

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-38

August 30, 2022

TOWN OF PENHOLD

Case File Number 012758

Office URL: www.oipc.ab.ca

Summary: The Complainant complained to the Commissioner that the Town of Penhold had collected his personal information on CCTV footage and then issued a traffic ticket for failing to stop at a stop sign outside a fitness facility.

There was some uncertainty as to whether the Public Body had collected the Complainant's personal information from CCTV cameras. The Complainant pointed to a letter he had received from the Public Body referring to CCTV footage; the Public Body explained that the CCTV footage had been overwritten and was therefore unavailable for the purpose of issuing the ticket; the Public Body also explained that the CCTV camera footage did not provide sufficient detail to enable identification of drivers.

The Adjudicator determined that it did not matter whether the Public Body had collected the Complainant's personal information using CCTV cameras, as it would have the authority to collect this information for the purpose of law enforcement in any event. Law enforcement is a purpose for which a public body may collect personal information about an individual without providing the individual notice about the collection.

The Adjudicator confirmed that the Public Body had collected the Complainant's personal information in compliance with Part 2 of the FOIP Act

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 72]

Case Cited: AB: Order F2011-007

1. BACKGROUND

[para 1] The Complainant received a ticket under the *Traffic Safety Act* from the Town of Penhold (the Public Body). It stated:

On 14 April, 2018 at approximately 7:58 pm Community Peace Officer [...], witnessed a vehicle bearing your Alberta Licence Plate [...], turn onto Hwy 42 from Waskasoo Ave without stopping at the stop sign. Officer [...] obtained your licence plate by use of binoculars and took note of your plate. Officer [...] was in the middle of towing a vehicle and unable to stop your vehicle at the time of the infraction. After the vehicle was towed Officer [...] went upstairs at the multiplex and utilized building security camera footage to confirm the infraction.

Enclosed is a violation ticket A88354582R for 160(1) Registered Owner in contravention of: "Section 37(A) Fail to Stop at Stop Sign" under the Traffic Safety Act. This ticket is given to you as the registered owner of the vehicle at the time of the infraction. Please note R/O tickets do not carry any demerit points.

[para 2] On April 10, 2019, the Complainant made the following complaint to the Commissioner:

The concerns I have with the ticket are as follows: I received a letter in the mail outlining the events of me receiving the ticket, as I recall the letter indicated I went through a stop sign in Penhold, the offence was noticed by a peace officer who noticed my licence plate number. There was no photo of my car or licence, they then went to the multiplex fitness facility in Penhold where I had been exercising at and went through the CCTV or video footage of me there and used the video footage of me to issue a traffic ticket.

My concern is that I was being videotaped without my knowledge and further, that my personal movements had been tracked and used to issue a ticket.

I paid my ticket as the letter indicated I had run a stop sign and I don't have an issue with that, what I take issue with is that a CCTV video of me was recorded and made available to track my movements, without my knowledge.

I see signs in other fitness facilities that video recording is prohibited unless authorize[d], I am now wondering if the video recording of me was authorize[d] for this purpose, to enforce traffic tickets and what safeguards to my privacy are overlooked to issue a ticket.

[para 3] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. The SIPM asked the Public Body about its use of CCTV cameras and to explain why the peace officer had written "no video" when the letter accompanying the ticket had indicated that there was video. In her mediation overview letter, which was provided to both parties, the SIPM provided the following account of her investigation:

The Public Body provided this Office with copies of the ticket, the Officer's notes and the Peace Officer appointment. The Public Body responded to the complaint as follows:

Officer [...] explained that while waiting to deal with another issue, he observed multiple vehicles running the stop sign located on Waskasoo Avenue at Hwy 42. Officer [...] stated

he used binoculars to observe vehicles from the Town Office Board Room in order to obtain license plate numbers so that he could issue tickets [...] Officer [...] observed 18 infractions that evening for vehicles not stopping at the stop sign. When he was able, Officer [...] went to the police cruiser and using the MOVES (Motor Vehicle System) software, only accessible with Level 1 Peace Officer status, currently known as ROADS, searched each of the license plates in order to issue the appropriate violation tickets.

[...]

This initial response did not address whether the Officer had collected any information from a video recording to issue the traffic ticket. However, on the copy of the ticket, the officer had marked "video" under "Exhibits." Conversely, his handwritten notes stated "no video" next to the Complainant's vehicle information. The Public Body was asked to explain this discrepancy.

The Public Body explained that that the Officer's notes reference the video surveillance camera system it has surrounding the *outside* of the multiplex. The Officer did not access any video footage from inside the Fitness Centre. The Officer had checked the Peace Officer cameras in his office; however, the cameras reset every five minutes if no movement is detected; therefore he was unable to print footage for all 18 infractions. It stated that the cameras can only be accessed by Peace Officers and are not sophisticated enough to pick up plate information so the video footage would not have provided additional information other than a repeated glance of the 'fail to stop' violation.

