

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER FOIP2025-35**

December 3, 2025

**CITY OF EDMONTON**

Case File Number 003477

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant made a complaint to this office that the City of Edmonton (the Public Body) collected, used and disclosed the Complainant's personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

The Commissioner decided to conduct an inquiry into the matter. The inquiry also considered the Complainant's concern that the Public Body failed to make every reasonable effort to ensure that the personal information it used about them to make a decision was accurate and complete as required by section 35(a) of the FOIP Act.

The Adjudicator found that the Public Body had authority to collect, use, and disclose the Complainant's personal information as it did. The Adjudicator also found that the Public Body fulfilled its duty under section 35(a).

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 35, 39, 40, and 72

**Authorities Cited: AB:** Orders F2006-018, F2006-019, F2008-029, F2009-041, F2012-05, F2013-14, F2013-29, F2015-01, F2017-39, F2017-49, F2019-42, F2021-03, F2024-02

## **I. BACKGROUND**

[para 1] On June 17, 2016, the Complainant submitted a Request for Review/Complaint Form to this Office alleging that the City of Edmonton (the Public Body) collected, used and disclosed the Complainant's personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

[para 2] The Public Body had banned the Complainant from its recreational facilities based on incidents the Complainant had been involved in. The Complainant's concerns relate to the information the Public Body collected and used about the Complainant, in addressing the incidents. Additionally, an employee of the Public Body had made a report about the incidents to the Edmonton Police Service (EPS). The Complainant had obtained information from the EPS file from the EPS, and raised concerns about the personal information the Public Body had disclosed about them to the EPS.

[para 3] The Commissioner decided to conduct an inquiry into the Complainant's complaint that the Public Body collected, used and disclosed their personal information in contravention of the FOIP Act.

## **II. ISSUES**

[para 4] The Notice of Inquiry states the issues in this inquiry as follows:

1. Did the Public Body collect the Complainant's personal information in compliance or in contravention of section 33 of the FOIP Act?
2. Did the Public Body collect the Complainant's personal information in compliance or in contravention of section 34(1) of the FOIP Act?

*In its initial submission, the Public Body is to cite the specific provision or provision(s) under section 34(1) that it relied on to collect the Complainant's personal information if it collected his personal information from a source other than the Complainant.*

3. Did the Public Body use the Complainant's personal information in compliance or in contravention of section 39(1) of the Act? If the Public Body used the Complainant's personal information, did the Public Body comply with section 39(4) of the FOIP Act?
4. Did the Public Body disclose the Complainant's personal information in compliance or in contravention of section 40 of the Act? In particular, was the disclosure authorized under sections 40(1) and 40(4) of the FOIP Act?

[para 5] The Notice set out specific instructions for the Complainant:

In [their] initial submission, the Complainant is to:

- specifically identify what personal information about [them] the Public Body collected without authority under the FOIP Act,
- specifically identify what personal information about [them]the Public Body used without authority under the FOIP Act, and
- specifically identify what personal information about [them] the Public Body disclosed without authority under the FOIP Act and who it disclosed [their] personal information to,

and provide evidence to support each allegation of collection, use and disclosure.

[para 6] By letter dated July 8, 2025, the previous adjudicator notified the parties that an additional issue was being added to the inquiry. She said:

In [their] initial submission, the Complainant asserts that the Public Body used [their] personal information to ban [them] from its facilities. The Complainant alleges that the Public Body failed to make every reasonable effort to ensure that the personal information it used about [them] to issue the ban was accurate and complete as required by section 35(a) of the FOIP Act...

[para 7] The following issue was added:

If the Public Body used the Complainant’s personal information, did it make every reasonable effort to ensure the information was accurate and complete as required by section 35(a) of the FOIP Act?

### **III. DISCUSSION OF ISSUES**

#### **Preliminary discussion – scope of the inquiry and concerns raised by the Complainant**

[para 8] The Complainant has raised concerns that fall outside the scope of this inquiry.

[para 9] The Complainant argues that the Public Body is required to inform them of “where and how and what witness saw the [specified incident].” This information is not relevant to the issues in this inquiry, as discussed below, and the Public Body is not required to provide it as part of this inquiry.

