# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER F2023-08

February 13, 2023

## EDMONTON POLICE SERVICE

Case File Numbers 015135, 015059, 015705, and 015707

**Office URL:** www.oipc.ab.ca

**Summary:** The Complainants complained that the Edmonton Police Service (the Public Body) disclosed their personal information to members of the media. In particular, they complained that the Public Body had referred to them as "persons of interest" in relation to a criminal investigation in which the Public Body had executed search warrants on properties they owned.

At inquiry, the Public Body argued that it had disclosed the Complainants' personal information for purposes consistent with its original purpose in collecting the Complainants' personal information. It also argued that it was not an invasion of personal privacy to disclose the information and also argued that the information that was disclosed was publicly available in any event.

The adjudicator found the Public Body had disclosed the fact that it considered the Complainants to be persons of interest in a criminal investigation. The adjudicator found that the Public Body had not disclosed the Complainants' personal information for a purpose consistent with the purposes for which it was collected. She also found that the disclosure was an invasion of personal privacy within the terms of section 17(1) of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) and that the information disclosed was not available to the public at the time of disclosure.

The adjudicator reminded the Public Body that it was under a duty not to disclose the personal information of the Complainants except in accordance 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, 17, 32, 40, 41, 56, 72

**Authorities Cited: AB:** Order F2008-029

**Cases Cited:** *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403

## I. BACKGROUND

[para 1] On August 31, 2019, the Complainants complained to the Commissioner that the Edmonton Police Service (the Public Body) disclosed their personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) when the Public Body informed the media that the Complainants were "persons of interest". They provided copies of media articles in which the Public Body referred to the Complainants as "persons of interest. The Complainants also provided email communications between representatives of the Public Body and members of the media referencing the Complainants.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Complainants requested an inquiry. The Commissioner referred the matter to inquiry.

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

[para 3] The FOIP Act restricts the ability of the state (public bodies) to collect, use, and disclose information about identifiable individuals. While public bodies may collect, use, and disclose personal information, they are limited in the purposes for which they may collect, use, or disclose personal information and they must ensure that they use or disclose only the personal information necessary for meeting their legitimate purposes in using or disclosing the information.

[para 4] Restricting the ability of public bodies to collect, use, or disclose personal information is intended to promote the privacy rights of citizens. In *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403 LaForest J. (speaking in dissent, but not on this point) explained how privacy protection statutes, such as the FOIP Act, contribute to the protection of citizen privacy:

> Privacy is a broad and somewhat evanescent concept, however. It is thus necessary to describe the particular privacy interests protected by the *Privacy Act* with greater precision. In *Dyment*, I referred to *Privacy and Computers*, the Report of the Task Force established jointly by the Department of Communications/Department of Justice (1972), especially at pp. 428-30. That "report classifies these claims to privacy as those involving territorial and spatial aspects, those related to the person, and those that arise in the information context". It is the latter type of privacy interest that is of concern in the present appeal. As I put it in *Dyment*, at pp. 429-30:
>
> > Finally, there is privacy in relation to information. This too is based on the notion of the dignity and integrity of the individual. As the Task Force put it (p. 13): "This notion of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit." In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be

> compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected. Governments at all levels have in recent years recognized this and have devised rules and regulations to restrict the uses of information collected by them to those for which it was obtained; see, for example, the *Privacy Act*. . . .
>
> See also *R. v. Duarte*, 1990 CanLII 150 (SCC), [1990] 1 S.C.R. 30, at p. 46 ("privacy may be defined as the right of the individual to determine for himself when, how, and to what extent he will release personal information about himself"); *R. v. Osolin*, 1993 CanLII 54 (SCC), [1993] 4 S.C.R. 595, at pp. 613-15 (*per* L'Heureux-Dubé J., dissenting); Westin, *supra*, at p. 7 ("[p]rivacy is the claim of individuals . . . to determine for themselves when, how, and to what extent information about them is communicated to others"); Charles Fried, "Privacy" (1968), 77 *Yale L.J.* 475, at p. 483 ("[p]rivacy . . . is control over knowledge about oneself").

