

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2008-030**

**August 7, 2009**

**REGION 3 CALGARY AND AREA CHILD AND FAMILY  
SERVICES AUTHORITY**

Case File Number F3798

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

**Summary:** The Complainant made an access request to the Public Body. During the course of fulfilling the request, the Public Body brought to the Complainant's attention that it had collected Calgary Police Service reports containing the Complainant's personal information.

The Complainant brought a request for review to this office stating that his personal information, as contained in the Calgary Police Service reports, had been collected in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act").

The Public Body argued that its collection of information had been pursuant to the *Child Welfare Act* (the "CWA") and the *Child, Youth and Family Enhancement Act* (the "CYFEA"), and that this collection was authorized under section 33 of the Act, in that it had been expressly authorized by an enactment of Alberta (section 33(a)), had been done for law enforcement purposes (section 33(b)), and the information related directly to and was necessary for an operating program of the public body (section 33(c)). The Adjudicator agreed that sections 33(a) and 33(c) authorized collection of the information. Accordingly she dismissed the complaint. She did not find it necessary to decide whether section 33(b) also provided the requisite authority.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(h), 1(h)(ii), 1(n), 33, 33(a), 33(b), 33(c), 34, 34(1)(a)(i), 34(1)(a)(ii),

34(2), 40(1)(f), 40(1)(h), 40(1)(q), 72; *Child Welfare Act* R.S.A. 2000, c. C-12 ss. 1(2)(g), 1(3)(a)(ii)(C), 3(1), 6; *Child, Youth and Family Enhancement Act* R.S.A. 2000, c. C-12 ss. 1(2)(g), 1(3)(a)(ii)(C), 4(1), 6; **CANADA: *Criminal Code***, R.S.C. 1985, c. C-46, s. 718.

**Authorities Cited: AB:** Order 2001-001; **ONT:** Orders MO-1416, M-328.

## **I. BACKGROUND**

[para 1] By letter dated May 16, 2006, the Complainant requested documentation bearing his name or the names of his children from Region 3 Calgary and Area Child and Family Services Authority (the “Public Body” or “CFSA”). On July 4, 2006, the FOIP Coordinator of the Public Body advised the Complainant that Calgary Police Service (CPS) case file reports were included among the responsive documents that had been located by the Public Body.

[para 2] On August 15, 2006, the Public Body provided severed records to the Complainant, which did not include the CPS reports. On the basis of the information he had received from the FOIP Coordinator about the CFSA’s possession of the reports, the Complainant wrote to this office on August 16, 2006, complaining that the Public Body had contravened the *Freedom of Information and Protection of Privacy Act* (the “Act”) when it collected his personal information. Mediation was authorized but was not successful, and the matter proceeded to inquiry.

[para 3] In addition, the Complainant complained that the CPS disclosed his personal information to the Public Body in contravention of Part 2 of the Act. That complaint was addressed in Order F2008-029 (Case File Number F3797). Although both inquiries center around the same information - its collection in this case and disclosure in the other - they involve separate Public Bodies and, therefore, they are the subject of two separate orders.

## **II. RECORDS AT ISSUE**

[para 4] As this is a complaint regarding the collection of the Complainant’s personal information, there are no records directly at issue.

## **III. ISSUES**

[para 5] The Notice of Inquiry dated November 7, 2007 set out the following issue:

Did the Public Body collect the Complainant’s personal information in contravention of Part 2 of the Act?

[para 6] In his submissions, the Complainant also requested a review by this office with regard to the information severed by the Public Body from the records that the Complainant received on an access request, and provided background information and

arguments about this question. This is a distinct issue from the complaint, and will be dealt with in a separate order.

[para 7] I also note that the Complainant in his submissions referred to various other sections of the Act that have no bearing on the question of the authority of the Public Body (CFSA) to collect the Complainant's personal information at issue here. For example, he cited the sections dealing with the disclosure of business information (section 16) and personal information (section 17) to someone making an access request for such information, as well as other provisions pertaining to access requests, and also those dealing with the notice a public body is required to give under section 30 when it is considering that it may provide information to someone who is requesting access.<sup>1</sup>

[para 8] As well, the Complainant attached a large amount of material relating to court proceedings in which he was involved, including filed affidavits, a notice of motion, a resulting court order, and other personal information of himself and others, which in his view demonstrates that the Public Body was biased and discriminated against him, misused his information, denied him services, and failed to investigate certain matters on the basis of information he provided to the Public Body.

