

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-39

October 19, 2021

CITY OF EDMONTON

Case File Number 010138

Office URL: www.oipc.ab.ca

Summary: An individual (the Complainant) complained that the City of Edmonton (the Public Body) disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act). The Complainant alleged that the Public Body contravened the Act when it disclosed to TransEd his contact information and the body of a complaint (the Complaint) about noise generated by TransEd as it worked on a construction project. When the Complainant made the Complaint, he indicated to the Public Body that his selected contact method was by e-mail.

The Adjudicator found that the Public Body complied with the Act when it disclosed the Complainant's name, e-mail address, and the body of the Complaint to TransEd. The form used to make the Complaint contained a notice that information on the form was collected in order to respond to the Complaint, and may be disclosed. Since TransEd was the entity responsible for the noise, and thus in the best position to respond to the Complaint, it was reasonable for the Public Body to provide it with the information necessary to respond to it.

The Adjudicator found that the Public Body failed to comply with section 40(4) of the Act when it disclosed the Complainant's home address and home telephone number to TransEd. This information was not necessary to enable the Public Body to address the Complaint, and was not the Complainant's selected method for contact.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e); 1(n)(i), 1(n)(viii), 1(n)(ix); 33; 40(1), 40(1)(c), 40(1)(h); 40(4); 72

Authorities Cited: AB: Order F2006-006

I. BACKGROUND

[para 1] In June 2018, the Complainant lodged a noise complaint (the Complaint) through the City of Edmonton’s (the Public Body) 311 website. The Complaint concerned noise generated by a light rail transit construction project (the LRT project), carried out by a private company, TransEd Partners General Partnership (TransEd). In the Complaint, the Complainant expressed his displeasure with the LRT project on the whole, and asked the Public Body whether it could “do something about the constant and excessive noise coming from the LRT construction project?”

[para 2] The Public Body forwarded the full text of the Complaint and contact information for the Complainant to TransEd. As evidenced by an e-mail sent to the Complainant from TransEd, TransEd received the Complainant’s first name and e-mail address for certain.

[para 3] An e-mail from the Public Body to the Complainant on June 25, 2018 (the June 25th e-mail) made in response to his Complaint, shows that the Public Body also collected the Complainant’s last name, home address, and home telephone number when he made the Complaint. The Public Body believes that it forwarded this information to TransEd as well.

[para 4] On September 28, 2018, the Complainant filed a complaint to this office, alleging that the Public Body contravened the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) when it provided the Complaint and his contact information to TransEd.

[para 5] Mediation and investigation were authorized to try to resolve the issues in this Inquiry, but did not do so.

II. ISSUES

Issue A: 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)?

III. DISCUSSION OF ISSUES

Issue A: 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)?

Terms of Service Applicable to the Complaint

[para 6] As discussed below, the terms of service that the Public Body imposes on users of the 311 online complaint platform, and hence are applicable to the Complaint, are relevant to the issues in this Inquiry. However, as will be explained, the precise terms of service are not known. I am left to consider which terms applied to the Complaint, based on the submissions of the parties.

[para 7] In 2019, the Public Body altered its 311 online complaint system. As a result, the webpage used to make the Complaint no longer exists. Consequently, both parties are limited in their ability to provide evidence regarding through which webpage the Complainant made the Complaint and what the terms of service applicable to making the Complaint through that webpage were.

[para 8] The Complainant's memory of what webpage he accessed in order to make the Complaint has faded. He can only recall generally that he accessed the Public Body's 311 complaint webpage, and completed and submitted a complaint form through it. The Complainant cannot recall the exact content of the form he used, and believes that the current form used for 311 complaints requests different information. Similarly, while the Complainant asserts that the webpage he used to make the Complaint contained prominent assurances that his information would remain confidential, he can neither recall the precise terms of any such assurance nor can he locate a copy of them. The Complainant states that the current terms of service for 311 complaints, by-law complaints, and the Public Body's web privacy code, contain statements of confidentiality and assurances that information will be used in accordance with the Act, that "say essentially the same thing" that he recalls seeing when he made the Complaint.

