



Office of the Information and
Privacy Commissioner of Alberta

Investigation Report F2023-IR-01

*Investigation into the City of Edmonton's collection of personal information
under the FOIP Act for DATS scheduling in response to the COVID-19 pandemic*

April 20, 2023

City of Edmonton

Investigation 024090

Summary

On October 5, 2020, an individual approached the Office of the Information and Privacy Commissioner asking the Commissioner for an investigation under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) into a concern she had about a new practice by the Dedicated Accessible Transit Service (DATS), which is operated by the City of Edmonton (Public Body).¹ The Public Body had instituted a requirement that DATS clients answer questions about their health/COVID-19 status before a trip on the transit service would be booked. The questions helped determine the type of ride service required, including if there was a need for single-client transport versus multi-client transport.

The investigation concluded that the Public Body had authority under section 33(c) of the FOIP Act to collect personal information, specifically the responses from its clients to the health/COVID-19 status screening questions. There were no recommendations for the Public Body.

¹ When the investigation was opened, the Commissioner was Jill Clayton.

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Jurisdiction

- [1] On October 5, 2020, an individual approached the Office of the Information and Privacy Commissioner (OIPC) asking the Commissioner for an investigation into a concern she had about a new practice by the Dedicated Accessible Transit Service (DATS), which is operated by the City of Edmonton (Public Body).² DATS instituted a requirement that users of the service answer questions about their health/COVID-19 status before a trip on the transit service would be booked.
- [2] On May 21, 2021, the OIPC opened the case and I was assigned to investigate. I determined that the individual had not provided her personal information to the Public Body for DATS. Consequently, the OIPC could not accept the complaint under the provision granting individuals the right to make privacy complaints.³
- [3] However, on December 21, 2021, the Commissioner decided the practice should still be investigated, and opened an investigation. The Commissioner has authority under the general powers in section 53 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act or the Act) to initiate an investigation of a public body's compliance with the Act on the Commissioner's own motion. Section 53(1)(a) reads:
- 53(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may
- (a) conduct investigations to ensure compliance with any provision of this Act...
- [4] The City of Edmonton is a public body further to section 1(i)(i) of the FOIP Act and is subject to its provisions. The purpose of the investigation was to determine whether the Public Body had the authority to collect personal information related to the health/COVID-19 status of individuals booking transit trips with DATS.
- [5] The collection of personal information is governed by section 33 of the FOIP Act.

² When the investigation was opened, the Commissioner was Jill Clayton.

³ That provision is section 65(3) of the Act. It grants individuals a right to "ask the Commissioner to review" a matter when an individual believes that his or her "own personal information has been collected, used or disclosed in contravention of Part 2" of the Act.

Issue

[6] The issue for investigation is:

- Does section 33 of the FOIP Act authorize the Public Body to collect personal information as part of its DATS scheduling requirements?

Background

[7] In April 2020, the Public Body introduced a new scheduling process for DATS clients. DATS is a transit service for individuals who cannot use standard transit for some or all of their travel needs, due to a physical or cognitive impairment.

[8] Before the change to the scheduling process, individuals who wished to book a trip provided information about themselves and the trip: their DATS registration number; the day and time of travel (for pickup and return, if applicable); the pickup address; and whether a mobility aid is used.

[9] After the change to the scheduling process, individuals provided the same information about themselves and the trip but were also required to answer screening questions related to their health/COVID-19 status.

[10] The Public Body said the requirement to answer health/COVID-19 status screening questions began in April 2020 due to the emergence of the COVID-19 pandemic. The Public Body said it ended the practice in the summer of 2021 “as a result of the Provincial Government lifting restrictions”.

Analysis

[11] I must first determine if the information collected by the Public Body qualifies as personal information.

Is the information that was collected personal information?

