

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-50

December 10, 2021

CITY OF CALGARY

Case File Number 009034

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that the City of Calgary (the Public Body) contravened sections 35 and 40 of the *Freedom of Information and Protection of Privacy Act* (the Act). Specifically, the Complainant alleged that the Public Body failed to take reasonable steps to determine the accuracy of a third party statement, alleging that the Complainant threatened to kill her and her dog. The Complainant also alleged that the Public Body contravened the Act when it disclosed the statement to numerous employees.

The Adjudicator found that the Public Body did not establish that it was permitted to disclose the Complainant's personal information to all of the employees that it did, but found that it was permitted to disclose it to some of the employees under section 40(1)(h).

The Adjudicator found that section 35(a) did not apply in this case, since the Public Body had not used, and had not retained to use, the Complainant's personal information to make a decision directly affecting him.

The Adjudicator ordered the Public Body to cease disclosing the Complainant's personal information to employees to whom it was not permitted to disclose it.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i); 33(c); 35, 35(a); 40; 40(1), 40(1)(c), 40(1)(h), 40(1)(q), 40(1)(x), 40(1)(ee); 40(4); 72.

Authorities Cited: AB: Orders 97-020, 98-002, F2013-50, F2017-83, and F2021-03.

I. BACKGROUND

[para 1] The Applicant states that on November 10, 2017, he and his dog were attacked by another individual's (the Third Party's) dog. The Applicant then filed a complaint about the dog attack with the City of Calgary (the Public Body). A Peace Officer with the Public Body's Calgary Community Standards (CCS) business unit investigated the complaint about the dog attack with a view to whether the Third Party had violated bylaw 23M2006 – the Responsible Pet Ownership bylaw.

[para 2] Through information received in response to an access to information request concerning the Public Body's investigation into the dog attack, the Complainant learned that the Public Body had issued a "Location Alert" (the Location Alert) about him.

[para 3] The Location Alert is an e-mail stating the following about the Applicant:

Please be advised that [name of the Complainant] who currently resides at [Complainant's address] has been reported to have uttered threats, including threatening to kill a dog owner and poison the dog.

[para 4] The Public Body issued the Location Alert after receiving information from the Third Party in the course of its investigation into the dog attack. The Third Party stated to the Peace Officer carrying out the investigation that the Complainant had become aggressive and "threatened to kill her and her dog."

[para 5] While the alleged threats were directed at the Third Party and her dog, the Public Body viewed the alleged threats as indicating danger to CCS staff. After reviewing the information about the alleged threats gathered by the investigating Peace Officer, a business analyst with the Public Body issued the Location Alert. The Location Alert was sent to everyone on the Public Body's Location Alert e-mail list (the Alert List).

[para 6] The Complainant complained to this Office that the Public Body disclosed his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) when it sent the Location Alert. The Complainant further complained that the Public Body failed to take reasonable steps to ensure his personal information was accurate and complete, as required by section 35 of the Act.

[para 7] Investigation and mediation were authorized to try to resolve the issues raised in this Inquiry. In the course of reviewing its practices, the Public Body determined that there were six people on the Alert List who did not need to receive location alerts; the Public Body initially removed five of them, and later removed the sixth, along with three others.

[para 8] Despite the changes to the Alert List, the matter was not settled and proceeded to inquiry.

II. ISSUES

Issue A: Did the Public Body disclose the Complainant’s personal information in contravention of section 40 of the Act when it issued a Location Alert email to individuals on the CCS Location Alerts mailing list?

Issue B: Did the Public Body make every reasonable effort to ensure the Complainant’s personal information was accurate and complete as required by section 35(a) of the Act?¹

III. DISCUSSION OF ISSUES

Issue A: Did the Public Body disclose the Complainant’s personal information in contravention of section 40 of the Act when it issued a Location Alert email to individuals on the CCS Location Alerts mailing list?

[para 9] The Complainant’s name and address are his personal information under section 1(n)(i) of the Act. The allegation in the Location Alert that the Complainant “...has been reported to have uttered threats, including threatening to kill a dog owner and poison the dog.” along with his name and address, is also his personal information under section 1(n) of the Act. The information is about him, and identifies him.