[para 5] As discussed in the foregoing excerpt, the provinces have enacted legislation to restrict the ability of government entities to collect, use, or disclose the personal information of citizens. Alberta's FOIP Act is an example of such a statute. Section 40 of the FOIP Act prohibits a public body from disclosing the personal information of an identifiable individual except in the circumstances it recognizes. Section 40 states, in part:

> *40(1) A public body may disclose personal information only*
>
> *[…]*
>
> *(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*
>
> *(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose […]*
>
> *[…]*
>
> *(bb) when the information is available to the public […]*
>
> *[…]*
>
> *40(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 6] Section 41 of the FOIP Act sets out the circumstances in which a public body's purpose in disclosing personal information will be consistent with the public body's purpose in collecting it. It states:

> *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 7] Section 1(n) of the FOIP Act defines "personal information" as information "about an identifiable individual". It states:

*1 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 8] I turn first to the question of whether the Public Body disclosed the Complainants' personal information.

[para 9] On July 24, 2019, the Public Body sent the following response to media requests for information regarding search warrants it had executed at various properties in Edmonton. The Public Body stated:

Good afternoon

My colleague […] passed along your request. I have included some details for you below.

No further Information is being released, at this time.

Following a six month investigation, the Edmonton Police Service, in partnership with the Canadian Revenue Agency, executed search warrants today, Wednesday, July 24, 2919, at multiple properties across the city.

The warrants are in relation to a group of property owners that have allegedly been operating as a criminal organization in the city of Edmonton for many years.

Charges are pending, though the identities of the suspects involved cannot be released at this time until charges have formally been laid.

[para 10] A journalist who received the news release of July 24, 2019 then emailed the Public Body on July 30, 2019 and asked:

Are you able to confirm if charges are pending against the following individuals:

[names of the Complainants other than the Complainant of case file #015705.]

[para 11] The Public Body responded:

The following people are "persons of interest" relative to this investigation and the search warrants that were executed last week.

[names of Complainants including the Complainant of Case File #015705]

The warrants were for:

Laundering of the Proceeds of Crime, contrary to Section 462.31(1) of the Criminal Code
Participation in a Criminal Organization, contrary to. Section 467.11(1) of the Criminal Code
Trafficking Controlled Substances, contrary to Section 5(1) of the Controlled Drugs and Substances Act
Obtaining Credit by False Pretenses, contrary to 'Section 362(1)(b) of the Criminal Code
Trafficking the Proceeds of Crime, contrary to Section 355.2 of the Criminal Code
Tax Evasion, contrary to Section 239(1)(a)) of the Income Tax Act

[para 12] The Public Body then received a request for clarification from the journalist:

Hi, sorry to bother you again, I just wanted to be sure if this phrasing was accurate? Is it fair to say charges, are pending against the persons of interest?
All six?

[para 13] The Public Body responded:

No, that is not accurate. Too early to tell. This investigation involves a lengthy process.

[para 14] The Public Body provided further clarification as to the information on the warrants that had been executed:

Here is what we actually included on the warrants themselves:

1) Laundering of the Proceeds of Crime, contrary to Section 462.31(1) of the Criminal Code
2) Participation in, a Criminal Organization, contrary to Section 467.11(1) of the Criminal Code
3) Tax Evasion, contrary to Section 239(1)(d) of the Income Tax Act

[para 15] The Public Body acknowledges in its submissions that it disclosed personal information about the Complainants to members of the media:

> At 12:22 pm, Supt. […] replied to [the employee] stating it was too early in the investigation to suggest that charges were pending but could confirm that the individuals named by [the journalist] were "persons of interest" relative to the investigation and the search warrants were executed last week. Supt. […] also included "[the complainant in case file #015705]" in the list of individuals identified as a "person of interest".
>
> At 11:35 am, [The employee] replied via email to [the journalist] that the listed individuals were "persons of interest" relative to the investigation and the search warrants that were executed the previous week, providing the Complainants' names.
>
> At 11:55 am, [The journalist] asked whether it was "fair to say that charges were pending against the individuals?" She followed up her email with the same request at 3:32 pm on the same date.
>
> At 3:12 pm, [The employee] replied "no, that is no accurate. Too early to tell. This investigation involves a lengthy process".