[para 9] I have reviewed these parts of the Complainant's submissions but I have not addressed most of them in this decision, nor have I reviewed in detail the attachments related to court proceedings. For the purpose of this decision, I have considered only the parts of the Complainant's submission that relate and are relevant to the issue that was stated in the Notice of Inquiry for this case – whether the Public Body collected the Complainant's personal information in contravention of Part 2 of the Act - as this is the only issue on which the parties have had an opportunity to make submissions in this inquiry. The remaining matters are outside the scope of this inquiry.

## **DISCUSSION OF THE ISSUE**

### **A. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**

[para 10] The Public Body does not dispute that it collected and was in possession of CPS case file reports (numbers 04197260, 04239216 and 04386166) which contain

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<sup>1</sup> I note that in his rebuttal brief the Complainant asks "Where are the Public Body's requests to the Calgary Police Service to have the Calgary Police Service release information pursuant to section 40 of the FOIP Act?". In light of this, it is possible the Complainant is under a misapprehension as to the relationship between Part 1, under which public bodies may disclose information to persons who have requested access, and section 40, the latter of which permits public bodies to disclose personal information on their own motion, and without consent (except if relying on section 40(1)(d)), under any of the circumstances specified in that provision. He may have a similar confusion as to the relationship between Part 1 and section 33, the latter of which permits public bodies to collect personal information from any source under any of the circumstances specified in that provision, as well as indirectly without consent (except if relying on section 34(1)(a)(i)) if any of the other terms of section 34 are met. The Public Body did not need to request information in this case before it could receive it, or to obtain anyone's consent; rather, as will be seen below, it has a duty to receive any information respecting the possible need for intervention or protective services for children that is provided to it, by anyone.

personal information about the Complainant as defined in section 1(n) of the Act. This includes his name, address, phone number, occupation, employer, driver's license number, physical description and condition, marital status, race, and relationship with others who were involved, together with a synopsis of the incident which was reported to and investigated by the CPS, and what police action was taken.

[para 11] The Complainant argues that this personal information was collected by the Public Body contrary to Part 2 of the Act.

[para 12] Personal information must be collected by a public body only for an authorized purpose, as set out under section 33 of the Act, which states:

*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.*

## **1. Purpose of the Collection**

[para 13] The Public Body argues that it is authorized to collect the information in question under each of the three subsections of section 33. Although its arguments focus primarily on section 33(b), I will begin with the other two subsections, as the conclusions I reach about them are more definitive than that which I reach under section 33(b).

*Authority under sections 33(a) and 33(c)*

[para 14] The *Child Welfare Act* was amended and renamed the *Child, Youth and Family Enhancement Act* (the "CYFEA") on November 1, 2004.

[para 15] The first two of the CPS reports in question were prepared, as indicated by their dates, at a time when the *Child Welfare Act* (the "CWA") was in force. CFSA "screening reports", which were provided by the Public Body (each of which appears to be associated with a police report), suggest that these two reports were also received by the CFSA prior to November 1, 2004. The third report was created, and appears to have been received by the CFSA, after the new legislation had come into force.

[para 16] Sections 3(1) and sections 1(2)(g) and 1(3)(a)(ii)(C) of the CWA provided as follows:

*3(1) Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to the director.*

Section 1(2)(g) of the CWA provided that “a child is in need of protective services if there are reasonable and probable grounds to believe that the survival, security or development of a child is endangered because the guardian of the child is unable or unwilling to protect the child from emotional injury.” Section 1(3)(a)(ii)(C) defined a child as emotionally injured when there were reasonable and probable grounds to believe that “exposure to domestic violence or severe domestic disharmony” had caused emotional injury to the child.

[para 17] These provisions closely parallel sections 4(1), 1(2)(g) and 1(3)(a)(ii)(C) of the *Child, Youth and Family Enhancement Act* (“CYFEA”). Section 4(1) states:

*4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.*

[para 18] Section 1(2)(g) of the CYFEA provides that “a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of a child is endangered because the guardian of the child is unable or unwilling to protect the child from emotional injury.” Section 1(3)(a)(ii)(C) defines a child as emotionally injured in the same terms as were contained in the CWA section of the same number.

