

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2019-29**

August 28, 2019

**CALGARY POLICE SERVICE**

Case File Number 004520

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

**Summary:** A complainant complained that a senior investigator of the Calgary Police Service (the Public Body) improperly accessed her personal information by reviewing a file containing reference to her.

The Complainant did not provide submissions for the inquiry.

The Adjudicator found that it had not been established that the Complainant's personal information had been accessed. The Adjudicator dismissed the complaint.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 38, 72

**I. BACKGROUND**

[para 1] On September 22, 2016, the Complainant requested the following from the Calgary Police Service (the Public Body):

1. Any and all information pertaining [to] any investigation of traffic ticket charge including;
2. Any and all searches of the following since January 1<sup>st</sup> 2010 (including background checks, license plate checks and any other police investigation tool used.). Please also include the description of the "case number" as well as why specifically the [personnel] was looking at my information.

[para 2] On October 19, 2016, the Public Body responded to the access request. The Public Body stated:

I am responding to your request for access to information. On September 21, 2016 you requested an audit of all accesses to your records between January 1, 2010 and present. A total of 31 pages of records were responsive to our request. [...]

In relation to the CASE entries, please be advised that it cannot be determined by the audit process whether the person who accessed that case file did so by querying your name specifically (they may have queried the case number, another person's name in the file, etc.). The audit records are being released to you in their entirety as none of the records contain information that is excepted from disclosure under the *Freedom of Information & Protection of Privacy Act*.

[para 3] The records listed an entry dated March 16, 2016 by a police member who is a respondent, along with the Chief of the Public Body, in a lawsuit alleging malicious prosecution brought by the Complainant's nephew.

[para 4] On November 8, 2016, the Complainant made the following complaint to the Commissioner:

In January of 2016 my nephew [...] was charged maliciously of Perjury by the Calgary Police while pursuing litigation seeking shared parenting of his daughter. My understanding is that this charge was withdrawn by the crown due to insufficient evidence as well as the obvious conflict of interest. I believe his ex-wife [...] (CPS civilian employee) and her [...] (CPS Senior Investigator) reached out to their good friend [...] (CPS Senior Investigator) and colluded on a plan to charge [my nephew] for a crime that did not happen. No ordinary citizen would have been able to bring that charge forward with the evidence provided and have the Calgary Police successfully lay a charge.

My understanding is that [my nephew's former spouse] is currently engaging on a fishing expedition to try and extract income from [my nephew's business]. There has been suspicious people with cameras at the business. It has become evident through a [FOIP] request that [the CPS Senior Investigator] has accessed my personal information. I believe this is unauthorized.

[para 5] The Commissioner agreed to conduct an inquiry in relation to the following questions:

1. Did a senior investigator of the Public Body access the Complainant's personal information as the Complainant alleges?
2. If yes, did he do so with authority or without authority? If the senior investigator had authority, was the use of the Complainant's personal information in compliance with Part 2 of the FOIP Act?
3. If the senior investigator accessed the Complainant's personal information as she alleges, and without authorization, did the Public Body make reasonable security arrangements against this risk, as required by section 38 of the FOIP Act?

[para 6] The notice of inquiry that was issued to inform the Complainant and the Public Body of the issues and the procedures to be followed in the inquiry, states:

The threshold requirement for a complainant in providing evidence to support a complaint in an inquiry is to provide sufficient evidence to suggest a reasonable likelihood that the alleged facts will be found to be true at inquiry. (See Order 2001-039 at paragraph 34, in which the Commissioner said: “While I will review the conduct of the [Public Body], the Complainant bears the burden of providing some credible evidence that a disclosure of his personal information happened as alleged.”)

In this case, the Complainant has provided evidence that a file in which her personal information is contained (File 16024610) was accessed by [the senior investigator] on March 16, 2016. However, to meet the threshold requirement in this case, and to establish her standing to bring a complaint under the Act, it will be necessary for the Complainant to establish in relation to question 1 that it is **likely** that the police member accessed **her personal information**, as opposed to a file that contains her personal information [emphasis in original].

In her initial submissions, the Complainant is asked to provide all her reasons, and to point to or produce any evidence she believes supports her reasons, for believing that her personal information was accessed by [the senior investigator] in the manner she alleges. The Adjudicator will then review the Complainant’s submissions to determine whether the threshold, discussed above, has been met and decide whether to continue the inquiry in relation to the other issues.

[para 7] The Complainant did not provide a submission for the inquiry.

## II. ISSUES

**Issue A: Did a senior investigator of the Public Body access the Complainant’s personal information as the Complainant alleges?**

**Issue B: If yes, did he do so with authority or without authority? If the senior investigator had authority, was the use of the Complainant’s personal information in compliance with Part 2 of the FOIP Act?**

**Issue C: If the senior investigator accessed the Complainant’s personal information as she alleges, and without authorization, did the Public Body make reasonable security arrangements against this risk, as required by section 38 of the FOIP Act?**

## III. DISCUSSION OF ISSUES

**Issue A: Did a senior investigator of the Public Body access the Complainant’s personal information as the Complainant alleges?**

[para 8] As noted in the background above, the Complainant was asked to point to evidence that would support finding that a senior investigator of the Public Body accessed her personal information in the circumstances she alleges. For example, if the file the senior investigator accessed was solely about the Complainant, then an inference

could be drawn that the senior investigator accessed the Complainant's personal information. However, the Complainant has not pointed to any evidence about the file that was accessed that would lead me to conclude that the reason for accessing the file was to gain access to her personal information, and not the personal information of other persons. In other words, the evidential burden has not been discharged, in this case.

[para 9] As the Complainant has not provided submissions for the inquiry and the evidential burden has, accordingly, not been satisfied, I am unable to find in the Complainant's favor. I will therefore make an order confirming that the Public Body has not failed to meet its duties under the FOIP Act.

**Issue B: If yes, did he do so with authority or without authority? If the senior investigator had authority, was the use of the Complainant's personal information in compliance with Part 2 of the FOIP Act?**

[para 10] As I have answered Issue A in the negative, I need not address this question.

**Issue C: If the senior investigator accessed the Complainant's personal information as she alleges, and without authorization, did the Public Body make reasonable security arrangements against this risk, as required by section 38 of the FOIP Act?**

[para 11] As I have answered Issue A in the negative, I need not address this question.

#### **IV. ORDER**

[para 12] I make this Order under section 72 of the Act.

[para 13] On the evidence before me, I confirm that the Public Body has not failed to meet any duties imposed by the FOIP Act.

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Teresa Cunningham  
Adjudicator