

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0392 (web version)

MANITOBA PUBLIC INSURANCE CORPORATION

PRIVACY COMPLAINT: USE AND DISCLOSURE

PROVISIONS CONSIDERED: 36(1)(a)(b), 43(a), 44(1)(d)(e)(r)

REPORT ISSUED ON MAY 2, 2013

SUMMARY: Manitoba Public Insurance (MPI) collected personal information from the complainant for the purpose of issuing him a driver's licence. During a subsequent renewal of his driver's licence, MPI learned that one of the identity documents submitted by the complainant was not valid. MPI was also advised by the Canadian Border Services Agency (CBSA) that the agency was investigating the complainant and had concerns about his identity. During the course of the investigations being conducted by MPI and CBSA, MPI disclosed personal information of the complainant to CBSA. The complainant alleged that MPI did not have the legislative authority to use and disclose his personal information in the manner it did and filed a complaint with the ombudsman. The ombudsman found that the complaints were not supported.

BACKGROUND

The issuance and renewal of drivers' licences is the responsibility of Manitoba Public Insurance (MPI or the public body) under *The Drivers and Vehicles Act* (DVA). When issuing or renewing a driver's licence, MPI must verify the applicant's identity and residency. This would include reviewing identity documents and taking a digital photograph of the applicant if he or she is a new driver. For existing clients seeking to renew their licence, a new photo is taken every five years or if the driver's personal information, such as their address, has changed. There may also be other circumstances in which a new photo is required, the end result being, that MPI has at least one photo of every licensed driver in Manitoba.

There are approximately 814,000 licensed drivers in Manitoba and 1.9 million photographs of those drivers stored in MPI's database. Because drivers' licences are a widely accepted form of identification, they are often used to gain other fraudulent documentation. This was noted by the Alberta Court of Appeal in *Hutterian Brethren of Wilson Colony v. Alberta* (2007 ABCA 160). In that decision, the court summarized the position of the province of Alberta as follows:

...drivers' licences are "breeder documents" which can be used to steal another person's identity and impersonate that individual for criminal or terrorist purposes. Further, using a digital photograph to minimize the security threats posed by fraudulent licences is consistent with many of the interjurisdictional harmonization agreements Alberta is seeking to enter. [21]

In order to reduce identity fraud and the issuing of duplicate licences, MPI began to use Facial Recognition technology (FR) in 2009.

FR technology is what is known as a biometric system. Biometrics refers to the technology of measuring, analyzing and processing the digital representations of unique biological data and behavioral traits such as fingerprints, eye retinas, voice and facial patterns, and hand geometry.

All of the digital photographs taken by MPI when licensing drivers are entered into a Facial Recognition System (FRS). Measurements, such as the distance between the eyes or from the nose to the chin, are used to create a numeric map or FR template of each image. Unlike other physical characteristics that can change and subsequently alter the appearance of individuals, such as the length of one's hair or skin tone, the FR template for an individual is constant, meaning the points of reference do not change over time.

Each FR template is much like a fingerprint as it is essentially unique to an individual image and can be compared against all other templates to determine whether there is a match. As a result, MPI can determine if an individual is who they say they are by comparing a new FR template to an existing one in the system or determine if the person has more than one identity by comparing it to the entire database. MPI uses FR technology to examine 1,300 photos a day of which approximately one-third are flagged for further review.

THE COMPLAINT

The complainant applied for a driver's licence in January 2009 after moving to Manitoba from Ontario. In order to obtain a driver's licence and register his vehicle, he had to establish his residency and his identity. As proof, the complainant provided a copy of a study permit issued by Citizenship and Immigration Canada (CIC) which allowed him to live in Canada until June 30, 2009. MPI was satisfied with the documentation and he was issued a Manitoba driver's licence. The complainant's photograph was also taken as he was a new customer.

After the initial study permit expired, and at various times over the next few years, the complainant provided MPI with new study permits which authorized his continued residency in Canada. MPI also, as stipulated under the DVA, required the complainant to submit to new

photographs due to address changes and a reactivation of his licence. In total, four photographs of the complainant were taken by MPI on the following dates:

- Photo 1 – January 31, 2009
- Photo 2 – August 19, 2009
- Photo 3 – December 14, 2011
- Photo 4 – July 7, 2012

MPI first had concerns as to the identity of the complainant in December 2011, when photo 3 was taken. At that time, the FR analysis indicated that there was an incomplete match between photo 2 and photo 3 and the complainant's file was flagged for further review by MPI's Identity Verification Unit.

