

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT MC13-49

Guelph Police Services Board

March 26, 2014

Summary: The complainant complained that the Guelph Police Service (the police) inappropriately used and disclosed the complainant's personal information while conducting a Police Vulnerable Sector Check (PVSC). In response the Office of the Information and Privacy Commissioner/Ontario opened a privacy complaint file to determine if the use and disclosure of the complainant's personal information was in compliance with the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

This Privacy Complaint Report finds that the police's use of the complainant's personal information for the purposes of a PVSC was contrary to the *Youth Criminal Justice Act* and the *Act*.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990, c. M.56, *Youth Criminal Justice Act*, S.C. 2002, *Police Services Act*, R.S.O. 1990, c. P.15, *Criminal Code*, R.S.C. 1985, c. C-46.

Orders and Investigation Reports Considered: Information and Privacy Commissioner/Ontario Privacy Complaint Report MC-050045-1 and MC-050047-1

Cases Considered: *Tadros v. Peel (Police Service)*, 2009 ONCA 442, *Canadian Western Bank v. Alberta*, 2007 SCC 22, *F.N. (Re)*, 2000 S.C.C. 35

BACKGROUND:

This investigation relates to a privacy complaint received by the Office of the Information and Privacy Commissioner/Ontario (IPC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), from an individual (the complainant). The complaint is that the Guelph Police Service (the police) inappropriately used and disclosed records of personal information collected about two separate incidents in the context of responding to a request for a police vulnerable sector check (PVSC).

At the time that this complaint was filed, the complainant was an adult. However, at the time of the two incidents referred to above, the complainant was a minor. The most recent incident (the youth matter) is alleged to have taken place when the individual was a youth as defined in the *Youth Criminal Justice Act* (*YCJA*). The latter incident is alleged to have taken place when the complainant was a child (the child matter), as defined in the *YCJA*.

The Youth Matter

When the complainant was a young person, the complainant was charged with two related offences that were dealt with under the *YCJA*. The Crown withdrew the charges and the complainant entered into a 12-month recognizance to keep the peace (a peace bond).

The Child Matter

When the complainant was a child, the complainant was involved in an incident (the child matter) with two other individuals – a youth and another child (the alleged victim). As a result of this incident, the alleged victim made a complaint to the police. The police officer investigating the complaint generated records associated with the incident. No charges were ever laid against the complainant in relation to this incident.

The Police Vulnerable Sector Check

The PVSC is a type of police reference check that is frequently conducted by police services in Ontario. Employers and educational institutions often require police vulnerable sector checks when an individual makes an application to work in a paid or unpaid capacity, or in a position of trust over individuals that are deemed to be “vulnerable” (such as children, the elderly, or persons with disabilities). In these circumstances, the individual is required to provide the employer or the educational institution with a clear check as a pre-condition of employment or participation in the educational program.

Police services may respond to requests for a PVSC differently. According to the Guelph Police Service, relative to other types of police reference checks that it conducts, it treats the PVSC as the most "fulsome check." Their process includes both a "criminal convictions check" (or criminal record check) and a check of police local files.

Following the expiration of the peace bond referred to above, the complainant wrote to the police to inquire into the status of the police records relating to the *YCJA* proceedings.

The police responded to the complainant by letter which stated as follows:

I am in receipt of your application and correspondence dated ..., requesting the destruction of your criminal file, fingerprints and photograph.

Please be advised that you were a Young Person at the time that charges were laid and as such, the file has been dealt with according to non-disclosure requirements contained within the *Youth Criminal Justice Act*. All reference to criminal charges have been sealed from the national database maintained by the RCMP. I have sealed your criminal file entry with the Guelph Police Service.

[*signed*, Manager, Data Services]

Subsequent to receiving this response, the complainant was required to obtain a clear PVSC for the purposes of an educational program the complainant was enrolled in. The educational program includes a mandatory two week work placement that the complainant must complete before the complainant can graduate or receive the relevant certification. The complainant applied for a PVSC. In order to apply for the PVSC, the complainant was required to complete an application form which stated:

I hereby authorize the Guelph Police Service (GPS) to search the criminal records held by the Canadian Police Information Centre (C.P.I.C.). Further I am aware that the GPS may provide additional information contained in local files where I was involved with the GPS regarding: charges; incidents where I was a suspect; and, incidents where I was arrested. I authorize the GPS to collect any information concerning myself from any other Police Service that the GPS deems necessary and I hereby provide consent to those other Police Services in possession of such information to release it to the Guelph Police Service.

