



Access to Information and Protection of Privacy Act

INVESTIGATION REPORT

File ATP11-023AI

Parties: Highways & Public Works and the Complainant

Date: March 10, 2015

Provisions: 25 (2)(b), 35 (a), 36 (a), and 36 (b)

Complaint

The Complainant, a Yukon Government employee, complained that Motor Vehicles made an unauthorized disclosure on or about June 30, 2011 of her name and work telephone number to a Yukon Government Security Guard (Security Guard). The Complainant alleged that Motor Vehicles disclosed her personal information to a Security Guard who sought the information to advise her that she needed to move her vehicle from the Whitepass Yukon Government employee parking lot (Whitepass Parking Lot) because of a downtown event.

Jurisdiction

I have authority under subsection 42 (b) to receive complaints from the public concerning the administration of the *Access to Information and Protection of Privacy Act* (ATIPP Act), conduct investigations into those complaints and report on those investigations.

Background Facts and Investigation

The responsibility for both Motor Vehicles (Transportation Services Branch) and Security Guards (Facilities Management & Regional Services) is within the Department of Highways and Public

Works (H&PW). H&PW is a public body according to the definition of a public body in the ATIPP Act.

On or about June 30, 2011, the Security Guard telephoned the Complainant to ask her to move her vehicle. When the Complainant asked how the Security Guard was able to contact her, he said he had obtained her name and work telephone number from Motor Vehicles. He also said he had advised Motor Vehicles it was an emergency. The Complainant did not ask for the Security Guard's name.

The Registrar of Motor Vehicles could neither confirm nor deny that the information in question had been disclosed. The Registrar, however, confirmed that on rare occasions it does provide a name and telephone number of a registered owner when a request is made by a Security Guard with a licence plate number if the request is pertaining to a vehicle parked in a Yukon Government parking lot. This practice, apparently, was based on a dated legal opinion provided to Motor Vehicles. Motor Vehicles has since sought an updated legal opinion.

I am satisfied, based on the evidence presented, that Motor Vehicles disclosed the Complainant's name and work telephone number to a Security Guard who in turn used the information to contact the Complainant.

A Privacy Impact Assessment (PIA) for the Secure Driver's Licence and General Identification Card System was completed by H&PW. In the PIA, disclosure of personal information to Security Guards is not specified as a purpose for the collection of personal information.

The Chief Security Guard Job Description includes in the position's principal duties and responsibilities "patrolling buildings and adjacent parking lots" and "monitors YG facility parking lots to ensure staff and the public are parking in the appropriate locations, issues tickets according to established procedures, makes arrangements to tow offending vehicles after [the] 2nd offence."

The General Administration Manual (GAM) sets out an employee Parking Policy (2.19) (Parking Policy), dated October 31, 2001. The policy indicates that a Security Guard's responsibility includes two parking patrols per day of the Main Administration building and the Whitepass Parking Lot where they can initiate towing. A "ticket" is a written notice placed on the vehicle to a first time parking offender stating that a further offence will result in their vehicle being towed. Along with other information about the parking offence, the offender's licence plate number is recorded in the patrol log, according to the written Tow Away Zones Processes and Procedures (Tow Away Zones Procedures), dated December 9, 2008.

Another process and procedure regarding Main Administration Building Parking Checks (Main Administration Building Procedures), dated May 2, 2009, applicable only to the Main

Administration Building public parking indicates a Security Guard can spot check the public parking to ensure Yukon Government employees are not parking in the public parking and can check the plate number of a vehicle in public parking with Motor Vehicles to obtain a registered owner's name which they can then check against the Yukon Government internal phone book, in order to ticket the vehicle.

Submissions

The Acting Director of Transport Services Branch submits that subsections 36 (a) and 36 (b) provide the authority to disclose personal information from Motor Vehicles to the Security Guards.

The Director of Transport Service Branch further advises that this information is not an unreasonable invasion of personal privacy under paragraph 25 (2)(b). He also states that the use of personal information in relation to a vehicle registration is a consistent use, according to paragraph 35 (1)(a) as it is expected that the information would be used to contact the owner of a registered vehicle. He indicates that Motor Vehicles has stopped disclosing personal information by telephone.

Analysis

According to the ATIPP Act:

“personal information” means recorded information about an identifiable individual, including

(a) the individual’s name, address, or telephone number, ...

The Complainant’s name and work telephone number is the information at issue. I find that both are personal information according to the ATIPP Act.

The ATIPP Act states:

36. A public body may disclose personal information only

(a) in accordance with Part 2;

(b) if the individual the information is about has consented, in the prescribed manner, to its disclosure; ...

Paragraph 36 (1)(a) only applies where information is being requested under Part 2 of the ATIPP Act by “a person” as set out in subsection 5 (1). Subsection 36 (a) does not apply to the disclosure in this case because the personal information was not requested under Part 2.

Paragraph 36 (b) requires the consent of the individual the information is about. H&PW did not provide any evidence of having consent, in the prescribed manner, from the Complainant. The prescribed manner for consent requires it must be in writing and specify to whom the personal information may be disclosed and how it may be used, as set out in subsection 2 (1) of the Access to Information Regulation.

Disclosures of personal information are permitted by section 36 only where a provision of section 36 applies. In my view, subsections 36 (a) and 36 (b) do not apply. It is necessary, however, for me to consider whether any other provision of section 36 authorized the disclosure that occurred in this instance.

Security Guards are not Peace Officers, therefore, the disclosure was not related to law enforcement under subsection 36 (m).

The only subsection that may apply in this case is subsection 36 (f) which states:

36. A public body may disclose personal information only...

(f) to an officer or employee of the public body or to a Minister, if the information is necessary for the performance of the duties of the officer, employee or Minister

In order for subsection 36 (f) to apply disclosure must be to an officer, employee of the public body, or to a Minister and the personal information must be necessary to perform that person's duties. A Yukon Government Security Guard is an employee of H&PW.

We were provided with the Chief Security Guard Job Description to explain the responsibilities of a Security Guard, According to it, the Parking Policy, Tow Away Zones Procedures, and the Main Administration Building Procedures contacting the Complainant for the purposes of removing her vehicle from the Whitepass Parking Lot is not a requirement of a Security Guard's responsibilities and, therefore, it was unnecessary for Motor Vehicles to disclose the personal information at issue to the Security Guard for him to perform his duties. Consequently, in my view, Motor Vehicles cannot rely on subsection 36 (f) as authority for the disclosure of the Complainant's personal information to the Security Guard in this case.

Conclusion and Recommendation

In my opinion, Motor Vehicles had no authority under section 36 of the ATIPP Act to disclose the Complainant's personal information to the Security Guard and in doing so contravened the ATIPP Act.

To remedy this contravention, I recommend the following.

1. H&PW remove and securely dispose of any of the Complainant's personal information collected by Facilities Management & Regional Services as a result of this unauthorized disclosure and confirm to me, in writing by February 27, 2015, that it has done so.
2. H&PW review the changes it needs to make to ensure this type of privacy breach does not recur and advise me, in writing by February 27, 2015, what those changes are.

Diane McLeod-McKay
Information and Privacy Commissioner

