

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

**Report on the Investigation into a Complaint about
a Breach of Privacy, contrary to Part II of the
*Freedom of Information and Protection of Privacy Act***

**March 8, 2001
The City of Calgary
Investigation Report # 2000-IR-006
Case Number 2023**

The Complaint

On September 28, 2000, the Office of the Information and Privacy Commissioner received a privacy complaint concerning the City of Calgary.

Three complaints were filed. They were:

1. That a designation of “ not suitable in this type of position” was not corrected on the public body’s Human Resources databank thereby affecting the future potential employment of the complainant within the corporate public body.
2. That the complainant never authorized the public body to disclose its personal medical information to a private insurance company.
3. That a former co-worker at the Assessment Review Board (ARB) contacted the complainant by telephone and stated that, at a dinner party, the co-worker was told that the complainant had filed an access to personal information request under *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”).

The Commissioner's Authority to Investigate

Under section 51(1)(a) of the FOIP Act, the Commissioner may conduct investigations to ensure compliance with any provision of this Act. In addition, section 51(2) 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.

Public Body's alleged violations of the FOIP Act

In this part of the report I will deal with the three incidents stated earlier in this report. My recommendation will follow each incident.

Incident 1: The complainant was terminated from employment with the public body on April 21, 2000. The complainant was informed at that time that a designation of “not suitable in this type of position” and “not suitable for rehire” would be placed on the file. The not suitable to rehire designation means that an ex-employee of the public body would not be considered to be rehired in other public bodies' departments or public body corporations. Public body corporations include organizations like Calgary Police Service, Public Library, Parking Authority etc.

The complainant's union was involved on behalf of the complainant in the termination process. On June 14, 2000 the union representative had the public body change the complainant's designation from “not suitable for rehire” to “suitable for re-hire”. The complainant applied for a position in the Calgary Police Service (CPS). On or about August 11, 2000 the complainant became aware that the “not suitable in this type of position” was not changed on her personal records on the public body's database. All public body departments have access to this database. The public body stated that the City of Calgary Police Service is part of the public body corporation and as such there are many common programs and services, including the Human Resources functions.

My investigation has found that on May 30, 2000 a public body official sent correspondence to change the complainant's record from “not suitable for rehire” to “suitable for re-hire”. In early August the complainant sent a letter to the union representative stating that the complainant received information from a very good source at the Human Resources databank that the complainant's designation had not changed. I believe this correspondence inferred that the complainant's application for employment with the CPS was not successful because the information was not changed on the public body's database. From August 9 to August 21, 2000 the public body exchanged correspondence to correct the error on the Human Resources databank. The record I have reviewed from the public body Human Resources databank confirms that the

change “ suitable for re-hire” has now been made and that it was backdated to April 22, 2000.

Section 34(a) and 38(1)(g.1) state:

34. If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

(a) make every reasonable effort to ensure that the information is accurate and complete

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

(g.1) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed,

It is my opinion that the disclosure of the complainant’s personal information by the public body to the CPS is allowed under these provisions of FOIP. However, the public body failed to meet the requirements under section 34 (a).

Recommendation:

I recommend that the public body put a system in place that verifies that when a change is made to a party’s personal record, a corrected copy of the record is automatically sent to the affected party within 30 days of the change.

Incident 2: The complainant wanted to appeal the public body’s denial of sickness and accident benefits. The complainant filed a medical appeal with Employee Services Department. This department was part of the Finance Department at the time of the appeal. The complainant was led to believe that an independent medical practitioner would review the appeal. The complainant learned a private sector insurance company, Great West Life Assurance Company (GWL) would review the appeal. GWL would be reviewing the complainant’s medical information submitted to the public body. The complainant did not authorize the giving of the information to GWL.

My investigation found that the complainant, as part of her condition for employment, became a member of the Municipal Employees Benefit Association of Calgary (MEBAC). This agreement is called the Benefit Agreement. The agreement for this membership was signed on March 12, 2000. The public body informed me that a copy of the entire agreement was not provided to every employee but it is readily available if requested from the employer or the complainant’s bargaining agent. The employee would have received a copy of

the last page signed by the MEBAC and the public body. The complainant would have received a package of "Schedule of Benefits" outlining the employee benefits to which the complainant was entitled.

Pages 25 and 26 of the MEBAC agreement states under Medical appeal that:

The appeal must be submitted within 30 days of the date of the notification that the claim has been denied or terminated. In order for the claim to be reviewed, the employee must provide any information not previously submitted which might be relevant in supporting the appeal. S&A claims denied on the basis of medical information will be forwarded by the proper authority to the insurance company for further adjudication, decision and appeals.

