



Yukon
Information
and Privacy
Commissioner

INVESTIGATION REPORT

**Pursuant to section 37 of the
*Access to Information and Protection of Privacy Act***

Department of Justice

File ATP-ADJ-2024-10-277

Corrected Report made March 24, 2025

[See text under Complaint on page 5 (first para, last sentence), Facts at paras 18-19 on page 8, and Issue 1, Analysis at paras 33, 34 and 42 on pages 11-12.]

Rick Smith, Adjudicator

March 04, 2025

Summary

On or about June 10, 2024, an individual (Complainant) made a direct complaint to the Department of Justice (Public Body) alleging that its *Civil Emergency Measures Act* (CEMA) enforcement officers had collected the Complainant's personal information in June of 2021 without authority, thus contrary to the *Access to Information and Protection of Privacy Act* (ATIPPA). According to a response letter from the Public Body to the Complainant on July 9, 2024, the Public Body confirmed the collection of this information and further stated that its CEMA enforcement officers had the necessary authority and powers under the CEMA and *CEMA Ministerial Order 2020/13* [April 2, 2020].

On August 20, 2024, the Office of the Information and Privacy Commissioner (IPC) received a complaint from the Complainant in accordance with sections 37 and 90 of the ATIPPA. The Complainant alleged that the Public Body had collected their personal information without due authority in the manner set out above (ATIPPA Complaint).

Following the ATIPPA Complaint, the IPC notified the Complainant and the Public Body about first conducting a consultation, as per section 93, in an attempt to find resolution. However, resolution did not occur so the IPC referred it to formal investigation and assigned an adjudicator to the matter (Adjudicator).

The issue at hand was whether the Public Body was authorized to rely on the 'law enforcement' purpose in subsection 15(b) to collect the Complainant's personal information. Section 15 is the ATIPPA's 'authority to collect personal information' provision. The Adjudicator found that the information sought was personal information and that the CEMA enforcement officers collected it for law enforcement purposes.

The second issue, as formulated by the Adjudicator for purposes of this investigation, was if the Public Body was authorized to collect the personal information under section 15, were they authorized to rely on subparagraphs 16(2)(c)(i) and 16(2)(d)(x) to collect the Complainant's personal information indirectly. The Adjudicator found that they were able to rely on subparagraph 16(2)(c)(i) ('authorized by legislation') because the Commissioner in Executive Council, under CEMA, declared a COVID-19 state of emergency in Yukon on March 27, 2020, and the Minister responsible for CEMA issued several Ministerial orders – two concerning health protection and one authorizing the CEMA enforcement officers to enforce them.

However, the Adjudicator also found that the Public Body was not authorized to rely on subparagraph 16(2)(d)(x) ('law enforcement matter'). Although its CEMA enforcement officers were conducting a regulatory investigation for a law enforcement purpose, they had no authority to collect the Complainant's Information indirectly because there is no evidence that

they took into mandatory consideration any of the three concerns enumerated in subsection 16(3) prior to indirect collection.

In view of these findings, the Adjudicator made no recommendations.

However, the Adjudicator made one observation. If ever the Public Body is looking under subsection 16(2) to collect personal information indirectly for law enforcement purposes, it should then instruct its duly authorized officers on their mandatory obligations under subsection 16(3) before any such collection occurs.

Table of Contents

Summary 2

Table of Contents 4

Complaint 5

Jurisdiction 5

Statutes and Regulations Cited 5

Cases, Orders and Reports Cited 6

Explanatory Note 6

I BACKGROUND 6

II SUBMISSIONS 7

III FACTS 8

IV ISSUES 9

V DISCUSSION OF THE ISSUES 9

Issue 1 – Was the Public Body authorized to rely on subsection 15(b) to collect the Complainant’s personal information? 10

Issue 2 – If yes, then was the Public Body authorized to rely on subparagraphs 16(2)(c)(i) or 16(2)(d)(x) to collect the Complainant’s personal information indirectly? 13

VI FINDINGS 18

VII RECOMMENDATIONS 19

Observation 19

Complaint

On or about June 10, 2024, an individual (Complainant) made a direct complaint to the Department of Justice (Public Body) alleging that, contrary to the *Access to Information and Protection of Privacy Act* (ATIPPA), it had collected their personal information without authority. The personal information at issue was their private address and work schedule.

On August 20, 2024, the Office of the Information and Privacy Commissioner (IPC) received a complaint from the Complainant in accordance with sections 37 and 90 of the ATIPPA. The Complainant alleged that the Public Body had collected their personal information without due authority in the manner set out above (ATIPPA Complaint).

Jurisdiction

This is a privacy complaint under section 37. We have the necessary jurisdiction, as set out in section 91.

Statutes and Regulations Cited

Statutes

Access to Information and Protection of Privacy Act, SY 2018, c.9

Civil Emergency Measures Act, RSY 2002, c.34

Summary Convictions Act, RSY 2002, c.210

OICs

CEMA OIC 2020/61 Declaring State of Emergency in Yukon [March 27, 2020]

CEMA OIC 2023/15 [Cancelling State of Emergency in Yukon] [January 14, 2023]

Government Organisation Act OIC 2014/174 [September 14, 2014]

MOs – Health

CEMA MO 2021/13 Civil Emergency Measures Health Protection (COVID-19) Order [May 24, 2021]

CEMA MO 2021/18 Civil Emergency Measures Health Protection (COVID-19) Order [June 17 2021]

MO – Border Control

CEMA MO 2020/19 Civil Emergency Measures Border Control Measures (COVID-19) Order [April 17, 2020]

MOs – Enforcement

CEMA MO 2020/30 Civil Emergency Measures Enforcement (COVID 19) Order [May 13, 2020]

Cases, Orders and Reports Cited

None cited.

Explanatory Note

All sections, subsections, paragraphs and the like referred to in this investigation report (Investigation Report) are to the ATIPPA, unless otherwise stated.

All references to a ‘public body’ mean a public body as defined in the ATIPPA.

References to specific Public Body officials will only be identified by a letter, such as ‘A’, ‘B’ or ‘C’, as the case may be, for privacy protection purposes.

I BACKGROUND

[1] On or around June 10, 2024, the Complainant filed a privacy complaint directly with the Public Body, alleging that officers in its ‘CEMA Enforcement Unit’ had collected the Complainant’s personal information in June of 2021 without authority under the ATIPPA.

[2] The Complainant received a July 9, 2024 response letter from the Public Body’s Designated Privacy Officer (DPO) that –

- confirmed the Complainant’s ATIPPA allegations against the CEMA enforcement officers; and

- concluded that their inquiries were duly authorized under subsection 15(b).

(DPO Letter)

[3] On August 20, 2024, the Complainant filed an ATIPPA Complaint similar to the one they filed with the Public Body.

[4] The IPC decided to investigate the matter and notified both the Complainant and the Public Body about first conducting a consultation, as per section 93, in an attempt to find resolution. The IPC assigned it file number ATP-COM-2024-08-217.

[5] However, resolution did not occur so the IPC moved from consultation to formal investigation, as per paragraph 93(4)(b). The IPC assigned it file number ATP-ADJ-2024-10-277.

[6] On October 25, 2024, the IPC issued the Public Body and the Complainant with a 'Notice of Written Investigation' essentially stating that the CEMA Enforcement Unit collected the Complainant's home address for law enforcement purposes. It also called for written submissions.

[7] On November 14, 2024, legal counsel for the Public Body made a submission on subsection 15(b).

[8] On November 20, 2024, the Complainant provided a reply submission on subsection 15(b).

[9] No parties raised any procedural issues.

[10] Since this Investigation Report is about the collection of an identifiable individual's personal information, I make no comment about the Public Body's authority, briefly raised in the DPO Letter, to disclose that information under paragraph 25(h)(xi) in the context of a law enforcement matter.

II SUBMISSIONS

[11] The Public Body and the Complainant each made submissions on the subsection 15(b) 'law enforcement purpose' because the issue identified for formal investigation was whether the Public Body was authorized by subsection 15(b) to collect the Complainant's personal information.

[12] The Complainant submitted that the CEMA enforcement officers who collected the Complainant's personal information did not have the necessary authority to do so because they could produce no proof of that authority.

[13] The Public Body submitted, with supporting case law, that any action done for a law enforcement purpose is not dependent on the status of the party doing the action but rather on the functional nature of the action. The case law examples included individuals (*i.e.*, a dentist, dental assistant, Nunavut government official, deputy minister, nurse, doctor, or police force civilian member) who acted for purposes of law enforcement, their functional actions being the central factor.

III FACTS

[14] CEMA *Order-in-Council (OIC) 2020/61* declared a state of emergency in Yukon on March 27, 2020.¹

[15] Following this regulation, the CEMA Minister issued ministerial orders concerning the COVID-19 pandemic and associated enforcement measures.²

[16] The Public Body operated a 'CEMA Enforcement Unit' to respond to CEMA non-compliance concerns. In June of 2021, the CEMA Enforcement Unit investigated the Complainant to determine whether any chargeable offences had occurred.³ This unit included the particular CEMA enforcement officers who collected the Complainant's personal information.

[17] On June 15, 17 and 21, 2021, two CEMA enforcement officers (Officer A and Officer B) accessed the Complainant's personal information in the Yukon Government's (YG) 'YuDriv' database operated by the Transport Services Branch. This was an indirect collection.

[18] On June 19, 2021, two CEMA enforcement officers (Officer B and Officer C) attended the Complainant's workplace to collect the Complainant's work schedule. However, the Complainant was not at the workplace due to a self-isolation requirement.

[19] In addition, the CEMA enforcement officers obtained the Complainant's home address indirectly on an unspecified date.

¹ *OIC 2020/61* was not specific about the cause but it coincided with the spread of the COVID-19 pandemic. CEMA *OIC 2023/15* [January 14, 2023] cancelled the state of emergency in Yukon.

² A 'Ministerial Order' is a regulatory counterpart of an OIC at the ministerial level. CEMA paragraph 9(1)(b) authorizes the CEMA Minister to make regulations considered 'proper' to put into effect any civil emergency plan.

³ All references to CEMA enforcement officers are the members of the CEMA Enforcement Unit and were employed by the Public Body and acted on its behalf.

IV ISSUES

- 1) Was the Public Body authorized to rely on subsection 15(b) to collect the Complainant's personal information?
- 2) If yes, then was the Public Body authorized to rely on subparagraphs 16(2)(c)(i) or 16(2)(d)(x) to collect the Complainant's personal information indirectly?

V DISCUSSION OF THE ISSUES

[20] This is a privacy matter. The ATIPPA ensures the right of an individual to have control over their personal information by establishing rules by which a public body is able, in addition to other things, to collect that information. Part 2, entitled, the 'Protection of Privacy', sets out privacy protection principles that establish, for example, when a public body can collect personal information, from where it can collect it, how it can use it, and to whom it may be authorized to disclose such information.

[21] The term 'collection' is defined in section 1, as it pertains to personal information, includes the gathering or obtaining of personal information but excludes its use, disclosure or management.

[22] Collection of personal information also requires a public body to be able to demonstrate that it was for a specific purpose. The Cambridge online dictionary defines 'purpose' as "an intention or aim; a reason for doing something or for allowing something to happen."⁴ The purpose of collecting personal information by a public body amounts to the reason(s) why it needs this information and what use it will make of it.

[23] In addition, such collection must be informed by subsection 12(b) which prohibits a public body from collecting personal information beyond the amount that is reasonably necessary to conduct the purpose for which the personal information is collected. In other words, a public body can only collect the minimum of personal information necessary to effect their authorized collection purpose.

⁴ <https://dictionary.cambridge.org/dictionary/english/purpose>.

Issue 1 – Was the Public Body authorized to rely on subsection 15(b) to collect the Complainant’s personal information?

[24] A public body can only collect personal information if it is authorized by section 15 and meets one of the three purposes set out within.

Relevant Law

[25] The following section 1 definitions apply to this issue –

‘[P]ersonal information’ means –

... recorded information about an identifiable individual, including

(a) their name,

(b) their home, mailing or email address or phone number,

(c) their age, sex, gender identity ...

...

[Emphasis in original]

[26] **‘[L]aw enforcement’** means –

...

(b) a police, security intelligence, criminal or regulatory investigation, including the complaint that initiates the investigation, that leads or could lead to a penalty or sanction being imposed, ...

[Emphasis in original]

[27] The collection purpose at hand is set out in subsection 15(b) –

(15) A public body may collect the personal information of an individual only if

...

(b) the collection is for a law enforcement purpose; ...

Analysis

[28] I must first determine if the information collected is the personal information of the Complainant.

Personal Information

[29] 'Personal information' means recorded information about an identifiable individual. In other words, it is information that can identify an individual, such as their name, home address, personal phone number, email address, ID numbers, physical description, what they do and so forth.

[30] The facts show that, according to the DPO Letter, CEMA enforcement officers A and B accessed the Complainant's 'YuDriv' file on June 15, 17 and 21, 2021.

[31] According to YG's Transport Services Branch, 'YuDriv' is a digital platform used by its Motor Vehicles and Carrier Compliance to complete a variety of transactions for the public (e.g., drivers licenses, registrations, permits, etc.), and to maintain an associated database that contains personal information of an identifiable individual, including for example, their –

- name;
- birthdate;
- address; ...

[32] All of this information is, by definition, the personal information of an identifiable individual. Therefore, whatever of this CEMA enforcement officers A and B accessed about the Complainant in the 'YuDriv' database is the Complainant's personal information.

[33] CEMA enforcement officers B and C also attended the Complainant's workplace on June 19, 2021, to obtain the Complainant's work schedule. It shows the names of various employees, including that of the Complainant, and their shift patterns for the month of June, 2021. In examining this document, I am of the view that the Complainant's name on it is their business contact information under section 3 but their shift pattern is their personal information because it constitutes information about their employment status at that time.

[34] CEMA enforcement officers also obtained the Complainant's home address indirectly and there is no evidence to the contrary. I find that the Complainant's home address is their personal information.

[35] I must now determine if the personal information collected by the Public Body was for law enforcement purposes.

Law Enforcement

[36] Subsection 15(b) states that a public body can collect the personal information of an identifiable individual for law enforcement purposes.

[37] 'Law enforcement', as defined above, comprises four types of investigations – police, security intelligence, criminal or regulatory, each of which could lead to the imposition of a penalty or sanction.

[38] CEMA is a Yukon ordinance, subsections 6(1) and 9(1) of which give the Public Body the authority to conduct a regulatory investigation. In addition, CEMA section 11 provides for offences that could lead to the imposition of a penalty or sanction.

[39] The DPO Letter stated that the CEMA enforcement officers wanted to determine if the Complainant had, under CEMA, committed a regulatory offence during the COVID-19 pandemic by providing a false COVID-19 health declaration. In addition, they wanted to stop a possible act of self-isolation non-compliance by the Complainant that might constitute a further regulatory offence.

[40] In my view, the Public Body's regulatory investigation of the Complainant was for law enforcement purposes because the CEMA enforcement officers were engaged, at the time, in detecting, investigating, preventing or enforcing CEMA, and that it provided for penalties or sanctions.

[41] In making this finding, I am in agreement with the Public Body's submission that any action done for a law enforcement purpose is not dependent on the status of the party doing the action but rather on the functional nature of the action. The Public Body's collection actions were done for the functional purpose of conducting a regulatory investigation.

[42] The submission by the Complainant that the CEMA enforcement officers did not have the appropriate authority in the form of a specific declaration, appointment or other formal document declaring them as peace officers, is not relevant. The issue before me is whether the Public Body, not its employees or agents, was authorized to rely on subsection 15(b). I have found that the Public Body was engaged in a matter of law enforcement and therefore had the necessary collection authority in its own right. It follows, then, that all the Public Body's employees or agents, whether enforcement officers or not, had the same authority.

Conclusion

[43] The Public Body was authorized to rely on subsection 15(b) collect the Complainant's personal information.

Issue 2 – If yes, then was the Public Body authorized to rely on subparagraphs 16(2)(c)(i) or 16(2)(d)(x) to collect the Complainant's personal information indirectly?

[44] Since I have found Issue 1 in favour of the Public Body (*i.e.*, 'yes'), I will now proceed to examine Issue 2.

[45] A public body is authorized in certain circumstances under section 16 to collect a person's personal information indirectly.

Relevant Law

[46] The collection purpose at hand is set out in subparagraphs 16(2)(c)(i) and 16(2)(d)(x) –

(2) A public body may collect the personal information of an individual from a source other than the individual only if

...

(c) the collection from another source is

(i) authorized or required under an Act of the Legislature or of Parliament, ... ; or

(d) subject to subsection (3), the public body determines that the collection from another source is necessary for the purpose of

(x) a law enforcement matter, ...

[47] Subparagraph 16(2)(d)(x) is subject to 16(3) –

(3) In determining under paragraph (2)(d) whether it is necessary to collect personal information from a source other than the individual whose information is to be collected, the public body must consider whether collection directly from the individual would

(a) defeat or prejudice the purpose of the collection;

(b) result in the collection of inaccurate personal information; ...

Analysis

Was the Public Body authorized to rely on subparagraphs 16(2)(c)(i) or 16(2)(d)(x) to collect the Complainant's personal information indirectly?

[48] As previously stated, the parties made submissions on subsection 15(b) and I determined that the Public Body was authorized under this provision to collect the personal information of the Complainant for law enforcement purposes. However, that is not an end to the matter because the facts are that the Public Body only collected this information indirectly.

[49] Section 16 states that, subject to some limited exceptions, a public body must collect personal information directly from the identifiable individual about whom the information is about. One of the reasons for doing so is to ensure to the extent possible that an individual is made aware of the type of personal information being collected and used by the public body to make a decision about them. Since no direct collection occurred, I will therefore proceed with an analysis based on subsection 16(2).

[50] For purposes of this Investigation Report, it is only necessary for the Public Body to meet any one of the enumerated exceptions in subsection 16(2). The following two are relevant.

Paragraph 16(2)(c)(i) – Authorized by Legislation

[51] As stated in subparagraph 16(2)(c)(1), a public body may only collect the personal information of an identifiable individual indirectly if this collection is authorized or required by legislation.

[52] CEMA is a Yukon statute that sets out a legislative framework for the management of emergencies and disasters at the territorial and municipal levels. It outlines the roles and responsibilities of the Minister responsible for CEMA,⁵ the civil emergency planning officer, and various designated officers to assist that officer in carrying out the duties of office. It also provides for the granting of additional powers during a state of territorial or local emergency and governs the coming into force, expiration, and termination of these emergent states.

[53] CEMA subsection 9(1) states that, despite any other legislation, when the Commissioner in Executive Council or a mayor declares a state of emergency within their respective jurisdictions, the CEMA Minister may do all things considered advisable for the purpose of

⁵ Under the Schedule in the *Government Organisation Act OIC 2014/174*, the Minister of Community Services has this CEMA responsibility.

dealing with the emergency and, without restricting the generality of the foregoing, may for example –

(a) do those acts considered necessary for

(i) the protection of persons and property, [and]

...

(v) assisting in the enforcement of the law,

(b) make regulations considered proper to put into effect any civil emergency plan; ...

[54] In my view, this means that the Minister responsible for CEMA, in a stated emergency, may do whatever is reasonably necessary to meet the situation at hand. That situation was the COVID-19 pandemic which, in June and July of 2021, risked the public's health and overwhelmed the Yukon healthcare system.

[55] To that end, the Commissioner in Executive Council, under CEMA subsection 6(1), declared a state of emergency in Yukon on March 27, 2020⁶ to address this pandemic. The Minister then issued a series of Ministerial Orders (MO), four of which are relevant to this Investigation Report because they were in effect at the time of the June, 15-21, 2021 fact pattern that led to the ATIPPA Complaint.

Health Protection

MO 2021/13 and **MO 2021/18**, both entitled, the '*Civil Emergency Measures Health Protection (COVID 19) Order*' (MO Health Order)

The Health Protection MO set out the requirements to make a medical declaration on entry to Yukon and self-isolate for a fixed period.

Border Control – Health Protection

MO 2020/19, entitled the '*Civil Emergency Measures Border Control Measures (COVID 19) Order*' (Border Control MO).

The Border Control MO applied to the Health Protection MO by providing additional detail on the health protection entry and self-isolation requirements.

⁶ CEMA OIC 2020/61.

Enforcement

MO 2020/30, entitled the '*Civil Emergency Measures Enforcement (COVID 19) Order*' (Enforcement MO).

The Enforcement MO stated that an 'enforcement officer', as used within the Order, had the same meaning as the one in the *Summary Convictions Act*. It also set out both their authority and powers –

Authority –

(2) All enforcement officers have, in addition to the authorities, responsibilities and duties set out in their individual appointments, the duty and authority to enforce, in accordance with the directions of the civil emergency planning officer, the following:

(a) the Act and any regulations made under it;

(b) health emergency orders.

Powers –

(3) For the purposes of enforcing a health emergency order, the Act or regulations made under the Act, an enforcement officer has, while acting in their capacity as an enforcement officer, all the powers of a peace officer, so long as they exercise their powers in accordance with the directions of the civil emergency planning officer.

In addition, it set out prescribed offences under the *Summary Convictions Act* for any contraventions of the Order.

[56] The facts show that three CEMA enforcement officers collected the Complainant's personal information. At that time, they were members of the Public Body's CEMA Enforcement Unit and were acting in accordance with the Enforcement MO. They therefore represented the Public Body in that capacity.

[57] As such, I find that the Public Body was authorized to rely on subparagraph 16(2)(c)(i) to collect the Complainant's personal information indirectly.

[58] However, I will examine the subsection 16(2) 'law enforcement' option since the one of the 'Background Facts' in the October 25, 2024 Notice of Written Investigation to both parties

essentially states that the CEMA Enforcement Unit collected the Complainant's home address for 'law enforcement' purposes.⁷

Subparagraph 16(2)(d)(x) – Law Enforcement Matter

[59] As stated in subparagraph 16(2)(d)(x), a public body may only collect the personal information of an identifiable individual indirectly if this collection is a law enforcement matter. In other words, a public body can collect personal information indirectly if it collects this information in that context and, in keeping with subsection 12(b), it only collects the minimal personal information that it needs to effect its purpose, in this case, for an investigation.

[60] 'Law enforcement', as defined above, comprises four types of investigations – police, security intelligence, criminal or regulatory.

[61] CEMA is a Yukon ordinance, subsections 6(1) and 9(1) of which give the Public Body the authority to conduct a regulatory investigation. In addition, CEMA section 11 provides for offences that could lead to the imposition of a penalty or sanction.

[62] The DPO Letter stated that the CEMA enforcement officers wanted to determine if the Complainant had provided a false CEMA health declaration on entry into Yukon.

[63] In my view, inquiring into that situation is enough to state that the CEMA enforcement officer regulatory investigation was for law enforcement purposes under subparagraph 16(2)(d)(x). In other words, they were engaged, at the time, to detect, investigate, prevent or enforce a Yukon enactment in the context of the Complainant's health declaration.

[64] That is, however, not an end to the matter. Paragraph 16(2)(d), containing as it does subparagraph 16(2)(d)(x), is unique. It allows a public body to collect, in an indirect manner, the personal information of an identifiable individual for any one of 18 enumerated purposes, (x) of which is a law enforcement matter. All of these purposes are subject to 16(3).

[65] Subsection 16(3)

[66] It states that, if a public body wants to collect an identifiable individual's personal information indirectly, in this case for a law enforcement matter, then it must [first] consider whether collecting it directly from the individual would, in addition to other things –

(a) defeat or prejudice the purpose of the collection, or

⁷ Background Fact #2.

(b) result in the collection of inaccurate personal information; ...

[67] This is a mandatory provision.

[68] What the DPO Letter does not state, and there is no other evidence before me, is that the Public Body, or more particularly its CEMA enforcement officers, gave any consideration to whether approaching the Complainant directly about their personal information requests would result in either of these two situations.

[69] I therefore find that the Public Body did not give any such consideration.

Conclusion

[70] The Public Body was authorized to rely on subparagraph 16(2)(c)(i) [‘authorized by legislation’] to collect the Complainant’s personal information indirectly. It was not, however, authorized by subparagraph 16(2)(d)(x) [‘law enforcement matter’] to the same end.

VI FINDINGS

[71] In summary, I make the following findings.

Issue 1

[72] I find that the Public Body is authorized to rely on subsection 15(b) to collect the Complainant’s personal information.

Issue 2

[73] I find that the Public Body –

- is authorized to rely on subparagraph 16(2)(c)(i) to collect the Complainant’s personal information indirectly; and
- is not authorized by subparagraph 16(2)(d)(x) to the same end.

VII RECOMMENDATIONS

[74] I make no recommendations.



Rick Smith, BA, MCP, LLB, Adjudicator
Office of the Information and Privacy Commissioner

Distribution List:

- Public Body Head
- Complainant

Observation

[75] I have one observation.

Law Enforcement

[76] This concerns the indirect collection of an identifiable individual's personal information by the Public Body.

[77] While I have found that the CEMA enforcement officers' regulatory investigation was for law enforcement purposes, any such collection first requires them to consider, as per subsection 16(3), whether collecting it directly could result in any one of three enumerated situations.

[78] As mentioned, I have no evidence before me in which to make a determination that such consideration occurred. The DPO Letter is silent on this matter and, in fairness, the Public Body was not asked to make a subsection 16(3) submission. That said, nothing in my findings turns on it.

[79] However, my suggestion is to ensure that whenever the Public Body is looking to collect personal information indirectly under subsection 16(2) for law enforcement purposes, it then instruct its duly authorized officers about their mandatory subsection 16(3) obligation before any such collection occurs.