[para 10] A large portion of the Complainant’s submissions on this issue focused on disagreements that he had arising out of the mediation and investigation process that took place before this Inquiry. Since this Inquiry is a *de novo* matter, I have disregarded those comments. I note that the Complainant continues to assert that the Public Body did not comply with the Act, although he does not provide much detail in his argument. The Complainant argues generally that the Public Body “does not have an absolute right to circulate inflammatory unverified information.” I agree with the Complainant’s assertion that the Public Body does not have such an absolute right. The Act greatly curtails any public body’s ability to circulate personal information, including that which is inflammatory and unverified. The question in this case, however, is whether the Public Body, under the circumstances in this case, circulated the Location Alert in a manner permitted by the Act.

[para 11] Regarding individuals who have since been removed from the Alert List, the Public Body does not make any argument that the Location Alert should have been shared with them. Accordingly, there is no evidence that the Public Body complied with the Act when it sent these individuals the Location Alert, and I must find that it did not. I

¹ I note that the Notice of Inquiry incorrectly listed this issue as whether the Public Body complied with section 35(1); the Act does not contain a section 35(1).

now turn to considering whether the Public Body complied with the Act when it sent the Location Alert to those who remain on the Alert List.

[para 12] The Public Body argues that section 40 of the Act is not engaged in this case since the Location Alert only went to its employees, meaning that the Complainant's personal information was not disclosed to anyone outside of the Public Body. However, the Act contemplates limitations on disclosure to public body employees. In particular, section 40(1)(h), discussed below, limits disclosure among public body employees to situations where the information is necessary to the performance of duties.

[para 13] The Public Body argues that disclosing the Complainant's personal information in this case is permitted under sections 40(1)(c), (h), (q), (x), and (ee). I do not consider all of the Public Body's arguments since I find that disclosure was permitted under section 40(1)(h).

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,

[para 14] The term "necessary" as used in section 33(c) of the Act was considered and interpreted in Order F2017-83. The Adjudicator stated at para. 14,

In Order F2008-029, the Director of Adjudication discussed the meaning of "necessary" in relation to a disclosure of information for the purposes of meeting the goals of a program of the Public Body. She said:

[...] I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. [...]

[...] Again, I find that "necessary" in this context does not mean "indispensable", and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program.

In my view, this analysis applies equally to collection and use of personal information.

[para 15] Given the similar use of the term "necessary" in sections 33(c)² and 40(1)(h), I afford the term "necessary" in section 40(1)(h) the same interpretation as that given to section 33(c).

² 33 No personal information may be collected by or for a public body unless

(c) that information relates directly to and is necessary for an operating program or activity of the public body

[para 16] The Public Body provided a chart listing everyone remaining on the Alert List (after changes made during mediation/investigation), as well as their job duties and a brief reason why that person should have received the Location Alert. Everyone on the Alert List is an employee or officer of the Public Body. With the exception of the Public Body's 311 Business Advisor, all of people on the Alert List are Peace Officers of various ranks and titles, charged with some aspect of bylaw enforcement. The Peace Officers of lower rank and title, among other duties, carry out field investigations, while those of higher rank and title, in addition to carrying out field investigations in some cases, also supervise, assist, and direct those of lower rank.

[para 17] The Public Body explained that personal information in the Location Alert was necessary for the performance of the Peace Officers on the Alert List since they were either involved in the investigation into the dog attack, or could have other dealings with the Complainant regarding animal offences or other bylaws. The Public Body states, and I agree, that it is reasonably necessary to inform Peace Officers in the field of potential threats or dangers that they may face. For those Peace Officers who have the responsibility to supervise, assist, or direct lower ranking Peace Officers, I also find that the personal information in the Location Alert is reasonably necessary to carrying out their duties in respect of supervising, assisting, or directing. Such duties cannot be properly carried out without awareness of the situations, including threats or dangers, which Peace Officers in the field may face.

[para 18] The 311 Business Advisor on the Alert List is responsible for entering information into the Public Body's Customer Service Request (CSR) system which attaches locations alerts to relevant addresses so that CCS employees conducting business at the address in the future can be made aware of them. This task could not be completed without an awareness of the personal information in the Location Alert, and is thus necessary to performance of the 311 Business Advisor's duties.

