

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into Complaint Regarding the Disclosure of Personal Information By Public Bodies

January 17, 2000

**Alberta Community Development
And
Alberta Infrastructure**

Investigation #1634 and 1635

The Complaint

On May 20, 1999, the Office of the Information and Privacy Commissioner received a privacy complaint concerning Alberta Community Development and Alberta Infrastructure (formerly Alberta Public Works, Supply and Services). The two provincial government departments are public bodies under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”).

The Complainant alleged that employees of both public bodies breached the Complainant's privacy when they disclosed the Complainant's personal information to various parties. The Complainant also claimed that the employees were willfully spreading information about the Complainant that they knew was false, and that their actions damaged the Complainant's ability to make a living.

Section 51(2)(e) of the FOIP Act states:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

Our file number for the complaint concerning Alberta Community Development is Case #1634, and the file number for the complaint concerning Alberta Infrastructure is Case #1635. However, the investigation conducted by this office incorporated both public bodies. This report outlines the findings and recommendations of the Portfolio Officer assigned to investigate this matter.

Application of the FOIP Act

The FOIP Act was amended effective May 19, 1999. However, as the Complainant's privacy complaint was made before the amendments came into force, the FOIP Act prior to the amendments apply.

Background

The Complainant was an employee of Alberta Community Development. In 1998, a co-worker ("the Co-Worker") filed a complaint against the Complainant. Alberta Community Development initiated an investigation into this matter and upon completion of its investigation, decided to take disciplinary action against the Complainant.

The Complainant questioned Alberta Community Development's handling of its investigation on the complaint filed by the Co-Worker. The Complainant believed Alberta Community Development withheld critical information that the Complainant was entitled to, while disclosing to the Co-Worker information about the Complainant.

The Complainant applied under the FOIP Act to Alberta Community Development for access to records relating to the investigation. In addition, the Complainant filed a privacy complaint against Alberta Community Development with the Commissioner in July 1998.

Subsequently, the Complainant signed a severance agreement with Alberta Community Development, and resigned from the Alberta Public Service. The Complainant withdrew the access request made to Alberta Community Development and the privacy complaint filed with the Commissioner.

On May 20, 1999, the Complainant requested that the Commissioner re-activate the Complainant's initial privacy complaint.

Complainant's Concerns with Alberta Community Development

The Complainant claimed Alberta Community Development breached the Complainant's privacy when:

1. A Human Resources Consultant ("the HR Consultant") disclosed a document, prepared by the Complainant and marked "Personal and Confidential", to the Co-Worker without the consent of the Complainant.
2. The HR Consultant and a Manager ("the Manager") disclosed "confidential details and negative commentary" about the Complainant to the Co-worker, while withholding from the Complainant information provided by the Co-Worker.
3. A district manager ("the District Manager"):
 - Told the Co-Worker to search the Complainant's desk, and that in doing so, the Co-Worker made copies of material that was on the Complainant's desk.
 - Willfully provided false information about the Complainant to the Co-Worker and to the Police.
4. The Co-Worker disclosed to a fellow employee the nature of the investigation, and provided false information about the Complainant to the Police.

Complainant's Concern with Alberta Infrastructure

The Complainant alleged that an employee of Alberta Infrastructure provided information to the Police that was “deliberately misleading”.

Authority of the Office of the Information and Privacy Commissioner

The Complainant claimed that the District Manager, the Co-Worker, and others have conspired to spread false and misleading information about the Complainant to the community and to the Police.

There are no provisions under the FOIP Act for the Commissioner to rule whether statements made by individuals about other individuals are true or not true. In Order 97-020, the Commissioner indicated he would not evaluate the truthfulness of statements made by a third party, but would only address whether the public body accurately recorded the statements of a third party. The Commissioner wrote:

[127]...a third party's statement of fact cannot be corrected, even if that statement of fact is in error. The statement does not appear for the truth of it; it appears for the fact that it is what was said, truthful or not.

