

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-02

January 13, 2017

ALBERTA TRANSPORTATION

Case File Number F8231

Office URL: www.oipc.ab.ca

Summary: In order to obtain a parking placard, the Complainant provided an application form to a Service Alberta Registry office. An MRI was mistakenly included in the envelope together with the application form. The Registry conveyed this information to Alberta Transportation, which then used it to require her to submit further medical information to determine whether she could continue to hold a valid operator's licence. The Complainant complained that Alberta Transportation (the Public Body) used her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act or FOIP).

The Adjudicator found that the Public Body was authorized to use the Complainant's personal information pursuant to section 39(1)(a) of the Act because the purpose of the use was the same as the purpose of the collection of the information by Alberta Transportation, which was to verify the medical eligibility of the Complainant to drive safely and be entitled to an operator's licence.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 33, 34, 35, 39, 40, 41, and 72; *Health Information Act*, R.S.A. 2000, c. H-5 s. 1(1); *Operator Licensing and Vehicle Control Regulation* AR 320/2002, s. 15; *Traffic Safety Act*, R.S.A. 2000, c. T-6, ss. 2, and 55.

Authorities Cited: AB: Order F2008-029.

I. BACKGROUND

[para 1] On November 15, 2013, the Complainant applied to have her Parking Placard for Persons with Disabilities renewed because of problems she was having with walking. The Complainant's husband dropped off an application form (application) to a Service Alberta Registry office. An MRI dated January 16, 2013 (MRI) was mistakenly included in the envelope. The Complainant was aware that the application had been dropped off but was not aware that the MRI had been included. The MRI noted that the reason for the examination was "Spastic Paraparesis. Cognitive Impairment". The Registry provided this information to Alberta Transportation (the Public Body) who routinely reviews parking placard applications to determine if the medical condition used to obtain the placard requires further follow-up.

[para 2] On November 18, 2013, the Complainant and her husband left the country, having had Canada Post hold their mail until April 16, 2014.

[para 3] On November 19, 2013, the Public Body sent a letter to the Complainant explaining that its Driver Fitness and Monitoring program had received the Complainant's application, which indicated that there may be a medical and physical condition that could affect her ability to drive. The letter asked that the Complainant provide a medical report and possibly submit to a driving test. She was given until January 6, 2014 to attend to this matter.

[para 4] On January 10 and 11, 2014, the Public Body sent letters to the Complainant advising that her licence would be suspended on February 4, 2014 if the Complainant did not provide the information it had requested on November 19, 2013.

[para 5] On April 16, 2014, the Complainant returned to Canada and retrieved her mail. On April 17, 2014, the Complainant contacted the Public Body and discovered that the MRI had been provided together with her application by mistake. She advised the Public Body that this was an error and that the Public Body did not have her consent to use the MRI. She followed up with a letter dated April 22, 2014 which reiterated these points, asked that the MRI be destroyed, and asked with whom the information in the MRI had been shared.

[para 6] On May 16, 2014, the Public Body wrote to the Complainant and advised that the MRI had not been disclosed outside of Alberta Transportation, Driver Fitness and Monitoring, and that the Public Body would not be destroying the MRI. She was advised that if she wanted her licence suspension reviewed, she would have to adhere to the requirements set out in the November 19, 2013 letter.

[para 7] On May 23, 2014, the Complainant wrote to the Public Body noting that her physiotherapist had no concerns with her ability to drive, and advising that since the Public Body was still using the MRI contrary to her expressed wishes, that she had asked the Information and Privacy Commissioner to investigate this matter.

[para 8] On May 26, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner. The Commissioner authorized a Senior Information and Privacy Manager to mediate and attempt to resolve the issues between the parties but this was

not successful and on June 26, 2015, the Complainant requested an inquiry. I received and reviewed initial and rebuttal submissions from both parties.

II. ISSUES

[para 9] The Notice of Inquiry dated March 9, 2016 states the issue in this inquiry as follows:

Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?

[para 10] The discussion that follows deals with the Public Body's authority under the Act to collect and use personal information of the type that is at issue in this case. As will be seen, I have concluded that the Public Body has such authority under the Act, and was in compliance with the Act when it collected and used the information.

