

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-41

October 28, 2021

CHILDREN'S SERVICES

Case File Number 007153

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that Children's Services (the Public Body) collected, used and disclosed her personal information in contravention of the Act.

The Complainant states that the Public Body collected her personal information in the course of an investigation regarding someone else, and used that information to open an investigation into the Complainant with respect to her children. The Complainant also states that the Public Body disclosed her personal information without authority.

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

The Adjudicator found that the Public Body had authority to collect the Complainant's personal information for the purpose of conducting an investigation or assessment under the *Child, Youth and Family Enhancement Act* (CYFEA).

The Adjudicator was not satisfied that the Public Body had authority to use the Complainant's personal information when it included her past history with the Public Body as a minor when conducting a safety assessment. The Adjudicator ordered the Public Body to conduct a review of this practice.

The Adjudicator found that the Public Body disclosed the Complainant's personal information without authority, in one instance, but had authority to disclose the personal information to the children's school.

Statutes Cited: AB: *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, ss. 4, 6, 126, 126.1, *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 98-002, F2001-004, F2006-019, F2008-020, F2008-022, F2008-029, F2008-030, F2009-035, F2009-048, F2012-05, F2015-01, F2016-18, F2017-83, F2018-59, F2019-15, F2020-10

Cases Cited: *Alberta Child Welfare v. C.H.S.*, 2005 ABQB 695, *Calgary Board of Education v. Alberta (Office of the Information and Privacy Commissioner)*, 2014 ABQB 189, *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112

I. BACKGROUND

[para 1] The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that Children's Services (the Public Body) collected, used and disclosed her personal information in contravention of the Act.

[para 2] The Complainant states that the Public Body conducted a safety assessment in 2016 in the course of an investigation of SM and PM. These individuals are formerly spouses and have children in common; the investigation concerned the care of those children. The Complainant and SM were partners at the relevant time, and the Complainant also has children.

[para 3] The Complainant states that a member of the team conducting the SM/PM investigation disclosed details of the investigation to an individual who works in the same building; that individual is a friend of the Complainant and informed the Complainant of this disclosure.

[para 4] The Complainant states that she and SM made a complaint about the team member who allegedly disclosed information from the investigation. They made the complaint to the Public Body as well as their MLA.

[para 5] The Complainant states that because she resided with SM, the Public Body conducted a check on her name when performing the safety assessment. Specifically, the Complainant states that the Public Body conducted a CYIM/ISIS check, and noted in the safety assessment that the Complainant had been a child in need when she was a minor. The Complainant states that a CYIM/ISIS check does not appear to have been performed for either SM or PM, who are guardians of their children. (The Public Body explained that CYIM and ISIS are acronyms for its former electronic information system used to maintain child intervention information. The acronym for the current system is CICIO).

[para 6] The Complainant states that a Public Body employee attended her children's school, as well as her home. She states that she was told that they were ensuring her children were not harmed by the SM/PM conflict.

[para 7] The Public Body later opened a file in relation to the Complainant and her children (separate from the file relating to SM and PM). The Complainant raises concerns about the reasons for the Public Body opening this file. She states that a CFS employee told her in a phone call that the Public Body was opening a file into the Complainant and had determined that she had a mental illness and was causing harm to her children.

[para 8] The Complainant states that she later met with a Public Body employee, who said that the Public Body had not reached such a diagnosis, and intended to close the file.

[para 9] The Complainant believes that the Public Body opened an investigation into her in retaliation for the complaint she and SM made regarding the alleged disclosure of investigation details by a team member.

[para 10] The Complainant is also concerned that the Public Body disclosed inaccurate information about her to her children's school, which has resulted in a difficult relationship between the Complainant and her children's teachers.

II. ISSUES

[para 11] The Notice of Inquiry dated April 7, 2021, states the issues in this inquiry as follows:

1. Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?
2. Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?
3. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

If the Public Body is relying on section 39(1)(a), the parties should also make submissions as to whether the requirements of section 41 are met.

4. Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

If the Public Body is relying on section 40(1)(c), the parties should also make submissions as to whether the requirements of section 41 are met.

III. DISCUSSION OF ISSUES

- 1. Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?**

[para 12] 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 13] Sections 4, 6 and 126(3) of the *Child, Youth and Family Enhancement Act* (CYFEA) are relevant. These sections state:

- 4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to*
- (a) a director, or*
 - (b) a police officer.*

- 6(1) If a director receives information in the form of*
- (a) a request for intervention services,*
 - (b) a report under section 4 or 5, or*
 - (c) any other allegation or evidence that a child may be in need of intervention,*
- the director must investigate the child's need for intervention unless the director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds.*

126(3) A director or a person acting on behalf of a director, including an agency providing services on behalf of a director, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or providing services under this Act.

