

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2019-42**

December 19, 2019

**CITY OF EDMONTON**

Case File Number 004092

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

**Summary:** An individual made a complaint to this Office that the City of Edmonton (the Public Body) collected her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Specifically, the Complainant alleges that a bylaw officer employed by the Public Body peered into her home, in the course of responding to an animal control complaint regarding the Complainant. The Complainant also alleges that the Public Body disclosed her personal information during the prosecution process, and to other departments in the Public Body, in contravention of the Act.

Mediation was authorized but did not fully resolve the issues between the parties and the Commissioner agreed to conduct an inquiry.

The Adjudicator found that the Public Body did not collect the Complainant's personal information when the peace officer recorded the number of dogs she observed in a front window. The Adjudicator determined that this was not personal information of the Complainant. The Adjudicator also determined that if the information was personal information, the Public Body was authorized to collect it under sections 33(b) and (c).

The Public Body did record personal information of the Complainant during the investigation of the bylaw complaint. The Adjudicator found that the information disclosed by the Public Body to the Municipal Prosecutor in relation to the contravention of the Animal Licensing and Control Bylaw was the Complainant's personal information. The Adjudicator determined that this disclosure was authorized under the Act.

The Adjudicator found that the Complainant did not substantiate her claim that her personal information was disclosed to other areas of the Public Body.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 40, 41, and 72, City of Edmonton Bylaw 13145 Animal Licensing and Control Bylaw

**Authorities Cited:** **AB:** Orders F2011-013, F2012-05, F2015-07

**Cases Cited:** *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII)

## I. BACKGROUND

[para 1] An individual made a complaint to this Office that an employee of the City of Edmonton (the Public Body) collected her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Specifically, the Complainant alleges that a bylaw officer employed by the Public Body peered into her home, in the course of responding to an animal control complaint regarding the Complainant.

[para 2] In her complaint, the Complainant also alleges that the Public Body disclosed her personal information during the prosecution process, and to other departments in the Public Body, in contravention of the Act. The Complainant states that the Public Body recorded untrue and slanderous comments made by her neighbour and that these comments were disclosed with the animal control complaint.

[para 3] Mediation was authorized but did not fully resolve the issues between the parties and the Commissioner agreed to conduct an inquiry.

## II. ISSUES

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

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

*This issue relates to the complaint that the by-law officer peered into the Complainant's window without her permission. The parties may wish to address what information collected was **recorded** information within the terms of [the] definition of personal information in section 1(n) of the Act.*

2. 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) of the Act?

*This issue relates to the Complainant's concerns about details from the complaint against her that she says were shared during the prosecution process and with other city departments. In addressing this issue, the Complainant should provide evidence that such disclosures were made and what information was disclosed.*

### **III. DISCUSSION OF ISSUES**

#### **1. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**

[para 5] Section 33 of the FOIP Act limits the collection of personal information by a public body. 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 6] Personal information is defined in section 1(n) of the Act as follows:

*1(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 7] The Public Body states that it received a complaint that the Complainant had an excessive number of dogs in her home. The Public Body's Animal Licensing and Control Bylaw 13145 (Bylaw) limits the number of dogs that can be kept in a home to no more than three (section 29(1)). An Animal Control Peace Officer with the Public Body investigated the complaint, which included going to the Complainant's home.

[para 8] The Complainant states that the officer looked into her window, and counted six dogs. The Complainant states that "[f]or her to see six dogs she had to have had a very close look into my window" (request for inquiry attachment). The Complainant states that the officer leaned over the guard rail and looked directly in to the window and that this "took a lot of effort as [the Complainant has] privacy panels" (complaint attachment). The Complainant has provided me with pictures of the front of her home, showing a large bay window beside the front door, with a railing between the window and the door, and privacy screen along the lower third of the window.

[para 9] The Public Body states that the officer knocked on the front door of the Complainant's home. No one was home "however while at the front door [the officer] observed four dogs through the adjacent living room window" (initial submission, at para. 4). The Public Body went on to state that

It is not uncommon for dogs to approach the front door or nearby windows when peace officers or other visitors attend at a property, making them visible to the visitor while waiting for a response at the door. Given that the complaint under investigation related to excessive dogs, [the officer] made notes of her observations, specifically the number of dogs present.

[para 10] A copy of the officer's notes were provided to me. These notes state that she was "able to observe and confirm four dogs inside the residence at the livingroom window." The notes further state that the Complainant then returned home, and confirmed she has six dogs in her house but was "dog sitting" three of the dogs. The Complainant later clarified that all of the dogs are hers.

[para 11] The officer concluded that the Complainant was in violation of section 29(1) of the Bylaw and issued a ticket.