[para 11] I am aware, however, that the primary thrust of the Complainant's complaint and of her argument is that she had no intention to provide the MRI to the Public Body, and that it is inaccurate, and it is for these reasons that the Public Body should not be continuing to rely on it. Indeed, in her Request for Inquiry, the Complainant points out that although she did not ask for determinations about the applicability of various provisions under the Act, the Senior Information and Privacy Manager had addressed these matters in her Letter of Findings. The Complainant objected to this because her concern was with the use of inadvertently-provided information that she had asked to have returned, rather than with the authorities under these various provisions.

[para 12] While I understand that this is the Complainant's position, there is nothing in the statute that addresses a situation in which information was provided to and collected by a public body who had the authority to collect it, but the provision of the information was inadvertent and unintended. Section 72 gives the Commissioner authority to destroy information that it has collected in contravention of the Act, but I have found that is not the case here. Section 35 of the Act requires a Public Body to make reasonable efforts to make sure that information it uses to make a decision that directly affects an individual is accurate. Here, the Complainant says the information in the MRI that the Public Body has used is inaccurate. However, the action taken by the Public Body in this case is in fact to try to obtain sufficient additional information to ensure its decision about the Complainant's fitness to drive is accurate. While it made the interim decision of suspending the Complainant's licence until it could obtain further information from her, in my view, this meets the Public Body's duty under section 35 to make reasonable efforts. In these circumstances, in which the Public Body has an overriding duty to ensure the safety of the public by ensuring driver fitness, it is reasonable in my view for it to make an interim decision on the basis of existing information, which can be changed if warranted by the additional information that it is seeking. Thus, in my view, the Public Body has met the "reasonable effort" requirement of section 35. I can see no provision that would give me the authority to order a public body to cease relying on information that it has authority under the Act to collect and to use when it did so. (The Complainant does have the ability to request a correction of the information, but as noted earlier, I understand that she has declined to do so.)

[para 13] Because the Complainant brought her complaint that the Public Body contravened the Act when it collected and used her MRI, I will review the various provisions in the Act that potentially authorize the Public Body to collect and use the Complainant's personal information, and make determinations about them.

III. DISCUSSION OF ISSUES

Preliminary issue – *De novo* process

[para 14] In her submissions the Complainant makes several references to the findings of the Senior Information and Privacy Manager. This inquiry is not a review of the mediation process conducted by the Senior Information and Privacy Manager. I do not obtain or review the findings from that process.

Preliminary issue – Correction/Accuracy of MRI

[para 15] In its correspondence with the Complainant prior to this inquiry, the Public Body suggested that if the Complainant believed that the information in the MRI was incorrect, she could have it corrected and submit that to the Public Body. The Complainant's submissions state that she has had it corrected but because the Public Body does not have the authority to have the MRI in the first place, she will not be providing the updated copy to them. The correction or accuracy of the MRI is not an issue in this inquiry and so I will not decide these issues.

Preliminary issue – Applicability of the *Health Information Act*

[para 16] The Complainant argues that the information at issue is her personal health information and as a result, cannot be accessed by the Public Body without her consent pursuant to the *Health Information Act* (HIA).

[para 17] The *Health Information Act* governs the collection, use and disclosure of health information by custodians and their affiliates. While the information in question relates to the Complainant's health, the HIA has no application to the present situation, in which the information was provided by the Complainant (albeit via her husband and the Service Alberta Registry, and unintentionally), and was collected and used by a public body (Alberta Transportation) rather than by a custodian within the terms of the HIA. (There is some suggestion the MRI was placed in the envelope by a person who may be a custodian under the HIA, but this inquiry is not dealing with that person's actions; rather the inquiry is dealing with the actions of the Public Body.) As well, the HIA applies to "health information" that falls within the definition of that term in the HIA where a public body is at the same time a custodian under the HIA, but again, that is not the case here. As a result, the proper Act to consider in this inquiry is the FOIP Act and that is what I will be considering for the remainder of this Order.

Preliminary issue – Collection

[para 18] I note that the only issue stated in the Notice of Inquiry was the use of the Complainant's personal information, not its collection. As well, the Complainant's submissions

make it clear that she does not take issue with the collection of her information by the Service Alberta Registry office, nor with the Registry's disclosure of that information to the Public Body. Her concerns relate to the Public Body's use of her personal information.

[para 19] Despite this, the Public Body's submissions revolve almost entirely around its authority to collect the information at issue.