Arguments of the parties

[para 14] The Complainant states that the Public Body conducted a check of her when it conducted a safety assessment in 2016 in the course of an investigation of her partner, SM, and his former partner, PM. Specifically, the Complainant is concerned that the Public Body reviewed the Complainant's past involvement with the Public Body, and included the Complainant's past involvement as a minor in the safety assessment. This check included information the Public Body already had in its possession; therefore, it is better characterized as a *use* of the Complainant's personal information, rather than a collection. I will discuss this aspect of the Complainant's complaint under issue #3.

[para 15] The Complainant is also concerned that after conducting a check on the Complainant with regard to SM and PM's file, the Public Body opened a file on the Complainant and her children. The Complainant states that the Public Body did not give her a reason for opening this file. The Complainant's submissions indicate that she believes the Public Body did not have a valid reason for doing so.

[para 16] With respect to the file opened on the Complainant, the Public Body states (initial submission, at page 4):

On November 29, 2016 the Public Body received a report wherein concerns were raised that the Complainant's children were being exposed to high conflict situations in the home and at the school and there was a risk for potential emotional injury. The report indicated that the RCMP had attended at the elementary school and that the youngest children had witnessed these altercations. The report also indicated additional concerns that the Complainant was informally diagnosing her children and seeking supports and services from the school to accommodate the children's perceived needs (which were not being observed by the school).

[para 17] The Public Body states that it followed up on this report by contacting the RCMP and the children's school. Based on the information obtained, the Public Body moved the file to assessment. It states that it was authorized to collect information about the Complainant and her children pursuant to sections 33(a) and (c) of the FOIP Act, as well as the CYFEA.

Analysis

[para 18] The Public Body states that it received a report expressing concern about the wellbeing of the Complainant's children. The Public Body is prohibited from revealing who provided that report (section 126.1(1) of the CYFEA). The Public Body investigated that report, as it is required to do under section 6 of the CYFEA. The CYFEA expressly permits the Public Body to collect personal information for the purpose of an investigation or assessment.

[para 19] The Complainant objects to the claim that she informally diagnosed her children. However, whether the reporter's claims are true is something the Public Body would determine by investigating the claim. I understand from the parties' submissions that the Public Body closed the file not long after it was opened. Even if none of the reporter's concerns were validated by the Public Body, the Public Body was nevertheless required to conduct an investigation (or assessment) into the report.

[para 20] I accept that the Public Body was authorized under section 33(c) of the FOIP Act to collect the Complainant's personal information, as well as her children's personal information, for the purpose of investigating the report made about the Complainant.

Other concerns raised by the Complainant

[para 21] With respect to the file relating to the Complainant and her children, the Complainant objects to the Public Body's collection of her children's information from their physician. The Public Body states that the Complainant shared information and concerns she had about her children's health with Public Body employees. A copy of a letter from the children's

physician to the Complainant (provided to me by the Complainant) states that the Public Body already had a copy of the physician's Letter of Diagnosis. In her submissions, the Complainant does not object to the collection of her children's medical information more generally, or the relevance of that information to the Public Body's investigation/assessment. Therefore, I will consider only whether the Public Body had authority to collect that information indirectly, in the next section of this Order.

[para 22] The Complainant disagrees with statements made by the Public Body regarding in person meetings Public Body employees had with the Complainant's children. In its submission to this Office during the earlier review of this file, the Public Body said that employees had in-person interviews with four of the Complainant's children at school, on December 20, 2016. The Complainant states that Public Body employees met with two of her children, but that her two youngest children were away from school that day. The Public Body acknowledged in its initial submission that upon review of its records, the younger children were interviewed by Public Body employees at home. The Complainant disputes this point as well, stating that the children had had extensive dental surgery on December 15 and 16, 2016, and were also both sick with the flu. She states that neither child would have been in a position to have an in-person interview with Public Body employees on December 20, 2016.

[para 23] I have no way of confirming whether Public Body employees interviewed the Complainant's children at home. In any event, my conclusions above do not turn on whether these interviews took place.

[para 24] The Complainant has raised other concerns regarding the information about her in the Public Body's file. She states that employees at her children's school "have stated that the social worker claims do not match with the school's claims and were concerned their words were distorted and embellished" (initial submission, at page 6). The Complainant has also alleged that various Public Body employees have fabricated information about the Complainant and her parenting, and that the Public Body's interactions with the children's physician and school have led to a breakdown in the relationship between the Complainant and the physician and school.

[para 25] I do not know what statements school employees may have made to the Public Body, or what they now believe may have been misrepresented. I do not know what might have led to a breakdown in the relationship between the Complainant and her children's physician.