[para 16] In its initial submissions, the Public Body stated:

> During an EPS' Professional Standards Branch investigation into the EPS media release and office conduct relating to the same, [the journalist] confirmed that EPS did not provide her with the names (other than the Complainant from case file #015705) and she located the names through her own reporting, review of land title documents and court documents.

[para 17] Based on the above, I find that the Public Body disclosed the Complainants' personal information. In its email of July 30, 2019, it disclosed that the Complainants were persons of interest in a police investigation in relation to money laundering, participating in a criminal organization and mortgage fraud. The emails of July 30, 2019 disclose the personal information of the Complainants. While it is true that the reporter provided names to the Public Body from her own research as to who owned the properties for which the warrants were executed, there is nothing in evidence to suggest that she knew with any certainty that the Complainants were "persons of interest" in the investigation until the Public Body provided that information on July 30, 2019. The warrants that were executed do not refer to the Complainants or indicate that the owners of the buildings were persons of interest. The warrants indicate only that an officer of the Public Body had reasonable grounds to believe that evidence of crimes was located at the properties. While members of the public may have observed the warrants being executed, they could not be certain, without reference to the Public Body's emails, that the Complainants were persons of interest in the investigation.

[para 18] As the Public Body disclosed the Complainants' personal information, I must consider whether the disclosure is authorized by Part 2 of the FOIP Act. The Public Body argues that the disclosure was authorized by sections 40(1)(b), (c) and (bb).

*Section 40(1)(c)*

[para 19] The Public Body argues that it disclosed the Complainants' personal information for the purposes of "law enforcement" within the terms of section 1(h) of the FOIP Act. Section 1(h) states:

> *1 In this Act,*
>
> *(h) "law enforcement" means*
>
> *(i) policing, including criminal intelligence operations,*
>
> *(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
>
> *(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred […]*

[para 20] The Public Body argues that it collected the Complainant's personal information in the course of conducting a police investigation and that disclosing the Complainant's personal information was done to assist the investigation. It argues that the disclosure, like the collection, was done for policing purposes and was therefore authorized by section 40(1)(c) of the FOIP Act. The Public Body states:

> In this instance, the EPS collected information with respect to a criminal investigation into various crimes for a law enforcement purpose. While the investigation remained actively ongoing, the EPS disclosed information relating to the investigation to the media for the purpose of furthering the investigation, with the additional purpose of ensuring the accuracy of information that was being reported to the public by the media and building public trust to ensure that the public was accurately informed about the nature of ongoing law enforcement activities. Releasing specific information to the public on police investigations and activities allows the public to better understand the work that is being undertaken by the EPS.
>
> The EPS has a number of policies and procedures relating to communications between the EPS and the media. The disclosure in this instance was consistent with these policies and procedures.
>
> Media and Police Relations Policy- IS7PO states:
>
> Policy Statement Purpose: This policy is intended to,
>
> 1. keep the public accurately informed of crime and newsworthy occurrences,
> 2. maintain media involvement in crime prevention and community policing programs,
> 3. promote public services performed by EPS,
> 4. assist investigators in investigations through communications with the public and media outlets.

**The Statement of Principle**

> The EPS is committed to informing the community and the news media of events within the public domain that are handled by or involve the agency. Publications related to EPS's objectives are crucial in achieving community awareness and successful results, through crime prevention, enforcement and public education.
>
> Policy Statement: The EPS will fully cooperate with and be impartial to representatives of the media in their efforts to gather factual public information concerning activities of service.

[para 21] The Public Body argues that its purpose in disclosing the Complainants' personal information was as follows:

> The disclosure of the Complainant's personal information was to further the ongoing investigation and correct erroneous information already in the hands of the media from other sources.
>
> The emails between EPS and [the journalist] demonstrate that EPS was mindful of not providing additional information beyond that referenced by the media. While an additional name was provided, this ensured that the list was accurate and fulsome as related to the search warrants executed. EPS also corrected the media to ensure that the public were not left with an incorrect understanding of charges against the Complainants and that the investigation was currently in progress.

