

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2006-015**

December 11, 2007

**THE EDMONTON POLICE SERVICE**

Case File Number 3478

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* to the Edmonton Police Service (the Public Body) for records relating to the number of times a CPIC database search of his name had been made in the last 10 years.

The Public Body provided the requested information about a number of queries. Relying on section 12(2) of the Act, it refused to either confirm or deny whether there were any additional responsive records.

The Commissioner found that the Public Body's refusal to confirm or deny the existence of a record, pursuant to section 12(2) of the Act, had not been proper. He ordered the Public Body to reply to the Applicant without relying on section 12(2).

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.12(2), 12(2)(a) 12(2)(b), 18, 20, 20(1)a), 20(1)(d), 20(1)(e), 20(1)(f), 20(1)(k), 72.

**Authorities Cited: AB:** Orders F2006-012, F2006-013.

**I. BACKGROUND**

[para 1] On July 6, 2005, the Applicant made the following access request to the Edmonton Police Service (the "Public Body"):

I would like to have the number of times C.P.I.C. has been done by the E.P.S. in the last ten years. I do not ask for the names of who did the search of such C.P.I.C. in the last 10 years

[para 2] On October 24, 2005 the Public Body wrote to the Applicant attaching a chart indicating the dates and times the Applicant's name was searched, and the name search parameters that were used. Pursuant to section 12(2) of the Act, the Public Body refused to either confirm or deny whether there were any additional responsive records.

[para 3] On November 7, 2005, the Applicant requested a review of this response. He asked for an explanation of the Public Body's reasons for using his personal information to conduct the queries. This Office assigned a mediator. The matter was not resolved, and it was brought to inquiry.

[para 4] The Public Body provided a submission with regard to its reliance on section 12(2) of the Act. However, it did not provide a submission regarding its authorization to use the Applicant's personal information to run queries. It asked the Commissioner for permission to defer this part of its submission until an intervening request made by the Applicant, for the names of the persons who had conducted the queries, had been processed. The Commissioner acceded to this request.

[para 5] No further submissions have been received from the Public Body. It is unknown to this Office whether the processing of the Applicant's intervening request has been completed by the Public Body, or whether the issue has been resolved.

## **II. RECORDS AT ISSUE**

[para 6] The records at issue are the records, if any, withheld on the basis of section 12(2).

## **III. ISSUES**

[para 7] The Issues stated in the Notice of Inquiry are:

Issue A: Did the Public Body properly refuse to confirm or deny the existence of a record, as authorized by section 12(2) of the Act?

Issue B: Did the Public Body have the authority under section 39 of the Act to use the Complainant's personal information?

**Did the Public Body properly refuse to confirm or deny the existence of a record, as authorized by section 12(2) of the Act?**

[para 8] Section 12 provides in part:

*12(1) In a response under section 11, the applicant must be told*

- (a) whether access to the record or part of it is granted or refused,  
...*
- (c) if access to the record or to part of it is refused,
  - (i) the reasons for the refusal and the provision of this Act on which the refusal is based, ... .**

*(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of*

- (a) a record containing information described in section 18 or 20, or*
- (b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.*

[para 9] I have reviewed the Public Body's reasons, provided to me *in camera*, for refusing to confirm or deny whether there were any records, responsive to the request, in addition to those which it did provide to the Applicant. These reasons are similar to those provided by the Public Body in the inquiries giving rise to Orders F2006-012 and F2006-013, which related to harm to law enforcement under section 20.

[para 10] The parts of section 20(1) relevant to the Public Body's arguments are as follow:

- 20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
- (a) harm a law enforcement matter,*
  - (d) reveal the identity of a confidential source of law enforcement information,*
  - (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities*
  - (f) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation,*
  - (k) facilitate the commission of an unlawful act or hamper the control of crime.*

[para 11] For reasons similar to those expressed in those orders and associated addendums, I do not accept the Public Body's justifications for using section 12(2) in this case. In my view, in this case as in the cases just mentioned, the facts on which the Public Body bases its theory as to the impact of disclosing whether additional records exist are improbable, and the theory itself is unsound. Thus I do not accept that the provision must be used to avoid harm to law enforcement, even at a general level. Furthermore, the Public Body has not demonstrated in this case a likelihood of harm from disclosing the information for any specific law enforcement matter (which is required in order to meet the terms of section 20). While I note that in paragraph 19 of its closed submission the Public Body asserts that harm to a specific law enforcement matter could result from disclosure, it is not referring to any particular matter, but only to a class of hypothetical situations. That does not, in my view, satisfy the provision.

[para 12] As well, in the circumstances of this case, I do not think the language of section 12(2)(a) in combination with the provisions of section 20 that were cited by the Public Body, apply to the Applicant in this case. Thus I conclude the Public Body was not entitled to respond to the Applicant in this case by refusing to confirm or deny the existence of responsive records in addition to the information it did provide to the Applicant.

[para 12] I do not comment on the general submissions made by the Public Body at page 5 of its closed submission. I have already expressed my view about these points in Orders F2006-012 and F2006-013.

**Issue B: Did the Public Body have the authority under section 39 of the Act to use the Complainant's personal information?**

[para 13] The Public Body did not make submissions with respect to this issue, other than what it offered as a justification for its request to defer this issue to a later time. As noted above, it suggested that the matter of authorization for the queries would be better dealt with in processing the Applicant's subsequent request for the names of the persons who ran the CPIC queries. As I have heard from neither party with respect to this subsequent request, it is unknown to me whether the Applicant's issues were resolved through this process. Thus the Applicant's original request regarding the authorization issue stands, and I will proceed to deal with it, in a second part to this Inquiry.

[para 14] I therefore direct the Public Body to provide any submissions that it has with respect to Issue B, by January 23, 2008. The Applicant has provided a list of the queries relative to which he asks for an explanation in his rebuttal submission, which was exchanged with the Public Body. The Applicant will have the opportunity to submit a rebuttal. I will then complete this Inquiry by issuing an order dealing with Issue B.

**V. ORDER**

[para 15] I make this Order under section 72 of the Act.

[para 16] I order the Public Body to respond to the Applicant without relying on section 12(2) of the Act.

[para 17] I further order the Public Body to notify me in writing within 50 days of being given a copy of this Order that the Public Body has complied with this Order.

Frank Work, Q.C.  
Information and Privacy Commissioner