[para 10] In its submission, the Public Body states that the EPS file provided with the Complainant’s initial submission “contains witness statements gathered by the City at pages 7, and 19-31. As far as the City can tell, the remainder of this document was information gathered and in possession of the EPS.” The Complainant appears to interpret this statement as meaning that the Public Body is not the source of any other information located in the police file, other than the witness statements at pages 7 and

199-31. The Complainant then raises a number of concerns or demands based on this interpretation. For example, the Complainant states in one of the emails comprising their rebuttal submission:

Although it is implied I should probably have made it more clear that one of the remedies thought is that the City of Edmonton write to EPS and inform them that what it is contained in the report was information not provided to them, specially the parts of the report identified in my submissions related to [details of specific incidents]. The City has to assume responsibility for this and write to EPS if as it claims it never provided the information to EPS, while EPS claims in its report it was provided by the public body. Clearly if the City did not provide this information this is personal information improperly recorded and has to be changed as [the author of the Public Body's submission] acknowledges in his submission that if the information is improperly recorded it has to be changed.

[para 11] I understand the Public Body's statement in its submission to mean that the witness statements appearing at page 7 and 19-31 of the police file were initially collected by the Public Body, and then provided by the Public Body to the EPS (i.e. disclosed by the Public Body to the EPS). The remaining information in the police file was collected by the EPS, not by the Public Body.

[para 12] Public Body employees appear to have made verbal statements to the EPS, which were recorded by the EPS and appear in records other than pages 7 and 19-31. The Complainant seems to argue that if these statements were provided to the EPS by Public Body employees, then it must have also been collected by the Public Body. This is not necessarily the case.

[para 13] The definition of "personal information" in the FOIP Act is restricted to *recorded* information about an identifiable individual. This means that Part 2 of the FOIP Act applies only to *recorded* personal information. If a Public Body employee provided a verbal statement to EPS based on that employee's observations that were not recorded, then the Public Body has not collected that information. The Public Body employees' observations were recorded by the EPS, which means that the EPS collected that information.

[para 14] The Public Body has not denied that Public Body employees provided verbal statements to the EPS that are contained in the police file, which is a record of the EPS and not the Public Body. Although a Public Body employee was the source of the information, nothing before me indicates that the Public Body employee had previously recorded (or collected) that information. In other words, it is true that the Public Body was the source of information in the EPS file appearing in pages other than 7 and 19-31, *and* it is true that the Public Body did not collect that information within the terms of the FOIP Act.

[para 15] Regarding the collection of personal information by the EPS, the EPS is not a party to this inquiry and that collection is not at issue.

[para 16] The Public Body has limited its submissions to the recorded personal information of the Complainant that it collected, used, and disclosed.

[para 17] From their submissions, it appears that the Complainant wishes for the EPS to expunge the information relating to these incidents from its records.

[para 18] If they have not already done so, the Complainant might make a request to the EPS to correct personal information about the Complainant in its records, under section 7 of the *Protection of Privacy Act*, S.A. 2024, c P-28.5 (POPA) which replaced Part 2 of the FOIP Act in June 2025. (This inquiry is continuing under the FOIP Act because the Complainant's complaints relate to the collections, uses, and disclosures that occurred before the FOIP Act was repealed, and the complaint was made to this office before the FOIP Act was repealed).

[para 19] I note however, that section 7 of POPA is substantially similar to section 36 of the FOIP Act, and past Orders have discussed the significance of maintaining the integrity of official records in the custody and control of public bodies, determining that correcting information by altering or removing incorrect information can destroy the integrity of the records (See Orders F2016-34, F2017-37, F2020-33). Order F2021-03 has summarized the application of section 36 as follows (at paras. 83-84):

I interpret section 36 as giving an individual some control over personal information about the individual in the custody or control of government institutions. While this provision does not permit an individual to dictate what may be said or written about the individual, or to require the deletion of information the individual considers inaccurate or misleading, it does permit the individual to provide the individual's own views (and supporting evidence) of information by requiring a public body to link or annotate correction requests to the records.

