



Access to Information and Protection of Privacy Act

FINAL INVESTIGATION REPORT

File ATP14-029AI

Parties: **Public Service Commission and the Complainant**

Date: **February 26, 2015**

Provisions: **3, 29 (a), (b) and (c)**

Complaint

On May 27, 2014, the Office of the Information and Privacy Commissioner received a complaint from a Complainant who wished to remain anonymous. The complaint was that the Public Service Commission (PSC) attempted to collect a copy of the Complainant's birth certificate contrary to the requirements of the *Access to Information and Protection of Privacy Act* (ATIPP Act). The PSC requested production of a copy of the birth certificate to enroll the Complainant, a common-law spouse of a Yukon Government employee, on the Great West Life Assurance Company (Great-West Life) extended health care benefits. The Complainant refused to provide a copy of her birth certificate to the PSC.

Explanatory Note

All section references in this Report are to the ATIPP Act unless otherwise stated.

Jurisdiction

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

Background Facts and Investigation

The PSC's Compensation Unit is responsible for Pay & Benefits which administers the Yukon Government's employee compensation. The PSC confirmed that it collects specific documentation from an employee in order to complete an employee's personnel file and, if applicable, for superannuation purposes. The PSC referred to its authority under section 167, Part 12, of the *Public Service Act* and section 48 of the *Public Service Superannuation Regulations* under the *Federal Public Service Superannuation Act*, to do so. The collection of employee personal information is not at issue in this complaint.

The PSC also explained that it has an "Administrative Services Only" agreement" with Great-West Life in order for employees and their dependants to receive extended health care benefits. Extended health care benefits through Great-West Life is a compulsory protection program for a Yukon Government bargaining unit employee (Employee) as a component of Employee compensation. Enrollment in the extended health care benefits for dependants plan (Plan) for dependants of an Employee is voluntary.

Employees eligible for extended health care benefits receive a PSC enrollment package (Package) to enroll themselves and their dependants for group insurance benefits. The Package consists of three pages. The first page is an information page and includes the notice:

This information is being collected under the authority of the Public Service Act, Part 12, for the purpose of enrolling you and any eligible dependants in the group insurance benefit plans. The information may be used at a summary level for statistical purposes.

For further information, direct inquiries to the: [giving the position, postal address and telephone number]

The second page of the Package is the "Enrollment for Group Insurance, Bargaining Unit Employees" form for the Employee to complete. There is no personal information about dependants on the second page.

The third page of the Package is an "Enrollment for Spouse and Children, Bargaining Unit Employees" form (Dependants' Enrollment Form). The Dependents' Enrollment Form is used to enroll a dependant in the Plan and includes space for a spouse's usual first name, last name, birthdate, gender, and date of marriage or when the couple became common-law. There is also space for an Employee's signature and date. The personal information collected on the Dependents' Enrollment Form is not at issue in this complaint.

The Dependents' Enrollment Form indicates the PSC must be provided with a copy of the birth certificate of a dependant being enrolled. The PSC informed us that the usual practice is that Employees provide the completed forms and a copy of any dependants' birth certificates to the

PSC. The PSC advised that subsection 29 (c) allows for the collection of dependants' birth certificates.

The PSC says it must verify the legal name and birthdate provided on the Dependents' Enrollment Form in order to enroll a dependant with Great-West Life and for that reason requests a copy of the dependant's birth certificate. The PSC says verification is required because many Yukoners use names that are not their legal names. No evidence was provided indicating Great-West Life requires the PSC to have a copy of a dependant's birth certificate on file.

Analysis

"Personal information" is defined in section 3 as recorded information about an identifiable individual. Under the definition is a non-exhaustive list of information considered to be personal information, which includes the following:

- (a) the individual's name, address, or telephone number, ...*
- (c) the individual's age, sex, sexual orientation, marital status, or family status,*
- (d) an identifying number, symbol, or other particular assigned to the individual, ...*

A birth certificate contains an individual's legal name, birthdate, gender, and place of birth as well as a place of registration, registration number, registration date, and issue date. In my view, this information is personal information as defined in the ATIPP Act.

The PSC advises that it has authority under subsection 29 (c) to collect copies of dependants' birth certificates for the purpose of enrolling them into the Plan.

Subsection 29 (c) reads:

- 29 No personal information may be collected by or for a public body unless*
...
(c) that information relates to and is necessary for carrying out a program or activity of
the public body.

In order for subsection 29 (c) to authorize the PSC to collect a copy of a birth certificate, the PSC must establish that all the information appearing on a birth certificate "relates to" and is "necessary" to carry out a program or activity of the PSC.

Is the personal information appearing on a birth certificate related to and necessary for carrying out a program or activity of the PSC?

The ordinary meaning of “relate” is “establish a connection between” according to the Canadian Oxford Dictionary, Second Edition (Barber, 2004, p. 1305).

Yukon Government has an agreement to provide Great-West Life with a defendant’s legal name and birthdate to enroll a defendant into the Plan. Although the defendant’s legal name and birthdate are provided on the Defendants’ Enrollment Form, there is, in my view, a connection between the collection of the name and birthdate on a birth certificate and the activity being carried out by the PSC - enrolling defendants into the Plan. There is not, however, in my view, a connection between this activity and collection of the remaining information on a birth certificate.