[para 26] The Complainant has not provided sufficient details or information about these concerns for me to make a finding about whether they occurred or how they relate to the Public Body's obligations under the FOIP Act.

[para 27] The Complainant has raised other concerns about the conduct of Public Body employees, including allegations that caseworkers diagnosed her with medical conditions without medical confirmation. This type of conduct does not fall within the scope of the FOIP Act and I will not address these allegations.

2. Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?

[para 28] The Complainant states that the Public Body contacted her children's physician without authority to do so. The Complainant does not appear to object to the collection of her children's medical information more generally.

[para 29] Collection from a source other than the individual the personal information is about is authorized in the circumstances set out in section 34(1). The following are the relevant sections:

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

(a) another method of collection is authorized by

(i) that individual,

(ii) another Act or a regulation under another Act, or

(iii) the Commissioner under section 53(1)(h) of this Act,

...

(g) the information is collected for the purpose of law enforcement,

...

[para 30] Law enforcement is defined in section 1(h) of the Act, to include:

1 In this Act,

...

(h) "law enforcement" means

...

(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,

...

[para 31] The Public Body states that it contacted the children's physician after obtaining consent from the Complainant. It states (initial submission, at page 6):

On January 18, 2017 the Public Body called the Complainant and the Complainant verbally provided the Public Body with her consent to contact her child's physician regarding the Complainant's child's personal medical information.

In reviewing the records the Caseworker notes on January 17, 2017 recorded that the Caseworker to ask mom re: permission to speak with the child's doctor. The Caseworker contacted the

Complainant by telephone January 17, 2017 at 3:46 pm and the Complainant gave approval for the Caseworker to call the Doctor.

[para 32] In its July 7, 2021 submission, the Public Body further states:

On January 10, 2017 the Complainant provided the Public Body with an email that outlined numerous names, contact numbers, addresses, interactions, school personnel, service providers and services provided, reports, etc. with regard to the Complainant and the Complainant's children. Physician information and contact details were included within the email. This information was provided by the Complainant in answer to discussions that arose during the CYFEA authorized investigation of the reports received against the Complainant by the Public Body.

Based upon information received by the Public Body during discussions with the Complainant and received in the Complainant's January 10, 2017 email and details of the reported concerns leading to the Public Body investigation, the Public Body decided to contact the physician for details regarding the diagnoses provided to the Complainant regarding her child. On January 18, 2017 the Public Body called the Complainant to discuss contacting the physician and the Complainant verbally provided the Public Body with her authorization to contact her child's physician regarding the Complainant's child's personal medical information.

[para 33] The Complainant denies that she provided consent for the Public Body to contact the children's physician directly.

[para 34] The Public Body's submission that the caseworker noted that consent was obtained from the Complainant is persuasive. It would have been more persuasive had the Public Body provided me with a copy of the caseworker's notes, so that I could confirm the content. In any event, I do not have to make a determination as to whether the Complainant did provide her consent.

[para 35] In Order F2008-030, the Director of Adjudication accepted that a Child and Family Services Authority conducting an investigation under the CYFEA had authority to collect personal information indirectly under section 34(1)(a)(ii).

[para 36] Order F2016-18 also found that an investigation conducted under the CYFEA falls within the scope of "law enforcement" as defined in the FOIP Act. I accept the Public Body's argument that it collected the children's medical information as part of its investigation/assessment under the CYFEA. Therefore, the collection from the children's physician was authorized under section 34(1)(g) as well.

[para 37] Despite finding that the Public Body had authority to collect the children's personal information indirectly without the Complainant's consent, I agree that the Public Body's practice of obtaining consent is the best practice. I encourage the Public Body to continue this practice; it may also be beneficial to obtain written consent or to clearly document consent, where possible and practicable.

3. Did the Public Body 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 38] 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,

...

(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 39] Section 41 defines what constitutes a “consistent purpose” under section 39(1):

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.

[para 40] The Complainant alleges that the Public Body conducted a check on her when conducting a safety assessment regarding SM and PM, as retaliation for the Complainant making a complaint about the caseworker. She states that the check for prior interactions with the Public Body was not conducted on either SM or PM, and asks why such a check was performed with respect to her only.

[para 41] The Public Body noted in the safety assessment that the Complainant had been a child in need as a minor. This is the information the Complainant has objected to being used by the Public Body.

[para 42] In its July 7, 2021 submission, the Public Body states (at page 7):

The Public Body is required to collect information regarding all persons residing in the home of a child whose family is under a CYFEA authorized investigation by the Public Body, including previous involvement with the Public Body. As such when a search was completed relevant to the Complainant, done in the nature of the investigation, all previous information held by the Public Body was found. This information is relevant in determining the steps to be taken and resources to be provided to the parties of the investigation by the Public Body.

