

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2008-024**

May 15, 2009

**EDMONTON POLICE SERVICE**

Case File Number F3478

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

**Summary:** Pursuant to an information request made to the Edmonton Police Service (the “EPS” or the “Public Body”), the Complainant obtained a list of 37 queries made relative to him by EPS members on police information databases. He complained that these queries were conducted without authority, in violation of the *Freedom of Information and Protection of Privacy Act* (the Act).

The Commissioner reviewed the information the Public Body provided about thirty-one of the queries.<sup>1</sup> Based on this review, he rejected the complaint with respect to most of them.

For fifteen of the queries, the Public Body provided documentation or explanations showing the law-enforcement or program purpose for the queries.

With respect the remaining queries, the EPS members who conducted them could not recall the reasons they had done so. The Complainant suggested that an improper motive on the part of the EPS could be inferred from the large number of queries using his name. He also suggested that they may have been motivated by prejudice given his accent, or racism against native people. However, beyond the suggestion about prejudice, he did not offer any evidence to support the idea that the EPS members conducted these

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<sup>1</sup> Six queries were conducted before the Public Body became subject to the Act.

unexplained checks for any purpose other than a law enforcement purpose or a purpose necessary for an EPS operating program.

The Commissioner found that the allegation about prejudice was not established. As their evidence was not contradicted, the Commissioner accepted the EPS members' sworn evidence that it was their invariable practice to conduct CPIC checks only for a law enforcement purposes or a purpose necessary for an EPS operating program. Thus he accepted that they had run the queries using the Complainant's name in order to carry out their police duties.

No such evidence was provided for three of the queries, and for these, the Commissioner found that the Public Body had failed to discharge its onus to show authorization within the terms of the Act. For these three searches, he found that the Public Body had contravened the Act.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 12(2), 33, 39, 39(1)(a), 39(4), 72.

**Orders Cited: AB:** Orders F2006-015, F2006-029, F2007-030.

## **BACKGROUND**

[para 1] On July 6, 2005, the Complainant made an access request under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Edmonton Police Service (the "EPS" or 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.

[para 2] The Public Body responded on October 24, 2005. It wrote to the Complainant attaching a chart indicating the dates and times his 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 Complainant 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 me 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. I acceded to this request. The Public Body's submission on the question of authority for the queries conducted in the list provided to the Complainant on October 24, 2005 was provided on July 3, 2008. The Complainant provided a submission for the first inquiry, but not for the second one.

[para 5] I dealt with the Public Body's refusal to confirm or deny the existence of a record, pursuant to section 12(2) of the Act, in Order F2006-015. The present order deals with the question of authorization for the queries. I relied on the Complainant's original submission as his submission for the present inquiry.

## **I. RECORDS AT ISSUE**

[para 6] There are no records at issue in this inquiry.

## **III. ISSUE**

[para 7] The issue in this case is:

Did the Public Body have the authority to use the Complainant's personal information, as provided by section 39 of the Act?

## **IV. DISCUSSION OF THE ISSUE:**

[para 8] Under section 33 of the Act, a Public Body has the following authority to collect information:

*33 No personal information may be collected by or for a public body unless*

*...*

- (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.*

[para 9] Under section 39(1)(a), a public body may use personal information for the purpose for which it was collected or compiled, or for a use consistent with that purpose. Thus section 39 is met where the personal information is used for the purposes of law enforcement, or as necessary for an operating activity or program of the public body. As well, under section 39(4), a public body must use the personal information only to the extent necessary to carry out its purpose in a reasonable manner.<sup>2</sup>

[para 10] The information of the Complainant that was collected and used by the Public Body in conducting the queries – his name – was his personal information. (For three of the queries the Public Body argued that the information could have been that of another

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<sup>2</sup> Section 39 provides, in part, as follows:

*39(1) A public body may use personal information only*

*(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose, ...*

*(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

person with the same name, but for the reasons given below, I do not accept that contention.)

