

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on Investigation into A Complaint Regarding the Use of Personal Information

November 16, 2000

Students Finance Board
and
Alberta Learning

Investigation #1841

The Complaint

On March 2nd, 2000, the Complainant filed a privacy complaint with the Office of the Information and Privacy Commissioner against the Students Finance Board and Alberta Learning.

The Complainant alleged that the Public Appeal Committee of Alberta Learning used a medical questionnaire in rendering their decision on the Complainant's September 1999 appeal for additional funding. The Complainant stated the medical questionnaire was provided to the Loans Administration Unit of the Students Finance Board and not to the Public Appeal Committee. The Complainant claimed that the Public Appeal Committee had no right to obtain access to or use the information.

The Commissioner's Authority to Investigate

Section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (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.

Accordingly, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations.

Application of the FOIP Act

The Students Finance Board is under the Ministry of Alberta Learning. Alberta Learning is a "public body" as defined under section 1(1)(p) (i) of the FOIP Act. The Students Finance Board is designated as a public body pursuant to section 1(1)(p)(ii) of the FOIP Act and section 1(2) of the *Freedom of Information and Protection of Privacy Regulation*. Therefore, Alberta Learning and the Students Finance Board are subject to the provisions of the FOIP Act.

Background

On January 1999, the Complainant wrote to the Minister of Alberta Advanced Education and Career Development requesting that the Complainant's student loan be forgiven. [Note: At that time, the Students Finance Board was under the ministry of Alberta Advanced Education and Career Development. As a result of the government reorganization announced by the Premier on May 25th, 1999, major portions of Advanced Education and Career Development (including the Students Finance Board) were realigned to the ministry of Alberta Learning.]

In response to the Complainant's request, the Students Finance Board asked the Complainant to complete an Income and Expense Summary Sheet and a medical questionnaire. The correct name of the questionnaire is the "Alberta Student Loans Program Questionnaire for Completion by Attending Physician". However, the questionnaire is commonly referred to as "the Medical Questionnaire" and will be referred to as such in this report.

The Loans Administration Unit of the Students Finance Board received the completed Income and Expense Summary Sheet and the Medical Questionnaire from the Complainant on February 11th, 1999. The Students Finance Board wrote to the Complainant on March 11th, 1999 to advise that the Complainant was eligible to receive loan forgiveness upon completion of the Complainant's studies.

Subsequently, the Complainant applied for student financial assistance for the period of September 1, 1999 to April 29, 2000. The award granted was less than the funding requested by the Complainant. As a result, the Complainant appealed to the Public Appeal Committee for additional funding. The Public Appeal Committee denied the Complainant's appeal.

Issue

The Complainant alleged that the Public Appeal Committee used the Medical Questionnaire to deny the Complainant's September 1999 appeal for additional funding. The Complainant argued that the Public Appeal Committee had no right to use the Medical Questionnaire, and that the use was not consistent with the purpose for which the Medical Questionnaire was provided.

Therefore, the issue for this investigation is:

Was personal information used in violation of Part 2 of the FOIP Act?

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Section 37(1)(a) of the FOIP Act states:

37(1) A public body may use personal information only

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

Therefore, a public body may use personal information:

1. if the use is for the purpose for which the information was collected; or

2. if the use 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”.

Was the information at issue “personal information”?

The information at issue is the Medical Questionnaire, which contains the Complainant’s name, Social Insurance Number, and medical information. The information is “personal information” in accordance with section 1(1)(n) of the FOIP Act.

What was the purpose for which the information was collected?

The Students Finance Board advised that the Medical Questionnaire is collected for the purpose of determining a student’s eligibility for loan forgiveness.

Section 4 of the *Student Finance Regulation, A.R.106/92* (the applicable legislation in effect at the time the Complainant’s Medical Questionnaire was completed and received), reads:

4 The Board may, with the approval of the Treasury Board, write off all or part of an outstanding loan made under any Alberta student finance program if

(a) the person to whom the loan was made is deceased,

(b) the person to whom the loan was made becomes physically or mentally incapacitated, precluding any possible repayment, or

(c) in the opinion of the Board, circumstances indicate that the outstanding loan is not collectible.

The Complainant had requested that the Complainant’s student loan be forgiven. Therefore, the Medical Questionnaire was required by the Students Finance Board to determine whether the Complainant met the criteria in section 4 of the *Student Finance Regulation* and whether the loan could be written off.

Was the Complainant notified of the purpose of collection?

Section 33(2) of the FOIP Act requires public bodies to notify individuals of the purpose for which personal information is being collected, the legal authority for collection, and the name of someone who can answer questions about the collection.

In response to the Complainant’s inquiry about student loan forgiveness, the Students Finance Board informed the Complainant in writing that an Income and Expense Summary Sheet and a Medical Questionnaire were required. The letter to the Complainant indicated the information was required to determine the Complainant’s eligibility for student loan forgiveness.

Although the letter indicated the purpose for which the information was collected, there is no reference as to legislative authority for collection and to whom questions on the collection can be referred. In addition, the Medical Questionnaire sent to the Complainant did not contain a notification statement in accordance with section 33(2) of the FOIP Act.

The investigation recommends that the Students Finance Board ensure that the Medical Questionnaire contain a notification statement that complies with the requirements of section 33(2) of the FOIP Act.

Did the Students Finance Board use personal information in accordance with section 37(1)(a) of the FOIP Act?

The Loans Administration Unit of the Students Finance Board is responsible for the administration of various programs to assist students when they are in repayment status or when students request that their loans be forgiven.

