

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

CASE 2012-0387 and 2012-0412

CITY OF WINNIPEG – WINNIPEG PARKING AUTHORITY

PRIVACY COMPLAINT: COLLECTION

PROVISIONS CONSIDERED: 36(1)(b) and 37(2)

REPORT ISSUED ON JULY 8, 2013

SUMMARY: City of Winnipeg employees complained that the Winnipeg Parking Authority (WPA) was not authorized under *The Freedom of Information and Protection of Privacy Act* (FIPPA) to collect their driver's license numbers for the purpose of issuing parking permits. The Ombudsman found that the WPA was authorized under FIPPA to collect the personal information in question but that the WPA did not provide proper notification for the collection as required by the Act. As a result, the complaints are supported in part. The WPA subsequently revised its parking permit application forms in order to comply with the notification requirements set out in FIPPA.

THE COMPLAINT

In November 2012, the Manitoba Ombudsman received several complaints from City of Winnipeg employees (the complainants) concerning the collection of their personal information by the Winnipeg Parking Authority, a Special Operating Agency of the City of Winnipeg.

The complainants advised our office that the Winnipeg Parking Authority (the WPA or the public body) was requiring them to provide a copy of their driver's license when applying for a parking permit for lots managed by the WPA. They believed that this was not necessary for the issuance of parking permits.

The complainants each noted that the WPA already collected other personal information such as their employee number, license plate number, home address and telephone number, all of which, in their opinion, was sufficient to issue a parking permit.

The Freedom of Information and Protection of Privacy Act (FIPPA) allows for public bodies, such as the WPA, to collect personal information in certain circumstances. At the same time, the Act also recognizes that individuals are entitled to privacy of their personal information and as such provides for a right of complaint if individuals believe their personal information has not been handled in accordance with the Act.

Complaint about privacy

59(3) An individual who believes that his or her own personal information has been collected, used or disclosed in violation of Part 3 may make a complaint to the Ombudsman.

In this matter, a number of individuals chose to exercise their right of complaint under FIPPA prompting an investigation by our office.

BACKGROUND

The WPA was designated as a Special Operating Agency of the City of Winnipeg in 2005 and is responsible for managing on-street metered parking, parking lots, and related assets owned and previously operated directly by the City of Winnipeg. The WPA is also responsible for enforcement with respect to parking related offences. This includes collecting fines for various violations under City of Winnipeg by-laws.

Parking Lot Management

The WPA advised our office that it operates 49 parking lots with 3,885 spaces. Some of these spaces are set aside for permit holders while others are for hourly/daily parking. Permit parking is available to both the general public and City of Winnipeg employees. The WPA estimates that there are currently 1,220 City of Winnipeg employees who have a parking permit for lots managed by the WPA.

When applying for a parking permit an individual is required to fill out an application form. Among other things, the application forms request the following information:

- Name
- Address
- Phone
- Email
- Vehicle information plate/make/model/colour
- Employee # (if applicant is a City of Winnipeg employee)

An account for the applicant is created with the personal information collected from the application form. This information is stored in a database managed by the WPA. The information collected is necessary in order for the WPA to contact the individual if there are changes in the terms and conditions of the agreement and to verify that the vehicle parked in the lot belongs to

the permit holder. City of Winnipeg employees are asked for their employee number to facilitate payroll deduction of their parking fees.

Enforcement

The City of Winnipeg Charter provides the WPA with the same authority as the Winnipeg Police Service to issue offence notices (tickets) for parking and non-moving violations. In 2012 the WPA issued over 164,000 tickets.

Failure to pay a ticket within 30 days will result in the following actions to be taken in accordance with the *Summary Convictions Act*:

- Denial of any further services
- Administration fees assessed
- Towing of your vehicle from City property
- Collection Agency and credit action
- Denial of driver's license and registration

When a ticket is issued to an individual for parking offence, an account for the individual is created and the information stored in a database managed by the WPA. This account contains information including the name of the individual, contact information, vehicle registration, license plate number and their driver's license number. The WPA is able to create this account by accessing the Manitoba Public Insurance Vehicle Registration database under an agreement between the two parties in order to identify offending vehicles and collect fines. The account is similar to the account created for the parking permit applicant, except that it includes the driver's license number.