[para 9] The Public Body was able to provide a screenshot of the form that it believes the Complainant used (the Form), but cannot say for certain that it actually was the form. I note that it is not the complaint form currently in use. The Public Body observes that the Form contains the following statement, which I refer to as the "Disclosure Notification":

All personal information requested or required is collected under the authority of section 33(c) of the Freedom of Information and Protection of Privacy Act (Alberta) (FOIP Act) for the purpose of responding to your question(s)/comment(s). This information will be collected, used and disclosed in accordance with the FOIP Act. If you have any questions about the collection or use of this information, please contact the Manager, Call Centre Operations, 300D Edmonton City Centre West, 780-495-0607

[para 10] The Public Body also asserts that the terms of service applicable to the Complaint included the following statement at the time:

"If this service request relates to a matter that involves an entity other than the City, such as utility service requests, your personal information may be disclosed to the appropriate entity in order to respond to the request."

[para 11] The Public Body's assertion that the above term applied is based on the fact that it was included in a letter sent to the Complainant upon receipt of his complaint to the Office of the Information and Privacy Commissioner. The letter appears to be dated incorrectly. The date on the letter is January 10, 2018, which is before the events in question. Likely, the letter was intended to be dated 2019. The Public Body states that it believes the terms of service that now apply to making a 311 complaint have not significantly changed since 2018.

[para 12] Related to the matter of applicable terms of service, the parties disagree on whether the Complainant was filing a by-law complaint against TransEd when he made the Complaint, or whether he was just complaining to 311 about the level of noise. The Complainant asserts he was making a by-law complaint, and that the terms and assurances of confidentiality that come with that process apply to the Complaint. The Public Body asserts that it has separate processes for making a formal by-law complaint which the Complainant did not engage.

[para 13] As it is in this case, I can conclude, on the balance of probabilities, only that the Disclosure Notification on the Form was applicable to the Complaint. The personal information requested on the Form perfectly mirrors the personal information that the June 25, 2018 e-mail indicates the Public Body collected. The only other information requested on the Form is: the Complainant's choice of means to be contacted (as either no response required, by telephone, or by e-mail); the subject of the Complaint; as well as a description of the Complaint. These pieces of information are also perfectly mirrored in the June 25, 2018 e-mail. The choice for means to be contacted is listed as "e-mail", the subject is listed as "Excessive noise from the stupid LRT project" and the Description contains the text of the Complaint. Based upon the symmetry of the information requested in the Form, and the information subsequently gathered through the Complaint, I conclude that the Form was actually the form that was used, which contains the Disclosure Notification.

[para 14] Regarding other terms of service referred to by the parties (and whether the Complaint was a by-law complaint or 311 noise complaint), due to the inability of either party to provide clearer evidence about whether any particular terms of service applied to the Complaint, or their precise content at that time, I cannot conclude that they apply to the Complaint, or reach a conclusion about what the precise provisions of them were. The evidence is too uncertain to reach those conclusions on a balance of probabilities. As such, I do not consider them further.

[para 15] I now consider whether the Public Body complied with section 40(1) of the Act.

Did the Public Body comply with section 40(1)?

[para 16] The Complainant's first and last name, home address, and home telephone number are personal information under section 1(n)(i) of the Act; in conjunction with this information, his e-mail address is also personal information since it is information about

an identifiable individual. The text of the Complaint also contains the Complainant's personal information under section 1(n)(ix) of the Act in the form of his opinion that the LRT project is "stupid" and the fact that those carrying out construction are "jerks."¹

[para 17] The Public Body states that it collected the Complainant's personal information for the purposes of responding to the Complaint, and disclosed it to TransEd for the same purpose. The Public Body's position is that disclosure of the Complainant's personal information was therefore permitted under section 40(1)(c) of the Act.

[para 18] Section 40(1)(c) states,

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,

[para 19] I agree that disclosure was permitted under section 40(1)(c).

[para 20] In this case, there was no dispute that the Public Body collected the Complainant's personal information in accordance with section 33 of the Act. It is clear that it collected the Complainant's personal information in order to respond to the Complaint. The Disclosure Notification on the Form was an applicable term of service to the Complaint and expressly states that the Public Body is collecting personal information for the purposes of responding to questions or comments on the Form.

[para 21] There is no indication that the Public Body disclosed the Complainant's personal information for any reason other than to respond to his request. As TransEd was the entity responsible for the noise coming from the LRT project, the Public Body reasonably understood that it was the entity that was in the best position to address the Complainant's concern.