[para 12] The Complainant's initial complaint about the collection of her personal information is limited to the information the officer obtained by looking through the Complainant's front window. In her request for inquiry, the Complainant has also argued that the Public Body should not have collected the additional comments made about the Complainant by the individual who complained about the number of dogs she had. This issue was not part of the issues initially raised by the Complainant; therefore, it has not been included as an issue in the Notice of Inquiry. However, as these additional comments are at issue with respect to the alleged

disclosure of personal information by the Public Body and both parties addressed this issue, I will also address the collection of these comments.

[para 13] I will address the complaint regarding the officer's observations first.

[para 14] The definition of "personal information" in the FOIP Act, cited above, specifies that it must be *recorded* information about an individual. Observing something is not itself a collection of personal information as contemplated under the Act. In other words, a complaint about the officer looking at something through a window – whether the thing observed was easily visible or whether the officer had to lean over a railing to see it – is not a complaint that I have jurisdiction to decide under the FOIP Act.

[para 15] In her request for inquiry, the Complainant has complained that the officer used the information she gathered by looking in the window 'against' the Complainant. This indicates a concern not just about the officer looking through the window, but also about the officer recording what was observed. This part of the complaint is about recorded information; therefore, I will consider whether this was an authorized collection of personal information.

[para 16] The Public Body states that the information the Complainant has specified as being collected without authority – the number of dogs observed by the officer through the window – is not personal information of the Complainant. For the reasons that follow, I agree that the officer's recorded observation of four dogs is not information about the Complainant. The information collected later from the Complainant – that she had six dogs, and their names (as recorded in the officer's notes) – is the Complainant's personal information, but this is not the information about which the Complainant has raised concerns.

[para 17] In *Edmonton (City) v. Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII), the Alberta Court of Appeal stated:

In general terms, there is some universality to the conclusion in *Leon's Furniture* that personal information has to be essentially "about a person", and not "about an object", even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act*. It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a "personal dimension", it might sometimes properly be characterized as "personal information".

[para 18] The distinction between information that has a 'personal dimension' and information that does not can be a fine one. In this case, the mere recording of the number of dogs observed in the Complainant's window at a particular time does not have a personal dimension. It is not information that is "about" the Complainant, even if it is known that the Complainant is the homeowner. Had the officer already known that all dogs in the home at that time belonged to the Complainant, perhaps the number of dogs visible in the window would have been personal information of the Complainant.

[para 19] The bylaw officer later confirmed with the Complainant that the dogs belonged to the Complainant – this is the Complainant's personal information. The remaining information

collected by the officer from the Complainant is also the Complainant's personal information. However, in this context, the number of dogs observed through a window at a particular time is not.

[para 20] Even if it were true to say the number of dogs observed through the Complainant's window is her personal information, the officer was authorized to record her observation (i.e. collect that information) under sections 33(b) (collection for a law enforcement purpose) and 33(c) (information necessary for the operation of an activity or program).

[para 21] 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 22] In Order F2011-013, former Commissioner Work concluded that conducting an investigation into the alleged contravention of a City bylaw falls within the scope of law enforcement, specifically within section 1(h)(ii) (see paras. 16-23 of that Order). An investigation into bylaw compliance has been accepted as falling within the scope of section 1(h)(ii) in Order F2015-07 (at para. 34). The Public Body has also argued that the Bylaw includes fines for noncompliance (sections 35 and 37), bringing the collection of the related information within section 1(h)(ii) of the definition above.

[para 23] The Public Body also points to sections 47(a) and (b) of the City's Animal Licensing and Control Bylaw, which state:

*Without restricting any other power, duty or function granted by this bylaw, the City Manager may:*

*(a) carry out whatever inspections are reasonably required to determine compliance with this bylaw;*

*(b) delegate any powers, duties or functions under this bylaw to an employee of the City;*

[para 24] The Public Body argues that the bylaw officer was a peace officer employed by the Public Body and that the inspection of the Complainant's property was to determine compliance with the bylaw.

[para 25] I agree that the investigation being conducted by the officer falls within the definition of law enforcement. The officer was conducting an investigation into an animal

control complaint, and recorded the number of dogs observed through the window – information relevant to the complaint – during that investigation. Section 33(b) would apply if that were personal information.

[para 26] Further, the Public Body has argued that licensing and regulation of pets is an operating program of the Public Body. As such, collecting information about pet ownership is directly related to and necessary to operate that program and is authorized under section 33(c). I agree with this as well.

[para 27] The Complainant argues that the Public Body needed a search warrant to look in her window. I have cited the authority in the bylaw for inspections that are reasonably required to determine compliance; presumably the Complainant is arguing that looking into her front window was not authorized by that provision.