[para 11] I must decide whether the Public Body has shown that its use of the Complainant's personal information was for a law enforcement purpose, or related to and was necessary for an operating program of the Public Body, and whether the extent of its use was appropriate for these purposes. If the Public Body shows that it has used the personal information in the context of a law enforcement matter, I will be satisfied that it used it for a law enforcement purpose. Without some specific reason to do so, I will not inquire further into the precise reason for accessing further information about the person whose name was used for the query, or precisely how it intended to use the information it accessed. In other words, if I am clear that the police are doing police work, I will not try to second-guess them as to how they do it.

[para 12] The Public Body submits that it was not governed in its use of the information prior to the *Freedom of Information and Protection of Privacy Act* coming into force for local government bodies, on October 01, 1999. I accept this submission. Therefore, the Public Body needs to establish its authority for use of the Complainant's personal information only for uses after that date. Of the thirty-seven queries that the records show were conducted, six occurred before that date, and I accept that these six queries are not at issue in this case.

[para 13] The Public Body provided the following information in relation to the remaining queries.

[para 14] Five queries - two on October 7, 1999, two on January 11, 2000, and one on March 3, 2000 were conducted by the same detective, relating to his investigation of a complaint made by the Complainant to the EPS Internal Affairs Section. The EPS provided the related file numbers, as well as an affidavit from the detective explaining the nature of his involvement with these files and the kinds of reasons for which such a query would be performed. I accept the EPS's evidence that these queries were conducted for a law enforcement purpose, in compliance with section 39 of the Act.

[para 15] Five of the queries – on October 25, 1999, November 25, 1999, May 3, 2000, at 11:33 hours, May 19, 2004, and June 23, 2004 were conducted by a non-sworn member assigned to the CPIC Warrant Unit. Her duties included querying names of individuals named in law-enforcement records from across Alberta. An example provided by the EPS was that if a person was named in a restraining order, a search would be done to determine whether there had been any EPS involvement such that the CPIC data base would need to be updated. The EPS submission states that two of the queries – on October 25, 1999 and November 25, 1999 - indicate the search was done “in conjunction with a recognizance check”. This individual was unable to locate any documentation in relation to the other three queries. I accept the EPS's evidence that the two “recognizance check” queries were conducted by the non-sworn member as part of her official duties in carrying out the programs and activities of the EPS, in compliance with section 39 of the Act.

[para 16] One of the queries – on February 16, 2000 - was conducted by a constable investigating a complaint concerning the Complainant. The EPS provided the related file number, and an affidavit from the constable explaining the nature of his involvement with the file and the kinds of reasons for which such a query would be performed. I accept the EPS’s evidence that this query was conducted for a law enforcement purpose, in compliance with section 39 of the Act.

[para 17] Two queries – on April 9, 2000 and on April 6, 2001 – were conducted by one constable. One, for which a file name was given, related to an investigation involving the Complainant. The second was done in the course of responding to a complaint made by the Complainant about the constable’s conduct of the investigation. The EPS provided an affidavit from the constable explaining the nature of his involvement with the file and the kinds of reasons for which such queries would be performed. I accept these queries were conducted by the constable as part of his official duties in carrying out the programs and activities of the EPS, in compliance with section 39 of the Act.

[para 18] Two queries – on March 4, 2001 and April 14, 2001 - were conducted by a constable in relation to his investigation of a complaint made by the Complainant. One other query – on April 23, 2001- was conducted by a constable who was a partner of the constable just mentioned, in relation to the same complaint. The EPS provided a file number for this complaint, and affidavits from the constables explaining the nature of their involvement with the file and the kinds of reasons for which such queries would be performed. I accept the EPS’s evidence that these three queries were conducted for a law enforcement purpose, in compliance with section 39 of the Act.

[para 19] The query performed on September 23, 2002 was done by a constable in relation to his investigation of a complaint made by the Complainant to the EPS Internal Affairs Section. The EPS provided a file number for this complaint and an affidavit from the constable explaining the nature of his involvement with this file and the kinds of reasons for which such a query would be performed. I accept this query was conducted by the constable as part of his official duties for a law enforcement purpose, in compliance with section 39 of the Act.