[para 19] As can be seen, the CWA and the amended CYFEA are substantially similar. Under both versions of this legislation, a person who has reasonable and probable grounds to believe (and, for the earlier act, who believes) that a child is in need of protective services or intervention must report the matter to the director of the Public Body. Once the report to the director is made, the provisions are triggered that require the director to examine or assess the information. The investigation provisions of the CWA were found at section 6 of the CWA, which states:

*6(1) A director shall examine a report made under section 4 or 5 and any other allegation or evidence that a child may be in need of protective services and shall cause the matter to be investigated unless the director is satisfied that*

- (a) the report or allegation was made maliciously,*
- (b) the report or allegation was made without reasonable and probable grounds for the belief,*
- (c) the report or allegation or evidence is unfounded, or*
- (d) it would be consistent with the protection of the child to refer a member of the family or the family to community resources for services. ... .*

*(3) If, after an investigation, a director is of the opinion that the child is in need of protective services, the director shall take whatever measures the director considers appropriate under this Act. ... .*

[para 20] The CYFEA reads:

*6(1) If a director receives information in the form of*

- (a) a request for intervention services,*
- (b) a report under section 4 or 5, or*
- (c) any other allegation or evidence that a child is in need of intervention,*

*the director must assess the child's need for intervention, unless the director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds.*

*(2) If, after an assessment referred to in subsection (1), the director is of the opinion that the child is in need of intervention, the director must,*

- (a) if the director is satisfied that it is consistent with the child's need for intervention, provide family enhancement services in accordance with this Act to the child or to the child's family, or*
- (b) if the director is not satisfied that the child's need for intervention may be met under clause (a), cause the matter to be investigated.*

*(3) If, after an investigation referred to in subsection (2)(b), the director continues to be of the opinion that the child is in need of intervention, the director must,*

- (a) if satisfied that it is consistent with the child's need for intervention, provide family enhancement services in accordance with this Act to the child or to the child's family, or*
- (b) if not satisfied that the child's need for intervention may be met under clause (a), take whatever action under this Act the director considers appropriate, including the provision of protective services in accordance with this Act.*

[para 21] In the companion order to this one, Order F2008-029, I was unable to determine whether the CPS disclosed personal information of the Complainant directly to the CFSA. However, I commented that if it had, then, as the conditions in sections 4(1), 1(2)(g) and 1(3)(a)(ii)(C) of the CYFEA, or the parallel provisions of the CWA (though possibly requiring some additional evidence from the reporter), appeared to have been met, I would find that the disclosure by the CPS was in compliance with section 40(1)(f) of the FOIP Act, by reference to its obligations under these provisions of the child welfare legislation. As well, I said I would find that the disclosure was also authorized by section 40(1)(h), as being necessary for the performance of the duties of officers or employees of the CFSA, as CFSA employees and officers have a duty to examine situations in which they are given information that protective services or intervention are potentially needed for a child.

[para 22] In this case, while it is not clear who provided the Complainant's personal information to the CFSA, it is clear that the CFSA collected the police reports, and thus that it collected his personal information as contained in these reports. As well, as I noted in the companion order, the reports themselves provide evidence that the situation of the children who were present was such as potentially placed them in need of protective services or of intervention within the terms of the legislation. Thus the information was such as the director was obliged to examine within the terms of the CWA or the CYFEA. Personal information of the people involved in or witnessing the incidents that were the subject of the reports, including information that would confirm their identity, was relevant to the determinations that were to be made by the director.

[para 23] It is not necessary to confirm that protective services or intervention were actually required before collecting a record containing personal information, where, as in the present case, the record, and the personal information in it, conveys information relevant for determining the need for protective services or intervention. I note the Complainant's point in his rebuttal submission that the situation did not meet the definition for "grounds to be investigated". However, the statutory duty of the director to examine a report or other evidence or allegations (under the CWA) or to make an assessment after receiving information (under the CYFEA) is triggered when "any ... allegation or evidence" related to such a possibility is received. Thus the director's duty extends to receiving all such information, from any source, even information which turns out to be unfounded, in order to determine what further steps to take if any. (While I note that the director need not take further steps on receiving the information if satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds, the information must be received in order to make this determination as well. In any event, there is no evidence before me to suggest that there were grounds for satisfying the director that there was malice or the absence of reasonable grounds in this case.) By virtue of his express duty to examine and assess the kinds of information listed in the legislation, which necessarily entails receiving the information, the director is expressly authorized to collect such information.

