

Disclosure of Personal Information to the Police or Public Bodies Conducting Investigations

Public bodies may only disclose personal information in accordance with the provisions of the [Access to Information and Protection of Privacy Act, 2015 \(ATIPPA, 2015\)](#).

ATIPPA, 2015 defines personal information as:

- 2(u) "personal information" means recorded information about an identifiable individual, including
- (i) the individual's name, address or 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, sexual orientation, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual's fingerprints, blood type or inheritable characteristics,
 - (vi) information about the individual's health care status or history, including a physical or mental disability,
 - (vii) information about the individual's educational, financial, criminal or employment status or history,
 - (viii) the opinions of a person about the individual, and
 - (ix) the individual's personal views or opinions, except where they are about someone else;

One circumstance in which disclosure by a public body may be authorized is when the request for personal information is received from a law enforcement agency or public body conducting an investigation associated with a law enforcement proceeding. This does not mean, however, that public bodies should automatically comply with all requests by law enforcement agencies or public bodies claiming to be pursuing a law enforcement proceeding.

Before addressing the evaluation of requests pursuant to section 68(1)(n), a distinction must be made between requests associated with search warrants or other forms of judicial authorization and those without. Pursuant to section 68(1)(e) public bodies are not obliged to question requests accompanied by warrants, other than to ensure that the information to be disclosed matches and does not exceed the information described in the warrant. This includes warrants or similar authorizations submitted by other public bodies:

68.(1) A public body may disclose personal information only

- (e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;



Office of the Information and Privacy Commissioner
P.O. Box 13004, Station "A", St. John's, NL A1B 3V8
Telephone: (709) 729-6309 or 1-877-729-6309 Fax: (709) 729-6500
E-mail: commissioner@oipc.nl.ca www.oipc.nl.ca

Public bodies must evaluate requests for personal information not accompanied by a warrant or other form of authorization issued by a competent authority. In those circumstances, a public body must be satisfied that the conditions in section 68(1)(n) of the Act are met:

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

- (n) 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;*

On receipt of a request for personal information to assist a public body or law enforcement agency with an investigation, the public body receiving the request must satisfy itself that all of the following conditions are met before providing that information:

- the personal information is sought to assist with an investigation of an ongoing or likely law enforcement proceeding;
- the investigation is being conducted under the authority of or for the purpose of enforcing an enactment;
- the investigation is one that leads or could lead to a penalty or sanction being imposed under the enactment.

In [Order F2016-41](#), Alberta's Information and Privacy Commissioner assessed whether Service Alberta's (SAB) disclosure of a person's address to the Canada Revenue Agency (the CRA) was authorized under that Province's [Freedom of Information and Protection of Privacy Act \(FOIP\)](#). The legislative provision applicable in Alberta's FOIP mirrors the comparable provision in the ATIPPA, 2015.

In that case, the CRA, pursuant to section 8(2)(e) of the federal [Privacy Act](#), asked SAB to provide the addresses of two persons from SAB's motor vehicle registration system. The CRA advised that the individuals were under investigation for purposes relating to the administration and enforcement of the *Income Tax Act*.

The Commissioner determined that the CRA ought to have made the request pursuant to section 40(1)(q) of Alberta's *Freedom of Information and Protection of Privacy Act (FOIP)*, which states:

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

- (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,*

Even if the CRA had invoked section 40(1)(q) of the FOIP, the Commissioner determined that SAB could not have relied on it to authorize disclosure of personal information to the CRA, as the request to SAB failed to indicate the legal authority for the conduct of its investigation, the statutory provisions pursuant to which proceedings were anticipated or the provisions that could result in sanctions or penalties:

[111] *The request letter from the CRA simply does not meet the standard set out in this provision, as it indicates only that it relates to the administration and enforcement of the [Act](#) in relation to two taxpayers and does not make reference to penalties or sanctions. It does not indicate anything about the nature of the investigation or any proceedings, or their potential consequences, or the Applicant's role in the investigation. Again, the request was for the information of two taxpayers, not one, and it is unclear to what extent either taxpayer was under investigation or that law enforcement proceedings within the terms of section 1(h)(iii) of the FOIP Act were anticipated as resulting from the investigation with respect to both taxpayers.*

[112] *While the Public Body argues that the Registrar provided the Applicant's physical address for the purpose of assisting the CRA in an investigation within the terms of [section 2\(1\)\(j\)](#) of [AMVIR](#), or alternatively, under section 40(1)(q) of the FOIP Act, I am unable to find that it could reasonably come to this conclusion on the information that was before it.*

[113] *The Registrar did not ask about the nature of the investigation and did not ask about the authority of the CRA to obtain information from the Registrar's office or how obtaining the Applicant's personal information could assist in the investigation.*

We agree and adopt this interpretation. Section 68(1)(n) of *ATIPPA, 2015* requires that the public body be satisfied that the law enforcement agency (or other public body) is conducting an investigation relating to a law enforcement proceeding before the public body is authorized to release any personal information.

Section (2)(n) defines law enforcement as:

- (i) *policing, including criminal intelligence operations, or*
- (ii) *investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment; [emphasis added]*

A law enforcement agency or public body seeking personal information pursuant to section 68(1)(n) must satisfy the public body to which a request is made that:

- it is conducting an investigation under the authority of and for the purpose of enforcing an enactment (statute or regulations), specifically referencing the sections of the enactment pursuant to which the investigation is being conducted;
- that the personal information requested is intended to assist in that investigation; and,
- that the investigation could lead to a penalty or sanction being imposed, specifically referencing the sections of the enactment pursuant to which a penalty or sanction could be imposed.

This information should be submitted in writing to the public body by the law enforcement agency (or other public body making the request). If a delay in obtaining the personal information could result in the loss of evidence or a danger of bodily harm or death to a person, the request may be submitted orally. In such cases, detailed notes should be kept by both the public body and law enforcement agency, including notes as to the urgent circumstances that precluded a written request.

Law enforcement agencies and public bodies relying upon section 68(1)(n) should keep records of all of their requests, including those that are denied. Public bodies who receive such requests should keep records of all requests. These records should include all correspondence and notes relating to these requests.

Public body disclosures pursuant to section 68 must be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed in accordance with section 68(2).

