

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-01

January 26, 2015

ALBERTA HUMAN SERVICES

Case File Numbers F6763 and F7977

Office URL: www.oipc.ab.ca

Summary: The Complainant was a recipient of benefits under the Government of Alberta's Assured Income for the Severely Handicapped (AISH) program, which is administered by Alberta Human Services (the Public Body). The Public Body stated that it received complaints about the Complainant, alleging that he had a cohabiting partner, which would affect his benefit level. The Public Body undertook an investigation to determine whether the Complainant did have a cohabiting partner.

The Public Body employee investigating the allegation (the investigator) contacted a third party organization, as well as the RCMP, to inquire about information they might have regarding the Complainant's relationship status.

The Complainant made a complaint to this office that the Public Body disclosed his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) when it disclosed his personal information to the Organization and the RCMP.

The Public Body argued that the disclosure was necessary in order for the investigator to gather information relevant to the Complainant's ongoing eligibility for AISH benefits (section 40(1)(l)). It also argued that the disclosure was permitted as part of a law enforcement investigation (section 40(1)(q)), that the disclosure was for the same purpose as the information was collected (section 40(1)(c)), and that the Complainant has consented to the disclosure (section 40(1)(d)).

The Adjudicator agreed that the Public Body had authority to disclose the Complainant's personal information for the purpose of determining the Complainant's ongoing eligibility for the AISH benefits. The Adjudicator also found that the Public Body did not disclose more information than was necessary to meet that purpose.

Statutes Cited: AB: *Adult Interdependent Relationships Act*, S.A. 2002, c. A-4.5, ss. 1, 3, *Assured Income for the Severely Handicapped Act*, S.A. 2006, c. A-45.1, s. 3, 5, *Assured Income for the Severely Handicapped General Regulation*, Alta. Reg. 91/2007, ss. 1, 11, *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 41, 72.

Authorities Cited: AB: Orders 98-002, F2001-004, F2008-029, F2012-05.

I. BACKGROUND

[para 1] The Complainant was a recipient of benefits under the Government of Alberta's Assured Income for the Severely Handicapped (AISH) program, which is administered by Alberta Human Services (the Public Body). The Public Body stated that it received complaints about the Complainant, alleging that he had a cohabiting partner. Having a cohabiting partner would affect the Complainant's benefit level; as the Complainant had not disclosed information to the Public Body about a cohabiting partner, the Public Body undertook an investigation to determine whether the Complainant did have a cohabiting partner.

[para 2] The Public Body employee investigating the allegation (the investigator) conducted an internet search using the names of the Complainant and the alleged cohabiting partner as search terms. This search elicited as a result an Energy Resources Conservation Board (ERCB) Energy Costs Order for a third party organization (Organization); this Cost Order listed the Complainant's and alleged cohabiting partner's name together, regarding the cost claim. The investigator then contacted (via telephone) the Organization, to inquire about the reason for the Complainant's name on the cost claim. The investigator also wrote a letter to the Organization (dated February 8, 2011), stating that she was an AISH investigator, conducting an investigation regarding the Complainant.

[para 3] The Public Body also contacted the RCMP via fax to inquire about the Complainant's relationship status.

[para 4] The Complainant made a complaint to this office that the Public Body disclosed his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) when it disclosed his personal information to the Organization and the RCMP.

[para 5] The Complainant requested a review from this office. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not

successful; the Complainant requested an inquiry and the matter was set down for a written inquiry.

II. INFORMATION AT ISSUE

[para 6] The information at issue is the Complainant's personal information disclosed by the Public Body to the Organization and the RCMP.

III. ISSUES

[para 7] The Notice of Inquiry dated August 14, 2014, provides the issue for inquiry as follows:

Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act? In particular, were the disclosures authorized under section 40(1) and 40(4)?

IV. DISCUSSION OF ISSUES

Is the information at issue personal information of the Complainant?

[para 8] The FOIP Act defines personal information as follows:

1 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;

[para 9] The above is not an exhaustive list. The personal information disclosed by the Public Body to the Organization is that the Complainant was being investigated by an AISH investigator. The investigator did not state that the Complainant was receiving AISH benefits, although this might be inferred. The investigator *did* disclose the Complainant's status as an AISH recipient to the RCMP.

[para 10] The Public Body acknowledges that the information it disclosed to the Organization and RCMP is personal information of the Complainant.

Did the Public Body have authority to disclose the Complainant's personal information?