Although the Commissioner's comments were made in the context of a request for correction of personal information, the Portfolio Officer believes the principle also applies to this situation. In other words, determining the truthfulness of statements made by other parties about the Complainant is outside the jurisdiction of the FOIP Act.

If the Complainant believes there is evidence that the District Manager, the Co-Worker and others have maliciously provided false information to the Police and community, the Complainant should seek legal advice as to what options are available to address this matter.

Investigation on Alberta Community Development

Concern #1: Disclosure of “Personal and Confidential” Document by Human Resources Consultant to the Co-Worker

What Information was Disclosed?

The Complainant had initially contacted the HR Consultant about a problem between the Complainant and the Co-Worker. The HR Consultant then contacted the Co-Worker and offered to mediate the situation through an informal complaint process. The Co-Worker was not interested in mediation, and submitted a formal written complaint against the Complainant.

The HR Consultant conducted preliminary meetings with the Complainant and the Co-Worker on an individual basis. During these meetings:

- The Co-Worker provided the HR Consultant with copies of notes detailing specific incidents relating to the complaint.

- The HR Consultant informed the Complainant of the general overview of the allegations against the Complainant, and asked the Complainant to comment on the allegations made by the Co-Worker. The Complainant provided preliminary notes to the HR Consultant but wanted to “*reserve the right to add more details or supporting facts later*”.

Subsequently, the Complainant provided an eleven-page document (‘the Document’) to the District Manager to deliver to the HR Consultant. The Document included a detailed chronology of events between the Complainant and the Co-Worker and a copy of the preliminary notes that were provided by the Complainant to the HR Consultant.

The documents provided by the Co-Worker and the Complainant were forwarded to an investigation panel (“the Panel”) established by Alberta Community Development to formally investigate the Co-Worker’s complaint. Members of the Panel included the HR Consultant, the Manager, and a representative from Alberta Justice.

The Panel interviewed the Co-Worker and the Complainant separately. During these meetings, the Panel gave the Co-Worker a copy of the Document. The Panel also gave the Complainant copies of the notes that had been submitted by the Co-Worker. The Panel asked both parties to comment on the information provided by the other party.

Is the Information Disclosed “Personal Information”?

As the Document contained information about the Complainant, it is the Complainant’s personal information in accordance with section 1(1)(n) of the FOIP Act. However, the Document also contained information about the Co-Worker and others, which is their personal information.

Is the Disclosure of Personal Information in Accordance with section 38(1) of the FOIP Act?

The disclosure of personal information by a public body is set out in section 38(1) of the FOIP Act, which states, in part:

38(1) A public body may disclose personal information only

(b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose

Under section 38(1)(b) of the FOIP Act, a public body may disclose personal information:

1. if the disclosure is for the purpose for which the information was collected; or
2. if the disclosure is for another purpose that is consistent with the purpose for which the information was collected. Section 39 of the FOIP Act outlines the criteria for determining a consistent purpose.

The Portfolio Officer finds that the disclosure of the Complainant’s personal information to the Co-Worker is in accordance with section 38(1)(b) for the following reasons:

- The Complainant provided the Document to the HR Consultant subsequent to the filing of the Co-Worker’s formal written complaint and subsequent to the preliminary meeting with the HR Consultant.

- When the Document was prepared and provided to the HR Consultant, the Complainant was aware of the general allegations made by the Co-Worker and that an investigation panel was established to formally investigate the Co-Worker's complaint. In fact, the Complainant was on leave with pay, pending the outcome of the investigation.
- In the Portfolio Officer's opinion, the Document was the Complainant's response to the complaint filed by the Co-Worker, and was submitted to the HR Consultant to counter the allegations made by the Co-Worker. Had there been no investigation of the complaint filed by the Co-Worker, the Complainant would not have prepared the Document.
- In the Complainant's July 13, 1998 letter to the Commissioner, the Complainant wrote that the Document was given to the HR Consultant to "aid in [the Human Resources Consultant's] investigation...".

