

# ALBERTA INFORMATION AND PRIVACY COMMISSIONER

## Report on Investigation into Complaint Regarding the Disclosure and Use of Personal Information

August 24, 2001

University of Alberta

Investigation #2193

### I. INTRODUCTION

[para 1.] On May 28, 2001, the Commissioner received a complaint against the University of Alberta (the "Public Body") regarding the "improper use of confidential information".

[para 2.] In response to the complaint, the Commissioner authorized me to investigate this matter pursuant to section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"), which reads:

*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.*

[para 3.] This report outlines my findings and recommendations.

### II. BACKGROUND

[para 4.] The Complainant was employed with the Public Body. In 1996, the Public Body received a complaint against the Complainant and conducted an investigation. The results of the Public Body's investigation were summarized in a letter, which I will refer to in this report as "the 1996 Letter".

[para 5.] In March 2000, the Complainant filed a complaint with the Public Body against two former colleagues ("the Colleagues"). The Colleagues are employed with the Public Body. The Public Body conducted an investigation and a report was produced ("the Report"). The Report included a letter that was jointly written by the Colleagues in response to questions posed by the Public Body's investigator.

[para 6.] The Public Body provided the Complainant with a copy of the Report to read. The Complainant noted that the Colleagues' letter referenced the 1996 investigation and indicated that material related to the 1996 investigation was attached. However, the attachment was not included in the Report.

[para 7.] Subsequently, the Complainant applied to the Public Body under the FOIP Act for access to the material that was attached to the Colleagues' Letter. In response to the Complainant's access application, the Public Body released a copy of the 1996 Letter.

### III. THE COMPLAINANT'S CONCERNS

[para 8.] The Complainant questioned how the Colleagues obtained a copy of the 1996 Letter without the Complainant's consent.

[para 9.] The Complainant said the 1996 Letter was marked "Confidential" and was originally sent to six individuals employed with the Public Body, including the Complainant. Although the Colleagues were named in the 1996 Letter, they were not included in the 1996 Letter's distribution list.

[para 10.] The Complainant said the Colleagues had "*no right to access the information in the first place nor to use it for this new purpose*".

### IV. PRELIMINARY MATTERS

#### A. Is the information at issue "personal information"?

[para 11.] Part 2 of the FOIP Act sets out the parameters under which a public body may collect, use or disclose personal information. In order for the provisions of Part 2 of the FOIP Act to apply, the information at issue must be "personal information".

[para 12.] "Personal information" is defined in section 1(1)(n) of the FOIP Act as "recorded information about an identifiable individual". Personal information can include an individual's name and anyone else's opinions about the individual.

[para 13.] The 1996 Letter outlines allegations that were filed against the Complainant, the names of individuals interviewed during the investigation and the investigator's findings and recommendations.

[para 14.] I find that the information contained in the 1996 Letter includes non-personal information, information about the Complainant and information about others. Therefore, the information at issue is "personal information" as defined in the FOIP Act.

#### B. Scope of Investigation

[para 15.] In filing the complaint with the Commissioner, the Complainant wrote:

*"Please investigate my complaints -- that my personal privacy has been unreasonably invaded and confidentiality has been seriously breached -- and see that any and all references to [the 1996 Letter] and any similar documents unflattering to my reputation be removed and destroyed for all time..."*

[para 16.] I believe it is important to clarify the Commissioner's mandate and authority as this establishes the scope of my investigation.

[para 17.] Privacy and confidentiality are two separate matters. Part 2 of the FOIP Act protects privacy by controlling the manner in which a public body may collect, use or disclose personal information. It does not matter whether the information is confidential or not. The Commissioner has no mandate to investigate breaches of confidentiality. Therefore, this investigation will only address whether the Public Body disclosed or used personnel information in accordance with the provisions set out under Part 2 of the FOIP Act.

[para 18.] Section 68 of the FOIP Act sets out the Commissioner's powers to make an order. Under section 68(3)(f), the Commissioner can require the head of a public body to destroy personal information collected in violation of the FOIP Act (section 68(3)(f)). However, the Commissioner's power to order the destruction of personal information applies only if the information was collected in violation of the FOIP Act.

[para 19.] The FOIP Act did not apply to the Public Body until September 1, 1999. The 1996 Letter was "collected" (i.e. created) prior to the extension of the FOIP Act to the Public Body.

[para 20.] The Commissioner has said that the obligations on public bodies respecting personal information did not exist before the application of the FOIP Act. The Commissioner also said the FOIP Act cannot be applied retroactively to events that have occurred in the past [Order 96-021 [260]; Order 97-004 [21, 22]; and Order 2000-002 [95]].

[para 21.] As the Public Body could not be in breach of the FOIP Act for events that occurred prior to September 1, 1999, the "collection" of the 1996 Letter cannot be in violation of the FOIP Act. Therefore, I find that this Office has no authority to order the Public Body to destroy the information as requested by the Complainant.

[para 22.] I would also like to clarify that the Colleagues' provision of a copy of the 1996 Letter to the Public Body's investigator in 2000 does not constitute a "collection". In Order 2000-002, the Commissioner wrote:

*[para. 99.] "Collection" and "access" are not synonymous. "Collection" must refer to a public body's having obtained the personal information in the first instance. "Access" in this context must refer to the internal retrieval of that information.*

*[para. 100.] Each "access" of personal information within a public body is not a new "collection" for the purposes of section 32 of the FOIP Act. Nor is there a new collection within programs of a public body that share the personal information..."*

[para 23.] The Colleagues and the investigator are employed with the Public Body. Therefore, the "access" of the 1996 Letter by the Public Body's investigator in 2000 is not a "collection".