[12] According to submissions received by the Public Body, it stated that:

- A client’s DATS registration number was required. To obtain a DATS registration number, individuals apply to the Public Body and provide their name, phone

number, email address (if available), and information about why the DATS service is needed.^{4,5}

- DATS clients were also asked to answer the following health/COVID-19 status screening questions prior to scheduling a trip:
 1. Do you have flu-related symptoms such as a fever or cough?
 2. Have you recently travelled outside of Canada in the last 14 days?
 3. Have you contacted Health Link 811 to arrange formal testing or been medically directed to quarantine yourself?
 4. Have you been tested for COVID-19 in the past 2 weeks?
 5. Have you been confirmed as having contracted COVID-19?
 6. Have you had close contact with someone who has been confirmed as having the virus, or have you been exposed to the virus during any other travel or in a laboratory setting?
 7. Is your destination closed to the public due to COVID-19 or as a physical distancing measure?
- Questions were posed to clients over the telephone when they contacted DATS to arrange a trip. Verbal responses were recorded for each client along with their registration number. The Public Body added, “[W]hile the registration number was used to identify the client...the answers are not linked or saved to any client files”.
- Clients who could not communicate verbally were encouraged to book DATS via email, where screening questions could also be answered.

[13] Personal information is defined in section 1(n) of the FOIP Act as “recorded information about an identifiable individual”, and includes someone’s name, email address, an identifying number, and “information about the individual’s health and health care history...”⁶

[14] Based on the evidence, I am satisfied that the recorded responses to the first six health/COVID-19 screening questions that were collected from DATS clients qualify as their personal information that is subject to the FOIP Act. This is because the

⁴ Registrants provide information about their mobility or cognition limits, if they use mobility aids, if they require a travel attendant/helper, etc.

⁵ Whether the FOIP Act authorizes the collection of this information is not in scope for this investigation and I make no findings in regards thereto.

⁶ See section 1(n) of the Act for the full definition.

registration number for clients was recorded along with their response to the screening questions. The registration number is linked to a client, making the information that was recorded identifiable.

[15] I will now go on to assess whether the Public Body was authorized to collect this personal information.

Was the Public Body authorized to collect the personal information?

[16] The Public Body provided the following submissions related to this question:

- “Collection is authorized under section 33(c) of the *Freedom of Information and Protection of Privacy* (FOIP) Act. Personal information was collected for the purpose of maintaining safe service for DATS clients and employees during the COVID-19 pandemic... [T]he nature of the service was changed in accordance with the risk to minimize potential transmission of COVID-19, and this information was necessary to make decisions and directly related to how DATS deployed drivers.”
- “[The Public Body] received general advice and guidance from [the Medical Officer of Health, Edmonton Zone, Alberta Health Services (AHS)] throughout the pandemic. The advice provided was in alignment with the public advice from [Alberta Health’s Chief Medical Officer of Health (CMOH)].”
- “The [Public Body] declared a state of local emergency on March 20, 2020 which was renewed weekly until June 5, 2020. Under this local emergency, [Public Body] Order 2020-001... ordered that any individual with a confirmed or suspected case of COVID-19 self-isolate until such time as they are admitted to a hospital for care, are asymptomatic for the period of time designated by the CMOH or are confirmed recovered. Suspected cases were defined as including ‘a situation where an individual has returned from travel outside Canada; has been in close contact with another individual with a confirmed case of COVID-19; or has been directed for testing based on the Alberta Health Services self-assessment tool.’”
- “[Alberta Health’s] CMOH Order 05-2020 (March 25, 2020 to June 30, 2021) [also] required isolation for a minimum of ten days if exhibiting symptoms of COVID-19 unless they have a negative test and no known exposure to the virus... Additionally, public health guidance to the broader public was to isolate upon the discovery of COVID-19 symptoms.”⁷
- “[Alberta Health’s CMOH Order 05-2020] requiring self-isolation by symptomatic individuals applied to all areas of the province and was not specific to paratransit

⁷ Alberta Health’s CMOH 05-2020 can be found at [COVID-19 orders and legislation](#).

services such as DATS. However, as a municipality within Alberta, the [Public Body] had a responsibility to support compliance with the Order.”

- “The operational decision to implement screening questions was made to maintain safe service for DATS clients and employees. The [Public Body’s] COVID-19 Task Team formalized a decision in April 2020 following a proposal from DATS management. This decision was made in alignment with [AHS] and other paratransit organizations across Canada.”
- “For context, [DATS] is a door-to-door public transportation service for Edmontonians who cannot use regular transit for some or all of their travel needs, due to a physical or cognitive impairment. DATS clients must apply, meet eligibility requirements and be registered before using DATS. During the pandemic, much of DATS’ trip volume has been for life sustaining medical services such as dialysis appointments. Due to the nature of the services DATS provides and the close proximity [Public Body] employees often [work with] clients, it was determined that additional precautionary measures needed to be taken to protect both the public and [Public Body] employees.”
- “The questions in the DATS pre-ride assessment mirrored questions regarding symptoms and exposure in the AHS self-assessment tool...”
- “[T]he decisions being made based on the answers were to best assist in encouraging clients to self-isolate, or to minimize the risk to other clients and staff by giving clients with symptoms rides that would not have any other DATS clients on board and [to] provide enhanced [personal protective equipment (PPE)] to the driver.” (DATS drivers, among other Public Body employees who reported to a worksite, were also required to complete the health/COVID-19 status self-assessment.)
- “The [Public Body] has a comprehensive responsibility under the *Occupational Health and Safety Act* to provide a safe workplace for our employees. This includes measures to reduce exposure to known pathogens in the midst of a pandemic. If a DATS client indicated that they had symptoms of COVID-19, additional PPE was provided to drivers in order to provide the maximum possible certainty against the risk of contracting COVID-19 from the client, while still providing the service.”
- “DATS worked with [AHS] to set up transportation for COVID-19 positive individuals. Those trips were provided by AHS. Over time, DATS established the ability to transport COVID-19 positive clients through the specialized isolated transportation.”
- “...DATS has an ethical responsibility to provide a safe service for clients. If a DATS client indicated that they had symptoms of COVID-19, they would be the only client in that vehicle for the duration of the trip. This helped to ensure that other DATS

clients (many of whom are vulnerable to the effects of illnesses) were not unnecessarily exposed.”

- To book a ride when the health/COVID-19 status screening questions were used, DATS clients booked rides by telephone. When calling, DATS clients would first hear the following automated message:

Freedom of Information and Protection of Privacy (FOIP) Act Statement

Personal information is collected for the purpose of maintaining safe service for DATS clients and employees during the COVID-19 pandemic and will be used to prevent non-essential travel as per AHS and Health Canada recommendations. Collection is authorized under section 33(c) of the *Freedom of Information and Protection of Privacy (FOIP) Act* and is managed and protected in accordance with the Act. For questions about the collection, please contact DATS Community Relations, 780-496-4567 (Option 4), or dats@edmonton.ca.

ETS and DATS are committed to maintaining a safe and secure service during the COVID-19 pandemic in accordance with Alberta Health Service (AHS) and Health Canada recommendations.

DATS is doing its part by ensuring we provide clean, well-sanitized vehicles and enforcing good hygiene practices amongst all our employees and partner agencies.

- After a DATS client was connected, the following script was used by agents:

We understand this is a challenging time and we appreciate your help. We are asking all clients to cover their cough, wash their hands frequently and to stay home if they feel sick. Clients are asked to wear a mask to prevent the spread of respiratory illnesses. Please notify DATS before your scheduled pickup if your health status changes.

Before we can book your trip today, can you please answer the following questions:

[Questions 1-7, as noted above.]

- “The information collected was retained for a period no longer than 90 days.”

Provision cited by Public Body to authorize collection

[17] The Public Body said it relied upon section 33(c) of the FOIP Act as its authority to collect the responses to the health/COVID-19 status screening questions asked by the Public Body.

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.

[18] Three conditions must be present to authorize a collection of personal information under section 33(c) of the FOIP Act. They are as follows:

- the collection must be for an operating program or activity of the public body;

- the personal information must be directly related to that operating program or activity; and
- the personal information must be necessary for that program.

[19] If all three conditions are met, the collection was authorized.

Was the collection for an operating program or activity?

[20] DATS is a public transportation service supplied by the Public Body with the mission to “provide safe, and reliable door-to-door shared ride services to those who are unable to use conventional transit”.⁸

[21] I find that DATS is an operating program of the Public Body, and the requirement to provide safe transport – in this case, safe from the transmission of disease – is part of that program.

[22] The Public Body’s evidence supports that it used the responses to the health/COVID-19 status screening questions to safely operate the DATS program during the pandemic to, for example, determine the level of service needed, the number of clients in one vehicle, whether extra PPE was required for drivers, or whether AHS transportation was required for COVID-19 positive clients.

Was the collection related directly to the program or activity?

[23] In Order F2010-014, the Adjudicator stated public bodies must “establish that the collection of... personal information... [is] for a purpose relating directly to” the activity or program.

[24] The Public Body referred to the State of Local Emergency Order it made and to Alberta Health’s CMOH Order 05-2020 as the impetus for the collection of the personal information.⁹

[25] CMOH Order 05-2020, along with general advice and guidance from the AHS Medical Officer of Health for the Edmonton Zone, guided the Public Body’s actions relative to screening DATS clients for COVID-19 risk. The Order refers to the authority of the CMOH. The relevant information from this Order is as follows:

Under section 29(2.1) of the Public Health Act (the Act), I have the authority by order to prohibit a person from attending a location for any period and subject to any conditions that I consider appropriate, where I have determined that the person engaging in that activity could transmit an

⁸ From the Public Body’s website at [Dedicated Accessible Transit Service \(DATS\)..](#)

⁹ Public Body Order 2020-001 was put in force on March 20, 2020 and can be found at <https://www.edmonton.ca/public-files/assets/document?path=meetings/EMAOrder.pdf>.

infectious agent. I also have the authority to take whatever other steps that are, in my opinion, necessary in order to lessen the impact of the public health emergency.

Therefore, having determined that certain activities could transmit COVID-19 as an infectious agent and that certain other steps are necessary to lessen the impact of the public health emergency, I hereby make the following Order, effective immediately:

1. Any person who is a confirmed case of COVID-19 must be in isolation for a minimum of 10 days from the start of their symptoms, or until symptoms resolve, whichever is longer.
2. For the purposes of this Order, Isolation includes the following restrictions:
 - a. remaining at home, and 2 metres distant from others at all times;
 - b. not attending work, school, social events or any other public gatherings; and,
 - c. not taking public transportation.
3. Subject to section 9, the following persons must be in Quarantine for a minimum 14 day period:
 - a. a person returning to Alberta after having travelled internationally; and,
 - b. a close contact of a person who is confirmed as having COVID-19.
4. For the purposes of this Order, Quarantine includes the following restrictions and requirements:
 - a. remaining at home;
 - b. not attending work, school, social events or any other public gatherings;
 - c. not taking public transportation; and,
 - d. watching for symptoms, as set out below, in themselves or in a family member.
- ...
7. Subject to section 8 of this Order, any person who is exhibiting any of the symptoms as set out below, which are not related to a pre-existing illness or health condition, must be in Isolation for a minimum of 10 days from the start of their symptoms, or until the symptoms resolve whichever is longer:
 - a. cough;
 - b. fever;
 - c. shortness of breath;
 - d. runny nose; or
 - e. sore throat.

[26] In summary, the Order:

- Directed individuals who had COVID-19 to isolate from others, which included not taking public transit.
- Directed individuals who had travelled internationally or who were a close contact of someone who had COVID-19 to quarantine, which also included not taking public transit.
- Listed the symptoms of COVID-19 that required individuals to be in isolation.

- [27] The health/COVID-19 status screening questions asked by the Public Body were based on the directives in CMOH Order 05-2020.
- [28] The Public Body submits the personal information collected was directly related to how DATS deployed drivers and to providing safe public transit. It stated that during the pandemic, much of DATS' trip volume had been for life sustaining medical services such as dialysis appointments. The nature of the service is that employees and clients are in close proximity to one another. The Public Body said it determined that precautionary measures were needed to protect both its clients and employees.
- [29] Once it received the responses to the questions, the Public Body "established special isolated transportation for any registrants that may have exhibited COVID-19 symptoms or were awaiting COVID-19 testing results". Drivers were also "provided with enhanced [PPE] for these trips" for their protection as required by Occupational Health and Safety rules. If an individual was COVID-19 positive, the Public Body worked with AHS to set up transportation for those individuals.
- [30] The screening questions were used to obtain information from clients about their health/COVID-19 status. This in turn became information the Public Body used to determine allowing only a single client versus more than one, the need for specialized PPE, or the need to have transport from AHS.
- [31] CMOH Order 05-2020 was issued to reduce disease transmission. The questions asked by the Public Body were connected to the specific details of the provincial public health order. The Order applied to how the Public Body managed its operations, including managing the DATS program, part of which includes keeping clients and employees safe. Therefore, I am satisfied that the collection of the personal information in the responses to the health/COVID-19 screening questions was directly related to the DATS program, which involves providing safe transport.

Was the collection necessary for the program or activity?

- [32] The Public Body submits that the collection of the information was necessary to minimize the risk of potential transmission of COVID-19.
- [33] Order F2022-30 dealt with the term "necessary" at para. 97:¹⁰

In order to comply with section 33(c), the information collected must relate directly to and be necessary for an operating program or activity of the public body. The term "necessary" as used in section 33(c) was considered and interpreted in Order F2017-83. The Adjudicator stated at para. 14,

¹⁰ Office of the Information and Privacy Commissioner of Alberta, [Order F2022-30](#), June 20, 2022.

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.

- [34] The Adjudicator in the Order quoted above determined that necessary does not mean indispensable, and that the “necessary” condition is satisfied as long as the collection is a significant means by which to help achieve the goals of the program. In this case, the Public Body asserts the collection of the information in the responses to the health/COVID-19 status screening questions were necessary as a means of achieving safety using DATS. It said the screening questions “were essential in ensuring these special precautions were in place for all DATS passengers and Operators while also ensuring DATS registrants could access critical life sustaining medical services.”
- [35] I agree. The collection may not have been indispensable but it was necessary so measures could be implemented to keep clients and employees safe from the transmission of COVID-19.¹¹ This is compatible with the CMOH Order 05-2020 requirement for isolation or quarantining. Since a client could not be refused transport, other means to achieve the isolation goal had to be found. Asking screening questions was needed to determine who needed isolation and to help ensure the safety of employees working in close contact with clients.

Conclusion

- [36] During the COVID-19 pandemic, the virus was found to be easily transmitted. The need for governments, including municipal governments, to act quickly to prevent spread was critical. To help ensure the health safety of employees who must closely interact with DATS clients, and to help ensure the health safety of the clients who have few transit options, the asking of health/COVID-19 status screening questions by the Public Body became a requirement that was authorized by the section 33 collection provisions in the FOIP Act. The urgency associated with the pandemic left little time for the typical, and methodical, time period usually taken to develop policies, to weigh pros and cons, to

¹¹ The same decision was reached in a similar set of circumstances in [Order F2010-014](#) where, at paragraph 27, the Adjudicator found that a collection of personal information was authorized because “ensuring suitability and safety of recruits are activities relating directly to, and necessary for, providing recruit training”.

consult with users, to consider alternatives (or even to determine if any exist), and to implement the plans in a measured way.

- [37] COVID-19 was a potentially deadly new virus with, initially, little understanding of how it was transmitted, and there was a genuine need to protect against all eventualities. There was pressure for governments and health facilities to take action in order to prevent the spread of the virus and to do it quickly. I say this to explain that even if a better method could have been found to handle the situation, and I am not sure there is one, the collection was necessary at the time and was directly related to the goal of keeping DATS' employees and clients healthy. Doing nothing was not an option. Regardless, the Public Body no longer requires riders to answer health/COVID-19 status screening questions because provincial health restrictions have mostly returned to pre-COVID-19 practices.
- [38] For the reasons indicated herein, I have concluded that the Public Body had authority under section 33(c) to collect the responses from its clients to the COVID-19 screening questions that qualify as personal information. As a result, I have no recommendations for the Public Body. However, I have made an observation, post-script, concerning retention for the Public Body to consider.
- [39] I would like to thank the Public Body for its cooperation in answering all my questions and for just generally being helpful.

Catherine Taylor
Senior Information and Privacy Manager

Postscript

Under section 35(b) of the FOIP Act, a public body must retain the personal information it collects for "at least one year after using it so that the individual has a reasonable opportunity to obtain access to it...". That period of time can be shortened if there is agreement between the public body, the individual, and, if applicable, the body that approves the records retention and disposition schedule for the public body.

For the collection of personal information from health/COVID-19 status screening questions, the Public Body retained the information for 90 days. I suggest that in the future, the Public Body retain personal information in accordance with the FOIP Act and ensure the policies and procedures, and any retention schedules, reflect these requirements.