As I noted in Order F2016-34, annotating or linking personal information will, in many or most instances, be the preferred method of correcting information when an applicant complains that there is an error or omission in his or her personal information. (In some cases, it may be possible to create a revised "corrected" version, but even so, the original version will likely need to be retained.)

[para 20] In any event, this inquiry is limited to the collection, use, and disclosure of the Complainant's recorded personal information by the Public Body, as well as its duty under section 35(a).

**1. Did the Public Body collect the Complainant's personal information in compliance or in contravention of section 33 of the FOIP Act?**

[para 21] Section 33 of the FOIP Act places limits on personal information a public body can collect. It states:

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

*(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*

*(b) that information is collected for the purposes of law enforcement, or*

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

[para 22] In their initial submission, the Complainant states that the personal information collected, used, and disclosed by the Public Body, that they believe was not authorized, is the personal information contained in a specific police report, provided with the Complainant's submission.

[para 23] This police report relates to allegations made about the Complainant's behaviour when they were present at a facility run by the Public Body. This includes witness statements of third parties, including statements made by Public Body employees. The Complainant argues that the Public Body collected statements from employees and patrons, which were later provided to police, without verifying the accuracy of these statements. The Complainant argues that this "invalidates the collection of information under sections 34(1) and 34(2)."

[para 24] The Public Body states that its collection of witness statements was authorized as part of an operating program of the Public Body, as well as for law enforcement (sections 33(c) and (b), respectively).

[para 25] The Public Body states (at page 2):

All of the information collected in witness statements in this matter was collected for an operating program, being the operation of City recreational facilities. The City of Edmonton operates and staffs various recreational facilities around the City. As part of that operation the City has an obligation to ensure that its recreational facilities are operated in a way that is safe, and members of the public can be confident that they are safe and free from any form of harassment (for both City staff and the public). When allegations of harassment are made, the City gathers witness statements about the incident to determine whether further action needs to be taken. This further action can include suspension from facilities and bans issued in accordance with the Trespass To Premises Act (RSA 2000, c T-7). If these bans are violated, this can result in actions including prosecutions under that act.

[para 26] The Public Body cites Order F2019-42, in which the adjudicator concluded that collecting information about pet ownership was authorized as necessary for the licensing and regulation of pets, which was part of the public body's operating programs.

[para 27] With respect to collection for the purpose of law enforcement, the Public Body states (at page 4):

Since bans and prosecutions can result from the gathering of this information, this clearly falls under the definition of law enforcement since there are penalties and sanctions (including possible prosecution). Further, if there is the possibility of a crime in the jurisdiction of the EPS, the information is then passed on to that law enforcement agency for their own investigations.

[para 28] Law enforcement is defined in section 1(h) of the FOIP 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 29] The Public Body provided copies of various policies, including its "Abusing Patron Policy", "Recreational Facility Safety and Use Guidelines", and "Respect for People and Property". It also included a copy of a 2018 letter to the Complainant, informing the Complainant that they were banned from the Public Body's recreational facilities for a period of time due to a contravention of the Public Body's use guidelines. This letter states:

Pursuant to the Trespass to Premises Act Section 2(a), you are hereby notified not to trespass on these premises owned by the City of Edmonton and located at the municipal addresses Identified below.

[para 30] This letter refers to the same incidents referenced in the police report provided with the Complainant's initial submission.

### *Analysis*

[para 31] From the submissions, I understand that the Public Body investigated complaints made by third parties about the Complainant's conduct while they attended a recreational facility run by the Public Body. The Public Body collected statements from third parties, including patrons and Public Body employees, about the Complainant's conduct; these include the Complainant's personal information. The Public Body also provided information to the EPS about the Complainant and the complaints.

[para 32] The purpose of the collection was to investigate the complaints about the Complainant's conduct at the Public Body's facility. As a result of the investigation, the Public Body banned the Complainant from its facilities for a time.

[para 33] I agree with the Public Body that ensuring the safety and security of its patrons is part of operating the recreational facilities. I agree that the conduct complained about is sufficiently serious

that it could affect the safety and security of patrons; therefore, it was reasonable for the Public Body to investigate the complaints.