[para 11] A public body may disclose personal information in accordance with section 40 of the Act. In this case, the Public Body cited sections 40(1)(c), (d), (l) and (q) as its authority to disclose the Complainant's personal information; section 40(4) is also relevant. These sections state:

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

...

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

(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,

...

(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,

...

(q) to a public body or a law enforcement agency in Canada to assist in an investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result,

...

(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 12] For the reasons provided below, I find that the Public Body had authority to disclose the Complainant's personal information in order to verify his eligibility for AISH benefits (section 40(1)(l)). I therefore do not need to consider whether the disclosure was authorized under section 40(1)(c), (d), or (q).

[para 13] The Public Body states that it received complaints about the Complainant that he was in an adult interdependent relationship and was in a cohabiting relationship that he had not reported to the Public Body. The Public Body therefore undertook an investigation to determine whether the Complainant had a cohabiting partner.

[para 14] The Public Body argued that the purpose of disclosing the Complainant's information was to enable the Public Body to collect information to verify his ongoing eligibility for AISH benefits, and that it was therefore reasonable to disclose some personal information in order to obtain the information sought. It states:

The ongoing assessment of an AISH recipient's eligibility during the period in which they are receiving benefits, as part of an investigation or otherwise, relates directly to and is a necessary component of the AISH program to ensure proper management of the public monies being expended. (Initial submission, para. 27)

[para 15] The definition of "cohabiting partner" in the AISH General Regulation (section 1(2)(a)) includes an adult interdependent relationship as defined in the *Adult Interdependent Relationships Act*. That Act defines an adult interdependent relationship as including cohabiting individuals who have lived in a relationship of interdependence for a continuous period at least 3 years (section 3(1)(a)); whether there is a relationship of interdependence depends upon several factors listed in the *Adult Interdependent Relationships Act*, including the ownership, use and acquisition of property (section 1(2)(i)).

[para 16] Under the *Assured Income for the Severely Handicapped Act* (AISH Act), a cohabiting partner of a claimant must provide information as required by the director. Section 5 of that Act states:

5(1) An applicant or client and his or her cohabiting partner must provide any information a director considers necessary as required by the director to determine if the applicant or client is eligible or continues to be eligible to receive a benefit.

[para 17] Under section 3(3)(c) of the AISH Act, the income of the claimant's cohabiting partner is used to determine whether a claimant can receive a benefit under that Act. The AISH General Regulation requires a claimant to report to a director the commencement of a cohabiting relationship (section 11(d)).

[para 18] Given the foregoing, the Complainant's cohabiting status is relevant to determining whether he maintains eligibility for AISH benefits, and if so, the level of those benefits.

[para 19] The Public Body investigator discovered the ERCB Energy Costs Order while conducting an internet search. Since this Cost Order listed the Complainant's and alleged cohabiting partner's name together regarding the cost claim, the investigator contacted the Organization, by letter dated February 8, 2011, to inquire about the reason

for the Complainant's name on the cost claim. The investigator's letter to the Organization stated that she was an AISH investigator conducting an investigation regarding the Complainant. She requested the following information from the Organization:

- the reason for [the Complainant's] name on this cost-claim as a land-owner joint with [the alleged cohabiting partner] (ie joint owner, spouse, vested interest etc)
- The LSD address affected by the proposed pipeline in reference to the [named] claim

[para 20] The fax sent to the RCMP (on August 17, 2011) stated that:

- the investigator was conducting a fraud investigation;
- the Complainant was an AISH recipient;
- the Complainant had claimed not to have a cohabiting partner;
- the Complainant lived with the alleged cohabiting partner since a certain date; and
- complaints have been received regarding the Complainant's cohabiting status.

[para 21] I accept the Public Body's argument that it contacted the Organization and the RCMP in order to obtain information about the Complainant's cohabiting relationship. I agree that the Public Body investigator was required to disclose some information about the Complainant to the Organization and the RCMP in order to establish her authority to conduct the investigation. Therefore, I find that the Public Body had authority under section 40(1)(1) of the FOIP Act to disclose the Complainant's personal information to the Organization and RCMP in order to verify the Complainant's eligibility for AISH benefits.

Did the Public Body disclose the Complainant's personal information only to the extent necessary, as required by section 40(4)?

[para 22] Section 40(4) limits a public body's disclosure to what is necessary to meet the purpose of the disclosure.

[para 23] In past Orders of this Office, deference has been given to public bodies performing investigations related to their program areas with respect to the collection of personal information (see Orders 98-002, F2001-004, F2012-05).