[para 20] While not raised as an issue, the Public Body's authority to collect the Complainant's personal information is relevant to this inquiry. This is because one of the provisions of the Act which permits use of collected information (section 39(1)(a)), permits use for the same purpose as, or a purpose consistent with, the purpose for collection. (Use under section 39(1)(a) will be discussed further below.) An authorized use under section 39(1)(a) *presumes* a proper collection. I must therefore also consider whether the Public Body had authority to collect the personal information from the Complainant (via the Service Alberta Registry).

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

[para 21] The Public Body argues that it collected the information (in its view, indirectly) pursuant to section 33(c) of the Act. Section 33(c) of the Act states:

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

*...
(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 22] I accept the Public Body had authority to collect the personal information under section 33(c).

[para 23] The duties of the Public Body are largely governed by the *Traffic Safety Act* R.S.A. 2000 c. T-6 (TSA) and its Regulations. Section 2 of the TSA allows for the creation of the Registrar of Motor Vehicles and his or her staff who are responsible for administering the TSA. Section 2(1) of the TSA states:

2(1) In accordance with the Public Service Act there may be appointed a Registrar of Motor Vehicle Services and any other officers and employees required for the administration of this Act.

[para 24] Section 55(2) of the TSA and section 15 of the Operator Licensing and Vehicle Control Regulation AR 320/2002 give the Registrar of Motor Vehicles (the Registrar) the ability to require a licence holder to submit documentation that in the Registrar's opinion is relevant to determine the individual's ability to safely operate a vehicle. Section 55(2) of the TSA states:

55(2) The Registrar may require a person who holds a motor vehicle document to provide such information and material and to meet

such requirements that, in the opinion of the Registrar, are pertinent to determining whether that person continues to be qualified to hold the motor vehicle document.

[para 25] Section 15(1) and 15(2) of the Operator Licensing and Vehicle Control Regulation states:

15(1) The Registrar may refuse to issue an operator's licence if the Registrar is not satisfied, by examination or otherwise, that the applicant is competent to drive a motor vehicle without endangering the safety of the general public.

(2) The Registrar may, at any time,

(a) cause special conditions or restrictions, or both, to be stated on an operator's licence;

(b) require a holder of or an applicant for an operator's licence to submit to a medical or physical examination by a person that the Registrar designates;

(c) require a holder of or an applicant for an operator's licence to submit to an examination of the person's driving ability.

...

[para 26] While none of these provisions specifically authorize the Registrar of Motor Vehicles to collect information submitted for the purpose of obtaining a parking placard, I infer from these sections of the TSA and the Operator Licensing and Vehicle Control Regulation that it is within the authority of the Registrar of Motor Vehicles to ensure that individuals holding an operator's licence are medically able to drive safely. To this end, the Driver Fitness and Monitoring program was established as a program of the Public Body, and, among other ways to obtain information relevant to this program, a process was put in place to obtain information potentially relevant to individuals' fitness to drive (and hence relevant to the program) via Service Alberta Registries' collection of information submitted for the purpose of obtaining parking placards. This is reflected in the application form for the parking placard, which states:

If a placard is issued to me the information on my application may be provided to the Driver Fitness and Monitoring Branch to be cross-referenced against my driver's record and my primary care physician may be contacted.

[para 27] I recognize that section 33 requires that the collected information be "necessary" for an operating program of a public body, and that it is arguable that the program could still operate without reliance on this particular method for obtaining information which may be relevant to an individual's fitness to drive. However, in this context, I believe the institution of a process for obtaining information which may not be available through other means renders the process "necessary". In Order F2008-029, the Director of Adjudication discussed the meaning of "necessary" relative to a disclosure of information for the purposes of meeting the goals of a program of the Public Body. She said:

... 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. ...

...Again, I find that "necessary" in this context does not mean "indispensable", and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program.

(Order F2008-029 (at paras 51 and 52))

[para 28] I adopt this reasoning in the present case in relation to the collection of information by the Registrar that is submitted in parking placard applications. Such collection provides a significant means by which the Registrar of Motor Vehicles can obtain information important for achieving the goals of the Driver Fitness and Monitoring program. Therefore, I find the collection was authorized under section 33(c) as relating directly to and necessary for an operating program of the public body within the terms of that provision.

