



Order F21-55

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Jay Fedorak
Adjudicator

November 4, 2021

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Summary: An individual complained that the Ministry of Children and Family Development (Ministry) used unverified information about him in contravention of s. 28 (accuracy of personal information) and s. 29 (correction of personal information) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to make child custody decisions that affected him. The adjudicator found that the Ministry made every reasonable effort to verify the personal information that it used in accordance with s. 28. The adjudicator made no finding with respect to s. 29 owing to lack of evidence.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 28 and 29.

INTRODUCTION

[1] An individual (complainant) made a complaint to the Office of the Information and Privacy Commissioner (OIPC) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) that the Ministry of Children and Family Development (Ministry) had used his personal information without verifying its accuracy in contravention of s. 28. He also complained that the Ministry had failed to correct the personal information in dispute in contravention of s. 29.

[2] An investigator at the OIPC issued an investigation report with findings relating to the complaints. The complainant applied to the Supreme Court of British Columbia for a judicial review of the investigation report. The OIPC, the complainant and the Ministry signed a consent order that remitted the matter back to the OIPC with the matter to be determined at an inquiry.

ISSUE

[3] The issues to be decided at this inquiry are:

1. Whether the Ministry of Children and Family Development, or someone on behalf of the Ministry, used the complainant's personal information to make a decision that directly affected the complainant; and, if so,
2. Whether the Ministry made every reasonable effort to ensure that the complainant's personal information was accurate and complete prior to using the information in the decision that directly affected the complainant, in compliance with ss. 28 and 29 of FIPPA.

[4] These issues relate to the application of ss. 28 and 29 of FIPPA, which have different requirements. Therefore, I shall determine the application of each of these sections separately, while addressing the issues as the parties have framed them for this inquiry.

[5] There is no statutory burden of proof with respect to the application of ss. 28 and 29. However, as previous orders have indicated, it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have.¹

DISCUSSION

[6] **Background** – The complainant was living with a female partner (mother) and her two minor sons. The mother made a report to the Ministry about concerns she had in relation to the complainant and her sons. The details of that report persuaded Ministry child protection officials that there was a risk to the safety and well-being of her sons, based on the relationship between them and the complainant. Ministry officials subsequently conducted research on the internet that uncovered a website naming the complainant and indicating that he had a history of interest in children of a sexual nature. Both the Ministry and the police commenced separate investigations.

[7] The police uncovered further information about the complainant's history with minors and sexual material relating to children in other jurisdictions. One jurisdiction laid charges against the complainant, then withdrew them. Another jurisdiction issued two restraining orders against the complainant prohibiting him from having contact with a particular minor. The Ministry also discovered additional information on the internet about the complainant's participation as a minor in communications involving men with a sexual interest in children.

¹ Order F10-31, 2010 BCIPC (CanLII) 44, para 29.

[8] The mother initially participated in the investigation and in the development of a Safety Plan that involved her leaving the home and placing the sons temporarily with their natural father. The mother later recanted her concerns about the complainant after speaking with him. It is noteworthy, however, that she did not recant the facts she provided in the initial report and subsequent investigation with the Ministry officials and police.

[9] The Ministry later obtained an interim Protection Intervention Order (PIO) requiring the complainant to have no contact with the sons. After the complainant and the mother violated the interim PIO on a specific occasion, the Ministry sought and received an interim court order to place the sons in the care of the Ministry. The court ordered the sons into the custody of the Ministry and denied the complainant's application for access. The complainant filed an appeal in the Supreme Court of British Columbia, which dismissed the appeal as moot, because, by then, the custody order at issue had expired.²

[10] **Information at Issue** – The information at issue includes screen shots from a website that contained unsubstantiated opinions and allegations against the complainant of having an interest in children of a sexual nature. The website also contained facts about the complainant, including his work history. The information at issue also includes two articles about the complainant available on the internet.

Did the Ministry contravene s. 28?

[11] Section 28 requires the following:

28 If

(a) an individual's personal information is in the custody or under the control of a public body, and

(b) the personal information will be used by or on behalf of the public body to make a decision that directly affects the individual,

the public body must make every reasonable effort to ensure that the personal information is accurate and complete.

² A copy of this judgement is included in the complainant's submission as appendix AB. I refrain from providing the court citation for this case because the decision identifies all the parties by name and contains sensitive personal information about the complainant, the mother and her sons, as well as other individuals. Citing the judgement would confound the purpose of protecting their identifies in this decision. I have reviewed this judgement.