[para 19] I now consider whether the Public Body complied with section 40(4) of the Act when it sent the Location Alert to those who remain on the Alert List. 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 20] I find that the Public Body complied with section 40(4). The Location Alert was an e-mail sent to those for whom receiving the personal information in it was necessary to perform their duties. There is no indication that the Location Alert went elsewhere, or that any personal information about the Complainant that was not necessary to performance of those duties was included in it.

Issue B: Did the Public Body make every reasonable effort to ensure the Complainant's personal information was accurate and complete as required by section 35(a) of the Act?

[para 21] Section 35(a) of the Act states,

35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

(a) make every reasonable effort to ensure that the information is accurate and complete, and

[para 22] The Complainant alleges that the Public Body failed to comply with section 35(a) in several ways. First, he denies making the alleged threats reported by the Third Party and argues that the Public Body took no steps to determine whether what the Third Party alleged he said was true. Second, the Complainant argues that the Public Body is also misstating what the Third Party alleged. Specifically, the Complainant notes that the Public Body describes that the Third Party alleged that he threatened to “kill her and her dog” while the Location Alert states that he was reported to have threatened to “poison the dog.” The Complainant argues that the reference to “poison” was made by the Public Body, and was not something alleged by the Third Party.

[para 23] As to whether the Public Body used his personal information to make any decisions that directly affect him, the Complainant states that because of the Location Alert, bylaw officers would no longer attend his residence, which required him to attend the Public Body in person to follow up on his complaint about the dog attack. The Complainant further alleges that the Public Body’s bylaw officers would not respond to his complaint about a subsequent attack by the same dog, and that he had to again attend in person in order to bring a complaint about a subsequent attack forward.

[para 24] The Public Body advances several arguments supporting its position that section 35(a) does not apply in this case. One is that section 35(a) is not meant to apply to the type of personal information in this case i.e. third party information about someone else. There are cases in support of this conclusion. The Adjudicator in Order F2013-50 considered that issue, and concluded at para. 162,

I agree with the Director of Adjudication’s interpretation of section 35. Section 35 is not engaged by personal information in relation to which a decision maker must make findings of fact. Rather, it applies to information that can be readily ascertained by reference to data. An example of the kinds of information to which section 35 applies is a birthdate or a social insurance number.

[para 25] However, section 35(a) also encompasses fair information practices, which include accurate recording of third party statements. Former Commissioner Work commented on fair practices in Order 98-002 at para. 85:

Section 34 [now section 35] incorporates a fundamental principle of “fair information practices”, in that it requires that public bodies, who use personal information to make decisions about individuals, ensure that the personal information is accurate and complete. As stated in Ontario Investigation I95-031M, “The importance of this ‘data quality’ principle cannot be overstated; its absence can lead to serious consequences.”

[para 26] In Order 97-020, former Commissioner Work noted the importance of accurately recording third party statements, particularly if a decision will be made in light of such information. He stated at para. 127,

...That reason involves maintaining the integrity of the record in certain situations, such as investigations in which a third party's statements have been recorded. In investigations, there is a need to record statements accurately, in order later to make a decision relating to what was said, and to understand the basis on which a decision was made. Accordingly, a third party's statement of fact cannot be corrected, even if that statement of fact is in error. The statement does not appear for the truth of it; it appears for the fact that it is what was said, truthful or not.

[para 27] Accordingly, I consider that while the Public Body may not be required to take reasonable steps to ascertain whether the Complainant made the threats alleged by the Third Party, it appears it does have to take reasonable steps to ensure that it accurately recorded what the Third Party alleged. In the present case it is not clear that the Public Body did so. While the Public Body's submissions indicate that the Third Party stated that the Complainant "threatened to kill her", which was accurately reported in the Location Alert, the Public Body also states that the Third Party stated that the Complainant threatened "to kill her dog" whereas the Location Alert references a threat to "poison the dog." The Public Body does not explain the discrepancy between "threat to kill" and "threat to poison." However, for the reasons below, section 35(a) does not apply in this case, regardless of the discrepancy.