[para 29] With respect to the Public Body's manner of collection, which it regards as *indirect*, the Public Body states that this manner of collection (indirect) was authorized pursuant to section 34(k)(i) and (ii) of the Act, which states:

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

...

(k) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,...

[para 30] I agree with the Complainant that the information was collected directly rather than indirectly, and that the Registry was merely acting as a conduit of the information for the Public Body. As already noted, the form which the Complainant signed states:

If a placard is issued to me the information on my application may be provided to the Driver Fitness and Monitoring Branch to be cross-referenced against my driver's record and my primary care physician may be contacted.

An applicant for a parking placard thus typically provides information knowing it may be provided to the Driver Fitness and Monitoring Branch, and thus the collection of the information

by the Driver Fitness and Monitoring branch may be said to be done directly from such an applicant.

[para 31] I have noted the Complainant was unaware the MRI was contained in her application for the parking placard. However, at the time the Public Body collected the MRI information, it had no way of knowing she had not provided it voluntarily, so this point cannot detract from its authority to collect the information directly from her at the time it did so.

[para 32] In the event I am wrong in my view that the collection is direct, I would accept the Public Body's contention that indirect collection is authorized under section 34(1)(k), in that driving pursuant to a driver's licence entails participating in a program of the Government of Alberta.

[para 33] The Complainant also notes that the Public Body's Driver's Fitness Medical Exam form has a section that requires the individual's consent for the information from the medical assessment to be released to the Public Body. The waiver states:

I certify that the information I have given my doctor is true to the best of my knowledge. I authorize release of this information as well as additional medical information an examining physician may wish to submit for the confidential use of Alberta Transportation.

(Complainant's rebuttal submission at page 3)

[para 34] This waiver appears to deal with consent for the examining physician to disclose the information to the Public Body, not for the Public Body to collect the information, and therefore it is not relevant to this inquiry.

Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?

[para 35] A public body's use of personal information is governed by sections 39 and 41 of the Act, the relevant portions of which state:

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,

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

...

(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.

...

41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

Section 39(1)(b) – consent to use

[para 36] One of the grounds for authority to use personal information is if an individual whose information it is consents to a particular use. The Complainant argues that section 39(1)(b) of the Act does not apply because she did not consent to the Public Body's use of the MRI.

[para 37] I have noted above that the application form signed by the Complainant states:

If a placard is issued to me the information on my application may be provided to the Driver Fitness and Monitoring Branch to be cross-referenced against my driver's record, and my primary care physician may be contacted.

[para 38] However, because the Complainant did not know that the MRI was included in the application, it may not constitute the consent needed to conform with section 39(1)(b) of the Act.

[para 39] In any event, I do not need to decide whether this was consent in the prescribed form within the terms of the Act because I find, below, that the Public Body had authority to use the Complainant's information under section 39(1)(a).

Section 39(1)(c) – purposes relating to sections 40, 42 and 43

[para 40] It is arguable that this provision applies because the Complainant's information is possibly disclosable to the Public Body under section 40(1)(i), as information relating to the delivery of an integrated program or service. However, again, given my findings below, I do not need to make a determination about this question.

Section 39(1)(a) – same or consistent purpose

[para 41] To determine if section 39(1)(a) of the Act applies, it is first necessary to determine the purpose of the collection of the information.

[para 42] In its initial submissions, the Public Body states that it was authorized to collect the information in the application because it related directly to and was necessary for an operating program or activity of the Public Body. Specifically, the Public Body stated:

Alberta Transportation reviews handicap parking placard applications and any information that accompanies that application, to assess whether a medical condition, affects the applicant's ability to drive safely as per the *Canadian Council of Motor Transport Administrator Medical Standards of Drivers*. The review is part of the Driver Fitness and Monitoring program with is an operating program and activity of Alberta Transportation within the meaning of section 33(c) of the FOIP Act.

(Public Body's initial submissions at pages 2-3)

[para 43] In the course of making its argument that it was authorized to collect this information indirectly under section 34(1)(k) of the Act, the Public Body also stated:

Alberta Transportation collected the personal information to assist in determining if the Registrar required further information in the course of administering its Driver Fitness and Monitoring Program. [The Complainant] is concerned that she submitted the information for the parking placard to Service Alberta which then disclosed it to Alberta Transportation which used it for a different purpose – the Driver Fitness and Monitoring Program. Alberta Transportation submits that it did have the authority to collect personal information indirectly as per section 34(1) of the FOIP Act.