...

Vulnerable Sector Checks: I also understand that when I am going to be involved with any person or organization where vulnerable sector clients

may be involved, additional records searches shall be considered. For such cases, I hereby authorize and consent to the Guelph Police Service making the appropriate enquiries to:

- a. Collect any information concerning myself from any other Police Service that the GPS deems necessary and I hereby provide consent to those other Police Services in possession of such information to release it to the Guelph Police Service; and
- b. Verify through the Royal Canadian Mounted Police (R.C.M.P.) whether any sexual offence records existed for me and have been pardoned under the schedule of the Criminal Records Act.

Where information has been duly collected, I am aware of the obligations of the GPS to share this information with me through this application. The applicant shall then decide on sharing the information further with the person or organization requiring the record check.

The police responded to the PVSC application more than one year and two months following the date that charges involving the youth matter were withdrawn. The PVSC stated:

Criminal Convictions - NEGATIVE
Vulnerable Sector - NEGATIVE
Guelph Police Service Local files – POSITIVE

Subsequent to receiving this response, the complainant states that a meeting was arranged with the Data Services Manager, however no relevant answers to concerns relating to the "Positive" notation were provided. The complainant also applied for a reconsideration of the police's decision to include the "*Guelph Police Services Local Files: Positive*" notation in the PVSC.

The police responded by letter to the complainant's reconsideration request, as follows:

... the Reconsideration Review Committee did meet.

The committee, by this correspondence, confirms the [date] decision of the Data Services Manager to place the notation "*Guelph Police Services Local Files: Positive*" on your Guelph Police Record Check document in light of there being a record with our Police Service.

The Record Check is a document provided to you as the requester exclusively. No one other than yourself is afforded access to the Record

Check document which reflects a search of police records as they are defined at law.

Thus, your Police Record Check provides no indication, by this Service, of the circumstances referenced in your local file. You may choose to use the document as you see fit.

The complainant filed this complaint knowing that if the complainant decides to continue in this chosen educational program, the complainant must provide the educational institution with a copy of the PVSC form and may be required to answer questions and provide further information relating to the positive notation on the form. The complainant may also be required to agree to the disclosure by the police of further information to the educational institution.

Although the police PVSC process does not share information with the educational institution *directly*, it does so indirectly. The police placed the notation "*Guelph Police Services Local Files: Positive*" on the PVSC form with respect to the youth matter. Having placed this notation on the Guelph Police Record Check document, the police would affect a disclosure, at the very least, as soon as the obligatory provision of the document to the educational institution occurs. At that point, it is highly likely that the complainant will be required to disclose additional information or will be required to agree to the disclosure of additional information as part of the screening process. As a result, the fact that the complainant was dealt with under the *YCJA* will have been disclosed to the third party.

The Complaint

Initially, the complainant filed an access to information request with the police seeking access to the records relating to its decision to deny the complainant a clear PVSC. The complainant received access to some records and filed an appeal with this office in which the complainant sought a correction of the records. The complainant's appeal form stated that the police records should be corrected and that the "positive" notation should be removed from the PVSC form.

Subsequently, the complainant decided to withdraw the appeal and file a privacy complaint with this office in which the complainant complained about the use and disclosure of the information relating to the youth matter as part of the PVSC process. This complaint file was opened and an investigation was conducted by this office into the circumstances surrounding the PVRC application process.

During this investigation, I sought and received representations from the police and from the complainant, and I have carefully considered them in arriving at my findings below. In the discussion that follows, I find that the police used the personal information of the complainant contrary to the *YCJA*, and the *Act*.

RECORDS:

The records at issue in this matter include occurrence reports and other police records which relate to the youth matter and child matter described above.