[para 43] I asked the Public Body to provide more detailed arguments as to how the Complainant's information, collected when she was a minor, shares the same purpose as the much later CYIM/ISIS check conducted in 2016. I asked (letter dated August 7, 2021):

I have briefly reviewed the lengthy manual referred to by the Public Body in its submissions (via the link provided in its July submission) and I cannot locate where it directs the Public Body to review prior records relating to any person residing with the children at issue. Please provide a pinpoint citation.

In addition, a policy of the Public Body is not authority under the FOIP Act. The Public Body should explain what provision in section 39 authorized the use of that personal information. In this explanation, the Public Body should be as specific as possible as to why the Complainant's status as a minor is relevant to the file that was being investigated in October 2016, regarding her partner's children. I understand that the Complainant resided in the relevant household and was therefore included in the investigation; however, it is not yet clear why her status as a minor was relevant. It is not sufficient to say that this is the usual practice; if that is the case, the Public Body should explain *why* this is the usual practice.

[para 44] The Public Body states that it performs a history check using the Children's Services electronic information system, for every child, guardian and any other resident of the home. The Public Body explains the purpose as follows (August 31, 2021 submission, at page 3):

The purpose of the History Check is to establish if a child, guardian or any other resident of the home might have caused a child or youth to be in need of intervention. If the check reveals they placed a child in need or was a child in need, a review may be conducted to determine if the circumstances of the intervention in the past has any relevance to the current situation. The past history of a child in need may provide relevant information on how the intervention impacted the child, the results of the intervention and any long term effects that may affect them in the future.

[para 45] The Public Body states that section 3.1.2 of its Enhancement Policy "directs that information is gathered on 'significant persons', 'other persons', 'adults', and 'family composition', and that these categories are not limited to a child's guardian.

[para 46] The Public Body highlights the following relevant points, apparently from this policy:

- Document details of immediate and extended family, and any significant persons in the child's life, including contact information.
- Document details of other persons or agencies having knowledge of, or contact with the child. If there are other children living in the home document their names, dates of birth, gender, distinct physical features and where they attend school.
- Document the family composition and background information: criminal history, addiction issues, mental health issues and employment

[para 47] The first two points clearly relate to information about the child in question. The last point is more relevant to information about the Complainant, who was an adult in the household where the children reside. The Public Body did not provide a copy of its policy; rather, it

provided a link to the policy available on the Government of Alberta website in its initial submission. I have reviewed the policy on the website and cannot locate the last point about family composition. It may be that the Public Body is referring to a version of the policy other than the current policy on the website.

[para 48] The Public Body's argument with respect to its authority under the FOIP Act to use the Complainant's information about her previous history as a child in need is as follows:

The Public Body was authorized under the *Child, Youth, and Family Enhancement Act* (CYFEA) which provides authorization to collect and use personal information for an assessment or an investigation – [sic]

[para 49] The Public Body cited sections 39(a) and (c) of the FOIP Act, as well as section 41. However, the Public Body did not provide any additional detail as to how these provisions apply to the facts in this case.

[para 50] The Public Body points to section 126(3) of the CYFEA, which permits the director, or person acting on behalf of a director, to collect and use personal information for the purpose of conducting an assessment or investigation. However, the use must still be authorized under the FOIP Act, which requires a public body to use personal information only to the extent necessary to enable the public body to carry out its purpose. Past Orders of this Office have found that 'necessary' does not mean 'indispensable' (see Orders F2008-029, at para. 51; F2017-83, at para. 14; F2019-15, at para. 15). However, in this case, the Public Body has not provided any explanation as to why information about the Complainant's history as a child in need is relevant to the investigation of SM's children.

[para 51] With respect to the application of section 39(a), information about the Complainant as a minor was presumably collected for the purpose of providing her with services when she was a minor. In order for the use of that information to be consistent with the purpose of the collection, the use would have to be reasonably and directly connected to providing the Complainant with services as a minor (section 41(a)).

[para 52] It seems reasonable for the Public Body to check whether the Complainant has had interactions with the Public Body as an adult, in order to determine whether there are any concerns about the children residing in the same household as the Complainant. However, the fact that the Complainant was a child in need as a minor is not obviously relevant, and the Public Body has not explained how it is. I am unable to draw an inference as to the Public Body's purposes in accessing information about the Complainant as a minor on the evidence that has been provided to me. Therefore, I cannot accept that the use of the Complainant's information was consistent with the purpose for which it was collected.