[para 28] The Public Body also argues that section 35(a) does not apply in this case since the Complainant's personal information was not used to make a decision that directly affects the Complainant. For the following reasons, I agree with the Public Body.

[para 29] While the Complainant alleges that he was required to attend the Public Body in person as a result of the Location Alert, he does not provide any particulars of the facts of his allegation such as dates or the circumstances under which such requirements were imposed, nor does he explain how he reached the conclusion that the Location Alert was a factor. The Complainant's allegations in this regard are not much more than bald assertions that something he alleges the Public Body did, with which he disagrees, must be because it used his personal information in the Location Alert to make a decision.

[para 30] The Public Body did not comment directly upon the Complainant's allegations in the preceding paragraph. Rather, the Public Body addresses the role that the Complainant's personal information in the Location Alert has played in its decision making processes. In an affidavit sworn by its Access and Privacy Analyst, who was assigned to address the Complainant's complaint about disclosure, the Public Body swears that it has not used the information *in the Location Alert* to make any decisions directly affecting the Complainant. I consider that the Public Body is in the best position to know what information it considers when making decisions that affect the Complainant, and I see no reason to doubt the truth of what its Access and Privacy Analyst has sworn.

[para 31] In light of the above, while it is unknown whether the Public Body has ever used the Complainant's personal information to make decisions that affect him³, I am satisfied that the Complainant's personal information in the Location Alert was not used in any such decisions.

[para 32] I note that section 35(a) does not require a Public Body to actually make a decision directly affecting the Complainant before it applies. Section 35(a) is worded prospectively, and applies when personal information *will be used* to make a decision. In some cases, as here, where information is retained in a database (the Public Body's CSR system) section 35(a) may apply if there is evidence that the information in the database is intended to be used to make decisions directly affecting an individual. In Order F2021-03 at para. 21, the Adjudicator found that information was placed in a police database (Edmonton Police Reporting and Occurrence System or EPROS), for use in making decisions that would directly affect an individual, such as whether to place an individual under arrest. As such the Adjudicator found that when personal information was entered into EPROS section 35(a) applied to it despite that it was not known exactly when a decision would be made using the information (Order F2021-03 at para. 25). In contrast, the Adjudicator also recognized that where there is no evidence that information will be used to make a decision directly affecting an individual, then section 35(a) does not apply (Order F2021-03 at para. 23).

[para 33] In the case at hand, there is no evidence that suggests the information in the Location Alert will be used to make a decision directly affecting the Complainant. The evidence suggests that the personal information from the Location Alert was entered into the CSR system so that the Public Body's employees can be made aware of it, and take precautions in conducting their work that they may feel are necessary. Any suggestion that such decisions would affect the Complainant, and if so, whether they would affect him directly, is speculative at this point. It would not be appropriate or fair to conclude, on the basis of speculation about how the Complainant's personal information may be used, that section 35(a) applies in this case. That said, if, in the future, the Public Body finds itself faced with an as yet unforeseen decision that directly affects the Complainant and wishes to use the personal information in the Location Alert to make that decision, its responsibility to comply with section 35(a) will arise.

[para 34] Since section 35(a) does not apply in this case, I do not need to consider whether the Public Body has taken reasonable steps to ensure the accuracy and completeness of the Complainant's personal information, and I make no comment on that matter.

[para 35] In closing, I recognize that it is frustrating for the Complainant that the Public Body retains the Third Party's allegations, which he ardently denies. The Act, however,

³ The submissions from the parties indicates that they have had dealings with each other beyond those with which this Inquiry is concerned, and that the Public Body likely has more personal information about the Complainant than what is in the Location Alert.

permits such practice. Indeed, one of the rationales for retaining personal information, even if it is inaccurate, is to preserve an accurate record of what a public body does, even if a correction to information may be in order. See, for example, Order F2021-03 at para. 82.

IV. ORDER

[para 36] I make this Order under section 72 of the Act.

[para 37] I order the Public Body to cease disclosing the Location Alert to employees removed from the Alert List.

[para 38] I confirm that the Public Body complied with section 40 of the Act regarding employees who remain on the Alert List.

[para 39] I confirm that the Public Body complied with section 35(a) of the Act.

John Gabriele
Adjudicator
/bah