DISCUSSION:

The following issues were identified as arising from this investigation:

1. Do the records at issue contain "personal information" as defined in section 2(1) of the *Act*?

"Personal information" is defined in section 2(1) which states, in part:

"personal information" means recorded information about an identifiable individual, including,

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual...

Although I have not reviewed the records, the police do not dispute that they contain personal information, and confirm that they consist of two occurrence reports. They have also confirmed that the two occurrence reports include the complainant's name, address, and age and details of the incidents that are alleged to have occurred when the complainant was a young person and a child.

I therefore find that the records contain the personal information of the complainant.

2. Does the *YCJA* apply to the records at issue?

Speaking generally, the *YCJA* applies to police records generated in relation to incidents involving young persons and, in some limited circumstances, it applies to police records that include information about children. The terms "young person" and "child" are defined in section 2 of the *YCJA* as follows:

"child" means a person who is or, in the absence of evidence to the contrary, appears to be less than twelve years old.

"young person" means a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is

charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act.

At the time that the complainant is alleged to have been involved in the youth matter, the complainant qualified as a "young person" as that term is defined in the *YCJA*. At the time that the complainant is alleged to have been involved in the child matter, the complainant was a "child" as that term is defined in the *YCJA*.

The police agree.

Therefore, I find that the *YCJA* does apply to information relating to the youth matter and may have some application to the child matter. However, as I set out below, it is clear that not all of the provisions of the *YCJA* that apply to a young person also apply to a child.

3. What is the impact of the *YCJA* in relation to the records at issue?

As I have found that the *YCJA* applies to the records relating to the youth matter and may apply to the child matter, I must now turn to the question of the impact of that legislation in the context of a PVSC and in the circumstances of this complaint. Before I do that, I note that the police state that the *Police Services Act* provides an overriding discretion for Police Chiefs, or their designates, to disclose information for purposes of public protection and the protection of victims of crime. The police imply that the *Police Services Act* prevails over the *YCJA*.

I disagree.

The *YCJA* is a federal statute containing comprehensive records management provisions whose intent is to ensure that young persons do not suffer from the stigmatization of having been dealt with under the *YCJA*.¹ The records management provisions of the *YCJA* restrict access to records on the basis of the type of disposition and the time. Generally speaking, it prohibits the use and disclosure of records and information in records that could identify a young person, and prohibits the publication of information that could serve to identify a young person.²

As a duly enacted federal statute, it can be presumed that, in the event of a conflict, the *YCJA* supersedes or is paramount over provincial legislation. However, as the Supreme Court of Canada has held, it is only "when the operational effects of provincial legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility."³ In other words, it is only if it is impossible to comply with both the

¹ F.N. (Re), [2000] 1 S.C.R. 880, 2000 S.C.C. 35, para 14

² *YCJA*, ss. 118, 119, 129, 110 and 111.

³ *Canadian Western Bank v. Alberta*, 2007 SCC 22

YCJA and the *Police Services Act* (and the related provision of the *Act*, as discussed below) provisions, that the *YCJA* would prevail over the provincial provisions. In my view, the provisions of the *Police Services Act*, the regulations enacted thereunder, and the *Act* that permit the disclosure of records or information for the purposes of public safety or protection in certain defined circumstances present no such irreconcilable conflict with the statutory prohibitions limiting the use and disclosure of records set out in the *YCJA*. The relevant provisions of these provincial laws can - indeed they must - be interpreted and applied consistently with the *YCJA*.

In this regard, a critical provision enacted under the *Police Services Act* is section 6 of Ontario Regulation 265/98 ("Disclosure of Personal Information" regulation) which provides that:

In deciding whether or not to disclose personal information under this Regulation, the chief of police or his or her designate shall consider the availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest and what is necessary to ensure that the resolution of criminal proceedings is not delayed.

In this context, "what is consistent with the law" necessarily includes a requirement that any disclosure of personal information be consistent with the *YCJA*. Therefore, my analysis must begin with a consideration of the provisions of the *YCJA* and any restrictions that it may place on the use and disclosure of the records at issue.