[para 53] The Alberta Court of Queen's Bench has considered the use of clients' personal information by a public body in the course of a civil proceeding to be a use as contemplated by section 39(1) of Alberta's Act. In *Alberta Child Welfare v. C.H.S.*, 2005 ABQB 695 (*Child Welfare*), the Court asked whether Alberta Children's Services was entitled to use personal information in its records to defend a lawsuit against it. The Court stated, with respect to consistent use under section 39(1)(a) (at para. 24):

Where files are assembled as a part of a government activity, and litigation arises from that activity, the use of the information to defend or prosecute the litigation has a reasonable and direct connection to the purpose for which the information was collected.

[para 54] In Order F2009-048, a public body was found to have used personal information of a former employee without authority, when it used information from the employee's human resources (HR) file in the course of a legal proceeding. The former employee had testified as a witness in a legal proceeding between the public body and another individual. The public body believed that the former employee's testimony contradicted information in their HR file, and sought to use the information from the HR file in its cross-examination of the former employee.

[para 55] In that case, the public body had argued that this use of the HR information was consistent with the purpose for which it was collected. However, the information in the HR file had been collected for the purpose of managing the former employee's employment; the current legal proceeding did not relate to the former employee or his employment. The public body's argument that information in a particular employee's HR file is collected for the purpose of managing *all* public body employees was rejected. The *Child Welfare* case was distinguished, as that case involved the use of information in an individual's child welfare file for the purpose of defending the public body's actions in providing welfare services *to the same individual*. The public body's use of the former employee's HR information in a legal proceeding involving a different individual was found not to be consistent with the purpose for which it was collected. This analysis was upheld in *Calgary Board of Education v. Alberta (Office of the Information and Privacy Commissioner)*, 2014 ABQB 189.

[para 56] The discussion in Order F2009-048 seems relevant to the facts in this case, insofar as the Public Body has used the Complainant's past interactions with the Public Body as a minor, in the course of an investigation regarding the welfare of other children. The Public Body has not explained how this use of the Complainant's personal information is consistent with the purpose for which it was collected. As was found in Order F2009-048, just because a public body has information in its custody or control, that it believes might be relevant to a particular circumstance, does not mean that the public body has the authority under the FOIP Act to *use* that personal information.

[para 57] The Public Body has also cited section 39(c) as authority for its use of information about the Complainant's history as a minor. However, it has not provided any further argument as to how this provision would apply. It is not clear why information about the Complainant's history as a child in need would be disclosed to the Public Body in the current circumstances, for the same reason is it not clear why its use in these circumstances would be consistent with the purpose for which it was collected.

[para 58] The Public Body also did not adequately explain what the Public Body's usual practice is, with respect to checking an adult's past involvement with the Public Body as a minor. For example, I do not know whether it is done in every case, or only in the presence of particular factors or circumstances. I also do not know whether it is done for every adult in the relevant household.

[para 59] In my August 2021 letter to the parties, I asked the Public Body to address the Complainant's argument that the CYIM/CSIS check was conducted only with respect to her name, and not the name of SM or PM, who are the guardian of the children in question. The check was conducted in October 2016, prior to the file being opened into the Complainant and her children; therefore, the check was conducted in the course of investigating the circumstances of SM's and PM's children. The Public Body's submissions are consistent with this conclusion.

[para 60] The Public Body explained that a check *may* have been performed for SM and/or PM, but that this information may not have been shared with the Complainant. Possibly the Public Body is suggesting that the Complainant received a version of the safety assessment in which information about SM and PM was redacted. The copy of the assessment provided to me by the Complainant does not indicate that any information was redacted. I do not know how the Complainant came to have a copy of the safety assessment conducted with respect to SM's children. The Public Body has said only that it was not in response to an access request. I do not know if the Public Body provided it to the Complainant directly, or if it was provided to SM, who then provided a copy to the Complainant. Therefore, I do not know why the copy of the safety assessment provided to me by the Complainant indicates that a CYIM/CSIS check was performed only with respect to her name. If a CYIM/CSIS check was not conducted with respect to the guardians of SM's children (i.e. SM and PM), then it is even less clear why one would have been conducted for the Complainant.

[para 61] The Public Body has the burden of satisfying me that its use of the Complainant's personal information was authorized under the FOIP Act (see *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112, at para. 108). For the reasons discussed, the Public Body's submissions on this point are insufficient to meet this burden. In other words, because the Public Body has not met its burden to satisfy me that it had authority to use the Complainant's personal information as it did, I can conclude only that it did not have authority.

[para 62] The usual remedy given this finding, is to order the Public Body to stop using the Complainant's personal information the way it did. However, for the following reasons, I do not believe that is the appropriate remedy in this case.