[para 34] I also agree that the circumstances fall within the scope of “law enforcement” as defined in the Act, such that section 33(b) also authorizes the collection. The definition of “law enforcement” includes the complaints that led to the investigation, which some of the witness statements contain. The Public Body’s investigation led it to issue a ban to the Complainant; it also referred the complaints to the EPS.

[para 35] This finding is consistent with Order F2024-02, which addressed whether information relating to an investigation conducted by the same public body, which resulted in an individual being banned from the premises, was information in a law enforcement record for the purposes of section 17(4)(b) of the Act. In that case, the adjudicator concluded (at para. 84):

I find that the Public Body’s investigation and the issuance of the ban to the Applicant under the *Trespass to Premises Act*, R.S.A. 2000, c. T-7 falls within the definition of “law enforcement” under section 1(h)(ii) of the Act.

[para 36] I find that this collection was authorized under section 33(b) and (c) of the FOIP Act.

[para 37] With respect to the Complainant’s argument that the information was collected without authority because the statements were inaccurate, the Public Body cannot be expected to verify the accuracy of witness statements *before* it collects them. This would require the Public Body to investigate the veracity of the statements before recording them.

[para 38] Past Orders of this office have stated that in conducting an investigation, a public body may collect information that it ultimately determines is not necessary to make a decision regarding the relevant individual; this is discussed in Order F2012-05 (at paras. 30 and 42):

I note that the Public Body does not need to rely on all information collected when making a determination under the WCA, in order for that collection of information to be authorized under the FOIP Act. Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager’s job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.

...

In my view, certainly so long as these bodies are gathering and evaluating evidence in good faith and the belief that it may be or is relevant, it is not my role to second-guess their performance of these duties.

[para 39] A similar analysis applies here. It would not be practical to impede an investigation by requiring the public body to verify the accuracy of any statement or fact before recording (collecting) it.

[para 40] Further, witness statements contain more than merely factual information. They often also contain statements of opinion, which are not necessarily verifiable.

[para 41] Therefore, whether or not the statements collected by the Public Body are “accurate” is not relevant to the Public Body’s authority to collect the Complainant’s personal information as it did.

**2. Did the Public Body collect the Complainant’s personal information in compliance or in contravention of section 34(1) of the FOIP Act?**

[para 42] Collection from a source other than the individual the personal information is about is authorized in the circumstances set out in section 34(1). The following are the relevant sections:

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

*(a) another method of collection is authorized by*

*(i) that individual,*

*(ii) another Act or a regulation under another Act, or*

*(iii) the Commissioner under section 53(1)(h) of this Act,*

*...*

*(g) the information is collected for the purpose of law enforcement,*

*...*

[para 43] I have found that the Public Body’s collection of the Complainant’s personal information was for the purpose of law enforcement. Given this, I find that the indirect collection was authorized under section 34(1)(g).

**3. Did the Public Body use the Complainant’s personal information in compliance or in contravention of section 39(1) of the Act? If the Public Body used the Complainant’s personal information, did the Public Body comply with section 39(4) of the FOIP Act?**

[para 44] Use of the Complainant’s personal information is governed by section 39 of the Act. The relevant portions of section 39 of the Act state:

*39(1) A public body may use personal information only*

*(a) for the purpose for which the information was collected or*

*compiled or for a use consistent with that purpose,*

*(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*

*(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

...

*(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 45] Section 41 defines what constitutes a “consistent purpose” under section 39(1):

*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 46] The Complainant’s submission regarding the use of their personal information is the same as the argument regarding collection: that the Public Body failed to ensure the accuracy of the information as required.

[para 47] The Public Body states that it used the Complainant’s personal information for the same purpose for which it was collected. Specifically, it argues (at page 5, footnotes omitted):

The only use of the information by the City was to determine whether legal proceedings needed to be undertaken such as the ban outlined above. This was the specific reason it was collected. Since the witness statements included information that could be seen to be more serious they were also forwarded to the EPS which is consistent with this purpose.

