

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into a Complaint  
about the Unauthorized Disclosure of Personal Information**

**July 12, 1999**

**Alberta Energy and Utilities Board**

**Investigation Report 98-IR-016**

[Note: This Report was provided to the Complainant and to the Public Body in July 1999. The Public Body took immediate action in responding to the Complainant and to the Office of the Information and Privacy Commissioner in August 1999. At the request of the Complainant, the Report was not released at that time to allow related negotiations with third parties to be concluded. Report 98-IR-016 is now released with a Postscript summarizing the Public Body response.]

**Background to the Complaint**

1. The Complainant resided with his family on a homestead in rural north-central Alberta.
2. A drilling company did seismic exploration work on land adjacent to the Complainant's residence.
3. The Complainant believes that the drilling company was licenced by the Alberta Energy and Utilities Board ("AEUB") to drill only for sweet gas.
4. The Complainant believes that the drilling company's exploration activity around his residence caused certain damages to buildings and grounds, and produced sour gas vapours which directly affected the Complainant's health in a serious way.
5. The Complainant viewed the drilling actions that produced those vapours as unlicenced exploration activity, and saw AEUB as the public body responsible for monitoring and halting that unlicenced activity.
6. The Complainant's dealings with field operatives of the AEUB at its St. Albert office led him to make contact with staff at the AEUB's head office at Calgary.

**Verbal Complaint**

On February 26, 1998, the Complainant phoned the undersigned Portfolio Officer at the Office of the Information and Privacy Commissioner (“IPC”) to say that his privacy had been breached by the AEUB. He said that he had sent to the AEUB “evidence-of-claim” letters to convince the AEUB to suspend exploration near his home. He had been asked by an AEUB employee to forward these papers as evidence of what happened at the exploration site.

The Complainant said that, among the papers he sent as evidence that the exploration was raising sour rather than sweet gas, he had included doctor’s letters, covered by a *post-it* sticky note marked “Strictly Personal and Confidential”. He said that he had come to learn that an employee of the AEUB had shown his doctor’s letters to a management representative of the drilling company.

On February 27, 1998, the Portfolio Officer discussed the matter with the AEUB Freedom of Information and Privacy Coordinator, asking her to take measures to contain damages to privacy if those were present and if that were possible.

On March 3, 1998, the FOIP Coordinator reported back to IPC that she learned from the responsible AEUB employee that the employee did not realize that the sticky note pertained to the Complainant’s entire facsimile transmission, or at least to an entire page within that transmission. The employee had interpreted the faxed image of a *post-it* note covering a portion of a page as the censoring from view of just the covered portion, and not a warning that all that page and maybe other pages were to be treated as confidential material. It was not evident to the employee, from the content or presentation of the information, that it held dimensions of personal information that required shielding. (The Portfolio Officer passed these explanations along to the Complainant by telephone.)

### **Written Complaint**

On June 9, 1999, the Complainant sent a written complaint to the Information and Privacy Commissioner. The full text of the written complaint was as follows:

*After briefly speaking with Mr. J. Ennis on Feb/26/98, regarding a filing of an objection with the Alberta Energy and Utilities Board (Applications Audit Team, C/O [employee name] Calgary A.B. on Feb/13/98, that I fax an objection, to the proper and safe procedures by the oil company known as [company name] as well, I questioned the EUB s’ involvement, therefore sending a [employee name] of the Calgary EUB a copy of the invoice on the purchase of a apparatus known as a “nebulizer” for breathing after her questioning of the releasing of contaminated gases of an oil well adjacent of the house, I’m staying in.*

*As you can see, I personally marked the top right hand side of the invoice in my hand writing STRICKLY PERSONAL and CONFIDENTIAL. To my surprise the drilling manager, a Mr. [company manager’s name] from the above mentioned drilling company phones myself on Feb/23/98, to ask if I had any objections to another well going in across from the other oil well in which I expressed that I did not have any objections if*

*proper and safe procedures were followed and in this telephone conversation, Mr. [company manager's name] express his sympathy for what had previously carried on and at which time I asked how ? he knew so much about this machine and what had happened. At this point he stated that [employee name] from EUB Calgary, had sent the papers over that I had sent her and had showed them to Mr. [company manager's name].*

*I would like the office of the privacy commissioner to look into this matter as I feel there has been a breach of my rights under the Privacy act.*

### **The Investigation**

On or around February 13, 1998, an employee at the AEUB's Applications Audit Team, Facilities Division, received by fax a set of pages from the Complainant. The pages constituted his reply to the AEUB's letter to him of January 30, 1998, in which the AEUB invited the Complainant to make a submission regarding his reasons for objecting to the drilling licence. In the January 30<sup>th</sup> letter from AEUB, the Complainant was told what to include in his submission:

*Please note that, any submissions filed shall contain information detailing:*

- (i) the desired disposition of the application;*
- (ii) the facts substantiating the position of the submitter; and*
- (iii) the reasons why the submitter believes the Board should decide in  
the manner advocated.*

*Please also forward or fax a copy of any submissions to (company name) at the following address: (company manager's name and address)*

The Complainant's response to the AEUB included a two-page typed letter which in turn covered two supporting single-page documents. The first document is a page of rough sketches and notations of names and phone numbers. The notations indicate two or more authors contributed to this page's contents. Its purpose was to impress upon the AEUB that the Complainant had contacted a number of people already about the problem, including a field inspector from the AEUB. On that point the Complainant was plainspoken and direct in the body of his letter.

The Complainant did not describe why he included the second document, described below, although he alluded to its purpose in the following words:

*This should be sufficient for now, as I have more personal concerns to concentrate on. Ie the second document that follows this letter.*

The Complainant added a formal postscript to his letter after his signature:

*P.S. I do not believe that I owe (company manager's name) a FAX and/or a letter. You may though relay to (company manager's name) that he can write or call if he wishes.*

The second document was a copy of an invoice, 8 ½" x 11", from a health-care supply company to the Complainant. The upper left-hand corner of the invoice form includes checked off and filled in boxes for certain elements of personal information, including:

- *name*
- *address*
- *date-of-birth*
- *parents' name as guardians*
- *phone number*

The upper right-hand corner of the form shows four check boxes, indicating:

- *new patient*
- *new therapy*
- *rental*
- *service*

The first two of these were checked off.

The middle band of the form holds columns for itemizing and detailing the goods being sold. The first row for information across those columns is filled in by hand, indicating a product by trade name, model number, serial number, quantity supplied, and the invoice amount (\$245).

Below the middle band is a set of lines marked "Referred by" and "Comments." Here clearly sits the name of a physician with the hand-printed, barely-legible comment:

*Dx H2S exposure, Plevisey chronic lung infections  
Rx Vintolin*

At the bottom of the form are small-print paragraphs about terms-of-sale and related disclaimers. The form is signed by the Complainant as recipient of the goods, and by a therapist.

The invoice document contains a blank rectangular space, about 2" x 3 ½", in the upper right-hand quarter. It appears that a card of some kind, possibly a post-it note, had been placed over the form at that spot when a photocopy was being made, or when the original was being run through a fax machine. In that blank space are hand printed the words "*Strickly Personal And Confidential.*" There is no reference in the rest of the correspondence to this warning or what it alludes to.

### **Analysis & Observations**

The Complainant feels that the AEUB should have had the presence of mind to recognize that the entire invoice related to a piece of breathing apparatus called a “nebulizer”. This apparatus is used to process intake air for persons with lung conditions. The Complainant believes that the passing along of his documents to the company with whom he was having ongoing conflict was a violation of his privacy rights.

The AEUB employee who received the Complainant’s correspondence and who in turn relayed a copy of that correspondence to the drilling company is reported to have stated that she did see the curious warning, but that she also believed that the confidential information to which it related had been covered by the note, so that none of the rest of the invoice document, in her view, was regarded by the Complainant as confidential. On that line of thought, she saw no problem with relaying the document to the drilling company.

The AEUB has designed its procedures so that the company against whom an application is made (to suspend a licence) gets a chance to respond to the claims being made and to examine the evidence being offered in support of those claims. The AEUB apparently does not interfere with attempts by the parties to strike a negotiated settlement of a problem, and it appears that its procedures and operational behaviours lean towards encouraging bilateral talks between disaffected residents and exploration companies. Certainly the Energy Resources Conservation Act gives the Board a strong mandate to secure the observance of safe and efficient practices in the exploration for energy resources in Alberta, and generally empowers the Board to do all things that are necessary for the performance of that duty. The ERCA allows the Board to make *rules of practice* governing its procedures and hearings and allows the Board considerable leeway on its rules concerning evidence.

Pamphlet and brochure material supplied to the Investigator by the AEUB indicate that the Complainant was viewed and treated as a “local intervener” within the meanings of the ERCA. His complaint was taken as a Notice of Objection to the drilling company’s already-approved well licence application. The decision to commence a formal proceeding was effectively left with the Complainant through a deadline given him in the January 30<sup>th</sup> letter.

Working from the October 1996 consolidation of the AEUB’s Rules of Practice, the Investigator saw Rule #15 as allowing the Board to require the filing of a copy of the Complainant’s submission directly from the Complainant to the drilling company:

*15. Upon the filing or (sic) an intervener’s submission, the Board may direct, orally or in writing, that the intervener or his solicitor or agent supply copies of the submission to such other persons and in such manner as the Board specifies.*

Later, Rule #19 communicates the Board’s latitude for adjusting the material submitted by an intervener:

*19. Where the matter raised by or set out in the submission of an intervener appears to the Board to be not in response to the particular application or to have implications of importance beyond its reference to the application, the Board may*

- (a) *direct any amendment of, deletion from or amplification of the application or any intervenor's submission that appears to it desirable, or*  
 (b) *order that the matter shall not be considered at the hearing of the application, but may be heard as another application.*

In pursuing his initial grievance with the Board, the Complainant balked at the direction given him in the January 30<sup>th</sup> letter, substituting his own procedure in which he made a submission to the Board but did not supply a copy to the exploration company. In accepting that submission and continuing the application, the Board must have amended its own rules for that case, or must have agreed with the Complainant that its January 30<sup>th</sup> polite request was a suggestion rather than a stipulation, as Rule #23 states:

*23. No submission shall be received unless it has been filed in accordance with these rules.*

Apparently the Complainant's submission was "received." Within two working days of receiving the correspondence from the Complainant, the AEUB had relayed it to the company, apparently without consulting the Complainant prior to taking that action. The Investigator cannot see a rule that contemplates such a disclosure by the Board.

The allowable cases for disclosure of personal information are contained in the FOIP Act in Section 38. The cases covered in 38(1)(d) [complying with enactment of Alberta] would apply in this matter if there was a rule in place to cover the disclosure that was done. There does not appear to be such a rule. Section 38(1)(e) [purpose in accordance with an enactment] comes close but fails to meet the test as the enactment neither authorizes nor requires the disclosure by the public body.

And so, when the AEUB forwarded the Complainant's correspondence, including supporting documents, to the drilling company on February 17, 1998, it disclosed his personal information without a basis for doing so.

### **Investigator's Findings**

The Complainant has a style of communication which requires some additional study on the part of anyone reading it. He often alludes to matters raised in previous letters or to topics discussed by phone, and his correspondence has to be read in a context. It cannot be said to stand on its own. Rather, each of his letters relays a segment of a stream of consciousness.

The Complainant's conflict with the drilling company is a complicated matter, with large measures of circumstantial evidence and logical warrants requiring concentration on the part of his readers.

The initial basket of issues that the Complainant sent to the AEUB seems to have been given formal recognition and due respect, as evidenced by the invitation issued to him to make a submission. However, when he made his formal submission, it appears that the message in his

submission was not read or not understood, and that the AEUB shunted the submission to the drilling company to facilitate the drilling company's efforts to understand and solve the problem. The Complainant intended his submission to be read and acted upon by AEUB without being sent to the company. He did see the procedural direction by AEUB in its instructions of January 30, 1998, but decided that he would not be bound by that direction. He stated that point rather clearly at the end of his letter.

The Complainant's decision to alter the procedures by not sending a copy of his submission to the company was not respected by the AEUB. Rather, the AEUB relayed his correspondence without discussing the matter with him, but thinking that it was not violating his privacy in doing so.

In all this, it is important to remember that the AEUB was operating from imperfect fax copies of what were already low quality photocopies or damaged originals. The effect is to have documents that are a trial to decipher. Added to that consideration is the Complainant's customary openness with recounting the particulars of his grievance against the drilling company including details of damages to property and damages to persons. The damages he did suffer to his breathing are the central piece of that grievance, and it likely came as no surprise to the AEUB or to the drilling company that he would present evidence speaking to that claim. It is possible that the information contained on the documents was believed by AEUB to be information that was already put in the public domain by the Complainant's previous actions in dealing with the drilling company.

The Complainant's request for intervention by the Commissioner seems largely fuelled by the feeling that he would rather present his evidence to the drilling company in his own way, only if necessary, and possibly in another forum. So he sees his privilege as having been violated by a public body who he believes should remain disengaged on those matters of harm that may go to litigation. He sees the disclosure actions of the AEUB as those of an apologist for the company rather than as those of an enforcement agency.

### **Key Issues and Determinations**

Issue #1: Was there a disclosure of personal information?

Yes, the public body disclosed to another party personal information about the Complainant.

Issue #2: Was that disclosure an unreasonable invasion of the Complainant's privacy?

The Act presumes that the disclosure of medical and health-related details about a person is an unreasonable invasion of privacy. Under the new amendments to Sections 38 and 16 of the Act, there might be an ability to argue that the disclosure was allowable and warranted because the personal information was relevant to a fair determination of the drilling company's rights to continue to operate on the licence. However, the law in place

at the time the disclosure was made is what is being considered here, and that law prohibits disclosures done without consent or specific authority (Section 38).

Issue #3: Did AEUB have the legal authority to make this disclosure?

Though it may be argued that the Complainant implied a consent to the disclosure by following through on making his submission, the FOIP Act requires that consent for disclosure be obtained in writing and must specify to whom the personal information may be disclosed and how the personal information may be used (AR 200/95, Section 6). In this case, a quick screening of the Complainant's correspondence catches his objection to the disclosure of his correspondence in general. He certainly could have been clearer and more direct on the point if what he was concerned about was the disclosure of his personal information. However, the very fact that the AEUB took the action of passing the correspondence along to the drilling company confirms that the AEUB understood that the Complainant had not done so as directed. The AEUB took to itself the role of discloser, and in doing so was obliged to follow the rules that govern public bodies.

No legal authority has been cited by the public body to justify the disclosure. The AEUB appears to have the ability to set its own procedures and to require that they be observed by those seeking Board decisions. As those procedures are laid out in the January 30<sup>th</sup> letter, the Complainant would disclose his information directly to the drilling company, and there would be no disclosure by the AEUB to the drilling company. But the Complainant chose to submit his information only to the AEUB. Did that election on his part give to the AEUB the right to send his personal information to the drilling company? No. If AEUB insisted on the drilling company having the information, then AEUB should have made the sending of information to the drilling company by the Complainant a precondition to its acceptance of his submission. Instead it accepted his submission and took onto itself the role of supplying the drilling company with the information.

Whatever the motives behind the AEUB's actions, the net effect was to disclose his personal information to a stranger with whom the Complainant was having conflict.

Issue #4: Did AEUB wilfully disclose personal information in violation of Part 2 (Protection of Privacy) of the Act?

This Investigator found that the AEUB was not accustomed to considering what obligations this (then) two-year old law had brought to its doorstep in the area of privacy protection for individuals through Part 2 of the Act. By oversight or by disregard, the AEUB disclosed an individual's personal information to a company despite his resistance to that procedure. The way that the Complainant phrased his information made that resistance hard to discern and understand, but it didn't make it impossible to see. Nevertheless, given the Complainant's unusual presentation style and the Complainant's decision to follow some but not all the rules given him by the AEUB regarding

submissions, the Investigator is of the opinion that the disclosure happened as an administrative oversight, and was not a wilful breach of privacy rights.

### **Conclusions**

The AEUB did disclose to an outside party personal information about the Complainant. That disclosure was a breach of the AEUB's obligations as a public body subject to the Act. The breach does not appear to be a wilful disclosure, but rather seems to be the result of an oversight by the AEUB.

### **Recommendations**

The Investigator makes the following recommendations:

1. That the AEUB offer its apologies in writing to the Complainant privately and directly for having disclosed his personal information to the drilling company without his consent.
2. That the AEUB contact the drilling company in writing to request the return of the documents it sent to the drilling company from the documents submitted by the Complainant, and to request that all copies subsequently made by the drilling company be turned over to the AEUB or be destroyed at the drilling company.
3. That the AEUB revisit its procedures with a view to accommodating individuals who wish to submit medical or health-related information as evidence of risk from exploration and production operations so that those individuals are made aware that the information will be disclosed to the other side in a dispute unless they ask the Board to apply its discretion to sever information under Rule #19.
4. That the AEUB include explicit reference to the accommodation for confidential health information in the text of letters inviting submissions.
5. That AEUB take this opportunity to review procedures it has in place requiring the provision of personal information of all types directly from individuals to energy resource companies and utilities, including procedures to monitor or audit how that personal information is safeguarded by the companies who collect it, to certify those procedures as respecting the fair information practices found in the Freedom of Information and Protection of Privacy Act.
6. That, in any future dealings with public bodies, the Complainant himself be clearer and more direct in expressing his wishes for protection of his privacy.

This report concludes my investigation.

John Ennis  
Portfolio Officer

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**Postscript:** Summary of AEUB August 1999 Reply to Report 98-IR-016

In response to Recommendation #1, the AEUB wrote to the Complainant a letter (copied to the Office of the Information and Privacy Commissioner) that met the Complainant's needs for a clear and sincere expression of the AEUB's view on the incident.

The AEUB followed Recommendation #2 by directing the company to destroy or return to AEUB all copies of the document. (Later verbal reports to the Office of the Information and Privacy Commissioner confirmed that the company complied with that direction.)

In reply to Recommendations #3, the AEUB explained the restrictions it sees in its latitude regarding the severing of personal information where a claim has been made against a company's licence or licence application. The AEUB concurs that, in the case under investigation, "the Board staff member should have immediately returned the confidential information to the intervenor with the explanation that confidential information cannot be considered by the Board". The AEUB will maintain its view that it is unable to sever part of a submission if the deletion is intended to deny the other side from the opportunity of knowing the information.

In reply to Recommendation #4, the AEUB felt that the suggestion about accommodating confidential health information would result in a breach of the rules of natural justice insofar as its own legislation and the Administrative Procedures Act are concerned. The AEUB felt that current safeguards available for limiting the distribution of sensitive information can be adapted to those (very uncommon) cases where intervenors want to raise unshared personal health information as evidence for their arguments. Under those *in-camera* procedures, the other interested parties still have access to the information but their use and possession of it is strictly controlled.

For Recommendation #5, the AEUB indicated that it would certainly consider introducing obligations on companies regarding securing of personal information (e.g., in emergency response plans) in a manner that can be checked in the AEUB's plan audits.

J. Ennis 01/03/26