## **V. ISSUES**

[para 24.] The issues of this investigation are:

1. Did the Public Body disclose personal information in violation of Part 2 of the FOIP Act?
2. Did the Public Body use personal information in violation of Part 2 of the FOIP Act?

## **VI. DID THE PUBLIC BODY DISCLOSE PERSONAL INFORMATION IN VIOLATION OF PART 2 OF THE FOIP ACT?**

[para 25.] In March 2000, the Complainant filed a complaint with the Public Body against the Colleagues. In accordance with its policy, the Public Body notified the Colleagues of the allegations made by the Complainant. The Public Body also appointed an investigator to review this matter.

[para 26.] One of the Colleagues advised me that a copy of the 1996 Letter was obtained during their preparation for the Public Body's investigation. The Colleague had approached a number of

individuals, who are also employed with the Public Body, for documentation that would assist in dealing with the Complainant's allegations. The 1996 Letter was included in the material provided by these individuals to the Colleague. The Colleague had not seen the 1996 Letter prior to March 2000.

[para 27.] The Colleague cannot recall which specific individual provided the 1996 Letter. However, the identity of the individual is not required for the purposes of this investigation.

[para 28.] Based on the information provided, I find that the disclosure occurred after the extension of the FOIP Act to the Public Body. Therefore, the disclosure is subject to the FOIP Act.

[para 29.] I also conclude that an individual employed with the Public Body is the "source" of the disclosure. In Order 99-032, the Commissioner said that public bodies would be held accountable under the FOIP Act for the actions of its employees. Therefore, I find that the Public Body disclosed personal information.

[para 30.] Section 38(1) of the FOIP Act sets out the provisions under which a public body may disclose personal information. I find that the disclosure of the 1996 Letter to the Colleagues did not fall under any of the disclosure provisions of the FOIP Act. Therefore, I conclude the Public Body disclosed personal information in violation of Part 2 of the FOIP Act.

## **VII. DID THE PUBLIC BODY USE PERSONAL INFORMATION IN VIOLATION OF PART 2 OF THE FOIP ACT?**

[para 31.] The Colleague said the 1996 Letter was sent to the Public Body's investigator on December 21, 2000. As the information was used after the extension of the FOIP Act to the Public Body, I find that the Colleagues' use of the 1996 Letter is subject to the provisions of the FOIP Act.

[para 32.] Section 37(1) outlines the provisions under which a public body may use personal information.

[para 33.] Section 37(1)(a) of the FOIP Act allows a public body to use personal information for the purpose for which that information was collected or for a use consistent with that purpose. Section 39 of the FOIP Act outlines the criteria for determining a "consistent purpose". I find that the Colleagues' use of the 1996 Letter was not for the purpose for which that information was collected. Further, the Colleagues' use did not meet the criteria of "consistent purpose" as set out in section 39. Therefore, the Colleagues' use is not authorized under section 37(1)(a) of the FOIP Act.

[para 34.] As the Complainant did not consent to the use, the Colleagues' use of the 1996 Letter is not authorized under section 37(1)(b) of the FOIP Act.

[para 35.] Lastly, I find that the Colleagues' use of the 1996 Letter did not fall under section 37(1)(c) of the FOIP Act. Therefore, I conclude the Public Body used personal information in violation of Part 2 of the FOIP Act.

## **VIII. RECOMMENDATIONS AND CLOSING COMMENTS**

[para 36.] In summary, I conclude that the Public Body did disclose and use personal information in violation of the FOIP Act.

[para 37.] I recommend that the Public Body ensure its employees understand their respective responsibilities and obligations under the FOIP Act. Employees should be mindful that personal information is to be used or disclosed in accordance with the provisions set out in the FOIP Act. Further, employees should be informed that their actions have the potential of placing the Public Body in breach of the FOIP Act.

[para 38.] I would also like to address some additional concerns raised by the Complainant:

- The Complainant expressed concerns that others may also have access to the 1996 Letter.

I find that the disclosure of the 1996 Letter to the Colleagues was specific in purpose i.e. to assist the Colleagues in addressing the allegations made by the Complainant. There is no other reason or evidence to suggest that the 1996 Letter was disclosed to any other persons.

- The Complainant asked, "*why is this confidential document containing incomplete, unsubstantiated and unfounded accusations still in existence?*".

Under the FOIP Act, the Commissioner may investigate to ensure public bodies retain personal information in accordance with section 34(b) of the FOIP Act. The Commissioner may also investigate the destruction of records to ensure that public bodies comply with authorized rules relating to the destruction of records (section 51(1)(a) of the FOIP Act). However, the FOIP Act does not grant the Commissioner jurisdiction over how a public body establishes its records management system. Therefore, the Complainant should contact the Public Body regarding its records retention and disposition schedules as it relates to the 1996 Letter.

[para 39.] The dispute between the Complainant, the Colleagues and the Public Body is one of a long-standing nature. I believe this investigation has addressed those issues that are relevant to the FOIP Act and that are within the Commissioner's jurisdiction. Therefore, I recommend that this case be closed.

Submitted by,

Marylin Mun  
Team Leader - FOIP