Parking Management Database – T2 Flex System

The WPA utilizes a management software program known as the T2 Flex System. This system supports the management of parking facilities, the issuance of parking permits and tickets, and the collection of fines.

As noted, an account for an individual is created when either a ticket is issued or when an application for a parking permit is received. The T2 Flex System, however, only merges information into one account when it can match driver's license numbers as that personal information is a unique identifier.

For example, if an individual receives a parking ticket the T2 Flex System will create an account for that individual. If that same individual subsequently applies for a parking permit, the T2 Flex System will create a second account for that individual. It will not merge the information related from the parking ticket with the information from the parking permit application into one account for that individual, as there is no driver's license number associated with the parking permit account to provide for a match. The WPA estimates there are approximately 20,000 duplicate accounts in the T2 Flex System.

POSITION OF THE WPA

In November 2012, the WPA requested that individuals applying for parking permits provide the public body with a copy of their driver's license in addition to the personal information already collected. The WPA later modified the request so that individuals would just have to provide their driver's license number. Our investigation looked at the collection of the driver's license numbers as the WPA had ceased collecting photocopies of driver's license cards.

The WPA advised our office that the collection of driver's license numbers was necessary in order to eliminate duplicate accounts. The WPA indicated that ideally, one individual should only have one account and that account would include information relating to parking tickets and parking permits. The WPA indicated that having all of the information contained in one account was necessary in order to effectively administer the parking permit program.

Complainants had indicated to our office that when they contacted the WPA for clarification as to why the driver's license numbers were required, they were provided with a number of explanations. Some were told that it was related to the duplication of accounts while others indicated they were told that it was to confirm home addresses or to collect unpaid parking fines.

INVESTIGATION

The collection of personal information by public bodies involves four privacy principles. They are as follows:

- Accountability
- Identifying purposes
- Collection limitation
- Openness

These principles are reflected in sections 36 and 37 of FIPPA, and will frame our analysis of the collection of the information in question by the WPA.

Subsection 36(1) of FIPPA identifies the circumstances that must exist for a collection of personal information authorized under the Act. It 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

Personal information cannot be collected by or for a public body unless the collection is authorized by at least one of the clauses in 36(1) of FIPPA.

In this case, clause 36(1)(a) appears not to be applicable as the WPA did not identify any Act or regulation which expressly provides for the collection of the driver's license numbers by the WPA. Similarly, the public body did not identify clause 36(1)(c) and so its applicability was not examined by our office.

As such, the relevant provision to be considered in this matter is clause 36(1)(b) which requires that the information relates directly to and is necessary for an existing service, program or activity of the public body. In this instance, the service, program or activity does not have to be established under the authority of a specific statute or regulation for clause 36(1)(b) to apply.

Is the WPA authorized under clause 36(1)(b) of FIPPA to collect driver's license numbers?

In order to determine if collection is authorized under clause 36(1)(b), the public body must first identify the purpose(s) and the existing service, program or activity for which the personal information is to be collected.

As already noted, the WPA initially provided several explanations to complainants as to the purpose for the collection of their driver's license numbers which caused some confusion for complainants. In its initial response to our office, the WPA emphasized the need to eliminate duplicate accounts. While duplicate accounts may be administratively awkward, it is unlikely that the elimination of such accounts would provide the necessary authority under FIPPA to collect driver's license numbers.

During the course of our investigation, it became clear through discussions with the WPA that the personal information in question was being collected by the public body to carry out its responsibilities concerning enforcement, in particular the collection of fines for parking-related offences.