[para 4] The Complainant requested an inquiry on the following grounds:

- The discrepancy between the Officer's notes and the letter as to whether the Officer accessed CCTV footage of him.
- When surveillance began and whether it included him exercising at the multiplex centre.
- What identifying characteristic of his were used to connect him to the ticketed vehicle and/or how he was connected to the vehicle.
- How long has the camera been used as an 'infraction tool',
- When was the camera certified and inspected for accuracy and used for policing and enforcement.
- The necessity of the Officer accessing CCTV footage if he had already identified his license plate with binoculars.
- Lack of signage in the complex's exercise room indicating that there was surveillance and to know where else in the building surveillance is conducted.
- What evidence was there of the Complainant's infraction, as there was no photo of his license plate?
- Why was the Complainant the only person under surveillance that day to have "no video" noted next to his name?

[para 5] Former Commissioner Clayton agreed to conduct an inquiry regarding the issues raised by the Complainant.

II. ISSUE: Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the FOIP Act?

[para 6] "Personal information" is defined by section 1(n) of the FOIP Act as "recorded information about an identifiable individual". This provision states:

I In this Act,

- (n) “personal information” means recorded information about an identifiable individual, including
- (i) the individual’s name, home or business address or home or business telephone number,
 - (ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,
 - (iii) the individual’s age, sex, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,
 - (vi) information about the individual’s health and health care history, including information about a physical or mental disability,
 - (vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,
 - (viii) anyone else’s opinions about the individual, and
 - (ix) the individual’s personal views or opinions, except if they are about someone else[...]

[para 7] The FOIP Act prohibits public bodies from collecting personal information except in the circumstances set out in section 33. This provision states:

- 33 No personal information may be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,
 - (b) that information is collected for the purposes of law enforcement, or
 - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

[para 8] Section 33(b) of the FOIP Act authorizes a public body to collect personal information for the purposes of law enforcement. “Law enforcement” is defined by section 1(h) as including policing and police investigations, or proceedings that could

lead to penalties or sanctions. Enforcing the *Traffic Safety Act* by issuing a ticket is an example of “law enforcement” within the terms of section 1(h) of the FOIP Act, and therefore section 33(b).

[para 9] Section 34 of the FOIP Act sets out the circumstances in which a public body may collect personal information without notice to the individual who is the subject of the personal information. It states, in part:

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

[...]

(g) the information is collected for the purpose of law enforcement [...]

(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual’s questions about the collection.

(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, it could reasonably be expected that the information collected would be inaccurate.

[para 10] If the FOIP Act requires a public body to collect personal information directly from an individual, then the public body must give notice to the individual under section 34(2). In the case of collection for law enforcement purposes, direct collection is not required and a public body need not provide notice that it intends to collect personal information before collecting it. This point is made in Order F2011-007 at paragraphs 62 – 68.

[para 11] The Complainant’s complaint is that the Public Body collected his personal information from CCTV cameras without his knowledge.

[para 12] Section 33(b) authorized the collection of the Complainant’s personal information for the purpose of enforcing the *Traffic Safety Act*. Moreover, section 34(1)(g) authorizes collecting the Complainant’s personal information for this purpose without collecting it from him directly or providing notice to him.

[para 13] Whether or not the Public Body collected the Complainant's personal information from CCTV footage, it is clear that the Public Body has authority to do so for the purpose of enforcing the *Traffic Safety Act*. As a result, any collection of the Complainant's personal information whether by accessing CCTV footage or accessing the MOVES database, cannot be said to be in contravention of Part 2 of the FOIP Act.

[para 14] The Public Body in this case says that it did not collect the Complainant's personal information from CCTV footage. Even if the Public Body had collected the Complainant's personal information in this way, doing so would not contravene the FOIP Act because accessing CCTV footage in order to gather evidence in relation to a *Traffic Safety Act* infraction is authorized by sections 33 and 34 of the FOIP Act. The Complainant has not alleged any actions on the part of the Public Body that would suggest the Public Body contravened the FOIP Act when it issued the ticket.

[para 15] The Complainant also expresses concern that the complex's exercise room does not indicate that there is surveillance. However, this concern is unrelated to the complaint regarding the possible use of CCTV footage to issue a ticket, for which case file 012758 was opened. Moreover, the Complainant has not pointed to any evidence to establish that his personal information was captured on CCTV cameras inside the complex. A complainant has the initial or "evidential" burden of proof, in that he or she must point to some evidence as to why the complainant believes personal information was collected in the manner alleged.

[para 16] Finally, the Complainant questions what evidence there is of his infraction, noting there was no photograph of his license plate. He wants to know why he is the only person under surveillance that day to have "no video" noted next to his name. Neither of these issues are issues that can be addressed under the FOIP Act. Complaints may be made under the FOIP Act when a public body collects personal information and a complainant considers the collection inappropriate; however, the FOIP Act does not accommodate complaints that a public body did not collect the personal information an individual believes should have been collected.

III. ORDER

[para 17] I make this Order under section 72 of the Act.

[para 18] I confirm that the Public Body complied with Part 2 of the FOIP Act when it collected the Complainant's personal information for the purpose of issuing a traffic ticket.

Teresa Cunningham
Adjudicator
/md