ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on Investigation Regarding the 2002 Alberta Government Corporate Employee Survey

July 23, 2003

Personnel Administration Office

Investigation #2664

I. INTRODUCTION

- [1] Section 82(1)(b) of the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act") allows employees of public bodies to disclose to the Commissioner any information that the employees are required to keep confidential and that the employees, acting in good faith, believe is being collected, used or disclosed in contravention of Part 2 of the FOIP Act. Under section 82(2), the Commissioner must investigate and review any disclosures made to him. Further, the Commissioner must not disclose the identities of the employees who made the disclosures to any person without the employees' consent (section 82(3)).
- [2] The Commissioner received information concerning the 2002 Alberta Government Corporate Employee Survey. This report will refer to the information disclosed to the Commissioner as "the Disclosure".
- [3] The Commissioner was satisfied that the Disclosure met the requirements of section 82(1)(b) of the FOIP Act:
 - The employees are "required" to keep confidential the information disclosed to the Commissioner. The Alberta Government requires all its employees to sign an "Oath of Office", which states:
 - I, [name of employee] do swear that I will execute according to law and to the best of my ability the duties required of me as an employee in the public service of Alberta and that I will not, without due authorization, disclose or make known any matter or thing which comes to my knowledge by reason of my employment in the public service.
 - The employees acted in good faith. There was no evidence that the Disclosure was based on a dishonest or insincere intention, or motivated by malice or a design to defraud or seek an unconscionable advantage.

[4] Subsequently, the Commissioner authorized an investigation on his own motion under section 53(1)(a) of the FOIP Act, which allows the Commissioner to conduct investigations to ensure compliance with any provision of the FOIP Act.

II. BACKGROUND INFORMATION

- [5] The Alberta Government has conducted an annual corporate employee survey since 1996. The 2002 Corporate Employee Survey was conducted across all provincial departments. On behalf of the Alberta Government, the Personnel Administration Office contracted a private sector company ("the Contractor") to design the corporate survey questionnaire, interview the survey participants, collect and analyze the survey results, and report the survey results to the Alberta Government and to the departments.
- [6] Employees were selected on a random basis to participate in the survey. Quotas were established to ensure representative proportions of management and non-management employees in each department. Participation in the survey was on a voluntary basis. While employees were encouraged to participate in the survey, they were not compelled to do so. A total of 7,068 employees were invited to participate in the 2002 survey. The overall participation rate was 95%.
- [7] The survey consisted of a set of statements and questions that were common to all government departments. Each department was also given the option of adding department-specific questions to the survey.
- [8] Survey participants were asked to rate their level of satisfaction or agreement with the statements and questions. The corporate survey also included an open-ended question in which the survey participants' responses were recorded "verbatim". The question was: "What one change would help most to improve the quality of your work environment?"
- [9] Survey participants were informed:

"Please be assured that all individual answers are confidential. [The Contractor] will provide only a summary of all responses and no individual responses will be reported or made accessible to the government."

[10] Survey results were reported at the corporate level and at the individual department level. Departments were given the option of having the survey results further broken down by region, division and occupational groupings.

III. SCOPE OF INVESTIGATION

A. The Disclosure

- [11] The Disclosure alleged the following:
 - That the Contractor breached confidentiality by not removing all personal identifiers from responses to the open-ended question.

- That the amount of information released by the Contractor in some of the responses to the open-ended question would enable departments to identify the individual employees and that these employees would be at risk from "possible repercussion" from management.
- That departments were using information obtained from the survey in an "inappropriate manner".

B. The "Public Body"

[12] The Personnel Administration Office was designated as the "public body" for the purposes of this investigation as the survey is a government-wide initiative and is part of the Alberta Government's corporate human resources development strategy.