Section 38(1)(j) states:

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

(j) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,

On page 33 of the benefit agreement between MEBAC and the public body, the agreement states that GWL under policy #138248 – GHA is responsible for the Long Term Disability Insurance (LTD) for MEBAC employees. As stated earlier on page 25, GWL is the proper authority for further adjudication, decision *and appeals*.

It is my opinion that the disclosure of personal information to GWL by the public body was consented to by the complainant, when the complainant signed onto the Benefit agreement. Therefore, the disclosure under by the public body to GWL is allowed under section 38(1)(j) of the FOIP Act.

Recommendation:

That work be undertaken with the Manager of Employee Services and Benefits to ensure forms and processes are FOIP compliant. Further, that discussions be held with the Office of the City Solicitor to ensure MEBAC contracts cover FOIP concerns correctly. I recommend that the public body at the time of employment give all new employees a summary of the MEBAC agreement and give individual notice of forwarding of medical information if a claim is denied and an appeal filed.

Incident 3: The complainant stated that a former co-worker told the complainant about the complainant's FOIP request for access to personal information. The co-worker stated this information was heard at a dinner party. The complainant stated that the only person that knew of the FOIP request was the FOIP coordinator for the public body. The complainant immediately advised the FOIP coordinator of the potential leak of personal information. The FOIP coordinator investigated the complaint.

My investigation found that this incident involved the release of the complainant's name to persons who did not need to know this information. My investigation found that the FOIP request was received by the public body's FOIP office. The request for records retrieval was sent to two public body business units, Human Resources Department and Office of the City Clerk. Knowledge of the complainant's request was restricted to two persons in the FOIP coordinators office, the FOIP Coordinator and the FOIP Administrative Assistant. The FOIP Assistant prepares the letters, receives the documents and maintains the tracking system.

My investigation focused on the Human Resources Department and the Office of the City Clerk. Human Resources was not the source of the breach of privacy due to the fact of the detail received by the coordinator was limited to the complainant's complaint. This left the City Clerks Office. Investigation found that there were two incidents in which the complainant's privacy was breached by someone in the Clerk's office discussing the FOIP request and the complainant's name with persons who did not need to know. The breach occurred by two employees, one from the Assessment Review Board section and one from the Administrative Services Division of City Clerks Office.

Following the complainant's request for personal information the public body's FOIP coordinator sent a request for information to the departments affected by the complainant's request. The request was received by the complainant's former supervisor. This is where the first breach of personal privacy occurred. The supervisor informed a fellow co-worker at a meeting that a FOIP request had been made by the complainant. Later at an evening dinner the co-worker mentioned to four other co-workers that a FOIP request had been made by the complainant. The information passed on was that the complainant had filed a FOIP request but no details of the request were known or revealed.

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

Based on the findings of the investigation, I conclude that the Complainant's privacy breached section 38(1)(g) of the FOIP act. The City of Calgary acknowledged the breach.

Recommendation:

A memo be sent to all Business Unit FOIP Program Administrators to remind them of the City of Calgary's obligation to protect complainant privacy. That these individuals responsible for disclosing the complainant's personal

information be reprimanded for the breach, given details of their obligations under the FOIP Act and detail the seriousness and potential consequences of their actions.

Concluding Remarks

The complaints filed with this office have provided the City of Calgary with an opportunity to review its practices and operations in the City Clerks office.

The following is a summary of the recommendations of this investigation:

1. That the Manager of Employee Services and Benefits consult with the FOIP coordinator to ensure forms and processes are FOIP compliant.
2. That discussions be held with the Office of the City Solicitor to ensure MEBAC contracts cover FOIP concerns correctly.
3. A memo be sent to all Business Unit FOIP Program Administrator to remind them of the City of Calgary's obligation to protect complainant privacy.
4. The individuals who breached privacy be reprimanded for the breach, given details of their obligations, as employees, under the FOIP Act and detail the seriousness and potential consequences of their actions.
5. That the public body put a system in place that verifies that when a change is made to a party's personal record, a corrected copy of the record is automatically sent to the affected party within 30 days of the change.

The cooperation of representatives from the City of Calgary's during this investigation is acknowledged and appreciated. This file is closed upon receipt of the City of Calgary's acceptance of the above recommendations.

Submitted by,

Frank Borsato
Portfolio Officer