data, and prepared a report on relevant statistical findings.

[31] Among the standard terms contained in most agreements, the contract with the Consultant included terms dealing with: the confidentiality of the information collected both during and after the completion of the agreement; the ownership of the information (resides with the City); the destruction of records; and, the condition of not transferring the obligations of the agreement to anyone else. The contract had very specific reference to compliance with the Act and with acknowledging that this was a fundamental term of the agreement.

### Constraints on Use

[32] With respect to the use of the personal information, the City stated that the information “will be used in aggregate form” and “only for the purposes of the census and resultant programs that may be developed to assist the City of Edmonton’s goal of creating a more diverse and inclusive workforce”. Additionally, and critically from a protection perspective, “no personal information related to an identifiable individual will ever be reported to the City” and “results from groups numbering less than 100 individuals will not be reported back to the City”.

[33] Given the type of information collected, it would be natural for respondents to have concerns that the information would be used for purposes besides determining the diversity of the City’s employee complement. If the City uses the information only for the purpose stated and only in aggregate form as noted above ~ and I have been given no indication to the contrary ~ the condition provides for the necessary measure of protection from unauthorized use.

## Constraints on Disclosure

[34] The City placed similar constraints on disclosure. “Under no circumstance will individual, identifiable information will (sic) be released. The Contractor has been instructed to not report back on any group of employees smaller than one-hundred...”. The City expected that in most cases the groups would be considerably larger than that figure.

## Unique Identifier and Restricted Access

[35] Employees received a paper survey. It could be returned two ways: in paper format by Canada Post; or, electronically through a secure website managed by the Consultant. Each employee was given a unique identification number with their survey. The unique identification was used to ensure only qualified employees participated, it limited the number of times an employee could respond (a single time or for changes), and it allowed employees the ability to ask for a correction.

[36] The unique identifier on each survey is known only to the employee and the returned form/number can only be reference by the president of the consultant company thereby ensuring that no completed survey document was identifiable by employee name without that matching key.

[37] Additionally, the following detailed security measures were put in place (taken from the Privacy Impact Evaluation).

- The City provided the names to the Consultant. The Consultant’s design team assigned the unique authorization numbers.
- The Consultant created a list of names and the corresponding number. The file is held by the Consultant in secure, password-protected custody and it is separate from all other data collected for this project. Only the president knows the password. After the forms were sent out, no one in either the City or staff from the Consultant could match a name to the number (without express permission from the employee).
- The Consultant’s data entry clerks can see authorization numbers only.
- Paper records are maintained in locked offices inside the main office with restricted access. After hours access to the offices of the Consultant is also strictly controlled.

## Retention of Records and Data

[38] The City advised that the retention period for the returned or raw data (i.e., all the paper and electronic records with the responses) was two months from the close of the survey period. Following this the data was destroyed. (Since no identifiable personal information will be used for any decision making, there is no requirement to retain the information for at least one year pursuant to section 35(b) of the Act.) The Consultant will have custody of the records detailing the results of the survey; however the City “retains control of the records and retains the power to manage, restrict, regulate or administer the use and disclosure of the records”.

## Other Protection Components

[39] Though clearly supported by the Senior Management Team (it was sent with a memo signed by the City Manager), the survey was voluntary thereby ensuring that anyone who would be significantly troubled with responding was under no obligation to do so, leaving the most significant privacy control measure (i.e., not providing personal information in the first place) in the hands of each individual employee. Additionally, the names of non-respondents were not provided back to the City.

[40] The City stated it would not use hiring quotas to create a more diverse workforce. Rather, it would use the information to identify and address barriers to employment.

[41] The conditions and actions agreed to by the Consultant provide for a reasonable measure of security for the protection of the information from unauthorized access, disclosure or destruction.

## VII. CONCLUSIONS AND RECOMMENDATIONS

[42] In my opinion, the City collected the personal information in compliance with section 33 and with section 34 of the Act.

[43] In my opinion, the City made reasonable security arrangements against the risk of unauthorized access, use, disclosure or destruction as required by section 38 of the Act. (Collection was dealt with under section 33 so it is not mentioned here specifically.)

[44] I recommend:

- The City advise all staff who were sent the survey that a review was conducted by this Office and that the City was found to be in compliance

with the Act. I leave it to the City as to how that communication will be done.

- The City include in any future contract: that the City retains records and data ownership; that the City determines retention periods; and, that the City determines when and under what form destruction of records and data will occur and will determine what confirmation is necessary for the destruction. This should be included for electronically held and paper records. These items were mentioned in other documents relative to the survey and were asserted to by the City however no contractual obligation was present.
- The City remain bound to the conditions it agreed to that are mentioned in this report.

[45] Finally, should the City ever conduct a survey or something similar again, it may wish to consider bolstering its campaign of communicating to staff about the confidentiality and the protection of the personal information. It may also wish to elaborate on what the information will be used for by pointing out more precisely that no identifiable personal information will be used for any decision making.

[46] These issues are not specific duties under the Act. They do fall under the broad duty of fair information practices and are mentioned for that reason. This, in any event, was mentioned to me by the City during my discussions with them so clearly the concept is already being taken seriously by those involved.

[47] This case is now closed.

Submitted by,

Catherine Taylor  
Portfolio Officer