[para 22] The Public Body argues that the purpose of disclosing the Complainants' personal information was to ensure that the media (and the public) had accurate information regarding its investigation. It also argues that it did not provide additional information that the media did not already have or that was not in the public domain.

[para 23] The Public Body provided evidence about its procedures for disclosing information about investigations to the media through affidavit evidence. The Public Body's affiant asserts:

> The EPS has a number of policies and procedures relating to communications between the EPS and the media.
>
> […]
>
> Media and Police Relations Procedure- IS7-1PR lists individuals that are authorized to supply information to the News Media, stating that:
>
> > **Procedure:** The activities of the EPS, particularly those of a sensational nature, attract public attention and comment. Members shall, whenever possible, assist the news media on all matters of a public nature to ensure that accurate, factual information is released.
> > ….
> > **3. Persons Authorized to Supply Information to the News Media:**
> >
> > a. members of CCB [EPS' Corporate Communications Branch],
> >
> > b. The Chief of Police and Bureau commanders may release statements regarding official operations, or procedures directly affecting the public in coordination with the CCB,
> >
> > c. Divisional commanders may release information pertaining to matters of public interest in coordination with CCB,

d. Duty officers and watch commanders will be the spokesperson(s) on behalf of the EPS when MRU is not staffed. For incident purposes, should circumstances be of an exigent nature, they may authorize the call-out of MRU members,

e. MRU members, duty officers, watch commanders, and the member i/c of the investigation may release information of a general nature pertaining to the investigation, provided the release does not:

i. interfere with any investigation or arrest,
ii. result in embarrassment, injury, or injustice to an innocent person, or
iii. potentially affect the course of a trial by divulging information or opinions, including:

1. the criminal record of the accused person,
2. comments regarding the personal or bad character of the accused person,
3. comments regarding previous encounters of the accused person with police,
4. statements that the accused person has recently been released from prison,
5. existence of any confessions or admission of guilt,
6. results of any tests or examinations taken or refused by the accused person,
7. identity, testimony, or credibility of any witnesses,
8. opinion of any members as to the guilt of the accused person, and
9. identity of young persons.

Members must therefore ensure that their public statements do not interfere with the right of the accused person to a fair trial. Any member(s) unsure of what information can or cannot be released should contact MRU.

[…]

From my review of EPS records and communications, I am informed and believe that in response to [a journalist's] requests, [the employee] and [a superintendent] discussed the practice for confirming or denying (or providing no comment) to a request, when a news outlet is already in possession of information. [The superintendent] considered that the information being clarified by [the journalist] was information already included in the ITO and search warrants and whether disclosure would interfere with ongoing investigations.

Supt. […] also considered whether it was in the public interest to disclose the information to assist in the overall investigation. Finally, Supt. […] also considered whether the information would accurately reflect the status of charges in the investigation and would be pejorative to the individuals named before approving release of the information by [the employee who wrote the first email].

[para 24] The affiant asserts in the foregoing excerpt that the email of July 30, 2019, which named the Complainants, was authorized by a superintendent of the Public Body, and addressed only information that was already in the possession of the media. The affiant also asserts that this email was in accordance with its policies regarding speaking to the media. She asserts that the disclosure was made to assist in the overall investigation. Finally, she asserts that the reporter was in possession of all the information disclosed and that the information was contained on the warrants.

[para 25] The Public Body did not provide the evidence of the representatives who made the disclosures, or the superintendent who authorized the disclosures in the emails of July 24, 2019 and July 30, 2019, but instead, provided the affidavit of a staff sergeant (the affiant) who reviewed EPS records and communications regarding the matter that is the subject of the complaint.