Section 39(4) indicated that a public body may use personal information only to the extent necessary to carry out its purpose. All of the information collected was witness statements. Since it is not possible to “parse” a witness statement and decide what to review and what not to review from the statement, all of these statements would have been considered as a whole in the issuance of the ban, and forwarded as a whole to the EPS. Since they are all related to the same incident, the City submits that this was a reasonable manner in accordance with Section 39(4).

[para 48] In Order F2008-029, the Director of Adjudication considered the meaning of the term “necessary” in section 41(b). In that case, the public body disclosed a police report containing an individual’s personal information to a third party organization, pursuant to an information-sharing agreement, for the purpose of enabling the organization to provide assistance to victims of domestic violence. The Director of Adjudication stated (at para. 51):

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 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 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 49] This analysis has been applied to the standard of what is necessary under section 40(4) (see Order F2015-01, at paras. 25-26), and applies as well to the standard under section 39(4).

[para 50] I found that the Public Body was authorized to collect the personal information for the purpose of law enforcement; the Public Body is also authorized to use the information for law enforcement purposes. There is nothing to suggest that the Public Body used the Complainant’s personal information for any extraneous or bad-faith purpose.

[para 51] I agree that the Public Body was authorized to use the Complainant’s personal information as it did, under sections 39(1)(a) and 39(4).

**4. Did the Public Body disclose the Complainant’s personal information in compliance or in contravention of section 40 of the Act? In particular, was the disclosure authorized under sections 40(1) and 40(4) of the FOIP Act?**

[para 52] Section 40 of the Act sets out the circumstances in which public bodies are authorized to disclose personal information. The relevant provisions state:

*40(1) A public body may disclose personal information only*

...

*(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*

...

*(q) to a public body or a law enforcement agency in Canada to assist in an investigation*  
*(i) undertaken with a view to a law enforcement proceeding, or*  
*(ii) from which a law enforcement proceeding is likely to result*

...

*(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 53] The Complainant argues that the Public Body disclosed his personal information to the EPS without authority. The Complainant repeats his argument that the Public Body did not ensure that the information was accurate before disclosing it.

[para 54] The Complainant also argues:

It is important to point out that the disclosure of the information happened 3 weeks after the alleged March 10 incident for which the City issued the ban. It is unclear the motivation or rationale for disclosure to Police, and it is important to state that other than the City nobody complained to Police as Constable [D] wrote in his report. It is the position of the Complainant that the City not only violated the Complainant's personal privacy, but also may have violated the privacy of all the other patrons and individuals whose information the City disclosed to Police without any warning to Police that the information was in all likelihood completely inaccurate. There is nothing in Section 40 that would permit the City to disclose inaccurate information to the Police, it is unclear what article of Section 40 the City used to justify disclosing the personal information of the complainant.

[para 55] The Complainant also argues that the Public Body “does not have legal standing to make a complaint that can result in criminal charges”.

[para 56] The Public Body argues that the disclosure of the Complainant's personal information to EPS was authorized under sections 40(1)(c) and (q). The Public Body states that the purpose of the disclosure was consistent with the purpose for which it was collected. It further states that the disclosure was to assist the EPS with its investigation.

[para 57] With respect to section 40(4), the Public Body states (at page 6):

Since all of the witness statements were related and all mentioned the Complainant, the City would submit it was reasonable to submit them in their entirety in accordance with Section 40(4).

### *Analysis*

[para 58] With respect to the application of section 40(1)(q), the Public Body disclosed the Complainant's personal information contained in witness statements to the EPS, which is a law enforcement agency. The disclosure must have been either undertaken with a view to a law enforcement proceeding, or from which a law enforcement proceeding is likely to result.

[para 59] In this case, it is clear from the police file provided by the Complainant, the EPS did not charge the Complainant. However, it is also clear from the information in the file that the Public Body contacted the EPS about the incidents believing a criminal offence may have been committed.

