

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-12

April 15, 2013

CALGARY POLICE SERVICE

Case File Number F6045

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Commissioner that the Calgary Police Service (the Public Body) had disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* when a police officer had provided a collision report in its entirety to a driver with whom she had been involved in a collision.

The Adjudicator found that the disclosure of some of the information was authorized by section 11(2.1)(a) of the *Traffic Safety Act*. However, the Adjudicator found that by providing the entire collision report, the police officer had disclosed more of the Complainant's personal information than was necessary for meeting the Public Body's stated purpose in disclosing the Complainant's personal information.

She ordered the Public Body to cease disclosing more personal information than was necessary from the collision reports.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 72; *Traffic Safety Act*, R.S.A. 2000, c. T-6 ss. 11(2.1), 69; 70; 71, 72; Operator Licensing and Vehicle Control Regulation, Alberta Regulation 320/2002 s. 146

Authorities Cited: **AB:** Order P2012-10

I. BACKGROUND

[para 1] On December 19, 2011, the Complainant made a complaint to the Commissioner that the Calgary Police Service (the Public Body) had disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when a police officer provided her name, address, home and work telephone numbers, driver's license number, and date of birth, on a collision report form to a driver whose rental car had been involved in a motor vehicle accident in which the Complainant had also been involved.

[para 2] Prior to the officer's disclosure of her information to the other driver, the Complainant had reported to the Public Body on her cell phone that this driver had driven aggressively, and sideswiped her car as a result of this pattern of driving. She also reported that the other driver had banged on her car window with his fists once the vehicles were stopped, with the result that she had been afraid to get out of her own vehicle. She reported that the driver of the other vehicle had then left the scene, and she had followed him in her vehicle while giving the police directions where he could be located. An officer of the Public Body located the other vehicle at a gas station.

[para 3] The Commissioner authorized mediation to resolve the dispute. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 4] On reviewing the submissions of the parties, I determined that I had questions for the Public Body. On January 10, 2013, I stated the following:

I note that neither party to this inquiry has addressed section 40(4) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) in its submissions. This provision states:

40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

The Public Body argues that [it] was authorized by section 11(2.1)(a) of the *Traffic Safety Act*, and consequently, section 40(1)(f) of the FOIP Act to disclose the Collision Report to the driver of the other vehicle involved in the collision. However, should I find this to be the case, this finding would not mean that the Public Body did not contravene the FOIP Act, as the extent to which it was necessary for the Public Body to disclose [the Complainant's] personal information in order to comply with section 11(2.1)(a) in a reasonable manner must also be considered. I therefore ask that the Public Body answer the following questions:

1. Does section 11(2.1)(a), or another provision of the *Traffic Safety Act*, require, or otherwise make it necessary for a police officer to provide the name, address, and telephone number of one driver to another? Could this information have been severed from the Collision Report form?
2. Why were [the Complainant's] name and contact information not severed from the Collision Report form that was provided to the other driver? Did [the constable] consider whether it was possible to sever this information from the Collision Report before providing this information to the other driver?

3. Does the Public Body always provide unredacted copies of the Collision Report forms to all drivers involved in accidents? Are there policies in place to assist police officers to exercise discretion under section 11(2.1)(a)? If so, what are they?

[para 5] The Public Body provided answers to my questions on January 25, 2013. The Complainant provided rebuttal submissions following receipt of the Public Body's answers.

II. ISSUES

Issue A: Did the Calgary Police Service disclose the Complainant's personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act*?

III. DISCUSSION OF ISSUES

[para 6] Personal information is defined by section 1(n) of the FOIP Act. This provision states:

In this Act,

- (n) *“personal information” means recorded information about an identifiable individual, including*
 - (i) *the individual's name, home or business address or home or business telephone number,*
 - (ii) *the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - (iii) *the individual's age, sex, marital status or family status,*
 - (iv) *an identifying number, symbol or other particular assigned to the individual,*
 - (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*
 - (vii) *information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
 - (viii) *anyone else's opinions about the individual, and*
 - (ix) *the individual's personal views or opinions, except if they are about someone else;*

Personal information under the FOIP Act is information about an identifiable individual.

[para 7] The evidence of the parties establishes that the Public Body disclosed the Complainant's name, address, driver's license number, and home and work phone number, and date of birth, to the driver of the other vehicle involved in the accident. This information is personal information as described in section 1(n)(i), (iii) and (iv). I therefore find that the Public Body disclosed personal information about the Complainant. I will now consider whether it did so in accordance with, or contravention of, Part 2 of the FOIP Act.