[12] To determine whether the Ministry contravened s. 28, I must answer the following questions:

1. Is the information at issue the personal information of the complainant?
2. Is the personal information in the custody or under the control of the Ministry?
3. Did the Ministry use the complainant's personal information to make a decision that directly affected the complainant?
4. If so, did the Ministry take every reasonable step to verify whether the information was accurate and complete prior to making the decision?

Is the information the personal information of the complainant?

[13] The information on the internet at issue relates to an individual with the same name as the complainant and provides opinions and allegations about that individual of a personal nature and includes facts such as the individual's work history. The Ministry concurs that the personal information is about the complainant.³ I find that the information is personal information in accordance with FIPPA.

[14] The complainant submits that the personal information is about him. The Ministry also submits that the personal information is about the complainant. All the evidence before me persuades me that the personal information is about the complainant. Therefore, I find that the personal information is about the complainant.

Is the information the personal information in the custody or under the control of the Ministry?

[15] The parties did not make submissions on this issue. However, the evidence before me supports the conclusion that the personal information is in the custody of the Ministry and was in custody during the proceedings outlined in this case. Therefore, I find that the personal information is in the custody of the Ministry. As I have found that the personal information is in the custody of the Ministry, I do not need to make a finding with respect to control.

³ Ministry's initial submission, para. 91.

Did the Ministry use the complainant's personal information to make a decision that directly affected the complainant?

[16] The Ministry says that it used the complainant's personal information throughout the course of the child protection investigation and child protection proceedings.⁴ While the Ministry concedes it used the complainant's personal information, the questions remain whether it used that information to make a "decision" and, if so, whether the decision directly affected the complainant.

[17] Order F10-31 and the subsequent judicial review decision *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 1204 [*Harrison*] examined the issue of whether an action constitutes "making a decision" in accordance with s. 28. The court found that it was reasonable for the adjudicator in that case to interpret the term "decision" broadly.⁵ From those reasons, I understand that the decision at issue under s. 28 does not need to comprise a formal decision, such as a decision made under an enactment. It can include decisions to take certain kinds of actions.

[18] I find the Ministry used the complainant's personal information, along with other information, to take a series of actions in this case. The first was to commence an investigation to verify the concerns that arose from the mother's report. This included the internet search that uncovered the information at issue. The police investigation was in part to corroborate the information contained on the website in question. The other actions were to develop a Safety Plan; to seek the interim PIO; and to seek an interim custody order. The Ministry concurs that it used the complainant's personal information in these ways and that they affected the complainant. I agree.

[19] I am satisfied that developing the Safety Plan, seeking the interim PIO and seeking an interim custody order were "decisions" that could be subject to s. 28. Nevertheless, I find otherwise regarding commencing the investigation.

[20] The Ministry decided to conduct its investigation and contact the police after receiving the report of the mother and conducting the internet search. However, in *Harrison*, the court held that a decision to commence an investigation does not constitute a decision for the purposes of s. 28. The action of verifying the information is different from that of acting on that information once verified.⁶ Consequently, in the present case, the decision of the Ministry to conduct its investigation and contact the police is excluded from my analysis of the application of s. 28 from this point forward.

⁴ Ministry's initial submission, para. 91.

⁵ Order F10-31, *supra* note # at paras. 49 to 54; *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 1204 [*Harrison*], paras 87-90.

⁶ *Harrison*, para. 82.

[21] The next question is whether the Ministry's decisions directly affected the complainant. The complainant alleges that the decisions of the Ministry affected him in many ways.⁷ I will not list them all here. The significant issue is that, because of the decisions the Ministry took based on his personal information, he was prevented from having access to the mother's sons, with whom he was residing prior to the mother making her first report. The Ministry concurs that these decisions affected the complainant. This includes a court order that prevented the complainant from having access to the mother's sons.

[22] Therefore, I find that the Ministry used the complainant's personal information to make decisions that directly affected the complainant in accordance with s. 28.

Did the Ministry take every reasonable step to verify whether the information was accurate and complete prior to making its decisions?