C. The Contractor

- [13] The Contractor is a private sector company and is not subject to the FOIP Act. However, the Contractor was employed under a contractual agreement with the Personnel Administration Office, which is a "public body" under the FOIP Act. Further, the Contractor had a separate contractual agreement with each department that added department-specific questions to the survey or requested additional survey reports or presentations. Provincial departments are "public bodies" as defined by section 1(p)(i) of the FOIP Act.
- [14] Section 1(e) of the FOIP Act states:

1 In this Act,

- (e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body
- [15] In Order 96-019 and Order 97-003, the Commissioner said that a "person" can include an individual or a corporation. Therefore, the Contractor was an "employee" of the Personnel Administration Office for the purposes of the FOIP Act in relation to the corporate survey and an "employee" of a department in relation to their respective department-specific questions, reports and presentations.

D. Breach of Confidentiality

[16] The following excerpt from Investigation Report 2001-IR-008 is relevant:

[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...

[17] As a breach of confidentiality is outside the Commissioner's jurisdiction, this investigation will not review or comment on this particular matter.

E. Issues

- [18] The issues of this investigation are:
 - 1. Is the information at issue "personal information"?
 - 2. If the information at issue was "personal information", was personal information used or disclosed in contravention of Part 2 of the FOIP Act?

IV. IS THE INFORMATION AT ISSUE "PERSONAL INFORMATION"?

- [19] Part 2 of the FOIP Act applies only to "personal information". Personal information is defined as "recorded information about an identifiable individual" and includes an individual's personal views or opinions (section 1(n)(ix) of the FOIP Act).
- [20] The information at issue is the verbatim responses to the open-ended question in the corporate survey. 75% of survey participants (a total of 5,291 employees) provided comments in response to the open-ended question. The Contractor was required to edit the responses and to remove personal identifiers. The edited responses were then sorted by overall levels of satisfaction and released to the departments.
- [21] This Office reviewed 294 pages of edited responses in this investigation, and determined it would not be possible to identify specific individuals from the edited responses at the corporate level. Therefore, the information released by the Contractor for the corporate survey report is not "personal information".
- [22] As indicated earlier, departments could request that their individual department survey results be further broken down by region, division and occupational groupings. Individual departmental reports would involve a smaller survey population and smaller volume of responses, raising the possibility that individuals may be identified by the nature and contents of the information. This possibility was raised in Order 99-018, where the Commissioner wrote:
 - [para 21.] ...it is not necessary to specifically name employees for there to be recorded information about an identifiable individual. Facts and events, the context in which information is given, as well as the nature and content of the information may also be personal information if it is shown to be recorded information about an identifiable individual. The key here is whether there is an "identifiable" individual.
- [23] However, under the terms of the contractual agreements, the Contractor could not provide breakdowns to departments if there were less than 10 employees in a particular sub-group. This restriction makes it difficult to link responses to specific individuals.

[24] Further, the Disclosure to the Commissioner did not provide evidence to substantiate the allegation that responses released by the Contractor to departments did indeed identify specific individuals. In Order F2002-020, the Commissioner wrote:

[para 20] ... the Complainant has the burden of proving that his personal information was disclosed by the Public Body. The Complainant has not met this burden of proof. Before I am able to find that a breach of Part 2 of the Act has occurred, there must be a satisfactory level of evidence presented in support of the allegation. If this were not the case, a public body could be put into the untenable position of proving a negative (e.g. that a breach did not occur) based on any allegation raised by a complainant. This would allow complainants to use the Act, and the review process under the Act, for purposes other than what was intended.

[25] Although the above comments relate to disclosure of a complainant's personal information, they are applicable to this investigation. Having reviewed the 294 pages of edited responses and in the absence of some other specific evidence, this Office concludes that the edited survey responses released by the Contractor at the department-level are not "personal information".

V. WAS PERSONAL INFORMATION USED OR DISCLOSED IN CONTRAVENTION OF PART 2 OF THE FOIP ACT?

[26] As the investigation concludes the information at issue is not "personal information", it is not necessary to review whether the information was used or disclosed in contravention of Part 2 of the FOIP Act.

VI. CLOSING COMMENTS

[27] The cooperation of the Personnel Administration Office during this investigation is appreciated. This investigation has addressed those issues relevant to the FOIP Act. As there are no further actions that can be taken by this Office, this case is now closed.

Submitted by,

Marylin Mun Team Leader, FOIP