[para 8] Section 40 of the FOIP Act establishes the circumstances in which a public body may disclose personal information. It states, in part:

40(1) A public body may disclose personal information only

...

(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure ...

...

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 9] The Public Body argues that the police officer was authorized to provide the information in the collision report to the other driver by application of section 11(2.1)(a) of the *Traffic Safety Act*. Sections 11(2) and 11(2.1) state:

11(2) Subject to the regulations, where a report is made in respect of an accident involving a motor vehicle under

(a) the previous legislation,

(b) section 70 or 71 of this Act, or

(c) the regulations,

a peace officer may release information contained in that report to the Registrar for the purposes of monitoring drivers and the safe operation of commercial vehicles and motor vehicles.

11(2.1) The Registrar or a peace officer may release information contained in a report referred to in subsection (2) to

(a) a person or an insurance company or a lawyer, agent or representative of that person or company if the person or company

(i) has paid or may be liable to pay damages, or

(ii) has recovered or may be entitled to recover damages,

(b) a road authority for the purposes of improving traffic circulation or the management of roadways, or

(c) the Alberta Transportation Safety Board for the purposes of making a decision under Part 2, Division 2 or 3.

[para 10] Section 69 requires drivers to provide information to other drivers and witnesses and to police officers, on request. This provision states:

69(1) Where an accident in which a vehicle is involved occurs on a highway, the driver or other person in charge of any vehicle that was directly or indirectly involved in the accident shall

(a) remain at the scene of the accident or, if the person has left the scene of the accident, immediately return to the scene of the accident unless otherwise directed by a peace officer,

(b) render all reasonable assistance, and

(c) produce in writing to anyone sustaining loss or injury, to any peace officer and to any witness all or such of the following information as is requested:

(i) that person's name and address;

(ii) the number of that person's operator's licence;

(iii) the name and address of the registered owner of the vehicle;

(iv) the licence plate number of the vehicle;

(v) a financial responsibility card issued in respect of that vehicle.

[para 11] Section 70 of the *Traffic Safety Act* imposes a duty on police officers to provide the Registrar of Motor Vehicles reports of accidents involving motor vehicles. It states:

70 A peace officer shall, in the form and the manner prescribed by regulation, provide to the Registrar reports respecting accidents involving vehicles.

[para 12] Section 71 of the *Traffic Safety Act* requires drivers who are involved in accidents to complete accident reports and provide them to a peace officer or an employee of a police service. This provision states:

71(1) A driver of a vehicle involved in an accident shall, in the form and manner prescribed by regulation, provide a report of the accident to

(a) a peace officer having jurisdiction where the accident occurred, or

(b) an employee of a police service having jurisdiction where the accident occurred who is authorized to receive those reports.

(2) If the driver is incapable of making the report required by subsection (1) and there is another occupant of the vehicle capable of making the report, the occupant shall make the report required to be made by the driver.

(3) If a report has not been made under subsection (1) or (2) and the driver or occupant is not the owner of the vehicle, the owner shall make the report forthwith after learning of the accident.

(4) If the driver is alone, is the owner of the vehicle and is incapable of making the report required by subsection (1), the driver shall make the report forthwith after becoming capable of making it.

[para 13] Section 146 of the Operator Licensing and Vehicle Control Regulation, Alberta Regulation 320/2002 states:

146 A peace officer who witnesses or investigates an accident and a person who is required to provide an accident report for the purposes of section 70 or 71 of the Act, as the case may be, in respect of an accident shall use the form provided for that purpose by the Registrar.

The prescribed form of the report is that which the Registrar of Motor Vehicles provides for that purpose. The officer of the Public Body completed such a form and recorded the personal information of both drivers and information about the accident on the form.

[para 14] The collision report form provided by the Registrar requires the following personal information to be provided by the drivers involved in an accident: Name, Address, Date of Birth, Gender, Home Phone, Work Phone, and Operator's License Number.

[para 15] Section 11(2.1)(a) of the *Traffic Safety Act* authorizes disclosing information from a collision report to a person who has paid, or may be liable to pay, or has recovered, or may be entitled to recover, damages. This description clearly encompasses the drivers of vehicles involved in the accident. I therefore find that section 11(2.1)(a) of the *Traffic Safety Act* authorized the police officer to disclose the Complainant's personal information from the collision report form to the driver of the other vehicle, and that the disclosure of this kind is authorized by section 40(1)(f) of the FOIP Act.