[para 60] Order F2017-49 addressed a situation in which expense claims of a municipality's councilors were provided to the RCMP for a fraud investigation. The complainant in that case argued that the municipality was not authorized to disclose this information to the RCMP. The municipality had argued that it was authorized to disclose the information under section 40(1)(q) of the Act. The adjudicator concluded (at paras. 30-32):

According to the information that I have before me, the information was disclosed to the RCMP to assist the RCMP in investigating a potential criminal code offence (fraud). So, when the information was disclosed, the view of the Public Body was that there was possibly a criminal code violation that needed to be investigated further by the appropriate authorities. Had the investigation led to the conclusion that criminal fraud charges ought to be laid, this likely would have resulted in charges and a court proceeding. I find that a court proceeding is a law enforcement proceeding.

None of the information I have before me convinces me that the RCMP investigation was likely to result in a law enforcement proceeding. As already noted, the allegations were investigated and no charges were laid, so the law enforcement proceeding did not occur. However, I interpret the phrase, "with a view to a law enforcement proceeding" to mean something less than "from which a law enforcement proceeding is likely to result". I believe that the former means that an investigation could result in a law enforcement proceeding.

When the disclosure was made it was to assist in the investigation. The investigation was undertaken to determine if a law enforcement proceeding was necessary or not (that is, if charges ought to be laid). Therefore, I find that the information was disclosed to the RCMP with a view to a law enforcement proceeding, and that section 40(1)(q) of the Act is applicable.

[para 61] I agree with this analysis and find it applicable here. No charges were laid against the Complainant by the EPS and it is unclear whether a law enforcement proceeding could be said to have been likely (even if it didn't occur). Nevertheless, based on the statements made by the Public Body employee who reported the matter to the EPS, which are contained in the police file provided by the Complainant, the employee reported the matter to the EPS with a view to a law enforcement proceeding. The incidents described in the police report are of a non-trivial nature, and it was not unreasonable for the Public Body employee to believe that a law enforcement proceeding may result from the reports. I find that section 40(1)(q) authorizes the disclosure.

[para 62] I am unclear about the basis of the Complainant's belief that the Public Body lacks "standing" to make a complaint that could lead to criminal charges. The Complainant seems to believe that the Public Body could only make complaints about acts such as vandalism, theft, or drunkenness at its facilities. The incidents that led the Public Body to ban the Complainant related to allegations of inappropriate conduct toward other patrons. The fact that the alleged harm was to other patrons rather

than the Public Body facility does not mean that a Public Body employee cannot submit a complaint to police if they believe in good faith that a crime may have been committed.

[para 63] With respect to section 40(4), the Public Body disclosed witness statements relating to the incidents the Public Body was reporting to the EPS. Public Body employees also provided their own statements to the EPS, which also included the Complainant's personal information. These statements also clearly related to the incidents being reported to the EPS. Nothing before me indicated that the Public Body disclosed more information than was necessary for the purpose of reporting the incidents to assist in a law enforcement investigation under section 40(1)(q).

[para 64] I find that the Public Body was authorized to disclose the Complainant's personal information as it did.

**5. If the Public Body used the Complainant's personal information, did it make every reasonable effort to ensure the information was accurate and complete as required by section 35(a) of the FOIP Act?**

[para 65] Section 35(a) of the Act states:

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

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

[para 66] The Complainant has the burden of proving that their personal information was not accurate or complete just as they would if they were making a correction request (Order F2013-29 at para 8, F2017-39, at para. 15). A complainant is in the best position to know whether the complainant's personal information is accurate.

[para 67] In order for section 35(a) of the Act to apply, the Complainant's personal information must have been used to make a decision that directly affected them. If this is the case, the Public Body must make "every reasonable effort" to ensure the information is accurate and complete. "Every reasonable effort" has been interpreted by this Office to mean:

Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable; the use of "every" indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information. (Order F2006-018 at para 111)

[para 68] Section 35(a) does not give me the jurisdiction to review the actual decision made by a public body. As the adjudicator in Order F2009-041 stated (at para. 104):

To comply with section 35(a), a public body must ensure that the personal information with which it makes decisions is complete and accurate. When deciding whether a public body has complied with section 35(a), I must consider the personal information available to a decision maker, rather than the decision itself. My role is not to evaluate the decision making process of a public body, but to consider only whether the information it uses to make decisions is accurate and complete.