[para 24] Based on the contents of the police reports, I find that the reports were conveyed to the CFSA so that the director's duties under the legislation could be performed. As indicated by the associated "screening reports" of the Public Body which it provided in its submission, it appears the director examined the information for this purpose. All of the information in the reports, including the Complainant's personal information contained therein, was relevant to examining and assessing the children's situation, and was of the kind the director is expressly authorized to collect under the child welfare legislation. As well, all the information relates directly to and is necessary for the director to perform his or her duties, and thus to do their part in the operating program or activity of the Public Body of ensuring the safety and well-being of children.

[para 25] Therefore, I conclude that the CFSA's collection of the personal information of the Complainant, as contained in the police reports, was authorized under the FOIP Act. It was authorized both by FOIP Act section 33(a), which permits collection of personal information where such collection is expressly authorized by an enactment of

Alberta, as well as by section 33(c), which permits collection of information that relates directly to and is necessary for an operating program or activity of the Public Body.

*Authority under section 33(b)*

[para 26] I turn to whether the collection of the Complainant's personal information was authorized by section 33(b).

[para 27] The term law enforcement is defined in section 1(h) of the Act as follows:

*(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, including a penalty or sanction imposed by the body conducting the investigation or by another body to the result 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 result of the proceedings are referred.*

[para 28] The Public Body submits that the CPS reports were collected for the purpose of an administrative investigation which could lead to a penalty or sanction, and thus that they were collected for the purposes of law enforcement within the terms of section 33(b). It argues that the penalty or sanctioning provisions are those which allow the director to apply for court orders ranging from supervision orders to apprehension orders and permanent guardianship.

[para 29] In support of its position that child protection investigation processes are law enforcement matters, the Public Body cites decisions of Information and Privacy Commissioners in both Alberta and Ontario.

[para 30] In Alberta Order 2001-001, the then-Assistant Commissioner stated, at para 43:

Children's Services claimed in essence that child welfare procedures are "law enforcement" records under section 16(4)(b), as a penalty or sanction can be imposed following an investigation authorized under the CWA. Third party personal information derived from police reports is also covered by section 16(4)(b).

After quoting the definition of "law enforcement", he continued as follows at para 45:

I agree that the CWA grants Children's Services investigatory powers and its investigations could lead to a penalty or sanction. Although some child welfare processes, such as investigations, amount to "law enforcement" under the Act, I would not accept



the too-broad argument that all child welfare records are necessarily law enforcement records under the Act.

[para 31] It appears that the Assistant Commissioner regarded investigations under the CWA as “law enforcement”, but it is not clear from this order whether he regarded the provisions in the child welfare legislation (supervision and apprehension orders and permanent guardianship) as the requisite penalty or sanction, or whether he thought that the terms of the Act were met because if the director were to discover an offence and report it to the police, a given investigation could possibly lead to criminal proceedings or court proceedings under the offence section of the child welfare legislation, with the possibility of an attendant penalty or sanction.

[para 32] In my view, the provisions in the child welfare legislation for ordering supervision or removing a child from the custody of a guardian are not properly characterized as “penalties or sanctions”. The fundamental purpose of imposing penalties or sanctions is to denounce unlawful conduct and to deter offenders.<sup>2</sup> The provisions cited by the Public Body address the needs of the child, rather than the need to penalize or sanction the parents or care-givers. While the result of the investigation may be that a parent is prohibited from having access to the child, the legislation does not, in my view, permit this to be done in order to punish the parent, but rather to ensure the well-being of the child. In this regard, I do not agree with the conclusions of the adjudicators in Ontario, cited by the Public Body, to the effect that prohibiting a parent from having access to a child amounts to a penalty or sanction for the parent. (Ontario Order MO-1416, citing Order M-328).