The WPA indicated that it is their policy not to issue parking permits to applicants if they have outstanding parking fines and to cancel the permits of those who fail to pay any monies owed. In order to accurately determine if an individual has outstanding fines, the WPA advised our office that it requires driver's license numbers as it is the only unique identifier for the enforcement program. Without this personal information, the WPA indicated it would not be able to meet the aforementioned policy objective. For example, The WPA advised that a parking permit holder may receive a parking ticket for a vehicle that is not identified on the individual's parking permit but is still registered to that individual. Without having the driver's license number, the WPA would not be aware through the T2 Flex System that this particular permit holder had received a parking ticket, and would not be in a position to cancel the parking permit if the ticket went unpaid.

Our office understands that through cross-referencing of information, such as a license plate numbers and names, the WPA can in some instances determine that a permit holder or applicant

has unpaid fines, however the WPA indicates that manual cross-referencing is extremely labour intensive and not fully reliable.

Given the fact that qualifying for or retaining a parking permit is contingent on payment of outstanding parking fines, our office is of the view that the collection of the driver's license number is directly related to the parking permit program

Clause 36(1)(b) of FIPPA, however, also requires that the collection of the personal information be necessary for the program. In effect, the public body must have a demonstrable need for the information in order to carry out the program.

As already noted, it is possible to determine if a parking permit holder has any unpaid parking fines without having access to their driver's license number. However, for the WPA to administer the parking permit program in a reasonable and efficient manner, having access to driver's license numbers is necessary with respect to its policy concerning unpaid fines.

It is also noted that enforcement of the City of Winnipeg's parking bylaws, is part of the WPA's mandate according to its 2012 Business Plan which states the following:

The WPA was created to manage City owned on-and-off street parking resources, parking compliance, to advocate, encourage and develop growth in supply and service delivery standards of daily/hourly parking in Downtown Winnipeg, and to participate in municipal transportation demand management wherever possible, on a self-supporting basis.

As such, our office is of the view that collection of driver's license numbers by the WPA is authorized under clause 36(1)(b) of FIPPA.

MANNER OF COLLECTION

Subsection 37(1) of FIPPA requires the collection of personal information to be made directly from the individual unless another manner of collection is permitted. Subsection 37(1) of the Act identifies approximately 20 situations where an indirect collection of personal information can be made. In this matter, the complaints were about the personal information that was collected directly from the individual and therefore our investigation did not address questions about indirect collection.

NOTICE OF COLLECTION

One of the privacy principles underlying FIPPA is openness. Public bodies should be open about their information practices and policies, and endeavour to make information about them readily available so that individuals can understand how their personal information is being collected, used, retained, protected, disclosed and destroyed. As a result, FIPPA requires public bodies to provide individuals with notice when their personal information is collected.

Subsection 37(2) of FIPPA states the following:

Individual must be informed

37(2) A public body that collects personal information directly from the individual the information is about shall inform the individual of

(a) the purpose for which the information is collected;

(b) the legal authority for the collection; and

(c) the title, business address and telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

In this case, the driver's license numbers of individuals were being collected on the WPA application forms for the parking permits. The WPA uses different permit application forms depending on the individual (City of Winnipeg employee vs. general public) and the type of parking sought (residential street parking vs. lot parking). To be compliant with FIPPA, all of these application forms must meet the criteria identified in subsection 37(2).

A review of the various forms, however, revealed that the permit applications were not compliant with FIPPA with respect to the notification requirements. This was true not only for the collection of driver's license numbers, but the collection of other personal information. For example, the terms and conditions on the WPA parking permit application for City of Winnipeg employees in the Water and Waste Department states the following:

Personal information is collected under Subsection 36 (1) of the Freedom of Information and Protection of Privacy Act and is protected under the Act. It will be used for the permit registration process; for notification of permit cancellation; for notification of amendment of terms and condition of agreement (where applicable); to ensure compliance with section 470 of the City of Winnipeg Charter, and to share with appropriate certifying bodies (where applicable).