[para 26] The Complainants argue that the affiant's evidence is hearsay and inadmissible. The Public Body counters:

> The EPS disagrees that the evidence it submitted falls short of the evidentiary standard required under the FOIPP Act to support its position that the disclosure of the Applicants' personal information was permitted under the Act. As the Applicants have recognized, hearsay evidence is permitted during an Inquiry and previous orders have confirmed this. In *Alberta Health Services (Re)*[7], former Commissioner Work cited *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 112 at paragraph 114, which in turn cites *Alberta (Workers' Compensation Board) v. Appeals Commission*, 2005 ABCA 276 (CanLII), [2005] A.J. No. 1012, where the court stated that administrative tribunals "are entitled to act on any material which is logically probative, even though it is not evidence in a court of law" because tribunals are not bound by the strict rules of evidence that bind the courts.
>
> The Applicants rely on the *Peace River School Division No. 10 (Re)*. However, in that Order, Adjudicator Gabriele did not preclude the use of hearsay evidence, rather the overriding concern was the lack of evidence available to support the Public Body's assertion that the duty to assist had been met under s. 10(1) of the FOIPP Act. Prior orders had specifically described the nature of evidence that a Public Body needs to submit to demonstrate the duty to assist had been met. While it is acknowledged that [the affiant] was not personally involved in the investigation or disclosure, based on her position and her review of EPS records, including Professional Standards Branch materials (which specifically dealt with the appropriateness of the disclosure at issue in this Inquiry), she had a reliable understanding of the context of this matter, and the individuals who made the disclosures. As the EPS is the named public body and party to this Inquiry, the EPS is not able to compel evidence from members, especially when they are involved in concurrent civil litigation.
>
> [The affiant] has included as exhibits, several key records that are probative in this matter, including the media policies and procedures, as well as email communications involving Supt. […] and [the employee] that contemporaneously document what their thought processes were during the time the disclosure was made. The questioning evidence submitted by the Applicants taken from the concurrent civil litigation proceedings provide no evidence that contradicts the evidence of [the affiant]. It was appropriate for [the superintendent] to rely on [the employee's] knowledge of the media policies and procedures and likewise, it was appropriate for [the employee] to rely on [the superintendent's] knowledge of the criminal investigation at the time, when a response was provided to the CBC's request.

[para 27] I agree with the Public Body that I may accept hearsay evidence. If I have sufficient evidence to determine that hearsay evidence is likely to be reliable, I may give weight to hearsay evidence. If there is insufficient evidence to determine that hearsay evidence is likely to be reliable, then I may give no weight to it.

[para 28] In this case, I have been given insufficient supporting evidence to give weight to the affiant's statements regarding the superintendent's purposes in disclosing the Complainants' personal information. The affiant did not refer to, or quote from, the content of the emails she reviewed or otherwise explain what led her to draw inferences as to the considerations and purposes of the superintendent in disclosing personal information. I do accept the affiant's evidence with regard to the Public Body's policies and procedures for communicating with the public, as these policies and procedures were provided for my review.

[para 29] I note that the Public Body states that it is not in a position to compel the employees who disclosed the information as witnesses because it is engaged in litigation. I accept that the Public Body is unable to do so. In any event, in an inquiry, the Commissioner has the power to compel witnesses under section 56(1).

[para 30] I have considered whether I should invoke the power under section 56(1) to obtain the evidence of the superintendent and the employee to explain the purpose of the disclosures for the inquiry; however, I find that this is unnecessary in this case as the emails speak for themselves to a certain extent.

[para 31] As noted above, the July 24, 2019 email states that the Public Body *could not* identify individuals until charges were "formally laid" and would not disclose any further information at that time. I infer from this email that at that time, the Public Body did not consider there to be any benefit to the investigation from releasing personally identifying information relating to the investigation, or possibly, that the investigation might even be harmed by doing so.

[para 32] I note that the detective who completed the Information to Obtain also requested the following Order:

> I request that an order be made prohibiting the access to, and the disclosure of, any information relating to this Order pursuant to section 487.3 of the Criminal Code on the grounds that disclosure of the information would subvert the ends of justice by:
>
> a) Compromising the nature and extent of this on-going investigation
>
> […]
>
> It is my respectful submission that these reasons outweigh in importance access to the information. I am requesting that the information be sealed indefinitely or until a court of competent jurisdiction orders otherwise.

