

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-48**

May 24, 2017

**SUMMER VILLAGE OF WEST COVE**

Case File Number F8318

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

**Summary:** The Complainant complained that the Summer Village of West Cove (the Public Body) breached the *Freedom of Information and Protection of Privacy Act* (the Act) when it used her name and address from a petition and mailed her a letter asking questions about a petition she had submitted.

The Adjudicator found that the Complainant had consented to the Public Body using her name and address to ask her questions about the petition.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 39, 41, 65 and 72; *Freedom of Information and Protection of Privacy Regulation* A.R. 186/2008, s. 7; *Municipal Government Act* R.S.A. 2000, c. M-26, ss. 222, 223, 224, 225, and 226.

**I. BACKGROUND**

[para 1] The Complainant was a resident in the Summer Village of West Cove (the Public Body). In 2014, the Complainant assisted in circulating a petition to have the contract of the then CAO of the Public Body terminated. A number of signatures, names, and addresses of residents of the Public Body were collected and submitted to the Public Body's Council and Administrator in July of 2014 (the petition). The petition was accompanied by a covering letter written by the Complainant and one other individual

and an Affidavit sworn by the Complainant. In addition, the Complainant provided a “Statement of Representative of Petitioners”, signed by her, which stated:

I, [the Complainant] of [the Complainant’s address], state that I represent the petitioners and am the person to whom this municipality or the Minister of Municipal Affairs may direct any inquiries with regard to the petition.

[para 2] According to the Complainant, in July of 2014, she and other the signatories of the petition received letters from the Public Body asking what they were told when they were asked to sign the petition and to state that reasons they personally knew to be factual that would give the Public Body sufficient evidence to terminate the contract.

[para 3] On July 25, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office) stating that the Public Body had violated the rights of the individuals it sent letters to using the contact information of the signatories contained in the petition. Mediation was authorized but did not resolve the issues between the parties and on June 25, 2015, the Complainant requested an inquiry.

## **II. ISSUES**

[para 4] The Notice of Inquiry dated April 14, 2016 states the issues in this inquiry as follows:

1. Did the Public Body use the "personal information" of the Complainant as that term is defined in section 1(n) of the Act?
2. If the answer to question 1 is yes, was the Public Body authorized to use the personal information by Part 2 of the FOIP Act? (Sections 39 and 41 of the FOIP Act may be relevant provisions.)

[para 5] I note that the Complainant makes several arguments that suggest that the Public Body did not follow the requirements of the *Municipal Government Act* (MGA), which do not relate to the use of information, and wants an apology from the Public Body. My role is to determine if the Public Body met its obligations under the Act, not the *Municipal Government Act*. Therefore, I will not be making any finding in that regard. Further, if I find that the Public Body breached the Act, I do not have the jurisdiction to order it to issue an apology.

## **III. DISCUSSION OF ISSUES**

- 1. Did the Public Body use the "personal information" of the Complainant as that term is defined in section 1(n) of the Act?**

[para 6] Personal Information is defined in section 1(n) of the Act as follows:

*1(n) “personal information” means recorded information about an identifiable individual, including*

*(i) the individual's name, home or business address or home or business telephone number,*

*(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual's age, sex, marital status or family status,*

*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual's health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else's opinions about the individual, and*

*(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 7] The Public Body admits that it used the Complainant's name and address. The Complainant's name and address are her personal information by reference to the definition of "personal information" in the Act. Therefore, I find that the Public Body used the Complainant's personal information.

[para 8] The Complainant complains that the Public Body breached the Act when it sent the letters out to the petition signatories. In her initial complaint she noted that many of the individuals who received a letter were upset and asked that the Public Body apologize to each of the individuals.

[para 9] Section 65 of the Act sets out who may ask for this Office to review a privacy matter. Section 65(3) of the Act is relevant to this inquiry and states:

*65(3) A person who believes that the person's own personal information has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review that matter.*

[para 10] Therefore, the Complainant can ask this Office to review the Public Body's collection, use, and/or disclosure of her own personal information but not that of the other individuals who received letters. As such, I will limit my findings in this Order to

whether the Public Body had the authority under the Act to use the Complainant's personal information or not.

**2. If the answer to question 1 is yes, was the Public Body authorized to use the personal information by Part 2 of the FOIP Act?**

[para 11] The Complainant argues that the names and addresses found in the petition were provided to the Public Body for the sole purpose of proving the validity of the signature on the petition, and not so it could contact the individuals. She believes that by contacting the individuals who signed the petition, the Public Body was being intimidating. That being said, as noted in the background section of this Order, the Complainant signed a form indicating that the Public Body was to contact her with any questions relating to the petition.

[para 12] The Public Body argues that it had the authority to use the Complainant's personal information pursuant to sections 39(1)(a) and 39(1)(b) of the Act. The relevant portion 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*

...

*(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 13] From the answers to questions I put to the Public Body, it appears that there is no current direct knowledge within the Public Body of the reasons for the collection of the petition or why the letters were sent to the signatories, nor are there records that would shed light on these questions. In its initial submission, the Public Body does not state what the purpose of the collection of the petition was. In response to my questions, the Public Body pointed out that by operation of several sections of the MGA, it had certain responsibilities on receiving the petition which focus on making a determination as to whether the petition was valid or not (see sections 222, 223, 224, 225, and 226 of the MGA).