[para 69] As stated in other orders issued by this Office, section 35(a) of the Act ensures fair information practices and emphasizes the importance of data quality (Order F2006-019 at para 88). As the Director of Adjudication stated in regard to section 35(a) (Order F2013-14, at para. 79):

Given these considerations, in my view, despite its broad wording, section 35(a) is to be engaged primarily in relation to information that does not depend, for the determination of its accuracy, on a quasi-judicial process. Rather, resort may be had to it where a public body is to make a decision on the basis of information the accuracy of which is readily ascertainable by reference to concrete data. As the Adjudicator noted in Order F2006-019, section 35 is intended to promote fair information practices and data quality in relation to personal information.

[para 70] The purpose of section 35(a) of the Act is to ensure that the factual data before a public body when making its decision is accurate and complete.

[para 71] Section 35(a) does not require a public body to ensure that personal information contained in statements provided to the public body by a third party are accurate. In Order F2006-018, the adjudicator explained why this would be the case (at para. 104):

The second statement regarding the prior physical condition is in a memo of November 28, 2005 from a physician. As the statement is contained in a document that was prepared and submitted to the Public Body by a third party, I do not believe that the Public Body has a duty under section 35(a) of the Act to make reasonable efforts to ensure that it is accurate. The statement forms part of a third party opinion and the integrity of a record not prepared by a public body should be maintained, as has been discussed in the context of section 36 of the Act (Order 97-020 at para. 132).

[para 72] The Complainant argues that the witness statements collected by the Public Body contained inaccurate information about him. The Complainant also states that the Public Body did not make efforts to verify the accuracy of the information before using it to make the decision to ban the Complainant from its facilities.

[para 73] The Public Body states that there is no indication that the statements collected by the Public Body were inaccurately recorded. The Public Body also states (at page 7):

The City agrees that there is a difference between maintaining accurately recorded information and using accurately recorded information that is not true. It is therefore necessary for the City to take reasonable steps to verify the accuracy of the information before using it.

[para 74] The Public Body states that the employee who made the decision to ban the Complainant is no longer with the Public Body. It provided information about the steps it takes before banning a patron from its facilities. It states (at pages 7-8):

The City takes the following steps before issuing a ban.

1. The City gathers witness statements from any staff or patrons that witnessed an event or any related events. This information is either gathered by having a witness fill out a witness statement, or for a City staff member to record what they are being told by witnesses. There are other times where there may be unrecorded conversations about the events (typically with City staff).
2. The City often discusses matters directly with the individual that has been accused of wrongdoing. In appropriate cases, City corporate security members may be consulted.
3. The decision maker reviews all of this information and weighs it for such items as consistency, severity of the events, and whether there is a pattern of conduct before making a decision.
4. A decision is then made which outlines the reasons for the decision. The decision should be clear enough that an individual can tell the reason they were banned.
5. Any decision that is made can then be judicially reviewed. This ensures that decisions that are not clear can be overturned as unreasonable.

[para 75] The Public Body states that this process enables the Public Body to weigh all relevant information to come to a decision.

[para 76] The Public Body states that it collected statements from Public Body employees who witnessed the incidents, as well as other patrons who were involved or witnessed the incidents. The Public Body states that the information in these various statements is consistent in this case, and argues that “collecting and reviewing the information as a whole to determine consistency is a reasonable step to ensure accuracy of the information before it is used.”

### *Analysis*

[para 77] The decision at issue in this case is the Public Body’s decision to ban the Complainant from its facilities. The first ban letter was issued in April 2016. This ban was subject to a judicial review. The Public Body then issued another ban letter in February 2018, following the completion of the judicial review proceedings; this second ban was based on the same incidents that led to the 2016 ban. The bans resulted from complaints made about the Complainant’s conduct. Therefore, the Complainant’s personal information was used by the Public Body to make a decision directly affecting the Complainant.

[para 78] As stated in Order F2006-018, section 35(a) is meant to address information that can be readily ascertained as accurate and complete, by reference to concrete data (Order F2013-14, cited above). Opinions or observations of third parties are not easily ascertained to be accurate or complete.