...

The information was collected to verify the medical eligibility to drive safely and be entitled to an operator's licence.

(Public Body's initial submissions at pages 3-4)

[para 44] As the application form for the parking placard (quoted above) makes clear, one of the purposes for which the Registry collects information from applicants for a parking placard is that the information may be provided to Driver Fitness and Monitoring to enable that program to conduct its processes for ensuring driver fitness. In other words, the Registry collects the information so it may be considered in determining whether to issue the placard, as well as on behalf of the Public Body's Driver Fitness and Monitoring program so it may take steps to ensure that drivers are sufficiently medically fit to be entitled to an operator's licence.

[para 45] The Public Body states that it reviewed the information in the application and the MRI in order to assess whether a medical condition affected the Complainant's ability to drive safely. Accordingly, I find the use of the information by Driver Fitness and Monitoring – to take steps, in view of the information it had received, to ensure the applicant could drive safely, was for the same purpose as one of the purposes for which the information was collected, on its behalf. Therefore, this met the requirements of section 39(1)(a) of being "for the purpose for which the information was collected". This is true of the use that the Public Body made of the information in the first instance, and of its continued use of the information to maintain the Complainant's licence suspension until she submits further medical evidence as requested.

[para 46] In addition or in the alternative, the use of the information also met the requirements for a consistent purpose within the terms of section 41. To ensure that the Complainant was medically able to drive safely, it was necessary for the Public Body to review the application and MRI provided to it by the Complainant, and to use that information to assess the Complainant's ability to drive and to inform its decision to require the Complainant to submit further medical information.

[para 47] Therefore, I find the Public Body was authorized to use the information in the manner that it did by section 39(1)(a) of the Act.

The inadvertent nature of the provision of the MRI

[para 48] I noted at the outset that the Complainant's primary argument was that information she provided inadvertently, and asked to have returned, cannot be collected and used by the Public Body. As I stated above, there is no provision in the Act that would permit me to order the Public Body not to rely on information it had authority to collect and use when it did so. I have found it had such authority.

[para 49] These circumstances may strike the Complainant as unfair, but that is something I have no power to remedy. Moreover, in the present case, the Registrar of Motor Vehicles has the important task of ensuring driver fitness, and is given a wide range of powers for obtaining information about a driver that enables the achievement of this important public interest objective. Contrary to the Complainant's final submission, the Registrar is permitted to require any driver to produce any information he regards as relevant, and is not restricted, as the Complainant contends in her recent submission, to information in a Medical Examination. As already quoted, Section 55(2) of the *Traffic Safety Act* states:

55(2) The Registrar may require a person who holds a motor vehicle document to provide such information and material and to meet such requirements that, in the opinion of the Registrar, are pertinent to determining whether that person continues to be qualified to hold the motor vehicle document.

[para 50] That the Complainant regards the particular information at issue as inaccurate does not detract from the fact that this type of information is the very type of information to which the Registrar is permitted to have access for sound reasons. Even if the information is in fact inaccurate or misleading, the Register may still need to review such existing information to make an assessment of whether this is so, or whether, as happened in this case, further information is required in view of a lack of clarity.

[para 51] In these particular circumstances, any perceived unfairness would be ameliorated by the fact that it is in the public interest for the Registrar to have access to information which might have a bearing on a driver's fitness, whether or not this is proved to be the case ultimately, however it is obtained.

[para 52] I note, finally, that in the Public Body’s initial submission it stated that the application form itself referenced a “neurological muscle weakness and poor balance problem”, which it says was itself a sufficient reason to undertake a further investigation and require a follow-up medical examination. Assuming this to be the case (and I have no reason to question it), the reliance on the “reason for exam” information contained in the MRI, while supporting the decision to require the follow-up, was not an essential item of information, and the result would have been the same even without it. While this point does not go to whether the collection and use of the MRI information was permitted, it speaks to the Complainant’s concerns to the extent she is concerned the use of the MRI led to an unfair result.

IV. ORDER

[para 53] I make this Order under section 72 of the Act.

[para 54] I find that the Public Body was authorized to use the Complainant’s personal information pursuant to section 39(1)(a) of the Act.

Keri H. Ridley
Adjudicator