Section 3 of the *YCJA* includes a statement of principles which guide the interpretation of the *YCJA*. Section 3(1)(b) states in part:

The criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:

- (i) rehabilitation and reintegration,
- (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
- (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

Section 3(2) states:

This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

The Youth Matter

The privacy protections set out in the *YCJA* can be found in Part VI which is entitled, "Protection of Privacy of Young Persons." Section 115 allows police to retain records relating to a young person alleged to have committed an offence. While the question of the police right to retain records relating to the youth matter is not at issue here, section 115(1) is important for the analysis that follows. It states:

A record relating to any offence alleged to have been committed by a young person, including the original or a copy of any fingerprints or photographs of the young person, may be kept by any police force responsible for or participating in the investigation of the offence.

The records relating to the offence that the complainant is alleged to have committed as a young person fall within section 115.

Section 128(1) of the *YCJA* is significant here because it prohibits the use of section 115 records for any purpose that would identify the young person to whom the record relates as a young person dealt with under the *YCJA*, after the end of the applicable period in section 119. Section 128(1) states:

Subject to sections 123, 124 and 126, after the end of the applicable period set out in section 119 or 120 no record kept under sections 114 to 116 *may be used* for any purpose that would identify the young person to whom the record relates as a young person dealt with under this Act or the [Young Offenders Act](#), chapter Y-1 of the Revised Statutes of Canada, 1985. [Emphasis added.]

Section 119(2) sets out the applicable period after which no record kept under section 115 may be used for any purpose that would identify the young person involved as a young person dealt with under the *YCJA*. Section 119(2)(c) applies to circumstances involving a withdrawal of charges. It states:

The period of access referred to in subsection (1) is,

if the charge against the young person is dismissed for any reason other than acquittal, the charge is withdrawn, or the young person is found guilty of the offence and a reprimand is given, the period ending two months after the dismissal, withdrawal, or finding of guilt;

Because the disclosure period in section 119(2)(c) turns on the passage of time since charges were withdrawn, it is worth reviewing here the sequence of events and their timing. Based on the information before me, I find that:

- The charges against the complaint relating to the youth matter were withdrawn on [a particular date].
- The peace bond expired one year later.
- The police issued the PVRC more than two months later.

Applying section 119(2)(c), I find that following the expiration of two months after the date when the charges were withdrawn, the police were prohibited under the *YCJA* from using the records kept by it relating to the youth matter for any purpose that would identify the complainant as a young person dealt with under the *YCJA*.

The *YCJA* is silent on the impact of a peace bond on the applicable period set out in paragraph (c). However, even if the peace bond, which was in place for one year, had the effect of extending the applicable period set out in section 119(2)(c) by one year, the police PVSC was issued outside the one year plus two month period. Therefore, even on the narrowest interpretation of the facts before me, the police PVRC was issued outside the applicable period - at a time when the police were expressly prohibited from using the records in such a way that would identify the complainant as a young person dealt with under the *YCJA*.

I have found that the police used the complainant's records outside the period set out in section 119(2)(c). I must now consider whether the use of the records by the police for the purposes of a PVSC amounts to a use "for a purpose that would identify the complainant as a young person dealt with under the *YCJA*."

As indicated above, I have found that the practical impact of the use of the complainant's records for the purposes of the PVSC is that the complainant's personal information will be disclosed to the educational institution. Once the educational institution is informed that the PVSC document reveals a "positive" notation, it is highly likely that the complainant will be required to disclose additional information or will be required to agree to the disclosure of additional information as part of the screening process. As a result, short of the complainant withdrawing, the fact that the complainant was dealt with by the police under the *YCJA* will have been disclosed to the educational institution.

In my view, this is a use of information for a purpose that would identify the complainant as a young person dealt with under the *YCJA*. To find otherwise would effectively mean that the police are permitted to use youth records beyond the disclosure period in such a way that would create barriers to employment and education. Such an interpretation would create obstacles to rehabilitation and reintegration, and would be inconsistent with the requirement to construe the legislation liberally in order to give effect to the principles set out in section 3(1) of the *YCJA*.