[para 22] Accordingly, I find that the Public Body disclosed the Complainant's personal information for the same purpose for which it was collected, as permitted under section 40(1)(c).

[para 23] I now consider whether the Public Body complied with section 40(4) of the Act when it disclosed the Complainant's personal information.

Did the Public Body comply with section 40(4)?

¹ Under section 1(n)(viii) of the Act, opinions about an individual are the personal information of the individual that is the subject of the opinion. I do not find that the Complainant's opinion that those carrying out construction are "jerks" is about any particular individual. In the context of the Complaint, that opinion appears to be a reference to whosoever might happen to be working on the LRT project, rather than a particular individual. As such, the opinion is the Complainant's personal information under section 1(n)(ix) and not the personal information of any other individual under section 1(n)(viii). I also note that the fact a person holds an opinion about an individual may be the personal information of the person holding the opinion. See, for example, Order F2006-006.

[para 24] Section 40(4) states,

(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 25] It is unfortunate that the precise terms of service applicable to the Complaint, whether as a by-law complaint or 311 noise complaint, are not known. The terms of service would inform whether disclosing the Complainant's personal information to TransEd was a reasonable manner in which to respond to the Complaint. If disclosure violated the Public Body's own terms of service, which the Complainant was relying on, then disclosure would seem to be unreasonable. If disclosure accorded with the terms of service, then disclosure would more likely be reasonable, subject to whether the terms of service themselves accorded with the Act.

[para 26] In so far as the Disclosure Notification on the Form informs whether the Public Body complied with section 40(4) in this case, I find that in conjunction with other factors, it supports the conclusion that disclosing the Complainant's first and last name, e-mail address, and opinions was necessary to respond to the Complaint in a reasonable manner.

[para 27] The Disclosure Notification makes clear that personal information provided in the Form may be disclosed in order to respond to a complaint. In this case, TransEd was not only the entity responsible for creating the noise that was the subject of the Complaint, but, under the terms of the contract between it and the Public Body which governs construction of the LRT project, it was also responsible for noise mitigation efforts. It was TransEd, rather than the Public Body, that was in the best position to address the Complaint. As such, having TransEd respond to the Complaint was a reasonable manner in which to respond.

[para 28] Under the circumstances, in order for TransEd to respond to the Complaint, it needed a name and contact information for a person to whom to respond. Thus, it required the Complainant's name and e-mail address, e-mail being the method of contact selected by the Complainant. Perhaps the Complainant had some discomfort with the fact that TransEd received the full text of the Complaint including his opinions that the LRT project is "stupid" and the ones carrying out construction are "jerks", but such statements were part of the Complaint, and were included in it of the Complainant's own volition. As TransEd needed to know the content of the Complaint to properly respond to it, the Public Body needed to forward it to TransEd. I cannot see that the Public Body had any obligation to edit the Complaint, or that it was unreasonable to forward the Complaint in the form that the Complainant freely chose to write it. As such, disclosing the Complainant's first and last name, e-mail address, and opinions was necessary to enable TransEd to respond to the Complaint; I find that the Public Body complied with section 40(4) when it disclosed that information.

[para 29] I find that the Public Body failed to comply with section 40(4) regarding disclosure of the Complainant's home telephone number and home address. TransEd was reasonably capable of responding to the Complaint using only the Complainant's e-mail address to make contact with him, as it was his chosen method of contact. It was neither necessary for the Public Body to provide any further contact information for the Complainant, nor was it reasonable to disclose further contact information in light of the Complainant's decision to be contacted by e-mail, as indicated on the Form.

[para 30] In closing, I note that the Public Body also argued that disclosure complied with the Act, in part, because by virtue of being contracted to construct the LRT project, TransEd is considered its employee under section 1(e) of the Act.

(e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;

[para 31] I did not find much turned on whether TransEd is an employee, since section 40(1)(c) of the Act is not limited to employees.²

IV. ORDER

[para 32] I make this Order under section 72 of the Act.

[para 33] I order the Public Body to cease disclosing the Complainant's personal information beyond a necessary extent, in contravention of section 40(4) of the Act.

John Gabriele
Adjudicator
/an

² The definition of "employee" is much more germane to determining whether a public body has complied with section 40(1)(h), which was not argued by the Public Body in this case:

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

(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,