[para 28] As explained above, I have jurisdiction only to consider the personal information that the officer recorded (i.e. collected), not what the officer merely observed, or the manner in which she observed it. The Public Body has referred to the Complainant's argument regarding the need for a search warrant as a constitutional issue. Possibly the Public Body understands the Complainant's argument to be that the officer's observation through the front window violated the right against an unreasonable search under section 8 of the *Charter of Rights and Freedoms*.

[para 29] The questions of whether a search is valid under the *Charter* and/or whether a search warrant is necessary in a particular context are different from a question about the authority for collecting personal information under the FOIP Act. This is so even if both questions involve the same set of facts. I have jurisdiction under the FOIP Act to decide only that latter question.

[para 30] Possibly, if there had been a finding by an authorized body that the officer was not permitted to look in the Complainant's window, such a finding might have been relevant to my decision here. In other words, if the *observation* had been clearly contrary to the officer's authority, it may have affected whether the officer was permitted to *record* the observation (i.e. collect the information) under the FOIP Act. There is no such finding here.

[para 31] In this case, the recorded observation did not include the Complainant's personal information. Even if it had, the officer was authorized to collect that information under the FOIP Act, for the reasons above. The Complainant's mere assertions that the officer's observation was not permitted without a search warrant does not affect that authority.

[para 32] The Complainant's last complaint regarding the collection of her personal information relates to the information provided to the Public Body by the individual who complained about the number of dogs in the Complainant's care. The Complainant states that this individual also made several untrue allegations about the Complainant at that time. These additional comments were recorded with the animal control complaint in the Public Body's notes. These other allegations do not relate to animal control; they relate to alleged behaviour of the Complainant. The notes of the comments make it clear they were made by the individual who called in the animal control complaint. In other words, these comments are recorded as an opinion of the caller.

[para 33] The allegations made by the neighbour about the Complainant's behaviour could reasonably have influenced the way the bylaw officer approached the Complainant. If true, the behaviour alleged by the neighbour could have affected the safety of the bylaw officer when investigating the animal control complaint. The allegations were not recorded as "true facts", but as opinions of the individual who complained. I disagree with the Complainant that these allegations should not have been recorded by the Public Body; the Public Body must ensure the safety of its bylaw officers in responding to complaints and alerting officers of alleged behaviour that might affect their safety falls within that responsibility. Further, it is difficult for a public body to immediately assess what information being provided by a complainant will ultimately be relevant when investigating the complaint. For this reason, public bodies have been granted latitude when determining what personal information to collect in the course of an investigation. In Order F2012-05 I said (at para. 30):

Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager's job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.

[para 34] Section 33(b) of the FOIP Act (collection for law enforcement purpose) authorizes the Public Body's collection of the Complainant's personal information in the course of investigating the bylaw complaint. The definition of "law enforcement" includes the complaint leading to the investigation. Therefore, the Public Body had authority under section 33(b) to collect the entire complaint as made about the Complainant.

**2. 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) of the Act?**

[para 35] The Notice of Inquiry states:

*This issue relates to the Complainant's concerns about details from the complaint against her that she says were shared during the prosecution process and with other city departments. In addressing this issue, the Complainant should provide evidence that such disclosures were made and what information was disclosed.*

[para 36] Section 40(1) of the Act provides authority for public bodies to disclose personal information. Sections 40(1)(c), (h), and (v) are relevant in this case. These provisions, as well as sections 40(4) and 41 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,*

...

*(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,*

...

*(v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,*

...

*(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.*

*41(1) 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.*

[para 37] The Complainant states that the additional comments made about her in the complaint were used by the Public Body in the legal proceedings. She also states that this information was disclosed “to such departments as Graffiti etc.” (request for inquiry attachment).

[para 38] The Complainant states that the Public Body ought not to have recorded or used the neighbour’s comments about the Complainant in the court proceedings or to have disclosed those comments to other Public Body departments. She states that she understands “that the city could/would provide information regarding excess dogs which is/was the complaint. However, the inclusion of the false allegations [was] unnecessary and constitute[s] a violation of [the Complainant’s] basic rights to privacy when interacting with a government official/dept.” (complaint attachment)

[para 39] The Complainant admits that she initially told the bylaw officer that not all of the dogs in her house belonged to her. The Complainant states that she later admitted to owning all of the dogs, and that she apologized to the Public Body for being untruthful initially. The Complainant states that the Public Body ought not to have used her initial untrue statements against her in the legal proceeding, as she had recanted those statements. I do not have jurisdiction to review what the Public Body does with a recanted statement in this context.

[para 40] Regarding the disclosure during the prosecution process, the Public Body states (rebuttal submission at paras. 11-12 and 14):

Disclosure provided by a prosecutor to an accused person represents the contents of the prosecutor’s file that are relevant and material to the offence. When disclosure is requested, a prosecutor is under a legal and ethical obligation to provide all records in their possession that are

related to the facts of the offence, whether or not the prosecutor intends to use the records as evidence in court.