[para 33] From the foregoing application, I conclude that the Public Body considered that the interests in protecting the contents of the Information to Obtain document weighed strongly against providing the public with details about the investigation. The Information to Obtain document contains the identities of persons of interest to the investigation. It is unclear, on the evidence before me, how referring to the Complainants as "persons of interest" would assist the investigation in any way. Rather, it appears from the Information to Obtain that the Public Body considered that disclosing information about persons of interest in the investigation could harm it.

[para 34] I recognize that the Public Body has also stated that its news release of July 30, 2019 in which it named all the Complainants as "persons of interest" was intended to give the public an accurate understanding of police work.

[para 35] Even accepting that the general purpose of the disclosures was to ensure that the public had an accurate understanding of police work, as the Public Body argues, I find that this purpose in disclosing the information is not consistent with the Public Body's purpose in collecting the Complainants' personal information for the criminal investigation. Section 41, cited above, establishes when disclosure is consistent with a public body's purpose in collection. For the purpose of disclosure to be consistent with the purpose of collection, the disclosure must have a reasonable and direct connection to the purpose in collecting the information, and it must

also be necessary for performing the statutory duties of the public body or for operating a legally authorized program.

[para 36] The general purpose of keeping the public informed about policing activities does not have a direct connection with the Public Body's purpose in collecting information about the Complainants for the purposes of an investigation into money laundering and drug trafficking. I do not accept that collecting personal information using the coercive power of the state in regard to a specific criminal investigation has a direct or reasonable connection to the broad, general goal of keeping the public informed about police activities.

[para 37] As the Public Body notes, prior orders of this office have interpreted the word "necessary" where it appears in section 41(b). In Order F2008-029, the Director of Adjudication said:

> In the context of section 41(b), I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS [the Calgary Police Service] 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. If the CPS was unable to convey this information, the [domestic violence] caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 38] I agree with the reasoning in Order F2008-029. Information that is "necessary" for performing statutory duties is not information that is "indispensable", but information that allows the Public Body to perform its statutory duties effectively or in a reasonable way.

[para 39] I find that disclosing to the public that the Complainants were "persons of interest" in an investigation has not been demonstrated to be a means by which the Public Body could conduct policing activities in a reasonable way. On the evidence before me, which includes the affidavit of the affiant and the Information to Obtain, it appears possible that the Public Body could have conducted its investigation in a reasonable way without communicating to the media that the Complainants were "persons of interest". The affiant states: "It is not the EPS' Media Relation Unit's typical protocol to distribute a news release on a warrant execution." This statement indicates that the Public Body could have performed its policing duties effectively or reasonably without disclosing the Complainants' personal information.

[para 40] As the terms of section 41 are not met, I am unable to find that section 40(1)(c) authorizes the disclosure of the Complainants' personal information.

[para 41] While I accept that there are situations in which a police service is authorized by section 40(1)(c) to disclose personal information collected in the course of an investigation to assist the investigation, I am unable to say that this provision authorizes the Public Body's communications with the media in this case. I also accept that the Public Body may disclose information pursuant to section 32 of the FOIP Act, which authorizes public bodies to disclose information in the public interest; however, the evidence does not establish that disclosing that

the Complainants were persons of interest in the investigation was clearly in the public interest as that provision requires.

[para 42] I find that section 40(1)(c) has not been demonstrated to apply to the disclosures in this case.

[para 43] Even though I find that section 40(1)(c) does not authorize disclosures in this case, I must consider whether section 40(1)(b) or (bb) authorizes the disclosure. If it would not be an unreasonable invasion of personal privacy to disclose personal information, or the information was already available to the public, then it does not matter what a public body's purpose was in disclosing it.

*Section 40(1)(b)*

[para 44] Section 40(1)(b), reproduced above, permits a public body to disclose personal information if doing so would not be an unreasonable invasion of an individual's personal privacy.