[para 24] My jurisdiction, in this case, extends to ensuring the investigator had authority to disclose the Complainant's personal information to the Organization and the RCMP under the FOIP Act, and ensuring she did not disclose more than necessary for that purpose. My jurisdiction does not extend to dictating how to conduct an investigation regarding AISH claimants generally. I have found that the Public Body investigator had authority to conduct her investigation, and to disclose the Complainant's personal information in order to conduct that investigation. The remaining issue is whether the

Public Body investigator disclosed more personal information than was necessary to meet this purpose.

[para 25] In Order F2008-029, the Director of Adjudication considered the meaning of the term “necessary” in section 41(b). In that case, the public body disclosed a police report containing an individual’s personal information to a third party organization, pursuant to an information-sharing agreement, for the purpose of enabling the organization to provide assistance to victims of domestic violence. The Director of Adjudication stated (at para. 51):

In the context of section 41(b), I find that “necessary” does not mean “indispensable” – in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 26] I find this analysis to similarly apply to the standard of what is necessary under section 40(4).

[para 27] The Complainant argues that the threshold set out in Order F2008-029 has not been met in this case. He argues that

[t]he easiest and most definitive way to determine if [the Complainant] is an owner of the land in question was [...] to check the Land Titles Registry. The investigator knew the address of [the Complainant’s] residence and could easily have checked this public registry without disclosing any of [the Complainant’s] personal information. Further, there is no information that [the Organization] could provide that could determine whether [the Complainant] was in a common law relationship. (Letter included with Request for Inquiry, labeled “Appendix B”)

[para 28] He also states that the Public Body should have first asked him the questions it posed to the Organization.

[para 29] With respect to the disclosure to the RCMP, the Complainant states that the RCMP “cannot provide information as to whether the Complainant received a financial settlement, owns real property, or was in a common law relationship.” (Initial submission, para 29).

[para 30] The Public Body states, regarding the Land Titles check, that “property ownership is not the sole indicia of a cohabiting relationship, as a person in a cohabiting relationship will not necessarily be included on the title of property owned by the

cohabiting partner. Land ownership is simply one source of information for an investigator to consider” (Rebuttal submission, para 7).

[para 31] With respect to the Complainant’s argument that the investigator ought to have sought the information from him directly, the Public Body notes that the Complainant signed a form on December 13, 2010, stating that he was not in a cohabiting relationship. It also states that

[o]btaining independent, third party information regarding the Complainant’s relationship status was necessary to either corroborate or refute the complaints the Public Body received about the Complainant. The investigator would not be doing a thorough investigation were she to rely solely on the Complainant’s assertions about the nature of his relationship with the alleged cohabiting partner (Initial submission, para. 32).

[para 32] I accept the Public Body’s arguments that an investigation regarding an AISH claim might require a Public Body investigator to “follow leads, explore potentially relevant evidence, and obtain evidence from multiple sources” (Rebuttal submission, para 8). I also agree that a Land Titles search might not provide a definitive answer regarding a claimant’s relationship status; further, as the Public Body received allegations about the Complainant’s relationship status that were in opposition to his own statements on that issue, it seems reasonable for the investigator to have sought information from other sources to verify the Complainant’s status.

[para 33] In any event, I am not, after the fact, telling the investigator that she ought to have performed her investigation in a different manner if she had authority under the FOIP Act to conduct it as she did.

[para 34] If the investigator did not convey the information to the Organization and RCMP that she did, she would not have been able to obtain information she sought. In other words, the investigator could not have requested the information she sought without divulging that she was an AISH investigator, and whom she was investigating. Although some further details were provided to the RCMP, those details served the same purpose of identifying the information the investigator sought.

[para 35] In my view, the reasons for the Public Body investigator’s disclosure to the Organization and RCMP meet the test for “necessary” described in Oder F2008-029; if the investigator was precluded from disclosing the Complainant’s personal information as she did, she would have been less effective in conducting a thorough investigation. I understand the Complainant’s distress at having sensitive personal information disclosed to a third party organization with which he had no relationship. However, I find that the Public Body had authority to disclose the information at issue to the Organization and RCMP, and that the investigator did not disclose the Complainant’s personal information beyond what was necessary to meet the purpose of the disclosure.

V. ORDER

[para 36] I make this Order under section 72 of the Act.

[para 37] I find that the Public Body was authorized to disclose the Complainant's personal information under Part 2 of the Act.

Amanda Swanek
Adjudicator