The Document was collected by Alberta Community Development for the purpose of the investigation process, and was disclosed to the Co-Worker for the investigation process. As personal information was disclosed for the purpose for which the information was collected, it is not necessary to review Section 39 of the FOIP Act regarding consistent purpose.

The Portfolio Officer concludes that the disclosure of the Document by the Public Body is in accordance with section 38(1)(b) of the FOIP Act.

Concern #2: Actions of Human Resources Consultant and the Manager

- a) The Complainant claimed that the HR Consultant and the Manager disclosed "confidential details and negative commentary" about the Complainant to the Co-Worker during the course of the investigation.

As noted earlier in this report, the Office of the Information and Privacy Commissioner will not evaluate the truthfulness of statements made by individuals about others. Therefore, this Office will take no further action on this matter.

The Portfolio Officer finds that information verbally disclosed by the HR Consultant and the Manager to the Co-Worker during the investigation is consistent with section 38(1)(b) of the FOIP Act i.e. personal information was disclosed for the purpose for which it was collected.

- b) The Complainant expressed concerns that the HR Consultant and the Manager withheld critical information provided by the Co-Worker from the Complainant.

The decision as to what information each party should have during the investigation process and the weight that the Panel did or did not place on the information provided by the parties is an issue outside the jurisdiction of the FOIP Act.

Concern #3: Actions of District Manager

- a) Search of Complainant's desk

The Complainant alleged that the District Manager breached the Complainant's privacy when the District Manager asked the Co-Worker to search the Complainant's desk. As a result, the Co-Worker had the opportunity to read material that was on the Complainant's desk.

The Complainant's main issue is that the actions of the Co-Worker constituted an illegal search and that the District Manager authorized it. However, the decision as to whether or not the actions of the Co-Worker or the District Manager constitute an illegal search or are appropriate in this circumstance is outside the jurisdiction of the FOIP Act.

- b) False Information to Co-Worker and Police

The Complainant claimed that the District Manager willfully provided false information about the Complainant to the Co-Worker and to the Police. As noted earlier in this report, this issue is not relevant to the FOIP Act and is outside the legislated mandate of this office.

Concern #4: Actions of Co-Worker

The Complainant claimed that the Co-Worker disclosed to a fellow employee the nature of the Co-Worker's complaint against the Complainant.

Section 38(1)(g) of the FOIP Act states:

38(1) A public body may disclose personal information only

(g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member.

The fellow employee was responsible for assigning individuals, including the Complainant and the Co-Worker, to various groups. Given the roles of the Complainant and the Co-Worker in the groups, their ability to work effectively with each other is a factor that the fellow employee must consider in the composition of these groups. Therefore, the disclosure by the Co-Worker to the fellow employee is in accordance with section 38(1)(g) of the FOIP Act.

The Complainant also alleged that the Co-Worker had provided false information to the Police. This issue is not relevant to the FOIP Act, and the Complainant should seek legal advice as the options available to address this matter.

Investigation on Alberta Infrastructure (formerly Alberta Public Works, Supply and Services)

The Complainant alleged that an employee of Alberta Infrastructure assisted the District Manager in giving information to the Police that was "deliberately misleading". This issue is not relevant to the FOIP Act, and this Office can take no further action on this complaint.

Concluding Remarks

The Complainant has expressed concerns with Alberta Community Development's investigation of a complaint filed against the Complainant. In addition, the Complainant claims that a number of individuals released false information about the Complainant both during and subsequent to the investigation. This Office has no mandate to review the fairness of the investigation process employed by Alberta Community Development and the truthfulness of statements made by parties about others. Such processes and issues relating to the evidence used in these processes are either subject to their own review or appeal mechanisms or can be reviewed by the Ombudsman. Therefore, this Office can take no further action on these matters.

On the issues relevant to the FOIP Act, the Portfolio Officer finds that Alberta Community Development's disclosure of the Complainant's personal information is in accordance with section 38(1)(b) and section 38(1)(g) of the FOIP Act.

Submitted by,

Marylin Mun
Portfolio Officer