[para 45] Section 17 of the FOIP Act sets out the circumstances in which it is, or is not, an unreasonable invasion of personal privacy for a public body to disclose personal information. This provision states, in part:

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*
>
> *[…]*
>
> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> > *[…]*
> >
> > *(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*
> >
> > *[…]*
> >
> > *(g) the personal information consists of the third party's name when*
> >
> > > *(i) it appears with other personal information about the third party, or*
> > >
> > > *(ii) the disclosure of the name itself would reveal personal information about the third party,*
> >
> > *[…]*

*(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

*(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

*(b) the disclosure is likely to promote public health and safety or the protection of the environment,*

*(c) the personal information is relevant to a fair determination of the applicant's rights,*

*(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*

*(e) the third party will be exposed unfairly to financial or other harm,*

*(f) the personal information has been supplied in confidence,*

*(g) the personal information is likely to be inaccurate or unreliable,*

*(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*

*(i) the personal information was originally provided by the applicant.*

[para 46] When the specific types of personal information described in section 17(4) are in issue, disclosure is presumed to be an unreasonable invasion of an individual's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of an individual, a public body must consider and weigh all relevant circumstances under section 17(5) (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 47] The Public Body argues:

> Under section 17(4)(b), a disclosure of personal information "is presumed to be an unreasonable invasion of a third party's personal privacy if…the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation".
>
> 'Law enforcement' is defined in section 1 of the *FOIP Act* as "policing, including criminal intelligence operations, [or]…a police…investigation…that leads or could lead to a penalty or sanction".
>
> The information in question was part of a law enforcement matter as it was collected and used for issuing and executing a search warrant, and ongoing investigation relating to the same.

> Despite the potential application of s. 17(4)(b), the presumption of an unreasonable invasion of privacy may be rebutted by the non-exhaustive factors of s. 17(5). The circumstances of the disclosure are relevant when considering whether the presumption under 17(4)(b) is rebutted.
>
> It is clear from the correspondence from [the journalist] that the Complainants' names were publicly available at the time of the disclosure. As [the journalist] presented the names to EPS it could be reasonably inferred that she, along with other members of the media, would have been able to access the personal information through public sources. It is also clear from [the journalist's] correspondence that the names were going to be published by the media, regardless of comment from EPS. There was already significant media interest in the search warrant execution and [the journalist] produced a popular podcast on [name of a complainant]
>
> As such, EPS made the decision to ensure that the information being published in the media was accurate and corrected the erroneous information provided by [the journalist], stating that charges were not pending, but the Complainants were persons of interest. This [ensured] that there was not unnecessarily damaging information published, of which EPS knew about and could have easily corrected. Allowing incorrect information of this nature to remain inaccurate could have negatively impacted the Complainants and their privacy and should be a factor considered under s. 17(5).

[para 48] The Public Body acknowledges that the information that was disclosed has its source in a police file within the terms of section 17(4)(b). As a consequence, the presumption arises that it would be an unreasonable invasion of the Complainants' personal privacy to disclose the information. However, the Public Body argues that the personal information it disclosed was either available to the public or disclosed in circumstances where it was not invasive to the Complainants' personal privacy.

[para 49] The Complainants argue:

> Further, it should be noted that when first contacted for information about the searches, the Public Body specifically stated that "the identities of the suspects involved cannot be released at this time until charges have been formally laid"[17]. This statement demonstrated an awareness of the impropriety of releasing the names of the suspects prior to any charges being laid. The fact that the Applicants were described as "persons of interest" rather than "suspects" makes no difference in terms of the harm that foreseeably resulted to each of the Applicants; the only reasonable inference to be drawn from the entirety of the information released by the Public Body was that the Applicants were indeed suspected of the offences referenced by the Public Body.

[para 50] The Complainants also point out that the Public Body applied for a publication ban to protect the privacy of the Complainants:

> The Public Body was either aware of, or ought to have been aware of, the potential harm and unfairness to the Applicants in deciding to release their name to the media and identifying them as "persons of interest" in connection with an investigation of an alleged "criminal organization" and other serious criminal offences. Such awareness was demonstrated when, in the course of a s. 490 application seeking an extension of the time permitted under the Criminal Code to retain items seized in the course of the searches conducted on July 24, 2019 counsel for the Public Body applied for a publication ban and gave the following reasons to the Court[18] for doing so:
>
> > … I would suggest that there should be a publication ban on the names of the respondents pursuant to section 487.2, which is the section that covers essentially publication bans or bans on the spreading of information of people who are the subjects of search warrants. In the circumstances, as they are not yet charged with anything, I think it's appropriate and in their interest and the public

> interest to ensure that they're not associated with crime in this case when they haven't actually been charged with anything yet…
>
> Counsel for the Public Body was entirely correct when she asserted that it was in the public interest that the Applicants not be associated with crime in a matter for which they had not been charged with any offence (and ultimately were never charged).