[para 16] As I noted in my correspondence of January 10, 2013, the fact that disclosure is authorized under section 11(2.1)(a) of the *Traffic Safety Act*, and section 40(1)(f) of the FOIP Act, which are discretionary provisions, does not end the matter. Section 11(2.1)(a) authorizes disclosing *information from* a collision report to the drivers and owners of vehicles involved in accidents; however, it does not *require* disclosing the *entire* report to anyone.

[para 17] A Public Body must also comply with section 40(4) of the FOIP Act when it discloses personal information. Cited above, this provision requires a public body to disclose personal information only to the extent necessary to enable it to carry out the purposes described in section 40(1) in a reasonable manner. Therefore, with regard to section 40(1)(f), a public body must disclose only the information necessary for fulfilling its purpose in disclosing the personal information that was authorized by the enactment, in a reasonable manner.

[para 18] The evidence of the police officer who disclosed the Complainant's personal information is the following:

I was able to locate the vehicle and pulled in behind it at a gas station.

Upon speaking to the driver of this vehicle, I determined that he had attempted to advise the Applicant that he was going to attend the police station to report the accident, but that she had refused to speak to him. In speaking with this driver, he seemed rational and forthcoming with the details of the collision that occurred. I determined that this was not a "hit and run" collision.

...

There were no independent witnesses to the collision nor was there any CCTV footage or any additional evidence to substantiate the allegations of a hit and run complaint made by the applicant.

In reviewing the driver's statements, I was unable to make a determination as to which driver was at fault, and recorded this opinion on page 2 of the Government of Alberta Collision Report Form.

After speaking with both parties I was satisfied that there were no concerns for the safety of the applicant nor was there any reason not to release her personal information by way of the Government of Alberta Collision Report Form.

I then provided a copy of the Government of Alberta Collision Report Form to both drivers as I am permitted to do under section 11(1) of the Traffic Safety Act. It is my usual and customary practice to provide copies of the Government of Alberta Collision Report Form to both drivers at the scene of the collision so that they do not have to make a request for the report at a later time.

[para 19] In relation to the officer's exercise of discretion, the Public Body argues:

The Public Body states that the officer did consider whether there was any reason for him not to follow his usual practice of providing the ACR [Alberta Collision Report] to the drivers at the scene, and determined there was not. The Public Body states that its officer properly applied his discretion under section 11(2.1).

[para 20] In answer to my questions as to whether it was necessary to provide the entire collision report form to the other driver, and whether it would have been possible to sever the Complainant's personal information from the collision report, the Public Body stated:

Under appropriate circumstances, the information could have been severed from the Alberta Collision Report. However, in this circumstance, [the constable] was aware that neither party had been co-operative with the other and that they had failed to exchange the necessary information following their motor vehicle collision. Being aware of this, [the constable] determined that the best way to keep the peace whilst ensuring that both parties fulfilled their legal obligations to one another was to facilitate the exchange of information through the release of the Alberta Collision Report. This course of action ensured that both parties received the necessary information while avoiding additional confrontation which had occurred prior to the arrival of [the constable].

To sever the information of [the Complainant] from the Alberta Collision Report would require a valid reason in order to prevent the release of her information. Severing this information because [the Complainant] did not wish to release it was not sufficient grounds to prevent its release when both parties had a legal obligation to exchange such information as per Section 69 of the TSA.

[The constable] considered whether or not there was a risk to releasing [the Complainant's] information to the other party. After conducting his investigation he determined that there was no articulable risk to the safety of [the Complainant] and as such no public safety grounds existed that would justify severing the Alberta Collision Report.

[para 21] Section 11(2.1)(a) creates a discretion in a peace officer to disclose information from a collision report to the drivers involved in a motor vehicle accident. It does not create a right in drivers to receive or demand the collision report, or information from it. It is unclear to me why the Complainant would require "a valid reason" to prevent the other driver from receiving her information from the Collision Report, given that the *Traffic Safety Act* does not create an entitlement in the other driver to receive the that information. There is no requirement in section 11(2.1)(a) of the *Traffic Safety Act* that anyone be provided with a complete collision report, and so it is unclear to me why the Public Body states that the police officer's actions "ensured that both parties received the necessary information".