It should be noted that the police approach to the complainant's request for a PVSC is *contrary to* the approach that it articulates on its own website. The Guelph Police Service's website indicates that a PVSC will not include a consideration of *YCJA* charges or information beyond the applicable disclosure dates. If the police were to follow the approach articulated on its own website, then the complainant would not have had cause to have complained to our offices.

The police refer to the OACP Learn Guideline (Guideline) and claim that it allows them to review "all available police contacts including but not limited to theft, weapons, sex offences, or violent, harmful and threatening behaviour..." The police quote from page 9 of the Guideline which states:

Incidents involving ... (i.e. ...) do not qualify for clearance by way of an Extrajudicial Measure and so should be released on a PIC or PVSC *observing period of non-disclosure*. [Emphasis added.]

The Guideline is no more than a guideline – it does not have the force of law. However, it is worth reviewing at length because in my view it does not support the approach taken by the police to the complainant's request for a PVSC.

First, the reference to "observing the period of non-disclosure" in the passage quoted above, appears to be a specific reference to the period of non-disclosure set out in section 119(2) of the *YCJA*. This is clarified in Section 1 of the Guideline which, like the police's own website, states that *YCJA* information beyond the applicable disclosure period will not be included on a PVSC.⁴

On my reading of the Guideline, it acknowledges that police can release information on their own local records management systems relating to matters dealt with under the *YCJA* subject to the *YCJA* rules, including the non-disclosure periods set out in that legislation. In other words, the reference check process should not include any information relating to incidents that fall outside the applicable disclosure period in section 119(2). I have found above that the applicable disclosure period in this case is within two months after the charges were withdrawn. Even if I am wrong and the disclosure period must be calculated based on the expiry date of the peace bond, I have found that the police used the information two months *after* the expiration of the peace bond. Therefore, even if the Guideline had the force of law, following its provisions, I would find that the disclosure period for the youth matter has clearly expired and the police were not entitled to use the personal information of the complainant relating to the youth matter for the purpose of responding to the PVSC.

In contrast, the police argue that they are entitled to consider the information relating to the youth and the child matters for the following reasons. They are allowed to keep

⁴ OACP Learn Guideline page 5

the records relating to the youth matter pursuant to section 115 of the *YCJA*. Because they are allowed to keep these records, the *YCJA* allows them to refer to these records for the purposes of a PVSC.

As indicated earlier, the right of the police to retain the personal information of the complainant is not at issue here. The complaint is that the police inappropriately used and disclosed the personal information as part of the PVSC process. There are specific provisions in the *YCJA* that govern the use and disclosure of information in police records that identifies a young person as a person dealt with under the act. These provisions are relevant to this complaint.

I have found above that the *YCJA* applies to the information relating to the youth matter and that the relevant provisions of provincial law can - indeed must - be interpreted and applied consistent with the *YCJA*. As a result, it cannot be said that there is an overriding discretion under the *Police Services Act* that would prevail over the restrictions set out in the *YCJA*.

I have found that the applicable disclosure period set out in section 119(2)(c) has expired. Therefore, in my view, the police are not entitled to use the information relating to the youth matter in the context of the police reference check process because it is outside the applicable disclosure period set out in the *YCJA*. In arriving at this conclusion, I am mindful of the obligation to apply a liberal interpretation pursuant to section 3(2) of the *YCJA* having regard to the principles set out in section 3, including the emphasis on rehabilitation and reintegration, and the enhanced procedural protections set out in that act, including the right to privacy. It is noteworthy that these privacy protective provisions apply to records related to convictions, as well as those dealt with informally or disposed of without a conviction.

For all of these reasons, I find that the police were not entitled to use the complainant's personal information relating to the youth matter for the purposes of responding to the police reference check. Their actions were, at a minimum, contrary to section 128 of the *YCJA*. It also follows that any disclosures that resulted from such a use would also be inconsistent with the law since such a disclosure of information would not comply with either section 6 of Ontario Regulation 265/98 or the *Act*.

The Child Matter

As I stated above, the complainant was involved in an incident as a child. Section 13 of the *Criminal Code* provides, in effect, that children under 12 years of age may not be held criminally responsible. It states:

No person shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of twelve years.