[23] This is the fundamental matter at issue in the complaint. The complainant alleges that the Ministry based all its decisions on the information that it obtained about him on the internet without taking any steps to verify if it was accurate. He submits that this information on the internet is false. He argues that even a cursory examination of the website at issue would show that the information was anonymous and old. Moreover, the complainant had told the Ministry that it was inaccurate.⁸ He alleges that an individual with a personal grievance against him had posted some of the information knowing it to be false.⁹

[24] The Ministry initially submitted that I have no jurisdiction to hear this case on the grounds that it involved re-adjudicating matters that a court had already decided.¹⁰ This is because, it states, the courts have determined that the Ministry's use of the personal information at issue was reasonable. It subsequently submitted that the complainant's complaints to the OIPC were an abuse of process for the same reasons.¹¹

[25] I disagree. The court decisions the Ministry cites were about a PIO and child custody, and they did not directly address the application of s. 28 and s. 29 in this case. My role is not to determine whether use of the information was reasonable, as the Ministry implies, but whether the Ministry made every reasonable effort to ensure that the information was accurate and complete.

⁷ Complainant's response submission, paras. 268-272.

⁸ Complainant's response submission, paras. 289-293.

⁹ Complainant's response submission, para. 66.

¹⁰ Ministry's initial submission, para. 99.

¹¹ Ministry's reply submission, paras. 1-12.

[26] The complainant submits that the Ministry collected a suite of inaccurate information in its pursuit of an interim PIO and interim court order. This includes information collected from the following sources: the website and additional articles referencing him; police in other jurisdictions; and the initial report of the mother. He presents reasons to support his contention that he has never done anything illegal and that he poses no threat to children. He submits that he had communicated this information to the Ministry on several occasions, but the Ministry continued to use this information despite his protests.

[27] According to the complainant, the only information that the Ministry failed to validate was the information on the website at issue. He submits that a simple examination of that website, and review of public comments about that website, would have demonstrated that the information available was unreliable.¹²

[28] During one of the court hearings, the complainant submitted an assessment of himself that an independent psychologist had completed. This assessment was of his mental health generally and of whether he posed a threat to children specifically. The report of this assessment concluded that he did not pose a threat to children.¹³ He submits that this corroborates his claims that the information about him on the internet is false.

[29] He also submits that he has been the subject of several police investigations relating to sexual interest in children. These investigations, with one exception, have resulted in him not being charged with any offence. In the one case, police charged him with an offence, but the prosecution later withdrew the charges. The complainant believes that the combination of this evidence substantiates his claim that he had no sexual interest in children and does not pose a threat to any child. He also argues that the mother subsequently recanted her initial report to the Ministry, and that this proves that the initial report was false. He submits that all this information demonstrates that the personal information that the Ministry used was false and, therefore, unverified.

[30] The Ministry submits that the impetus for the series of actions that it took was the initial report of the mother. Subsequently, it took several steps to determine whether the information that the mother provided was reliable. This included the internet search about the complainant and the subsequent investigations by the Ministry and the police.

[31] The Ministry submits that the judge in the court case found that all the information that the Ministry had compiled supported the conclusion that the Ministry should take the children into care. The Ministry says that, while the judge acknowledged that each item of evidence in isolation was insufficient on its own,

¹² Complainant's response submission, paras. 248-51.

¹³ Complainant's response submission, Tab X.

the combination of all the evidence consistently pointed to the existence of a risk to the children.¹⁴ The Ministry argues that the comments of the judge support its contention that its use of the complainant's personal information was reasonable.¹⁵

[32] The question before me is whether the Ministry took every reasonable effort to ensure the personal information about the complainant that it used to make its decisions was accurate and complete. The Ministry's arguments, along with the findings of the court proceedings, persuade me that the Ministry did take every reasonable step to corroborate its evidence prior to seeking the custody orders. It is evident from the transcripts of the mother's initial report to the Ministry that she had raised serious concerns about the risk to her sons, including some important facts not in dispute. That she subsequently changed her mind and said that she believed the complainant's explanations and no longer had any concerns about him, does not render the information in her initial statement false or inaccurate.

[33] Having received the initial report from the mother, the Ministry took the following steps: an internet search, a ministry investigation and a report to the local police department. The complainant suggests that the proper course of action would have been for the Ministry to examine the website at issue more closely, dismiss all the information as inaccurate or unreliable, and take no further action. I disagree. I find the approach of the Ministry, which was to seek further evidence to corroborate or refute the information that it had obtained from the mother and the website, to be reasonable. The investigations by the Ministry and the police uncovered information that was consistent with some of the information in the mother's report and on the website with respect to the complainant's interest in children.