[para 51] The Public Body argues that the names of the Complainants were publicly available, and that the media was aware of the execution of the warrants. Its purpose in disclosing that the Complainants were "persons of interest" to the media was to correct erroneous information and to ensure that the information the media would publish was not unnecessarily damaging to the Complainants. It reasons that this purpose is a mitigating factor for the purposes of section 17(5) that outweighs the presumption created by section 17(4)(b).

[para 52] The information that was disclosed is the fact that the Complainants were "persons of interest" -- that is, "suspects, victims, or witnesses to offences" -- in relation to a criminal investigation regarding the following:

> Laundering of the Proceeds of Crime, contrary to Section 462.31(1) of the Criminal Code
> Participation in a Criminal Organization, contrary to. Section 467.11(1) of the Criminal Code
> Trafficking Controlled Substances, contrary to Section 5(1) of the Controlled Drugs and Substances Act
> Obtaining Credit by False Pretenses, contrary to 'Section 362(1)(b) of the Criminal Code
> Trafficking the Proceeds of Crime, contrary to Section 355.2 of the Criminal Code
> Tax Evasion, contrary to Section 239(1)(a) of the Income Tax Act

[para 53] As noted above, the Public Body argues that the disclosure that the Complainants were "persons of interest" in the investigation was intended "to correct erroneous information and to ensure that the information the media would publish was not unnecessarily damaging to the Complainants".

[para 54] The Public Body's argument that it was correcting erroneous statements would not apply to the disclosure of the personal information of the Complainant of case file #015705. Her identity as a "person of interest" was unknown to the journalist until the Public Body's email of July 30, 2019.

[para 55] I note that the journalist asked the Public Body questions about the Complainants. She did not inform the Public Body that she intended to publish regarding the Complainants. I am unable to say that she would have published anything inaccurate about the Complainants or that the Public Body prevented her from doing so. It may be that she would not have published a story at all without being able to check facts or confirm that her theories were accurate. In addition, it is unclear that the Public Body had any responsibility or power to ensure that members of the media published accurate information. I am mindful, too, that the Public Body sought a sealing order to prohibit the disclosure of the identities of persons referenced in the Information to Obtain. I find that the Public Body has not established that there was any benefit to the Complainants or to the public interest by disclosing the identities of the Complainants and their status as "persons of interest" in a criminal investigation to the media.

[para 56] To conclude, as I find the presumption created by section 17(4)(b) is not rebutted, I find that section 40(1)(b) does not authorize disclosure of the Complainant's personal information.

*Section 40(1)(bb)*

[para 57] I find that the information that the Complainants were persons of interest in a criminal investigation into trafficking, money laundering, and tax evasion conducted by the Public Body was not information to which the public had access until the Public Body issued the news releases. The Complainants provided copies of the warrants in their submissions. These do not contain the names of the Complainants or indicate that the owners of the properties were 'persons of interest". While members of the public could observe the warrants being executed, an observer could not be certain that the Complainants were persons of interest. It would remain possible that persons other than the Complainants, such as tenants, family members, employees, or other users of the properties were persons of interest to the Public Body. I find that section 40(1)(bb) does not provide authority for the disclosure.

*Conclusion*

[para 58] I find that the Public Body disclosed the Complainants' personal information in contravention of Part 2 of the FOIP Act. As a result, I must require it to ensure that it does not disclose their personal information without authority in the future.

## III. ORDER

[para 59] I make this Order under section 72 of the FOIP Act.

[para 60] I require the Public Body not to disclose the Complainants' personal information except in circumstances authorized by Part 2 of the FOIP Act. The Public Body, like all public bodies, bears this duty in any event; the purpose of this order is to remind it of this obligation.

_____

Teresa Cunningham
Adjudicator
/kh