While there are some provisions in the *YCJA* that apply to children, the restrictions on the use and disclosure of personal information in police records that apply to information about a young person, do not apply to police records relating to a child who is alleged to have committed a criminal offence.

In these circumstances, my examination of the police use and disclosure of records relating to the child matter focuses primarily on a consideration of provisions of the *Act*.

1. Is the use of the complainant's personal information relating to the child matter permissible under the *Act*?

I have found above that the police reference to the complainant's personal information for the purposes of the police reference check is a use of personal information. Section 31 of the *Act* prohibits the use of personal information unless at least one of three exceptions is met. It states:

An institution shall not use personal information in its custody or under its control except,

(a) if the person to whom the information relates has identified that information in particular and consented to its use;

(b) for the purpose for which it was obtained or compiled or for a consistent purpose; or

(c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*.

I will address each of these criteria in turn.

(a) if the person to whom the information relates has identified that information in particular and consented to its use

As I indicated above, the complainant was asked to and did sign a consent form before the police would complete the PVSC. In my view, the police cannot rely on this consent form to support the use of the complainant's personal information about the child matter in the context of this PVSC.

In Privacy Complaint Report MC-050045-1 and MC-050047-1, Investigator Mark Ratner found that section 32(b) of the *Act*, which uses similar language to 31(a), "implicitly contemplates that applicants provide their informed consent prior to the disclosure of their information to third parties."

In the circumstances before me, it cannot be said that the complainant provided informed consent for a number of reasons. First, the complainant's position is that the complainant did not know that the records relating to the child matter existed – the complainant only learned of their existence after reading the representations filed by the police in this investigation.

In addition, it is important to note that there is an element of coercion that comes to play in the police records check process. Applicants are required to provide their consent in the form chosen by the police. The young person or child, who is now an adult, seeking to participate in employment or an education program has no choice but to sign the form, including the consent, or no reference check will be performed.

This was recognized by the court in *Tadros v. Peel (Police Service)*⁵ where the court acknowledged the appearance of coercion and unfairness in circumstance where a person effectively must consent to a police records check.

In my view, and based on all the circumstances before me, the consent form used by the police in this case has not transformed the police practices into a consent based practice as contemplated by section 31(a) of the *Act*.

In arriving at this conclusion, I am mindful of the principles and requirements set out in the *YCJA* regarding the protection of the confidentiality of young persons. In light of the strong statutory protections in place to protect the privacy of young persons who are dealt with under the *YCJA*, it would be unreasonable for this office to give a broad interpretation to the requirement for consent in the circumstances of the child matter. I find that the circumstances of this police reference check do not support a finding that the complainant has consented to the use of the personal information relating to the child matter.

Therefore, I am not satisfied that the use was in accordance with section 31(a).

(b) for the purpose for which it was obtained or compiled or for a consistent purpose.

In order to assess whether the actions of the police are in accordance with section 31(b) it is necessary to first determine the purpose for which the information was obtained or compiled. Then, I must determine whether the information is used for these same purposes, or for a purpose that is consistent with these purposes.

When considering the possible application of section 31(b), it should be noted that where information has been collected directly from an individual, a "consistent purpose" is defined in section 33 of the *Act* as follows:

⁵ 2009 ONCA 442

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure [Emphasis added].

In this case, however, the personal information about individuals may also be collected indirectly, that is, from other individuals. Where personal information is collected indirectly, a consistent purpose is one where the purpose for the disclosure is "reasonably compatible" with the purpose for which it was obtained or compiled.⁶

The information at issue was collected by the police for the purpose of an investigation into a possible violation of law and in order to maintain accurate records of their activities. In my view, the use of this information for the purpose of processing a PVSC is a different purpose than that for which it was originally obtained or compiled.

I also find that the personal information was used for a purpose that does not qualify as a "consistent purpose." The disclosure would only be considered a consistent purpose if the person in question might reasonably have expected the disclosure to have taken place or, in the case of information collected indirectly, if the use was "reasonably compatible" with the purpose.