[para 63] My finding that the Public Body did not have authority to use the Complainant's information about her status as a minor is based on the Public Body's insufficient submissions on this point. It remains possible that the program area responsible for conducting investigations and assessments under the CYFEA has a valid purpose for checking whether adults in a household being investigated have had past interactions with the Public Body as minors.

[para 64] In past Orders of this Office, deference has been given to public bodies with respect to the collection, use and disclosure of personal information when conducting investigations (see Orders 98-002, F2001-004, F2012-05, F2015-01, F2018-59). In conducting investigations under the CYFEA, the Public Body must also be given deference when determining what information is reasonably necessary to conduct a comprehensive investigation regarding the welfare of children. It may be that an adult's history with the Public Body as a child in need *is* relevant to such an investigation, but that the Public Body was unwilling or unable to express how, despite

my requesting additional detail on this point in two separate letters (June 16, 2021 and August 7, 2021).

[para 65] For these reasons, I will not order the Public Body to end this practice, or to stop using the Complainant's personal information in this manner. However, section 72(4) grants me authority to specify terms and conditions in an order; I will order the Public Body to conduct a review of its practice of using/accessing individuals' records relating to their status as a child in need, when conducting investigations or assessments under the CYFEA involving those individuals as adults.

[para 66] The Public Body should be clear about its practice: in what circumstances these checks are conducted, and who should be included in the check. The Public Body should determine the specific purpose for using the personal information of individuals who were designated as children in need as minors, when conducting investigations that involve those individuals as adults. In other words, the Public Body should determine when and why an adult's past interactions with the Public Body as a child in need is relevant to a current investigation. This review should include input from the program area that conducts assessments and investigations under the CYFEA.

[para 67] The Public Body also must determine its authority under the FOIP Act for using personal information in this manner, bearing in mind the discussion in this Order.

4. Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

[para 68] Section 40 of the Act sets out the circumstances in which public bodies are authorized to disclose personal information. The relevant provisions 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 of the performance of the duties of the officer, employee or member,

(i) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed

...

(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 69] The Notice of Inquiry states the following with respect to this issue:

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.

[para 70] Section 126(1) of the CYFEA is also relevant. It states:

126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the Freedom of Information and Protection of Privacy Act, in proceedings under this Act, in accordance with Part 2, Division 2 or this Part or as follows:

- (a) to any person or organization, including an agency providing services to a child, if the disclosure is necessary to plan services for or provide services to the child or the child's family or to plan or provide for the day-to-day care or education of the child;*
- (b) to the guardian of the child to whom the information relates or the guardian's lawyer;*
- (c) to the child to whom the information relates or the child's lawyer;*
- (d) to any person employed in the administration of child protection legislation in another province or territory of Canada;*
- (e) to any person with the written consent of the Minister.*

Disclosure by caseworker

[para 71] The Complainant states that a Public Body caseworker (TB) disclosed personal information of the Complainant and her partner, SM, to another Public Body employee (AS) during a conversation in a parking lot. AS is a friend of the Complainant and informed the Complainant of this disclosure.

[para 72] The Public Body states that it investigated this allegation and determined that no breach occurred. The Public Body provided me with a copy of the Privacy Breach Report Form completed by a manager with the Public Body. I accepted this Report *in camera* as it contains personal information of third parties. I will discuss only details from that Report that do not reveal third party personal information.

[para 73] The Public Body states that this Report was provided to this Office, and that this Office found that there was no a breach of privacy in that case. The Public Body provided me only with the Report it states was provided to this Office. I do not have a copy of what this Office might have said in response. Notably, there is no obligation under the FOIP Act for a public body to provide a breach notification report to this Office; there is also no specific authority under the FOIP Act to respond to a voluntary breach notification report. In any event, I am not bound by any response this Office might have provided as a result of the Report provided by the Public Body to this Office.

[para 74] The Report states that TB and AS were discussing a personal matter. The Report states that TB provided a response to AS that discussed a situation that TB had been working on,

but that TB did not reveal the name of the clients involved in that situation. The Report states that AS believed that TB was discussing SM's family circumstances (which involved the Complainant), due to particular details provided by TB.

[para 75] In its submission, the Public Body states (initial submission, at page 19):

The Caseworker used the family's situation as an example without disclosing direct personal details of the case. It is believed that [AS] assumed that the Caseworker was talking about the named family and went to the Complainant to state that the Caseworker had been discussing the named family in detail. This information was inaccurate. At no time did [AS] tell the Caseworker that [AS] felt that she was discussing the named family case or that [AS] went to the named family and said that the Caseworker was discussing that specific case.

[para 76] According to the Report, in the discussion with AS, TB provided details such as the profession of the client's mother, the number of children the client has, and the community the client lived in.