[34] The complainant goes to great lengths to discredit the information about him on the internet and to demonstrate that the Ministry failed to take every reasonable effort to verify its accuracy. I take his argument to mean that, the fact the Ministry used "false" information is an indication that it failed to verify the accuracy of this information. However, this begs the question as to whether the information was, in fact, false. That a source of information may be unreliable does not necessarily mean that all the information is incorrect. The information on the website contains passages that many observers would find to be unsavory, and it does not provide definite proof in support of their allegations. There is a reasonable doubt as to the veracity of those allegations. However, the complainant does acknowledge that many of the facts about him on the websites

¹⁴ Ministry's initial submission, para. 61. As I have noted above, I refrain from providing the court citation for this case because the decision identifies all the parties by name.

¹⁵ Ministry's initial submission, para. 98.

are accurate. What he disputes is the allegations against him of a sexual nature, including the opinions about him that the creator of one of the websites posted.

[35] It is not my role to determine whether all the information contained in these websites was correct. As the judge noted, it is not possible to determine whether, in isolation, any one of those allegations, or the explanations the complainant provided to counter those allegations, are accurate. I make no finding of truth in that respect. My role is to determine whether the actions of the Ministry were reasonable and complete in the circumstances.

[36] I cannot conceive of a way for the Ministry to confirm the veracity of the information on the websites merely through an investigation of the websites themselves, as the complainant has suggested. The creator of one of the websites posted the information many years ago. According to the complainant, this creator is now dead. The only means that I can see to verify that information was to seek corroboration or refutation from other independent, and more reliable, sources. The Ministry has done this. The consistency of the corroborating information that the Ministry and police were able to obtain has persuaded a judge of the Provincial Court of British Columbia that the information was sufficiently accurate for him to find in favour of the Ministry.

[37] I am satisfied that the Ministry took several steps to assess the accuracy and completeness of the personal information about the complainant before deciding whether the concerns that the mother's report raised about the risk to her sons warranted the Ministry to take the actions necessary to protect those children from harm. The Ministry took several steps to attempt to verify those concerns. It did not rely merely on one form of evidence. It compiled information from public and private sources that, despite the complainant's explanations, corroborated those concerns. The complainant has not persuaded me that there were further reasonable efforts the Ministry could have taken (in the context of what was clearly an urgent child protection matter) to ensure the information was accurate and complete before it made the decisions at issue.

[38] I conclude that the Ministry took every reasonable effort to confirm that the complainant's personal information it used to make decisions affecting the complainant was accurate and complete.

Conclusion on s. 28

[39] Therefore, I find that the Ministry complied with the requirements of s. 28.

Did the Ministry comply with s. 29?

[40] Section 29 gives individuals a right to request correction of personal information in the custody of public bodies and requires public bodies to respond to those requests. It reads as follows:

29 (1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.

[41] The applicant submits that he complained to the Ministry that the information at issue was false and requested that it correct this information many times on a series of occasions between 2018 and 2021. He provides the dates of the Ministry's responses but contends the Ministry did not respond appropriately to his repeated requests.¹⁶

[42] In response, the Ministry submits that it has annotated its file with the details of the complainant's disagreement with the investigation as a whole and its use of the information from the websites.

[43] I have insufficient information before me to determine if the Ministry failed to meet the requirements of s. 29. Generally, it is helpful for complainants to provide copies of their original requests for the correction of their personal information in accordance with s. 29 and the responses that they received from the public body. These records enable the adjudicator to verify the request for correction and the appropriateness of the response. The complainant makes vague references to the substance of his requests for correction. I am unable to verify the nature and substance of those requests or confirm whether indeed the Ministry has received a request in accordance with s. 29 and issued a response in accordance with s. 29.

Conclusion on s. 29

[44] Therefore, given that there is insufficient evidence before me, I am unable to substantiate the complaint that the Ministry failed to comply with s. 29.

¹⁶ Complainant's response submission, para. 212-15. I note that the complainant also makes allegations about what the Ministry said and did after he filed his complaint with the OIPC. Those allegations are outside the scope of this inquiry, so I will make no decision about them.

CONCLUSION

[45] For the reasons noted above, pursuant to s. 59(1) of FIPPA, I make no order, as I have made no finding of non-compliance by the Ministry with respect to ss. 28 or 29.

November 4, 2021

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F19-78967