In this case, the investigation into the number of dogs present at the Complainant's residence arose from a complaint from a member of the public. The caller contacted the Public Body's 311 service and provided the information shown in TAB 1 of the Public Body's Initial Submission. The agent that received the call would have recorded the information exactly as it was received from the caller, and upon noting the potential violation of the Animal Licensing and Control Bylaw, assigned the job to the Community Standards Branch for investigation by an Animal Control Peace Officer.

...

The Complainant suggests that this "could easily have been deleted", however this does not consider the disclosure obligations of a prosecutor. Since the caller provided this information while making their complaint regarding excessive dogs at the Complainant's residence, the record became part of the prosecutor's file. When the Complainant made a request for disclosure, the prosecutor was obligated to provide a complete, unredacted copy of all relevant records in that file. If this information had been deleted as suggested by the Complainant, the prosecutor would have been in breach of their ethical and legal obligations.

[para 41] I have found that it was reasonable for the Public Body to record the entire complaint about the Complainant. I agree with the Public Body that it was authorized to use the entire complaint during the prosecution process, under section 40(1)(v) (disclosure for use in a legal proceeding). Section 40(1)(c) (disclosure for the purpose for which the information was collected, or a consistent purpose) would also authorize the disclosure: the information was collected for the purpose of investigating a bylaw complaint and a prosecution resulting from the complaint investigation "has a reasonable and direct connection to that purpose" (per the definition of consistent purpose under section 41 of the Act). For the same reasons, I find that the Public Body did not disclose more information than necessary to meet the purpose of disclosure, as required by section 40(4).

[para 42] The Complainant also alleges that the information in the bylaw complaint was also shared with other areas of the Public Body, such as Graffiti. She has provided copies of various Public Body printout of the logged bylaw complaint; one printout shows a tab entitled "Graffiti Objects". Other tabs are titled "General Bylaw", "Related Objects" and "Animal Control".

[para 43] The Public Body states (at para. 18 of its rebuttal submission):

The Public Body uses software called POSSE to track all bylaw complaints. Given the wide variety of potential bylaw offences, POSSE has a number of functions, each with a different tab. "General Bylaw" is one of those functions, and is the function used to record and action animal related complaints such as the one related to this Inquiry. "Graffiti Objects" is another function, used specifically for graffiti offences. Any job created in POSSE contains all of the possible functions, however only those relevant to the particular facts are used or populated. The presence of the words "Graffiti Objects" on this page when a printout of the electronic POSSE record is generated is a coincidence, and the fact that no text appears below this heading demonstrates that this function was not used in relation to this job. Accordingly, this record does not provide any evidence of disclosure.

[para 44] Having reviewed the printouts provided by the Complainant and the Public Body, I accept this explanation. As such, I agree with the Public Body that there is insufficient evidence that the Complainant's personal information was disclosed to other areas of the Public Body.

[para 45] Last, the Complainant alleges that a Public Body employee discussed her case with a City Councillor and that the Councillor sent "slanderous" emails to the Complainant's friends. She did not provide any evidence for these allegations with her request for inquiry, and did not provide an initial submission to this inquiry. In her rebuttal submission, the Complainant provided an excerpt of an email purportedly sent by the Councillor to the Complainant's friend, by copying and pasting the excerpt into her submission. She complains about the tone of this email; regarding that issue, it does not fall within the scope of my authority under the FOIP Act.

[para 46] Regarding the allegation that a Public Body employee discussed her bylaw infraction with the Councillor, the Complainant acknowledges that she contacted the Councillor about her bylaw infraction. She argues that the Councillor and Public Body employee should not have discussed the matter. The Public Body provided me with copies of emails between the Complainant, the Public Body employee and the Councillor. It is clear that the Complainant had asked the Councillor to intervene on her behalf. It is also clear that the Councillor contacted the Public Body on the Complainant's behalf. To suggest that the Public Body employee dealing with the Complainant's bylaw infraction could not discuss the matter with a Councillor once the Complainant asked the Councillor to intervene on her behalf is puzzling. Clearly the Public Body employee disclosed the Complainant's personal information to the Councillor for the purpose of trying to resolve the matter. This is authorized under sections 40(1)(c) (disclosure for the purpose of collection, as discussed above) and 40(1)(h).

#### **IV. ORDER**

[para 47] I make this Order under section 72 of the Act.

[para 48] I find that the recorded observation of the number of dogs visible in the Complainant's window at a particular time is not her personal information. Even if it was, the collection was authorized under the Act.

[para 49] I find that the Public Body had authority to disclose the Complainant's personal information.

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Amanda Swanek  
Adjudicator