[para 77] It is not clear what the author of the Report means when he says that it was inaccurate that TB was discussing SM's situation, as AS assumed. The Report acknowledges that TB was discussing a case she was involved with; this indicates that TB did not make up a hypothetical situation. The Report indicates that the author believed that the situation described by TB in her conversation *could have been* about another family (other than the Complainant and SM); however, if the case discussed by TB involved a client *other than* SM, the Public Body has not said so (in the Report or the submissions to this inquiry).

[para 78] The details discussed by TB were reasonably specific. The profession of the client's mother was specific, rather than general (e.g. 'nurse' rather than 'health care worker'); that, together with the number of children the client had, and the fact that the client was dealing with CFS at the time, provided additional detail. Further, in 2016 (when the disclosure occurred), the population of the community the client was identified as residing in was approximately 14,000 (according to a Government of Alberta website).

[para 79] That the client's name was not provided does not mean that the client – or anyone else involved in the file, including the Complainant – was not identifiable. On the basis of the information before me, on a balance of probabilities it seems that the client was identifiable to AS. The Public Body has not denied that SM *was* the client being discussed; it states that it *could have been* someone else, and that a name was not provide by TB.

[para 80] In Order F2008-020, the adjudicator discussed whether a surveillance camera video contained personal information of an individual recorded on the video. The public body had argued that the individual was not clearly identifiable on the video. The adjudicator found (at para. 30):

Under section 1(q) of the Act, a record means a record of information in any form and specifically includes "images". I find that the Video contains personal information, as it consists of the images of the individuals appearing in the Video, being the members involved and the unidentified male. Although the Applicant argues that the unidentified male has not been

conclusively *identified*, he is nonetheless *identifiable*. An individual does not have to be identifiable by every person reviewing a particular record in order for there to be personal information about that individual; the individual needs only to be identifiable by someone. In this particular case, even if neither the Public Body nor I can conclusively identify the individual in the Video, he is identifiable by other persons viewing the Video, such as his friends, his family members and himself.

[para 81] That case is different from the facts before me, insofar as the individual in the video is a specific individual, and the question was whether the images in the video could serve to identify that individual. In this case, the Public Body has argued that the client discussed by TB could have been a client other than SM.

[para 82] On a balance of probabilities, I find it more likely than not that when TB discussed the details from her case with AS, she assumed that AS would not be able to identify SM from the discussion. I come to this conclusion because the Public Body has acknowledged (in the Report) that TB was discussing a case she had at the time. TB was the caseworker working with SM at the time. The Public Body has not provided any indication that the client's details were not the same details as describe SM's situation. The community that TB identifies the client as residing in is the same community as SM resided in; the population of this community is reasonably small. The Public Body's submissions, including the Report, do not state that TB was discussing another client, or a hypothetical situation; the Public Body merely posits that this *could have been* the case.

[para 83] It seems likely that the details discussed by TB would not have rendered SM and the Complainant identifiable to anyone not already familiar with their circumstances. However, information needn't identify an individual to *everyone*; if the information identifies the individual it is about to even one other individual, then it is identifiable (following Order F2008-020, discussed above). In this case, it appears the individuals were identifiable to AS as SM and the Complainant.

[para 84] The FOIP Act applies only to recorded personal information. The disclosure by TB occurred during a discussion. However, an oral disclosure is considered a disclosure of personal information under the FOIP Act if it is a disclosure of recorded information. In other words, if the personal information is not recorded, the FOIP Act does not apply to its disclosure; however, if the personal information is recorded, then a verbal disclosure fall within the scope of the Act (see Orders F2006-019, at para. 83; F2008-022, at para. 11; F2009-035, at para. 11; F2020-10, at para. 11). In this case, TB is the caseworker working on SM's file. It is reasonable to conclude that the information TB discussed with AS is recorded information from SM's file. Nothing in the Public Body's submissions indicate otherwise.

[para 85] Section 126(1) of the CYFEA permits Public Body employees to disclose personal information if the disclosure "is necessary to plan services for or provide services to the child or the child's family or to plan or provide for the day-to-day care or education of the child." The Public Body's submission states that the information was disclosed during a personal conversation. There is no indication that the disclosure related to the caseworker's job duties in relation to SM's file.

[para 86] I find that the Public Body disclosed the Complainant's (and SM's) personal information to AS without authority.

[para 87] The Report states that the author of the Report reminded all staff at the relevant CFS office that "use of the specific family's details as examples when assisting other clients or other government employee's [sic] should be done with extreme caution due to the possibility that within a small community, people may determine who is being used as the example."