I am not satisfied that the fact that the complainant was involved in an incident as a child would reasonably lead the complainant to expect the use of the information in question. This is particularly the case given the prohibition against the laying of charges against a child that exists in the *Criminal Code*. Coupled with the fact that there are express statutory limits on the use, disclosure and publication of youth-related personal information under the *YCJA*, I find that it would not be reasonably expected that the child-related information could be used against an individual as an adult years after in an application for employment or in the pursuit of educational opportunities. I also find that the use of this information for the purposes of a police reference check would not be reasonably compatible with the purpose of the collection.

Based on all of these factors, I am not satisfied that the use of the complainant's personal information relating to the child matter would reasonably be expected by the complainant within the meaning of section 33. I also find that the use of this information was not reasonably compatible with the purpose for which it was obtained or compiled. As such, I conclude that the use was not in accordance with the *Act*.

c) for a purpose for which the information may be disclosed to the institution under section 32

⁶ See, for example, Ontario Information and Privacy Commissioner, Privacy Complaint Reports MC-010032-1 and MC-010036-1

I will now consider whether the personal information relating to the child matter could be used by the police for a purpose for which it could be disclosed. Those purposes are set out in section 32 of the *Act*. I have already considered paragraphs 31(a) and (b), which mirror sections 32(b) and (c). My analysis will include an examination of the possible application of section 32(e) which permits the disclosure:

(e) for the purposes of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an act or treaty;

The *Police Services Act* (the *PSA*) includes provisions which permit the disclosure of personal information. It confers discretion on Chiefs of Police to disclose personal information in a variety of circumstances as long as the disclosure is in accordance with the regulations.

Pursuant to sections 41(1.1) and (1.3) of the *PSA*, only disclosures that are made in accordance with the regulations are deemed to be in compliance with sections 32(e) of the *Act*. Ontario Regulation 265/98 clarifies the circumstances under which a police service may disclose personal information under section 41(1.1).

I have carefully reviewed the Regulation and find that the disclosures permitted under that Regulation do not apply to the circumstances of the child matter. In those circumstances, no charges were laid, no convictions obtained and the complainant is not "under investigation" in relation to the incident.

Having considered the *Police Services Act* and its Regulations, I am not satisfied that the use of this information was for a purpose for which the information may be disclosed in accordance with any of the provisions of the Regulations. Therefore, I conclude that the use was not for a purpose for which the information could be disclosed under section 41(1.1) of the *PSA* or, as a result, section 32(e) of the *Act*.

For all of these reasons, I am not satisfied that the use by the police of the information relating to the child matter was in accordance with section 31(c) of the *Act*.

While I recognize that the PVSC program has a valid public safety purpose, I find that the use of *YCJA* records outside the applicable disclosure period is contrary to the *YCJA* and thus "not consistent with the law" as required under section 6 of Ontario Regulation 265/98. With respect to the child matter, I find that the use of this information for the purposes of the PVSC screening process is contrary to section 31 of the *Act*.

For all of these reasons, I will recommend below that the police issue a revised PVSC document without reference to records or information relating to the youth matter and the child matter described above.

CONCLUSION:

I have reached the following conclusions based on the results of my investigation:

1. The information in question qualifies as personal information as defined in section 2(1) of the *Act*.
2. The information relating to the youth matter falls outside the disclosure period set out in section 119(2) of the *YCJA*. Therefore, the police are not entitled to use or consider this information for the purposes of completing the complainant's police reference check.
3. The use of the personal information relating to the child matter for the purposes of responding to a request for a police reference check is contrary to section 31 of the *Act*. Therefore, the police are not entitled to use or consider this information for the purposes of completing the complainant's police reference check.

RECOMMENDATIONS

In light of the foregoing, I recommend:

1. All future background checks issued by the Guelph Police Services in relation to the complainant must be processed without reference to the child matter and the youth matter referred to in this Privacy Complaint Report.
2. A new background check for the complainant should be issued within two weeks of receipt of this Privacy Complaint Report.
3. Proof of compliance with recommendation 2 above, shall be provided to this office by April 9, 2014.

Original signed by

Lucy Costa
Investigator

March 26, 2014