In Order F07-10, former Information and Privacy Commissioner of British Columbia, David Loukidelis, examined the meaning of necessary under British Columbia’s *Freedom of Information and Protection of Privacy Act*, which has a provision similar to our subsection 29 (c). In examining whether the collection of personal information was necessary by a public body, he stated the following.

It is certainly not enough that personal information would be nice to have or because it could perhaps be of use some time in the future. Nor is it enough that it would be merely convenient to have the information...

At the same time, I am not prepared to accept... that in all cases personal information should be found to be “necessary” only where it would be impossible to operate a program or carry on an activity without the personal information. There may be cases where personal information is “necessary” even where it is not indispensable in this sense. The assessment of whether personal information is “necessary” will be conducted in a searching and rigorous way. In assessing whether personal information is “necessary”, one considers the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected, assessed in light of the purpose for collection. In addition, FIPPA’s privacy protection objective is also relevant in assessing necessity, noting that this statutory objective is consistent with the internationally recognized principle of limited collection.¹

A birth certificate contains highly sensitive information. It is considered a “primary” or official document that proves an individual’s identity and status in Canada. The information appearing

¹ F07-10, 2007 CanLII 30395 (BC IPC) at paras. 48-49.

on a birth certificate can be used to cause harm to individuals in the form of identity theft and fraud.²

The PSC submitted that, for the purposes of enrolling dependants in the Plan, it collects a copy of a defendant's birth certificate to verify that the name and birthdate provided on the Dependents' Enrollment Form is accurate. The PSC did not provide any evidence that Great-West life requires collection of birth certificates to verify this information, nor did it provide any evidence that the only way to verify this information was through collection of birth certificates.

Due to the highly sensitive nature of the personal information on birth certificates and the lack of evidence that collection of this information is required by the PSC for the purpose identified, in my view, the PSC has not established that it is necessary to collect copies of birth certificates from dependants to enroll them in the Plan. It cannot, therefore, rely on subsection 29 (c) as its authority for this collection.

I have not been provided with any evidence that subsections 29 (a) or (b) would provide this authority and, in my view, they do not.

Conclusion and Recommendation

For the reasons previously provided, in my opinion, the PSC is not authorized to collect a copy of dependants' birth certificates to enroll them in the Plan and in doing so is collecting this information in contravention of the ATIPP Act.

To remedy this contravention, I recommend the following.

- 1. The PSC cease collecting copies of birth certificates from dependants to enroll them in the Plan and advise me in writing no later than March 31, 2015 that it has done so.**

- 2. The PSC securely destroy any copies of birth certificates collected from dependants who were enrolled in the Plan and advise me in writing no later than March 31, 2016 that it has done so.**

Diane McLeod-McKay
Information and Privacy Commissioner

² Service Canada at <http://www.servicecanada.gc.ca/eng/sin/apply/proof.shtml>

Post Script:

Verifying personal information

Properly identifying individuals or verifying information are two reasons commonly cited for copying identification such as birth certificates. Given the highly sensitive nature of the personal information appearing on a birth certificate, collection of this information by public bodies creates significant risks both to individuals and public bodies.

Section 33 requires a public body to make “reasonable security arrangements” to protect personal information from “unauthorized access, collection, use, disclosure or disposal”, and “accidental loss or alteration”. The more personal information a public body collects, the greater the risk that this information may be compromised. Personal information that is highly sensitive should only be collected when necessary and when other less sensitive personal information will not suffice.

Privacy Commissioners across Canada have looked at the issue of collecting identification documents, such as driver’s licences, and recommended that these kinds of documents should merely be examined for verification rather than taking photocopies as a measure to reduce the privacy and security risks.³

I encourage the PSC to examine its practices involving photocopying identification documents and adopt a process of verification that serves its purpose without violating the ATIPP Act.

Requirements of section 30

Under subsection 30 (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) the commissioner under section 42,
 - (iii) an Act of Parliament or of the Legislature;
- (b) the information may be disclosed to the public body under sections 36 to 39; or
- (c) the information is collected for the purpose of

³ See for example “Your Customers’ Driver’s Licence Card, Do you need it?, A Guide for Retailers, Privacy Commissioner of Canada’s website: https://www.priv.gc.ca/information/guide/2009/gl_dl_090426_e.asp.

- (i) determining suitability for an honour or award,
- (ii) a proceeding before a court or a judicial or adjudicative body,
- (iii) collecting a debt or making a payment, or
- (iv) law enforcement.

The evidence provided by the PSC was that usually an Employee provides defendants' birth certificates with the completed Package, suggesting that defendants' personal information is being indirectly collected from defendants by the PSC. On the Defendants' Enrollment Form there is no place for defendants to authorize the indirect collection of their personal information. Unless the PSC obtains authorization from defendants some other way, it may be indirectly collecting defendants' personal information contrary to the requirements in subsection 30 (1).

Under subsection 30 (2) a public body must tell an individual from whom it collects personal information

- (a) the purpose for collecting it;
- (b) the legal authority for collecting it; and
- (c) the title, business address, and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

Given the manner in which the PSC collects defendants' personal information, it is unlikely defendants receive notice about the collection. If notice is not provided, the PSC would not meet the requirements of subsection 30 (2).

I further encourage the PSC to evaluate the requirements of subsections 30 (1) and 30 (2) in relation to the Package used for the collection of personal information to ensure compliance with these subsections.