[para 22] I disagree that section 69 of the *Traffic Safety Act* would require the police officer to exchange the collision report with the other driver as he did. Section 69, cited above, creates a duty on the parties and witnesses to an accident to exchange information with each other, or with a peace officer, *on request*. The "confrontation" to which the Public Body refers in its submissions, and appears to accept took place, resulted not only in neither driver providing information, but in neither driver *requesting* it from the other within the terms of section 69. As neither party had a duty in the circumstances to provide the information to each other, it was unnecessary for the police officer to do it for them. The parties did provide information to the police officer when he requested it, and that appears sufficient in this case to meet the requirements of section 69. In addition, section 69 makes no reference to parties and witnesses exchanging their birthdates or telephone numbers; however, the police officer provided the birthdates of each party to

the other in addition to their home and work telephone numbers. If the police officer's intention was to enforce compliance with section 69, then he disclosed more personal information than was necessary for meeting this purpose.

[para 23] If the police officer's goal in providing the Complainant's information from the collision report form was to ensure that both parties meet their legal obligations to each other, in relation to the accident, then it is unclear why it was necessary to provide all the information in the Collision Report to the parties. Section 69 establishes the information that should be exchanged in order for parties to meet their legal obligations to one another: name and address, operator's license number, name and address of the registered owner, license plate number and insurance card number. However, the Collision Report requires more personal information than that set out in section 69, such as phone numbers and birthdates. This is likely because the Registrar is authorized to collect the information in the Collision Report "for the purposes of monitoring drivers and the safe operation of commercial vehicles and motor vehicles" under section 11(2) of the TSA, and the additional information may assist the Registrar in this purpose. Information that the Registrar may use for the purpose of monitoring drivers and the safe operation of commercial and motor vehicles, is not necessarily the same information that would enable the parties to meet their legal obligations to one another.

[para 24] While is it possible that the Police Officer disclosed the Complainant's home and work phone number to the other driver as he considered this more useful than her address information, her birthdate does not appear to be relevant for the purpose of ensuring that the parties met their legal obligations to one another, particularly given the personally identifying information that had already been provided. It has also not been established that it was necessary to provide either or both home and work numbers, given that he provided the Complainant's address, and given that section 69 does not even require the exchange of phone numbers.

[para 25] As discussed above, completed collision report forms contain the name, driver's license number, gender, address, home and work phone number, and birthdate, of an individual, or individuals, involved in an accident, in addition to the license plate number, vehicle identification number, and insurance policy number associated with the vehicle involved in the accident. As discussed in Order P2012-10 at paragraph 36, information of this kind is sensitive, as it is sufficient to create a fraudulent driver's license or other forms of fraudulent identification. Disclosure of the information in a completed collision report forms can also expose the parties to other kinds of harm in some circumstances (which the Public Body's officer found not to be present in this case). Once information from the collision report is released to parties involved in an accident, the Public Body loses the ability to control where the information may go, or how it may be used.

[para 26] While I agree that ensuring that parties meet their legal obligations to each other is an important consideration when disclosing information from collision reports, it is equally important that the Public Body disclose only the personal information necessary for meeting this purpose, so that the parties are not exposed to harm through

disclosure of personal information that is not necessary for meeting this purpose. For example, if it is unnecessary in a particular case to provide a driver's contact information, date of birth, or driver's license number to another driver to ensure that the driver in questions meets his or her legal obligations, then this information should not be provided for that purpose.

[para 27] For the reasons above, I find that the Public Body has not established that it was necessary to disclose as much of the Complainant's personal information as it did for meeting its purposes in a reasonable way. I therefore find that the Public Body did not comply with section 40(4) when it disclosed the Complainant's personal information. As a result, I find that the Public Body disclosed the Complainant's personal information in contravention of Part 2 of the FOIP Act. In order to ensure that the Public Body does not disclose more of the Complainant's personal information than is necessary for meeting its purposes in a reasonable way in the future, I will order the Public Body to cease disclosing more information than is necessary for meeting its purposes when it discloses information from collision reports under section 11(2.1) of the *Traffic Safety Act*.

IV. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I order the Public Body to cease disclosing more information about the Complainant than is necessary for meeting its purposes under section 11(2.1) of the *Traffic Safety Act*. This requirement can be met by developing a written procedure that requires employees of the Public Body to ensure that they are disclosing only the personal information necessary for meeting their purposes in disclosing information under section 11(2.1) of the *Traffic Safety Act* in a reasonable way.

[para 30] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator