

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-26

August 6, 2025

CREDIT COUNSELLING SERVICES OF ALBERTA LTD. O/A MONEY MENTORS

AND

DEBTORS' ASSISTANCE BOARD

Case File Numbers 010063 & 023731

Office URL: www.oipc.ab.ca

Summary: The Complainant alleged that Money Mentors (the Organization) collected and used her personal information contrary to the *Personal Information and Protection Act* (PIPA). The Complainant alleged that the Organization obtained information about a past bankruptcy from someone other than herself. The inquiry was split into two parts.

The first part of the inquiry resulted in Order P2023-07/F2023-36. In that Order, the Adjudicator found that the Organization was exercising powers, duties, and/or functions of the Debtors' Assistance Board (the Public Body) during its interactions with the Complainant. The Public Body delegated those powers pursuant to the *Debtors' Assistance Act*. As a result, the Adjudicator found that the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), rather than PIPA, applied to the Organization's handling of the Complainant's personal information. The Adjudicator also found that the Public Body was responsible for the Organization's compliance with the FOIP Act, and so it was added as a respondent to the inquiry.

The second part of the inquiry examined whether the Organization collected and used the Complainant's personal information in compliance with the FOIP Act.

The Adjudicator found that the Organization collected the Complainant's personal information directly from the Complainant for the purposes of providing credit counselling services, which was a program or activity of the Public Body, carried out by the Organization. The Adjudicator found that collection complied with the FOIP Act under section 33(c). The Adjudicator found that the Organization used the Complainant's personal information for the same purpose for which it was collected, in compliance with section 39(1)(a) of the FOIP Act. Therefore, the Respondents complied with the FOIP Act.

Statutes Cited: AB: *Debtors' Assistance Act*, RSA 2000, c D-6

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(vii), 2(b), 33, 33(c), 34, 34(1), 39(1)(a), 56(1), 72.

Personal Information Protection Act, S.A. 2003, c. P-6.5.

Public Inquiries Act, R.S.A. 2000, c P-39 ss. 4, 5.

Statutes Cited: Federal: *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3

Authorities Cited: AB: Orders 99-019, F2003-017, F2007-019, F2002-020, P2006-008, P2023-07/F2023-36

Cases Cited: *Atco Electric v. Stelmach*, 2016 LNASRB 213; 2016 ABSRB 796; *R. v. Schwartz* [1988] 2 S.C.R. 443

I. BACKGROUND

[para 1] This inquiry was split into two parts.

[para 2] In the first part, I considered whether the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) rather than the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (PIPA) might apply in this case, and also whether the Debtors' Assistance Board (the Public Body), which delegates powers to Money Mentors (the Organization) should be added as a respondent. My decision in the first part of this inquiry is set out in Order P2023-07/F2023-36. In that Order, I found that the FOIP Act applies, and that the Public Body should be added as a Respondent since, as a public body delegating statutory authority to the Organization, it is responsible for the Organization's compliance with the FOIP Act.

[para 3] Here, in the second part of the inquiry, I address the issues related to the Complainant's allegation that the Organization collected and used her personal information contrary to the FOIP Act. The background relevant to those issues is as follows.

[para 4] The Organization is a not-for-profit organization providing credit counselling services to Albertans. As I described in Order P2023-07/F2023-36, the Organization wields many of the powers, duties, and functions of the Public Body as delegated to it under the *Debtors' Assistance Act*, RSA 2000, c D-6. It was exercising those powers, duties, and functions when it met with the Complainant as described below.

[para 5] On February 1, 2018, the Complainant attended a meeting at the Organization with one of its counsellors (the Counsellor).

[para 6] A support worker (the Support Worker) from Alberta Health Services accompanied the Complainant.

[para 7] During the meeting, the fact that the Complainant had gone through bankruptcy arose. The Complainant is certain the Counsellor mentioned the bankruptcy without being informed of it by her and that, therefore, the Organization must have collected that information prior to the meeting. The Organization is certain that the Complainant volunteered the information that she had a bankruptcy, and that it had no knowledge of it prior to being informed of it by the Complainant.

[para 8] The Complainant met with the Organization a second and final time on February 20, 2018.¹ At this point, however, the matter of bankruptcy was already known to the Organization.

[para 9] With the assistance of the Support Worker, in June 2018, the Complainant made a written complaint about the Counsellor to the Organization. The main thrust of the complaint was that the Organization must have conducted a background check on the Complainant, and learned of her bankruptcy by doing so. In the inquiry, the Complainant further considered that the Organization may have learned of her bankruptcy from a representative from an Assured Income for the Severely Handicapped (AISH) office, or a CEO of Social Services.

[para 10] In response to that complaint, the Organization's Debt Programs Manager advised the Complainant that the Counsellor stated that the Complainant mentioned the bankruptcy first.

[para 11] Subsequently, the Complainant made a complaint to this Office alleging that the Organization collected her personal information in contravention of PIPA. Investigation and mediation were authorized to try to resolve the matter but did not do so. The matter proceeded to Inquiry. Once it was determined that the FOIP Act applies rather than PIPA, the complaint proceeded under the FOIP Act.

II. ISSUES

[para 12] The issue of whether the FOIP Act rather than PIPA applies was resolved in Order P2023-07/F2023-36. The remaining issues under the FOIP Act appear below. It should be noted that the issues have been framed to reflect the fact that the Public Body is responsible for the Organization's compliance with the FOIP Act, and so refer to "the Public Body." The facts of the matter however, involve the Organization's actions, and so discussion of the facts in this order references the Organization, rather than the Public Body as a practical matter. This is done to avoid any confusion about with whom the Complainant met and how collection occurred.

- 1. Did the Public Body collect, use and/or disclose the Complainant's "personal information" as this term is defined in section 1(n) of FOIP? Is the Complainant's personal information "recorded" personal information?**
- 2. Which party bears the burden of proof of establishing how collection occurred? I.e., whether the Complainant provided information about her bankruptcy to the Public Body during a meeting or whether the Public Body obtained the information from elsewhere?**
- 3. Did the Public Body collect the Complainant's personal information directly from the Complainant or from elsewhere?**
- 4. Did the Public Body comply with sections 33 and, if applicable, 34(1) of FOIP when they collected the Complainant's personal information?**

III. DISCUSSION OF ISSUES

Preliminary matter – Complainant's request to summon a witness

[para 13] At various stages throughout the review and inquiry process, the Complainant requested that the Support Worker provide a statement. The Complainant wanted the Support Worker to address who first mentioned the bankruptcy at the February 1, 2018 meeting and whether she and the Complainant were informed that the meeting was being recorded. The Support Worker did not volunteer a statement, and, according to the Complainant, indicated that she would provide one if subpoenaed. The Complainant requested that I subpoena a statement from the Support Worker.

[para 14] Section 56(1) of the FOIP Act grants to me the powers of a commissioner under the *Public Inquiries Act*, R.S.A. 2000, c P-39 (the PIA). Sections 4 and 5 of that Act confer power to summon witnesses and, with them, documents:

4 The commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquire.

5 The commissioner or commissioners have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and to produce documents and things as is vested in a court of record in civil cases, and the same privileges and immunities as a judge of the Court of Queen's Bench.

[para 15] The PIA does not, however, contain any guidance on when such power should be exercised; neither is there significant precedent on the matter in previous orders of this Office. In Order 99-019, former Commissioner Clark summoned several witnesses, including a third party witness, to provide oral testimony in an inquiry but he did not elaborate on the reasoning that went into the decision.

[para 16] Other administrative and quasi-judicial bodies in Alberta enjoy the same powers under the PIA and have developed various standards to guide the task of deciding whether to summon a witness. Discussion of such standards appears in a decision of the Alberta Surface Rights Board: *Atco Electric v. Stelmach*, 2016 LNASRB 213; 2016 ABSRB 796 (*Stelmach*) I reach the same conclusion as the member of the Surface Rights Board in that decision. The exercise of the power to compel a witness under the PIA is a matter of discretion, without a definitive test, but at a *minimum* there should be a substantial possibility that a witness will provide relevant testimony (*Stelmach*, at para. 32)

[para 17] In this case, given that the Support Worker was present during the February 1, 2018 meeting, there is a substantial possibility that her evidence of what was said at the meeting would be relevant. The minimum standard I have adopted for summoning the Support Worker in this case is met. Since it is only a minimum standard, I consider further factors.

[para 18] The Support Worker is neither a party nor an employee of a party to this Inquiry. Rather, she is a disinterested third party caught in the crossfire of what is essentially a he-said/she-said situation between the Complainant and the Respondents. Further, I already have the benefit of the Complainant's statement and the sworn statement of the Counsellor regarding what was said regarding the bankruptcy, both of whom were at the meeting and witness to what each other said. In addition, I have the sworn statement of the Debt Program(s) Manager regarding the complaint of June, 2018, and the Organization's general information gathering practices. As well, the parties are firm in their positions that the other is the one who mentioned bankruptcy first. A further statement from the Support Worker would do little to resolve that issue.

[para 19] In view of the inconvenience it would cause to the Support Worker who is an uninterested third party, the availability of first hand evidence from the parties regarding the same matter that the Complainant wishes the Support Worker to speak to, and the limited utility of the Support Worker's evidence in light of the evidence from the parties, I decline to summon her as a witness.

1. Did the Public Body collect, use and/or disclose the Complainant's "personal information" as this term is defined in section 1(n) of FOIP? Is the Complainant's personal information "recorded" personal information?

[para 20] The information at issue here is the fact that the Complainant had a previous bankruptcy. That information is the type of information defined as personal information under section 1(n) of the FOIP Act. It is information about her and is part of her financial history which is expressly recognized as personal information in section 1(n)(vii). It is the case that section 1(n) only applies to recorded information.

[para 21] It is clear that, one way or the other, the Organization collected the Complainant's personal information since it appears in the Organization's notes. The information is thus information recorded by the Organization, and personal information under the FOIP Act.

[para 22] There is no indication that the Organization disclosed the Complainant's personal information.

[para 23] There is no indication that the Organization used the Complainant's personal information other than for the purposes of providing credit counselling services.

2. Which party bears the burden of proof of establishing how collection occurred? I.e., whether the Complainant provided information about her bankruptcy to the Public Body during a meeting or whether the Public Body obtained the information from elsewhere?

[para 24] The approach to determining which party bears the burden of proof where the FOIP Act is silent on the matter is set out in Order F2002-020 at para. 10; it involves two questions:

- i) Who raised the issue?
- ii) Who is in the best position to meet the burden of proof?

[para 25] The Complainant did not make any arguments about the burden of proof.

[para 26] The Respondents argue, and I agree, that the Complainant has an initial evidential burden to establish that the Organization collected her personal information. If the initial

evidential burden is met, then the onus shifts to the Respondents to establish that collection complied with the FOIP Act.

[para 27] The Respondents further argue that the initial evidential burden also requires that the Complainant provide evidence that it collected information in the manner that the Complainant alleges: by the Organization, prior to the February 1, 2018 meeting. Among various authorities cited by the Respondents in support of their positions is the following from Order F2003-017 at para. 21:

The Act is silent on which party bears the burden of proof in a breach of privacy case. Following the rationale for allocating the burden of proof laid out in Order 97-004, as the Applicant raised the issue, he has the initial burden to establish that his personal information was disclosed as he alleged. If some disclosure of personal information is proven, then the burden shifts to the Public Body to justify the disclosure(s) under the Act.

[para 28] The Respondents further cite Order F2007-019 wherein former Commissioner Work adopted the approach taken under PIPA in Order P2006-008. The Respondents highlight the following passages from Order P2006-008 at paras. 10 and 11 in particular:

Relying on these criteria in Order P2005-001, I stated that a complainant has to have some knowledge of the basis of the complaint and it made sense to me that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it has authority under the Act to collect, use and disclose the personal information.

This initial burden is what has been termed the “evidential burden”. As I have said, it will be up to a complainant to adduce some evidence that personal information has been collected, used or disclosed. A complainant must also adduce some evidence about the manner in which the collection, use or disclosure has been or is occurring, in order to raise the issue of whether the collection, use or disclosure is in compliance with the Act.

[para 29] The Public Body also argues that it may wind up in an unfair position if the burden shifts to it absent any evidence about the manner of collection from the Complainant. It states,

At a minimum, the Complainant needs to adduce credible evidence to raise the issue, for the burden to flip to the Respondents. The onus rests on the Complainant to adduce a satisfactory level of evidence to support her allegation, before the analysis continues to see if a breach of Part 2 of the Act occurred. If this were not the case, a public body could be put into the untenable position of proving a negative (e.g. that breach did not occur) based on any allegation raised by a complainant.

[para 30] I agree that the Complainant, as part of the initial evidential burden, has to provide evidence that the Organization collected information as she alleged. The Complainant is the one who raised the issue of collection and is in the best position to describe the circumstances which, as far as the complaint alleges, give rise to an issue of whether collection complies with the FOIP Act.

[para 31] In contrast, the Respondents, the Organization in particular, are eminently in the best position to meet the burden of proof of demonstrating how collection occurred, and whether they complied with the FOIP Act. The Complainant simply does not have access to knowledge of the Organization's inner workings, or the actions of its employees surrounding the meeting of February 1, 2018.

[para 32] That is not to say that the Complainant's version of events is irrelevant. The Respondents may provide sufficient evidence to meet the burden of demonstrating that they complied with the FOIP Act by establishing an alternate version of events to those alleged by the Complainant. At that point, if the complaint is to succeed, the Complainant would have to rebut the Organization's version of events and establish that her version of events is what occurred.

3. Did the Public Body collect the Complainant's personal information directly from the Complainant or from elsewhere?

4. Did the Public Body comply with sections 33 and, if applicable, 34(1) of FOIP when it collected the Complainant's personal information?

[para 33] In view of my conclusion on the burden of proof, I address these two issues together.

[para 34] It is uncontested that the Organization obtained the Complainant's personal information in this case; it necessarily follows that it was collected at some point.

[para 35] The Complainant recalled that the February 1, 2018 meeting had been recorded, and I asked the Organization to provide any recording of it. Unfortunately, if there was a recording, the Organization was unable to locate it.

[para 36] The Complainant described the circumstances that gave rise to her complaint about collection.

[para 37] The Complainant went through bankruptcy in 2002. The matter of her bankruptcy was a closely held by the Complainant. She states that she has told no one of it, save for her daughter, and not until 2019. A statement from the Complainant's daughter confirms she had no knowledge of the bankruptcy until that time.

[para 38] The Complainant recalls details of the February 1, 2018 meeting where the bankruptcy was mentioned. The Complainant recalls that she and the Support Worker waited twenty minutes past the appointed time for the meeting to begin. According to the Complainant, the reason for the delay was that the Organization was setting up sound equipment to record the meeting for training purposes. Once the meeting began, the Complainant states that she was aggressively confronted about a bankruptcy in 2009 twice within the first few minutes. In her words from an e-mail to the Debt Programs Manager, "...I only admitted a previous bankruptcy after it was disclosed to me that she [the Counsellor] was aware of it. I was shamed twice with this bully tactic and admitted it then." The Complainant states that she was so shocked that the Counsellor knew about the matter that she did not correct the date of bankruptcy (2002 instead of 2009) and was in a state of significant emotional distress throughout the remainder of the meeting. Such was the Complainant's certainty that she had not revealed the bankruptcy, that she made a written complaint about the matter to the Organization in June 2018, positing that the Organization conducted a background check about her financial history. At inquiry, she has further posited that an AISH representative or CEO of Social Services have been the source of the information.

[para 39] Given the above, I find that the Complainant has met the evidential burden. The Complainant has established that the Organization collected her personal information, and has set out circumstances that suggest that collection was indirect, and without her consent. In doing so, the Complainant has described circumstances which put into issue whether the Organization has complied with section 34(1) of the FOIP Act which limits authority to collect personal information from a source other than the individual it is about. The Complainant has demonstrated that the Organization collected her personal information and has some knowledge of the basis for a complaint that it was improperly collected from someone other than her.

[para 40] Whether what the Complainant alleges is in fact the case is of no matter at this point in the analysis. As noted by former Commissioner Work in Orders P2006-008 and F2007-019, the Supreme Court of Canada stated in *R. v. Schwartz* [1988] 2 S.C.R. 443 at paragraph 38,

The party with an evidential burden is not required to convince the trier of fact of anything, only to point out evidence which suggests that certain facts existed.

[para 41] As to the Complainant's thoughts that the Organization might have obtained information about her bankruptcy by conducting a background check on her, from an AISH representative, or from a CEO of Social Services, she has not provided evidence that any of those scenarios is in fact the case. Indeed, the Complainant has not made clear whether any AISH representative or the CEO of Social Services actually had knowledge of her bankruptcy. She recalls discussing her finances with such people in 2009 but does not state that she informed them of her bankruptcy. She also refers to those discussions as the "initial breach" which suggests that she attributes any knowledge of her bankruptcy on the part of those individuals to

a violation of her privacy rather than self-disclosure. If that is the case, no particulars of any breach are given. The Complainant does not identify such individuals by name in her submissions.

[para 42] However, given the nature of her complaint, I do not find that her failure to provide evidence substantiating her theories about from what source the Organization obtained her personal information leads to the conclusion that she has not met the evidential burden.

[para 43] Section 34 of the FOIP Act expressly addresses circumstances that an individual will likely not be aware of: collection of personal information from a source other than the individual it is about. Where, as is the case here, an individual has reason to believe that their personal information has been collected from elsewhere, and without their knowledge or consent, the evidential burden cannot require a complainant to provide evidence suggesting anything more than that. An individual complainant, with no power to investigate or compel answers from the entity collecting the information, or an entity suspected of disclosing information for collection, simply could not meet the burden. That, in turn, would effectively nullify review and enforcement of section 34 of the FOIP Act, thereby defeating its purpose stated in section 2(b),

(b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,

[para 44] In view of the above, sufficient evidence to shift the burden to the Respondents is present in this case.

[para 45] Applying the evidential burden this way does not leave the Respondents in a position to have to prove a negative. They do not have to prove that what the Complainant theorizes upon did not happen. As has always been the case, the Respondents, who are in the best position to provide evidence about their information collection practices, must provide evidence of what occurred, and how collection complied with the FOIP Act in those circumstances. In this case, that means explaining how it came by knowledge of the Complainant's bankruptcy.

[para 46] I now turn to the Respondents' submissions and arguments.

[para 47] The Respondents explain that the Complainant's personal information was collected directly from the Complainant pursuant to section 33(c) of the FOIP Act; it states,

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 48] It is clear that information about the Complainant's bankruptcy was collected for the purposes of carrying out the credit counselling functions of the Public Body, which is an operating program or activity of the Public Body, here carried out by the Organization. That purpose falls squarely within section 33(c) of the FOIP Act.

[para 49] The Respondents' evidence that the Organization collected information directly from the Complainant appears in a statement sworn by the Counsellor describing the Organization's regular practices and her recollection of the meeting with the Complainant.

[para 50] The Counsellor explains that the Organization does not have any policies that require or permit any sort of background check on potential clients, and that she has never conducted any such check prior to a first meeting with a client, including the Complainant. Prior to a first meeting, potential clients are only asked to complete a "Spending Plan" document which is then used to identify debt management options. The Counsellor explains that the Organization may search the database of the federal Superintendent of Bankruptcy in the event that a client enrolls in the Orderly Payment of Debts Program², but that such a step would only occur far later in the process, and the Complainant did not enroll in that program in any case.

[para 51] The Counsellor reviewed notes from the February 1, 2018 meeting with the Complainant and described the meeting based upon the notes and her own memory. Notes from the meeting state that the Complainant mentioned, "...there was a previous bankruptcy 9 years ago."

[para 52] The Counsellor recalls that the Support Worker was at the meeting, and also that a trainee of the Organization was there to observe. The Counsellor recalls discussing the Complainant's current financial situation, several points of her financial history, and debt management options. The Counsellor does not recall exactly what was said about bankruptcy, but states that the Complainant mentioned it in the first couple of minutes in the meeting. The Counsellor recalls suggesting that the Complainant meet with a licensed insolvency trustee, to which the Complainant had a "negative reaction." The Counsellor also stated that she explained to the Complainant that meeting with an insolvency trustee did not mean bankruptcy but could lead to a consumer proposal instead. The Counsellor is certain that the Complainant is the only source from which the Organization obtained the Complainant's financial information.

[para 53] The Counsellor states that to the best of her knowledge, the meetings with the Complainant were not recorded.

[para 54] The Debt Programs Manager provided a sworn statement also stating that the Organization does not conduct background checks on potential clients, adding that it has neither

a need, nor a budget to do so. The Debt Programs Manager also recalled the written complaint made in June 2018 and speaking to the Counsellor about it. The Debt Programs Manager was informed by the Counsellor that the Complainant was the one who mentioned bankruptcy. Notes and records detailing how the June 2018 complaint was handled state the same. The Debt Program Manager also states that to the best of her knowledge, the meetings with the Complainant were not recorded.

[para 55] Based upon the sworn testimony of the Counsellor and the Debt Programs Manager, I may conclude that the Respondents complied with the FOIP Act when the Organization collected the Complainant's personal information, absent evidence to the contrary. The Complainant speculates that the Organization may have conducted a background check, obtained her personal information from an AISH representative or a CEO of Social Services, but there is no evidence that those situations are the case, and are denied by the Respondents. I am left to consider only the Complainant's statement that she did not mention her bankruptcy to the Organization first.

[para 56] The Respondents observe that sworn testimony is preferable to unsworn statements and argue that the affidavit evidence asserting that the Complainant raised the matter of bankruptcy ought to prevail over the Complainant's unsworn statements. I am, however, cognizant that the Complainant is without legal representation, and in any case, do not need to rest my conclusion on the preference for sworn versus unsworn testimony.

[para 57] I cannot say for certain what was said by who at the February 1, 2018 meeting. The evidence between the parties is consistent to the extent that they agree bankruptcy was mentioned within the first minutes of the meeting, but not who mentioned it first. I have no reason to doubt that either Complainant or the Counsellor is anything less than sincere and truthful in their statements about what each recall of the meeting. There is little to be gained from analyzing credibility and, in light of facts that I find are established below, I have no need to.

[para 58] What is clear to me from the evidence is that the Organization had no source for financial information about the Complainant, other than the Complainant herself. The Complainant has kept close knowledge of her bankruptcy; the only person she has told was her daughter, and only then in 2019, the year after the Complainant met with the Organization. The Organization has sworn that it did not gather any information about the Complainant from anywhere else, as is consistent with its usual practices. Considering the totality of the evidence, on the balance of probability what appears to be the case is that while the Complainant likely did not volunteer information about her bankruptcy up front, in discussion of her finances during the February 2018 meeting she was, somehow, prompted to admit the bankruptcy.

[para 59] I find that the Respondents complied with the FOIP Act when the Organization collected the Complainant's personal information, pursuant to section 33(c).

[para 60] As to the matter of use of the Complainant's personal information, it was only used for the purposes of the credit counselling meetings. As such, use complied with the FOIP Act pursuant to section 39(1)(a), which permits use of personal information for the purpose for which it was collected.

IV. ORDER

[para 61] I make this Order under section 72 of the FOIP Act.

[para 62] I confirm that the Respondents complied with the FOIP Act.

John Gabriele
Adjudicator
/rm

¹ In Order P2023-07/F2023-36 this date is erroneously referred to as February 20, 2021. A correction is pending.

² The Orderly Payment of Debts Program is established under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and is administered by the Organization on behalf of the Government of Alberta (Order P2023-07/F2023-36 at para. 16.)