[para 20] The query performed on February 19, 2003 was performed by a non-sworn member in her position as a disclosure analyst in the FOIPP Unit, in order to respond to the Complainant’s information request. The EPS provided a file number for the related file. It asserted that the search as done for a law enforcement purpose. “Law enforcement” is defined in the Act<sup>3</sup>, and it is not clear to me without more information

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<sup>3</sup> Under section 1(h) “law enforcement” means

- (i) *policing, including criminal intelligence operations,*
- (ii) *a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction,*

that disclosure analysts responding to information requests are engaging in law enforcement within this definition. However, I accept that this search was conducted as part of the member's official duties in carrying out the programs and activities of the EPS, in compliance with section 39 of the Act.

[para 21] The query on May 25, 2004 was conducted by an EPS member who is now retired. The EPS states that it could not locate this member despite extensive searching. I will deal with this query below.

[para 22] The query on October 31, 2000 was conducted by a constable who is now retired. It was not possible to obtain an affidavit from this person as he was out of the country attending to an ill family member at the time the Public Body's submissions were being prepared. I will deal with this query below as well.

[para 23] Two queries conducted on November 4, 2002 used only a first and last name that is the same as the first and last name of the Complainant, but did not use a date of birth or middle name. The EPS argues that this is insufficient to establish that the Complainant was the person who was searched in the query, and that therefore it has no burden to show its authorization to conduct the search. As well, the query conducted on December 18, 1999 also used an age search parameter, "age 36", which was not the age of the Complainant at the time, and this query also used only the first and last name. The EPS argues that it is possible that this search was conducted relative to a person other than the Complainant, and that it therefore has no burden to show its authorization to conduct this search.

[para 24] I accept that other than in cases in which a person's name is highly unusual, a name alone does not conclusively identify a person, and therefore, it cannot be said with certainty that the Complainant was the person about whom these queries were conducted. Nevertheless, in the present circumstances, in which the name is not common, and the Complainant has been the subject of numerous other queries, I find on a balance of probabilities that it was the Complainant whose name was used for the two queries on November 4, 2002.

[para 25] As for the December 18, 1999 query, which used the age parameter, I note the Complainant's birthdate (which appears in the in the Affidavits of some of the members as a search parameter) is April, 1960, which means that on the date of that query he was 39 years old. I do not know how the search parameter "age 36" was derived. I do note that in the Investigation Report cited by the EPS, F2006-IR-001, the report describes an age having been entered as a parameter that was a guess as to the age of the subject, made by the member entering it. If this is a common practice, it seems this parameter is not

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*including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*

*(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

necessarily accurate when entered. As well, I note that the entry was for an age rather than a date of birth. Thus I cannot conclude that the disparity between “age 36” and the Complainant’s actual age is an indicator that the subject of the query was someone else. For these reasons, I reach the same conclusion about this search as about the two in the preceding paragraph – that on a balance of probabilities, it was the Complainant’s name that was searched.

[para 26] For thirteen of the queries – on November 26, 1999 (two); December 9, 1999; May 3, 2000 (at 11:33)<sup>4</sup>; March 3, 2001; November 4, 2002 (two); March 4, 2003; March 12, 2003; March 13, 2003 (two); May 19, 2004; and June 23, 2004, the EPS members conducting the searches could not locate records explaining the reasons for the searches, and could not recall the reasons for conducting the queries. However, in each of these cases, the EPS member who conducted the search provided an affidavit, describing the kinds of reasons for which they may have conducted the search, and swearing that they did not personally know the Complainant and could not recall having any dealings with him, and that it was their invariable practice to conduct queries on EPS information systems only for purposes related to their official duties.

[para 27] With respect to the searches described in para 26, the failure of the individual members to recall the reasons for the searches, in the absence of documents that could provide the explanation or prompt their recollection, does not in itself suggest that the purpose for conducting them was other than an authorized one. As well, in many situations relative to which searches are conducted, no documents are generated such as would go into a file.