[para 33] I turn to whether section 1(h)(ii) of the Act (which defines “law enforcement”) is met because an investigation by the director could, if he or she were to discover the elements of an offence in the course of conducting an investigation, lead to the imposition of a penalty or sanction. In this regard, I acknowledge that if the director were to discover facts which amounted to an offence, and were to refer the matter to the police, any investigation or proceeding that followed could lead to the imposition of penalties or sanctions. I also note that section 1(h)(ii) contemplates an investigation that could lead to

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<sup>2</sup> For example, *the Criminal Code* section 718, which was enacted in part to codify the common law, provides:

*s. 718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:*

- (a) to denounce unlawful conduct;*
- (b) to deter the offender and other persons from committing offences;*
- (c) to separate offenders from society, where necessary;*
- (d) to assist in rehabilitating offenders;*
- (e) to provide reparations for harm done to victims or to the community; and*
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.*

a penalty or sanction imposed by another body to which the results of the investigation are referred. As well, I note that the director is empowered under the child welfare legislation to take whatever action he or she thinks is appropriate after concluding an investigation, which could conceivably be interpreted to include the power to refer the matter for a possible charge and prosecution, and that in any event, section 40(1)(q) of the Act permits public bodies to disclose personal information to assist in investigations from which a law enforcement proceeding is likely to result. Finally, I note that the child welfare legislation, both current and former, makes it an offence to willfully cause a child to be in need of protective services or intervention. Thus it is arguable that a director's investigation could meet the definition of "law enforcement" under section 1(h)(ii) of the Act by reference to all of these factors.

[para 34] However, there is another possible interpretation of section 1(h)(ii), which is that it is limited such that the purpose of the administrative investigation must be to enforce compliance with a law, and does not cover an investigation which has other primary purposes but which might incidentally uncover an offence, which can then be referred to police for further investigation or prosecution. Under this interpretation, since a director's investigations are for the purpose of taking steps to protect children, and the uncovering of offences is not among the director's expressed duties, a director's investigation is not "law enforcement" under the Act. Support for this interpretation may be found in the fact that many statutory powers of investigation could lead to the incidental discovery of an offence, from which it would follow that all such statutory investigative powers are "law enforcement" under the Act – arguably a result that is broader than was intended.

[para 35] In view of the fact that I have already decided that the Public Body had the requisite authority to collect the Complainant's personal information under sections 33(a) and 33(c), I do not need to decide this question of interpretation of section 33(b). I make the foregoing observations so as to provide some criteria for future interpretation of section 33(b), should the need for this arise.

## **2. Manner of Collection**

[para 36] As the information was contained in police reports obtained from a source other than the Complainant, his personal information was collected by the Public Body indirectly.

[para 37] Even if a public body is authorized to collect information under section 33 of the Act, it still must collect the information in accordance with section 34 of the Act which sets out the general principle that personal information must be collected directly from the individual. However, section 34 also provides several exceptions to this general principle. The portions of section 34 relevant to this order are as follows:

*34(1) A public body must collect personal information directly from the individual the information is about unless*

*(a) another method of collection is authorized by*

- (i) *that individual,*
- (ii) *another Act ..., or ... .*
- ...
- (g) *the information is collected for the purpose of law enforcement,*
- ...

[para 38] As I have found above that the Public Body collected the Complainant’s personal information pursuant to its authority under the child welfare legislation, I conclude that the Public Body was authorized to collect indirectly under section 34(1)(a)(ii), and it did not need to collect this information directly from the Complainant. For the same reason, it did not need to obtain the Complainant’s consent for the indirect collection under section 34(1)(a)(i), nor to provide the information under section 34(2) that is to be provided where direct collection is required.

[para 39] I do not need to decide whether section 34(1)(g) also applies.

## **V. ORDER**

[para 40] I make this Order under section 72 of the Act.

[para 41] I find that the Public Body had the authority to collect the Complainant’s personal information as contained in the Calgary Police Service reports, pursuant to section 33(a) and (c), and 34(1)(a)(ii), of the Act. Therefore, I find that the Public Body did not contravene Part 2 of the Act.

Christina Gauk, Ph.D.  
Director of Adjudication