[para 88] In my view, this reminder is insufficient. All CFS staff should be reminded that any use or disclosure of personal information must be in accordance with the FOIP Act. For example, a caseworker might discuss details of a file with a supervisor or coworker, for the purpose of making a decision about the file. It is unclear when it would ever be appropriate to disclose details of a file in the course of a 'personal discussion' as was the case between TB and AS (according to the Public Body's submission). Further, CFS staff should also be reminded that omitting a client's name is not always sufficient to anonymize that client, such that personal information is not disclosed. I will order the Public Body to train its CFS staff regarding the appropriate management of personal information.

Disclosure to the school

[para 89] The Complainant states that the Public Body disclosed false information to her children's school, which caused a breakdown of the relationship between the Complainant and the school. This false information appears to relate to diagnoses about the Complainant and/or her children.

[para 90] The Public Body states (initial submission at page 18):

The only information shared [with the school] was that concerns had been received resulting in a child intervention investigation being opened. Subsequently, information was collected from the various schools' perspectives about the Complainant's children through a questioning approach (how are the children doing, strengths, challenges, involvement with parents, etc.). The school was attended by the Public Body prior to the home visit on December 20, 2016, so the Public Body did not possess much information at that point other than the initial report that was received by the Public Body. There was limited contact between the Public Body and the school during the investigation.

The Complainant states that false information was shared with the school resulting in a breakdown of that relationship. However, the Public Body did not share information outside of what is allowed by CYFEA and the CS Enhancement Policy Manual. School employees witnessed various behaviours regarding the Complainant that allowed the school to gather their own information. Any decisions made by the school regarding supports and services are based on observations made by school personnel and not on any information or records that are alleged to have been provided by the Public Body. It was indicated to the Public Body that "the children would continue to receive support and there is ongoing involvement from the various schools, community services and health professionals involved".

[para 91] The Public Body further clarified that it is able to conduct investigations “with very little sharing of personal information and as such the Public Body only has to state that there are existence of concerns and that a file has been opened” (July 7, 2021 submission, at page 8).

[para 92] It is not clear specifically what personal information the Complainant believes was disclosed by the Public Body to her children’s school.

[para 93] It seems clear that the Public Body disclosed the fact that it was conducting an investigation that involved or affected the Complainant’s children. I have already found that the Public Body was authorized to conduct that investigation, and to collect personal information for the purpose of conducting that investigation. In order for the Public Body to collect information it required from the school, the Public Body needed to disclose some minimal information, such as the authority for its collection (i.e. that it was conducting an investigation). Therefore, the disclosure was for the same purpose for which it was collected, and was authorized under section 40(1)(c).

[para 94] The Complainant has not provided sufficient detail to find that the Public Body provided false information to the school. The Complainant appears to disagree with conclusions made by the school regarding her children’s diagnoses. I do not know how this disagreement relates to information that may have been disclosed by the Public Body, or specifically what information was disclosed by the Public Body. Without this detail, I cannot find that personal information was disclosed by the Public Body to the school without authority.

[para 95] Section 40(4) of the FOIP Act requires the Public Body to disclose personal information only to the extent necessary to meet its purpose. As discussed, ‘necessary’ does not mean ‘indispensable’.

[para 96] A similar situation was discussed in Order F2015-01, in which an investigator with the Assured Income for the Severely Handicapped (AISH) disclosed the fact that she was investigating an AISH claim to an organization, in order to determine the claimant’s eligibility for benefits. In that order, it was found that had the AISH investigator not conveyed the information she did to the organization, “she would not have been able to obtain information she sought. In other words, the investigator could not have requested the information she sought without divulging that she was an AISH investigator, and whom she was investigating” (at para. 34).

[para 97] I make a similar finding in this case. I have insufficient information to conclude that the Public Body disclosed more information than was necessary to obtain information from the school that was reasonably necessary for its investigation.

[para 98] I find that the Public Body did not disclose personal information to the school beyond what was necessary for its investigation.

IV. ORDER

[para 99] I make this Order under section 72 of the Act.

[para 100] I find that the Public Body had authority to collect the Complainant's personal information, and her children's information. I also find that the Public Body had authority to collect the children's medical information from their physician.

[para 101] I find that the Public Body failed to satisfy me that it had authority to use the Complainant's personal information when it included her past history with the Public Body as a minor when conducting a safety assessment. I order the Public Body to conduct a review of this practice, as set out in paragraphs 65-67 of this Order.

[para 102] I find that the Public Body disclosed the Complainant's personal information without authority. I order the Public Body to stop disclosing personal information in this manner, I further order the Public Body to train its CFS staff regarding the appropriate management of personal information, as discussed at paragraph 88 of this Order.

[para 103] I find that the Public Body had authority to disclose the Complainant's personal information to her children's school.

[para 104] I order the Public Body 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.

Amanda Swanek
Adjudicator