In reviewing the photos, investigators with the unit noted that in photos 1 and 2, the complainant had a beard while in photo 3 there was no facial hair. They also noted that the headdress worn by the complainant was different. Ultimately, MPI decided that the incomplete match resulting from the FR analysis was not indicative of a different individual in photo 3 and the complainant was issued a driver's licence.

In July 2012, the complainant attended to MPI to renew his driver's licence as he had been apparently issued a new study permit, allowing for his continued residency in Canada. He provided MPI with the new study permit and had his picture taken for his driver's licence. Shortly thereafter, MPI noticed that the expiry date on the study permit was not clear and contacted CBSA for clarification. It should be noted that as part of each renewal application, the complainant had signed an authorization specifically allowing MPI to verify documents submitted by him to prove his identity.

On September 18, 2012, MPI was informed by CBSA that the study permit was not valid and that the complainant did not have any status in Canada. CBSA advised MPI that it was currently investigating the complainant under subsection 122(1) of the *Immigration and Refugee Protection Act (Canada)* which states the following:

Documents

122. (1) No person shall, in order to contravene this Act,

- (a) possess a passport, visa or other document, of Canadian or foreign origin, that purports to establish or that could be used to establish a person's identity;
- (b) use such a document, including for the purpose of entering or remaining in Canada; or
- (c) import, export or deal in such a document.

Thus as of September 2012, both MPI and CBSA were investigating the complainant in order to determine his identity. On November 2, 2012, MPI received an email from CBSA requesting copies of documents the complainant had provided to MPI. On November 6, 2012, an MPI

investigator attended the offices of CBSA, and provided scanned copies of the four CIC study permits provided to MPI by the complainant.

On November 9, 2012, a CBSA investigator attended MPI's office and met with an investigator from MPI's Identification Verification Unit to personally view the original documents CBSA had requested on November 2, 2012. While at MPI, the CBSA investigator submitted two written requests for copies of documents concerning the complainant as part of his ongoing investigation. As a result, the following documents were disclosed by the public body to CBSA:

- Copies of driver's licence photographs taken on January 31, 2009, August 19, 2009, December 14, 2011 and July 7, 2013
- Copy of Republic of India passport
- Copy of Ontario driver's licence

During the meeting of November 9, 2012, CBSA and MPI investigators reviewed the four driver's licence pictures of the complainant. In a sworn affidavit, dated November 9, 2012 and provided to our office by the complainant, the CBSA investigator noted that the first two photographs didn't seem to match the last two photographs. In his affidavit, he stated that the MPI investigator summoned the assistance of an MPI FR analyst who agreed that photos 1 and 2 did not seem to match photos 3 and 4, leading one to believe that they might not be the same individual.

The above noted exchange between the FR analyst and the CBSA investigator is the substance of the complaint. The complainant, through his representative, raises the issue that the opinion provided by the FR analyst constituted a new use of his personal information. He maintains that while MPI is authorized to use his photos to issue driver's licences, the public body was not permitted to use that personal information to form an opinion in response to the CBSA investigation. The complainant also believes that disclosure of that opinion to CBSA was not authorized under FIPPA.

To put the matter in a clearer perspective, the concern raised by the complainant is about what is commonly known as function creep. This phenomenon was at issue in an investigation by the Office of the Information and Privacy Commissioner for British Columbia into the use of Facial Recognition technology by the Insurance Corporation of British Columbia. In its investigation (Report F12-01) it noted the following with regards to function creep:

Function creep occurs when a process or system intended for one purpose is subsequently used for a new or originally unintended purpose. When personal information is involved, function creep implies that the change in use is without the knowledge or consent of the individuals. [44]

Function creep is a privacy issue because it is a basic privacy principle that personal information should only be used for the purpose it was originally collected unless, in the case of public bodies, FIPPA permits a change in use. Such a change in use should be subject to careful scrutiny given the sensitivity of biometric data and its potential for interoperability with other system. [47]

MPI is of the position that the information was not being used in a new way. The public body is of the view that it was authorized under FIPPA to use the complainant's personal information in the manner it did and to disclose the complainant's personal information to CBSA.

ANALYSIS

Is the information in question personal information?

Under FIPPA "personal information" means recorded information about an identifiable individual. It is clear that the photographs of the complainant and the corresponding FR templates created from those photographs are unique to that individual and can be used to identify that person and therefore it would be considered personal information.

Was MPI authorized to collect photos of the complainant?

When collecting personal information, public bodies must ensure they meet the requirements as identified in subsection 36(1) of FIPPA which states the following:

Purpose of collection of information

36(1) No personal information may be collected by or for a public body unless

- (a) collection of the information is authorized by or under an enactment of Manitoba or of Canada;
- (b) the information relates directly to and is necessary for an existing service, program or activity of the public body; or
- (c) the information is collected for law enforcement purposes or crime prevention

Subsection 10(1) of *The Drivers and Vehicles Act* sets out the criteria that must be met when applying for a driver's licence. Included is the requirement that an applicant submit to a photograph.