The Complainant had no issue with the Loans Administration Unit's use of the Medical Questionnaire. The Medical Questionnaire was collected for the purpose of determining the Complainant's eligibility for loan forgiveness and was used for that purpose. Therefore, the Loans Administration Unit's use of the Medical Questionnaire was in accordance with section 37(1)(a) of the FOIP Act.

Did Alberta Learning use personal information in accordance with section 37(1)(a) of the FOIP Act?

The Public Appeal Committee of Alberta Learning is an appeal body for students who have been denied financial assistance or who have been granted a lower amount of financial assistance than requested.

Alberta Learning provided the following information during the investigation:

- When a student files an appeal, the onus is on the student to ensure that all relevant material is provided to the Public Appeal Committee.
- Prior to a hearing, the Secretary to the Public Appeal Committee prepares a summary that outlines the student's situation and describes any action taken to date by staff. All relevant written documentation provided by the student would be attached to the summary. The summary is provided to the Public Appeal Committee and to the student before the hearing.
- A copy of the Medical Questionnaire was not included in the summary that was provided to the Public Appeal Committee prior to the Complainant's hearing. The Secretary to the Public Appeal Committee stated there is no reason to include the Medical Questionnaire in the summary as medical questionnaires are used only for determining loan forgiveness, and have no bearing on decisions relating to financial assistance.
- During the hearing, a student may provide additional information to the Public Appeal Committee if he/she wishes. However, even if the Complainant had presented a copy of the Medical Questionnaire during the hearing, it would have had no impact on the decision rendered by the Public Appeal Committee.

The investigation reviewed the minutes of the September 1999 appeal hearing, and found no evidence that the Public Appeal Committee used the Complainant's Medical Questionnaire. The investigation noted that the decision to deny the Complainant's appeal was based on the Public Appeal Committee's finding that the Complainant had adequate funding resources to cover expenses. This would appear to substantiate Alberta Learning's position that the Medical Questionnaire would have no bearing on the September 1999 appeal.

Based on the information before this office, the investigation concludes that the Public Appeal Committee did not use the Medical Questionnaire in its denial of the Complainant's appeal for additional funding. As there was no use of personal information, there can be no breach of the FOIP Act. Therefore, no further action is warranted on this matter.

Why did the Complainant believe Alberta Learning Used the Complainant's Personal Information?

The Complainant claimed that a copy of the Medical Questionnaire was released in response to the Complainant's request for "the documentation" that the Public Appeal Committee used in denying the Complainant's appeal. This is the basis for the Complainant's allegation that the Public Appeal Committee used the Medical Questionnaire in the September 1999 appeal.

The investigation found that the Complainant made a number of access applications under the FOIP Act to Alberta Learning. However, none of the access applications were for the documentation that the Public Appeal Committee used in denying the Complainant's September 1999 appeal.

The investigation also considered the possibility that the Complainant may have requested access to the documentation outside of the FOIP Act. In reviewing the Complainant's student financial assistance files, the investigation notes a lot of correspondence between the Complainant and various officials of the Students Finance Board and Alberta Learning. However, none of the Complainant's correspondence contains a request for the documentation used by the Public Appeal Committee in their decision on the September 1999 appeal.

The investigation found no evidence on the Complainant's student financial files that Alberta Learning released the Medical Questionnaire to the Complainant outside the FOIP Act. Although the Secretary to the Public Appeal Committee has no recollection of releasing the Medical Questionnaire to the Complainant, Alberta Learning advised efforts were made to release as much information as possible to the Complainant. Information may have been released to the Complainant without notation to the Complainant's files.

As the Complainant provided the Commissioner's office with a copy of the Medical Questionnaire, there is no doubt that someone from Alberta Learning released the record to the Complainant at some time. However, in the absence of concrete evidence, the investigation cannot determine the context in which the Medical Questionnaire was released. Therefore, the investigation cannot substantiate the Complainant's claim that the Medical Questionnaire was released as part of the documentation used by the Public Appeal Committee in the September 1999 appeal.

The investigation recommends that Alberta Learning document the release of personal information to individuals. If a request for information is made in writing and the response is made in writing, copies of the correspondence on file would be sufficient documentation. However, if a request is made verbally and the information is provided without a covering letter, a notation should be made on file.

Complainant's Concern that Wrong Medical Questionnaire was Used

Subsequent to the submission of the Medical Questionnaire to the Loans Administration Unit on February 11th, 1999, the Complainant's Physician amended the response on one of the questions on the Medical Questionnaire.

The Complainant argued that the Public Appeal Committee did not have authority to use the Medical Questionnaire. However, the Complainant also complained that the Public Appeal Committee used the wrong medical questionnaire. The Complainant felt that the Public Appeal Committee's decision would have been different if the amended medical questionnaire was used.

The investigation concluded that the Public Appeal Committee did not use the Medical Questionnaire. As stated earlier, the Medical Questionnaire would have no bearing on the Public Appeal Committee's decision. Therefore, it did not matter whether the original Medical Questionnaire or the amended medical questionnaire was before the Public Appeal Committee.

Closing Comments

In summary, the investigation concludes that Alberta Learning did not use personal information in violation of Part 2 of the FOIP Act.

The investigation recommends:

1. That the Students Finance Board ensure that the Medical Questionnaire contains a notification statement that complies with the requirements of section 33(2) of the FOIP Act.
2. That Alberta Learning ensure that the release of personal information to individuals is documented.

The Complainant has a number of issues and concerns with the Students Finance Board and Alberta Learning that are outside the mandate of this office. This office has no jurisdiction to review the fairness of the financial assistance decision-making process and the appeal process. Such issues should be either referred to the ministry of Alberta Learning or to the Office of the Ombudsman.

I recommend that this case be closed.

Submitted by,

Marylin Mun
Portfolio Officer