[para 79] This does not mean that the Public Body has no obligations with respect to the use of this information. For example, the Public Body should take steps to determine whether the witness has identified the correct individual before taking action against that individual. In this case, both the Complainant and the Public Body have identified some allegations in the witness statements that appear to have incorrectly identified the Complainant as the perpetrator of certain conduct.

[para 80] In Order F2013-14, cited above, the Director of Adjudication considered the application of section 35(a) to information used by the Energy Resources Conservation Board (ERCB) in a proceeding. The Director found that the ERCB made reasonable efforts in that case, stating (at para. 80):

Further, even if I am wrong in my view that section 35(a) is not engaged in this case, I note that this provision does not require a public body to absolutely ensure information is accurate, but only to *make reasonable efforts* to ensure it is so. The evidence and submissions of the parties document the efforts the ERCB made to obtain evidence from the Complainants. I am satisfied the ERCB made adequate efforts to ensure that the personal information necessary for it to make its decision was before it.

[para 81] As stated above, this inquiry is not an opportunity for me to judge the Public Body's decision to ban the Complainant, or the quality of that decision. The appropriate forum for such a judgement is the courts, by seeking a judicial review of the Public Body's decision. I understand that the Complainant took this avenue with respect to the April 2016 ban.

[para 82] The question before me then, is whether the Public Body took reasonable efforts to ensure the accuracy and completeness of the Complainant's personal information before making its decision. In this case, the Public Body sought statements from multiple individuals involved in the incidents or who witnessed the incidents. The Public Body has identified factual information in the statements that incorrectly identified the Complainant as having perpetrated specific conduct in relation to a different incident; the Public Body states that this specific conduct was not the basis for the ban, as the date it occurred is not the date of the incident identified in the ban letter.

[para 83] All this is to say that the Public Body appears to have considered the various statements provided by different individuals, including patrons and Public Body employees, to determine whether information was consistent and reliable before acting on it. Although the Public Body and the Complainant identified conduct described in some of the statements that was erroneously attributed to the Complainant, the ban letters do not appear to rely on that erroneous information.

[para 84] Lastly, the Complainant had argued that the Public Body was not balanced in the information it collected about the Complainant in relation to the incidents. In one of the emails comprising their rebuttal submission, they state:

With regard to the collection of personal information, the City is still obligated to ensure the consistency of the information collected as well as in a case like harassment at least document the information provided by the complainant. On April 27, an appeal meeting took place with City of Edmonton

Management, the Complainant went at length over the March 10 alleged incident and explained all the contradictions between the different incident reports, and clarified that no [person] complained to [the Complainant] about anything on March 10 or at any time. [A]nd yet none of the information provided by the complainant on April 27 was collected anywhere, [s]o clearly there was not a balanced approach in the collection of the [Complainant's] personal information.

[para 85] In Order F2017-39, the adjudicator considered whether section 35(a) places a positive burden on a public body to collect personal information. She concluded (at para. 29):

In any event, I do not believe that section 35(a) of the Act goes so far as to place a burden on public bodies to investigate and research other sources of information to ensure that its decision is correct. Section 35(a) is about the accuracy and completeness of the information that the Public Body had before it when making its decision, not about the decision itself, nor what information the Public Body should have used when making its decision (Order 98-002 at para 73).

[para 86] I agree with this analysis. More to the point in this particular case, I do not know whether the Public Body collected personal information of the Complainant, other than the witness statements that it later provided to the EPS, when it made its decision to ban the Complainant. The only records before me are the EPS file; the EPS file may not contain the entirety of what the Public Body collected about the Complainant regarding the incidents.

[para 87] I am satisfied that the Public Body fulfilled its duty under section 35(a) to take reasonable efforts to ensure the accuracy and completeness of the personal information used to make a decision about the Complainant, as required by that provision.

#### **IV. ORDER**

[para 88] I make this Order under section 72 of the Act.

[para 89] I find that the Public Body had authority to collect, use, and disclose the Complainant's personal information as it did.

[para 90] I find that the Public Body fulfilled its duty under section 35(a) of the Act.

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Amanda Swanek  
Adjudicator