Applying for a driver's licence

10(1) A person applying for any class of driver's licence must

- (e) allow himself or herself to be photographed in accordance with the registrar's requirements, unless the type of driver's licence is not required by law to display the licence holder's photograph or the regulations exempt him or her from being photographed.

As such the public body would be authorized to collect a photograph of the complainant under clause 36(1)(a) of FIPPA. Clause 36(1)(b) would also allow for such a collection as photographs of applicants are necessary for determining or confirming their identity in order to issue a drivers licence.

Was MPI authorized to create FR templates from photos taken of the complainant?

MPI creates FR templates of all the photos it takes when licensing drivers and this constitutes a “use” of their personal information under FIPPA. Section 43 (a) of FIPPA speaks to the use of personal information and states the following:

Use of personal information

43 A public body may use personal information only

(a) for the purpose for which the information was collected or compiled under subsection 36(1) or for a use consistent with that purpose under section 45;

As already noted, FR technology is used to prevent fraud and duplication with regards to issuing drivers licences. The photographs of individual applying for drivers’ licences are used to create FR templates. MPI then uses these templates which contain the personal information of applicants to compare them to the templates of other licensed drivers. Both uses in our view are authorized under subsection 43(a) of FIPPA as the personal information is being used for the purpose for which it was collected.

Did the opinion provided by the FR analyst constitute a new use of the complainant’s personal information that was distinct from the purpose for which it was collected? Is this a case of function creep?

The MPI investigator asked the FR analyst for her input as to whether photographs taken of the complainant matched. The FR analyst indicated that it appeared that there were some differences and that photo 3 did not appear to match up with photos 1 and 2. She indicated that this may lead one to conclude that it is a photo of a different person.

The opinion proffered by the FR analyst in this time, however, was not formulated in response to the CBSA investigation but was rooted in an existing analysis conducted by MPI which the public body was authorized to undertake. The FR analyst was simply restating her findings from December 2011, when she surmised that there was an incomplete match and a chance that photos 2 and 3 were not the same person. There is no evidence to suggest that the personal information of the complainant was now being manipulated in a new way. As a result, our office is of the position that the opinion of the FR analyst does not constitute a new use of personal information but an existing one authorized under FIPPA and therefore this is not a case of function creep.

Was MPI authorized to disclose the information to CBSA?

Although not defined in FIPPA, the term disclosure means revealing recorded personal information to someone outside of the public body. Recorded information may be disclosed in a number of ways:

- providing the record itself or a copy of it
- creating another record, such as a letter or memo, containing the information
- verbally disclosing information from the record

In this instance, the FR analysis was electronically recorded and then verbally disclosed to the CBSA investigator by the FR analyst. When disclosing such information public bodies must

ensure that the disclosure is authorized and limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.

MPI in representations to our office relied on three provisions of FIPPA it believed authorized the disclosure of the FR analysis of the personal information of the complainant to CBSA. They are as follows:

Disclosure of personal information

44(1) A public body may disclose personal information only

- (d) for the purpose of complying with an enactment of Manitoba or Canada, or with a treaty, arrangement or agreement entered into under an enactment of Manitoba or Canada;
- (e) in accordance with an enactment of Manitoba or Canada that authorizes or requires the disclosure
- (r) for law enforcement purposes or crime prevention;

Our office notes that subsection 135(1) of the DVA states the following:

Information to be provided for law enforcement

135(1) The registrar must provide copies of or access to any records required by any of the following persons for the purpose of enforcing an Act or regulation of Manitoba or Canada:

- (a) a member of the Royal Canadian Mounted Police, police officer, police constable, constable or any other person employed to preserve and maintain the public peace;
- (b) a person appointed by the Government of Manitoba or Government of Canada to enforce an Act or regulation of Manitoba or Canada.

Subsection 135(1) of the DVA clearly requires MPI to provide records to CBSA with regards to its enforcement of the *Immigration and Refugee Protection Act (Canada)*. It is also clear that the disclosure was for law enforcement purposes. It is our opinion that MPI was authorized under FIPPA to disclose the personal information of the complainant, including the findings of the FR analyst, to CBSA.

CONCLUSION

As our investigation determined that the personal information of the complainant was not used in a new way in response to the CBSA investigation, the complaint alleging the unauthorized use is not supported. Our office also determined that the public body was authorized to disclose the FR analysis to CBSA and therefore the complaint concerning the unauthorized disclosure is not supported.

May 2, 2013