

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2019-40

October 25, 2019

CALGARY POLICE SERVICE

Case File Number 003950

Office URL: www.oipc.ab.ca

Summary: The Complainant had made an access request to the Calgary Police Service (CPS) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). The request was for “any and all information pertaining to my recently withdrawn Perjury charge including the names of all investigators or Calgary Police staff that worked on the case.” He also requested information regarding searches (including background checks, licence plate checks, and any other police investigation tools) of his name and specified license plates and businesses. He received information indicating that his name/ licence plate number had been searched in CPS information system(s) numerous times, and by many different CPS staff members.

After receiving this information from CPS, the Complainant made a complaint to this Office that the Public Body collected, used and/or disclosed his personal information in contravention of the FOIP Act. He complained that several accesses of his personal information – in particular by a police officer (whom I will refer to as AB), now married to the Complainant’s former spouse, as well as by other CPS staff who had relationships with AB or with the Complainant’s former spouse – contravened the FOIP Act. The Complainant provided evidence that officers had accessed his personal information on CPS databases.

Subsequent to the investigation conducted by this Office, the Complainant requested an inquiry.

CPS acknowledged that the officer AB had used the Complainant’s personal information by accessing it from a CPS database and that this use was unauthorized. The Adjudicator agreed with this conclusion.

The Adjudicator found that there was insufficient evidence to determine that the officer AB disclosed the personal information that was used (accessed) without authority.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 39, 40, and 72,

Authorities Cited: AB: Orders 2000-027, F2006-002, F2008-029, F2017-87, F2017-88

I. BACKGROUND

[para 1] The Complainant had made an access request to the Calgary Police Service (CPS) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). The request was for “any and all information pertaining to my recently withdrawn Perjury charge including the names of all investigators or Calgary Police staff that worked on the case.” He also requested information regarding searches (including background checks, licence plate checks, and any other police investigation tools) of his name and specified license plates and businesses. He received information indicating that his name/ licence plate number had been searched in CPS information system(s) numerous times, and by many different CPS staff members.

[para 2] After receiving this information from CPS, the Complainant made a complaint to this Office that the Public Body collected, used and/or disclosed his personal information in contravention of the FOIP Act. He complained that several accesses of his personal information – in particular by a police officer (whom I will refer to as AB), now married to the Complainant’s former spouse, as well as by other CPS staff who had relationships with AB or with the Complainant’s former spouse – contravened the FOIP Act. The Complainant provided evidence that CPS had accessed his personal information on CPS databases.

[para 3] Following the investigation by this Office, the Complainant requested an inquiry. Specifically, the Complainant argues that AB, another officer (GH), and their respective spouses “communicated either via text, email, phone calls or social media” in contravention of the Act. The time period specified by the Complainant for these communications is August 2015-July 2016.

II. ISSUES

[para 4] The Notice of Inquiry dated July 4, 2019, states the issues in this inquiry as follows:

1. Did [CPS] collect the Complainant’s personal information in contravention of Part 2 of the Act?
2. Did [CPS] use the Complainant’s personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

In some previous orders of this Office, queries conducted by staff of police forces on police databases have been treated as ‘uses’ of information, rather than collections. The parties may want to address whether, in this case, the information was collected, used, or both.

3. Did [CPS] disclose the Complainant's personal information in contravention of Part 2 of the Act? [In particular, was the disclosure authorized under section 40(1) and 40(4)?]

If [CPS] is relying on sections 39(1)(a) and/or 40(1)(c), the parties should also make submissions as to whether the requirements of section 41 are met.

III. DISCUSSION OF ISSUES

Preliminary issue – scope of inquiry

[para 5] The CPS officer, AB, was investigated by the Professional Standards Section (PSS) of CPS in response to complaints made by the Complainant. In his submission, the Complainant raised concerns regarding the quality of the investigation undertaken by PSS. To the extent that those concerns relate to the issues listed in the Notice of Inquiry, I will consider them. However, I do not have jurisdiction to review the quality of investigations conducted by PSS.

1. Did CPS collect the Complainant's personal information in contravention of Part 2 of the Act?

[para 6] CPS states that audit records show AB did a search for and viewed reports in a case file relating to the Complainant and his child custody dispute. This occurred on two occasions in July 2012. CPS states that AB was in a relationship with the Complainant's former spouse at that time. Based on the description of the case file, I am satisfied that it contained the Complainant's personal information as defined in section 1(n) of the Act.

[para 7] Section 33 of the FOIP Act places strict limits on personal information a public body can collect. It 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.

[para 8] In this case, CPS states that the information contained in the case file was collected for law enforcement purposes, under section 33(b) of the Act.

[para 9] Law enforcement is defined in section 1(h) of the FOIP Act:

(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 which the results 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 results of the proceedings are referred,

[para 10] CPS states that the case file relates to a child custody dispute, and that the Complainant's former spouse had called CPS to report that her child had not been returned by the Complainant at the appointed time. CPS investigated the call, determined that there had been a misunderstanding, and took no action.

[para 11] While no action was required, CPS argues that "police attended the call pursuant to their powers and authority granted by the *Police Act*" (initial submission at para. 14). CPS points to Order 2000-027, in which former Commissioner Clark stated that 'policing' includes "activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime, or the enforcement of law" (at para. 16). This definition has been applied in subsequent orders and has been found to include investigations into incidents of domestic disputes (see Order F2008-029, at para. 30-33), and an investigation into an individual's reported fear for his or her safety with respect to a public body employee (Order F2006-002, at paras. 25-32). In my view, the investigation carried out by CPS into the call about a child's whereabouts – however brief or easily resolved – falls within the scope of 'policing'.

[para 12] As the Complainant had custody of the child at the time of the complaint, CPS collected his personal information in the course of investigating the call. This collection was authorized under section 33(b) of the Act.