[para 28] I note that the Complainant in this case suggested that an improper motive on the part of the EPS could be inferred from the large number of queries using his name. He also suggested that the queries may have been motivated by prejudice against French, given his accent, or racism against native people. However, beyond this comment about his ethnic or racial background, he did not offer any evidence to support the contention that the EPS members conducted these checks for any purpose other than a law enforcement purpose or a purpose necessary for an EPS operating program. I do not accept the suggestion about prejudice as proof of an improper motive. As their evidence is not contradicted, I accept the EPS members’ sworn evidence that it was their invariable practice to conduct CPIC checks only for a law enforcement purposes or a purpose necessary for an EPS operating program.<sup>5</sup> Thus I accept that they ran the queries using the Complainant’s name in order to carry out their police duties.

[para 29] For each of the foregoing searches I also accept that the extent of the use – to obtain the database information - was appropriate, as required by section 39(4).

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<sup>4</sup> The search conducted on May 3, 2000 at 12:41 hours is not addressed in the Public Body’s submission. However, it is sufficiently proximate to the search conducted on the same date at 11:33 hours that I assume it was in relation to the same matter.

<sup>5</sup> Such evidence has been accepted in earlier orders of this office, for example, Order F2006-029 and Order F2007-030.

[para 30] There were no explanations, or affidavits deposing as to the practice of the person running the queries, for the searches on December 18, 1999, October 31, 2000, and May 25, 2004. In two of these cases, this was, respectively, because the person could not be contacted at the time the submission was being prepared, or could not be located at all. In the third case, it was not clear who had performed the search. I have found that all these searches, including the one on December 18, 1999, were in relation to the Applicant. For these searches, the Public Body asserts that they were likely conducted for authorized purposes. In my view, this assertion is insufficient to support a finding that the searches were authorized. In the absence of any evidence related to these particular searches, I conclude that the Public Body has not met the onus (which it concedes falls upon it) of establishing that the search was for an authorized purpose. As the Public Body has not met its burden, I must find that it contravened the legislation in respect of these three CPIC searches.

[para 31] In reaching my conclusions in this case, I note that the practice, at the times the aforementioned searches were conducted, that EPS members were not required to note why they were running a query in the course of doing so, did not fit well with the obligations of public bodies to collect, use and disclose personal information only for authorized purposes. It meant, as has happened in the present case as well as in others, that the Public Body would be unable to demonstrate the precise basis of its authority, when asked to do so, unless (which is often not the case) there were related file documents or a specific recollection by the person running the query. As noted by the Adjudicator in Order F2007-030,

... the failure of the EPS to document the reason for, or circumstances surrounding, these searches is clearly not the best practice and does not engender public confidence in the police service. It also understandably raises a concern by individuals who are or, who may be, subject to these searches.

[para 32] However, I also note that this practice has changed. In its submission the EPS included a February, 2006 Service Directive (issued after the queries at issue were conducted) which states that

Members must be able to clearly articulate the law enforcement purpose any time an information system is used and may be required to provide the law enforcement purpose for a query in the future.

The EPS also provided a Service Directive requiring that members enter a reason for access when conducting queries of the EPS records management system (in EPROS an EPROS Gateway). The EPS did not provide an explanation in its submission as to the relationship between the “EPS records management system” and CPIC (which is a national database), other than to note that before June, 2006, searches using PROBE (as the EPS system was then called) defaulted automatically to also conduct CPIC queries. However, as the latter Service Directive states that “[i]n keeping with EPS and CPIC requirements, members shall complete the mandatory fields in the EPROS – Reason for Access”, I take the EPS submissions on this point to mean that “reason for access”



information is also required for CPIC queries. The Public Body did not explain how much detail is required in the “reason for access” that is now required to be entered.

## **V. ORDER**

[para 33] I make this Order under section 72 of the Act.

[para 34] I find the Public Body used the Complainant’s personal information in accordance with section 39 of the Act for all but three of the 31 queries it conducted. For the remaining three, I find that the Public Body failed to meet its burden of showing that it had the required authority to use the Complainant’s name to run the searches, and that for these three searches, it contravened the Act.

[para 35] In view of this result, I emphasize that it is key for EPS members to provide enough detail in the “reason for access” field to allow a determination of whether a CPIC search was done in accordance with the Act. The information in this field may permit the Public Body to discharge its burden, in the event of future challenges, for searches – such as the three unexplained ones in the present inquiry – in which there is no other evidence of the reason for the search.

Frank Work, Q.C.  
Information and Privacy Commissioner