We note that the above notice does not indicate that personal information (i.e. driver's license numbers) is being collected to ensure that any outstanding fines are paid. The residential parking permit application, however, does reference the WPA's policy concerning the issuance of permits and the payment of fines.

All outstanding fines and or balances must be paid in full prior to the renewal or issuance of a residential parking permit.

However there is no notification on the application form advising applicants of the legal authority under FIPPA for the collection of their personal information, and no explanation regarding the purpose for the collection. The same holds true for the parking permit application form for the general public.

As one can see, the forms used by the WPA were not only inconsistent but failed to provide the proper notification as required by FIPPA to applicants concerning the collection of driver's license numbers and, in some instances, the collection of other personal information.

The WPA acknowledged that its application forms were not compliant with FIPPA in this regard and agreed to revise its application forms to include the following:

It is the policy of the WPA that any and all outstanding fines and charges must be paid in full prior to the issuance, or renewal, of a parking permit. Personal information is collected under Subsection 36(1)(b) of the Freedom of Information and Protection of Privacy Act (FIPPA) and is protected under the Act. It will be used for the permit registration process in order to verify permit eligibility; for notification of permit cancellation; for notification of amendment of terms and conditions of agreement (where applicable) and, as it is the policy of the WPA that any and all outstanding fines and charges must be paid in full prior to the issuance or renewal of a permit, to verify if there are any outstanding fines and or charges. Inquiries regarding the collection of personal information should be directed to the WPA FIPPA Coordinator through 311.

The above notice now appears on all permit applications and, in our view, meets the requirements as set out in subsection 37(2) of FIPPA concerning notification in that it includes the following elements:

- purpose for the collection of the personal information
- authorization for the collection of the personal information
- contact information of an employee who can answer questions concerning the collection of personal information

We acknowledge the cooperation and assistance of the WPA in taking steps to ensure all of its parking permit application forms were revised to provide appropriate notice of collection, not just the forms which gave rise to the complaints to our office.

SUMMARY OF FINDINGS

Based on our investigation, the Ombudsman determined that the WPA is authorized under clause 36(1)(b) of FIPPA to collect driver's license numbers of individuals applying for parking permits. The collection is related to the program given that the issuance/renewal of permits is contingent upon payment of any outstanding fines. In order to meet that policy objective, along with fulfilling its broader mandate concerning enforcement, it is in our opinion that the collection of the personal information in question is in compliance with FIPPA.

The Ombudsman, however, found that the notification of the collection was not in compliance with the Act. We requested that the WPA address this matter and are satisfied with the form of notice now in place.

OTHER MATTERS

Collecting personal information carries with it the duty to protect the information as noted in section 41 of FIPPA which states the following:

Protection of personal information

41 The head of a public body shall, in accordance with any requirements set out in the regulations, protect personal information by making reasonable security arrangements against such risks as unauthorized access, use, disclosure or destruction

The courts have noted that security concerns are particularly heightened with regards to driver's licenses. The Alberta Court of Appeal, in *Hutterian Brethren of Wilson Colony v. Alberta* (2007 ABCA 160), referred to them as "breeder documents" which can be used to steal another person's identity and impersonate that person for criminal purposes.

During the course of our investigation, several complainants raised general concerns as to the security of their personal information collected by the WPA. As a result, our office will be undertaking a review of the WPA practices in this area as provided for under section 49 of FIPPA which states the following:

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

- (a) conduct investigations and audits and make recommendations to monitor and ensure compliance*
 - (i) with this Act and the regulations, and*
 - (ii) with requirements respecting the security and destruction of records set out in any other enactment or in a by-law or other legal instrument by which a local public body acts;*

CONCLUSION

Our investigation determined that the collection of personal information was authorized under FIPPA but that the WPA was not compliant with respect to providing proper notification of the collection. As a result, the complaints are supported in part.

July 8, 2013