[para 13] Based on the Complainant's submissions, he is not objecting to this collection of his personal information. The Complainant objects to AB subsequently searching for and reviewing the Complainant's personal information in the case file.

[para 14] CPS' submissions refer to AB's actions as a *use* of the Complainant's personal information. Previous Orders of this Office have also treated the access of personal information from a police database as a use of personal information, rather than a collection (see Orders F2017-87, at para. 12, F2017-88).

[para 15] As CPS already had custody and control of the Complainant's personal information when it was accessed by AB, I agree that AB's access was a *use* of the Complainant's personal information rather than another collection. I will discuss whether that use was authorized in the next section.

2. Did CPS use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

[para 16] Use of the Complainant's personal information is governed by section 39 of the Act. The relevant portions of section 39 of the Act 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.

[para 17] CPS states that AB was asked why he accessed the Complainant's information in the case file in 2016. According to CPS, AB admitted that he did not have a valid police reason for doing so. CPS states that AB was investigated by CPS Professional Standards Section for this action; this investigation concluded that AB improperly accessed the file (having no legitimate reason to do so) but that AB did not disclose the information to anyone.

[para 18] In other words, CPS has acknowledged that AB used the Complainant's personal information in contravention of the FOIP Act when he accessed the case file without valid reason.

[para 19] CPS has further stated that disciplinary action was taken as a result of its investigation into the matter. CPS also "engaged in a service wide educational and informational campaign to raise awareness among all employees of the absolute prohibition on accessing CPS databases or other information resources for any purpose other than lawful police business" (initial submission at para. 20). This educational component includes a training video on informational privacy, and updated pop-up screens that require users to acknowledge that they only use CPS resources for work-related matters, and that warn of consequences for non-compliance.

[para 20] I accept that CPS used the Complainant's personal information in contravention of the Act when AB accessed the case file without valid reason to do so.

3. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act? [In particular, was the disclosure authorized under section 40(1) and 40(4)?]

[para 21] CPS states that the Professional Standards Section investigation concluded that AB did not disclose the Complainant's personal information. It argues that the Complainant has not substantiated his allegation that a disclosure occurred.

[para 22] The Complainant has provided me with an affidavit sworn by his former spouse, which he states includes the information accessed by AB. The affidavit includes information

about the July 1, 2012 custody matter that led to the former spouse calling CPS. The affidavit states that the police report relating to that call is attached as an exhibit. The cited exhibit consists of what appears to be CPS' response to an access request made by the former spouse. The response letter is dated July 3, 2012 (two days after the call made by the former spouse to CPS regarding the custody dispute). The response letter of CPS indicates that five pages of responsive records were provided to the former spouse (with information severed under the Act); however there is only one page attached in the Complainant's submission. That one page shows a transaction log – all transaction dates are July 2, 2012.

[para 23] It is reasonable to conclude from the copy of the former spouse's affidavit provided by the Complainant that she obtained the case file report via an access request. There is nothing to suggest that AB disclosed information he obtained when he accessed the case file without authority. The former spouse would have been aware of the case file since she called CPS in the first place. Additionally, as the former spouse is employed by CPS (or was at the time), it is not unlikely that she would have some awareness of how files are opened or kept, and how to obtain a copy through proper channels. In other words, that the former spouse made an access request for the case file does not lead to the conclusion that AB must have disclosed information relating to the case file to the former spouse.

[para 24] The Complainant notes that the former spouse, as a CPS employee, seems to have received a response to her access request in a very short period of time in contrast to the lengthy time he waited to obtain a response using the same process. Even if the former spouse received a response to her access request quicker than the Complainant did, this does not indicate that the response was improper. The Public Body has informed me that its response to the Complainant's access request was reviewed by this Office in another file, including its time to respond under section 11. That issue is not part of this inquiry.

[para 25] The Complainant has not provided support for his allegation that AB discussed the information he accessed with the former spouse or with the other police officer named by the Complainant, or that officer's spouse. The Complainant states that he has additional information but cannot share it as "it is known within implied undertaking." It is likely frustrating for the Complainant to have information he believes is relevant to this inquiry that he cannot provide to me due to an implied undertaking. However, this is not unusual in a case where multiple related proceedings are underway.

[para 26] The Complainant has further stated in his submission to this inquiry that "if the CPS or Privacy commission does a proper investigation into the nature and receives the communications between the parties they would also see the truth." It is not clear to me what specific communications the Complainant believes I should consider. In his request for inquiry, the Complainant suggested that additional questioning and investigation of the time period of August 2015-July 2016 should occur, specifically relating to communications between AB, another named officer and their respective spouses via "text, email, phone calls or social media."

[para 27] Aside from whether the powers granted to the Commissioner under the FOIP Act would enable me to compel communications between private individuals, there is no reasonable basis in this case to do so. I understand that the Complainant believes that AB and other

individuals have communicated about him but he has not presented evidence to support this belief. More specifically, he has not presented evidence that AB communicated (disclosed) the information he accessed from the case file.

[para 28] As such, I do not have sufficient information to conclude that AB or CPS disclosed the Complainant's personal information from the case file that was accessed (used) without authority.

IV. ORDER

[para 29] I make this Order under section 72 of the Act.

[para 30] I find that CPS used the Complainant's personal information without authority when its officer accessed the case file without valid reason. As is the usual practice, I will order CPS to cease using such personal information without authority. I am satisfied with the remedial action taken by CPS to address the officer's actions directly and to provide additional training and safeguards more broadly (discussed at paragraph 19 of this Order). Therefore, I have nothing further to order to address the unauthorized use.

[para 31] I order CPS to notify me and the Complainant in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order. Given my findings, written acknowledgement of the Order is sufficient for compliance.

Amanda Swanek
Adjudicator