[para 14] The Public Body further argues that given the content of the letters, its purpose in using the information to send out the letters was, "[t]hat there was a desire to obtain more information (clarification) regarding the underlying concerns." (Public Body's initial submissions at page 14)

[para 15] It argues that this purpose is consistent as that term is further defined in section 41 of the Act which states:

*41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*

*(a) has a reasonable and direct connection to that purpose, and*

*(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 16] Specifically, the Public Body states:

In this case, where there was uncertainty with respect to the concerns of residents in a municipal petition, it is reasonably and directly connected to the primary purpose to contact those residents for further information.

(Public Body's initial submissions at page 14)

[para 17] In order for section 39(1)(a) of the Act to apply, the purpose of the use must be the same or consistent with the purpose of the collection. The Public Body did not state what the purpose of its collection was (though conceivably, it could be inferred that part of its role as a municipality is to listen to concerns from citizens about the way the municipality is being operated, whether they come in the form of petitions or otherwise, and the letters requesting further information about a concern would be consistent with that purpose). I considered asking the Public Body to clarify what its initial purpose was.

[para 18] However, based on my reasoning below, I find that section 39(1)(b) of the Act applies; therefore, I do not need to determine if section 39(1)(a) of the Act applies. As such, it is not necessary for me to make a finding as to the purpose for the collection and use in order to find that the Public Body had the authority to use the Complainant's personal information as it did.

[para 19] Regarding section 39(1)(b) of the Act, the Public Body states that the Complainant consented to the use of her personal information when she identified herself as the person to whom the Public Body and the Minister of Municipal Affairs could direct any inquiries regarding the petition.

[para 20] The content of the letter was as follows:

Council is in receipt of the petition that was signed by you. We are currently verifying its validity according to the Municipal Government Act. In the meantime, we wanted to reach out to you to get clarification. The petition does not state a reason for the request to terminate the contract of the administrator. To assist us in responding to the petition we

ask that you answer the following two questions, sign this form and return it to us by July 30<sup>th</sup>. Unsigned forms will not have any merit.

1. Please state specifically what you were told when you were asked to sign the petition that caused you to sign it.
2. Please state the reasons you personally know to be factual that would give council sufficient evidence to terminate the contract.

[para 21] The “Statement of Representative of Petitioners”, signed by the Complainant stated:

I, [the Complainant] of [the Complainant’s address], state that I represent the petitioners and am the person to whom this municipality or the Minister of Municipal Affairs may direct any inquiries with regard to the petition. [emphasis added]

[para 22] The Complainant argues that the letter was sent to her as a petitioner and not because she signed the “Statement of Representative of Petitioners”. She states that she received the same letter as all of the other petitioners and that this is proof that the Public Body was not relying on this Statement as justification to send the letter to her. Further she states that she provided her personal information (including her address) only to verify her as a proper petitioner.

[para 23] Section 39(1)(b) of the Act requires consent to be in the “prescribed manner”. The prescribed manner is defined in section 7 of the *Freedom of Information and Protection of Privacy Regulation* the relevant portions of which state:

*7(2) The consent of an individual to a public body’s using or disclosing any of the individual’s personal information under section 39(1)(b) or 40(1)(d) of the Act*

*(a) must meet the requirements of subsection (4), (5) or (6), and*

*(b) must specify to whom the personal information may be disclosed and how the personal information may be used.*

...

*(4) For the purposes of this section, a consent in writing is valid if it is signed by the person who is giving the consent*

[para 24] The consent provisions of the Act (cited above) do not require a public body to prove it was properly motivated to use the consent or that it has put its mind to using the consent; it only states that it may use personal information where there is consent in the prescribed manner. I also cannot agree with the Complainant’s argument that she provided her personal information for only one purpose. She clearly provided it as both a petitioner and as a Representative of Petitioners. Therefore, while the Applicant may be

correct that she was contacted because she was a petitioner and not because she signed the Statement of Representative of Petitioners, this does not affect the outcome of my analysis.

[para 25] The Statement of Representative of Petitioners was in writing and signed by the Complainant. Therefore it meets the requirements of section 7(4) of the FOIP Regulation. It also specifies how the Complainant's personal information may be used in that it states that she may be contacted by the Public Body or the Minister regarding any inquiries relating to the petition; the consent is not restricted to asking her questions about the validity of the petition. So, her personal information may be used to contact her to ask questions about the substance of the petition as well as its form.

[para 26] While the Statement of Representative of Petitioners could not be seen as consent for the Public Body to contact the other individuals who received the letter, as I noted above, this inquiry is limited to the Public Body's use of the Complainant's personal information. I believe that the questions asked in the letter are encompassed by the consent given by the Complainant to have "any inquiries with regard to the petition" directed to her. Therefore, section 39(1)(b) of the Act applies.

[para 27] Pursuant to section 39(4) of the Act, the Public Body may use the information only to the extent necessary to carry out its purpose in a reasonable manner. Section 39(4) of the Act states:

*39(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 28] The Public Body has said that its purpose in contacting the Complainant was to gather more information about the concerns of residents. I find that the Complainant's personal information was used by the Public Body only to the extent necessary to allow it to gather more information from her as to the concerns of residents.

[para 29] As a result, I find that the Public Body had the authority to use the Complainant's personal information in the manner in which it did.

#### **IV. ORDER**

[para 30] I make this Order under section 72 of the Act.

[para 31] I find that the Public Body used the Complainant's personal information in compliance with the Act.

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Keri H. Ridley  
Adjudicator