

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report on Investigation into Complaint  
Regarding the Disclosure of Personal Information**

July 20, 2005

University of Calgary  
(Investigation #3114 and #3122)

**Investigation Report F2005-IR-005**

**I. INTRODUCTION**

[1] The Commissioner received two complaints against the University of Calgary. The Complainants' issues are:

- That an individual ("the Third Party") obtained copies of private and confidential legal documents, personnel records and other personal correspondences of the Complainants and donated these records to the University Archives.
- That the University Archives made "*our confidential papers available to the public and posted detailed descriptions of their contents on the Internet for nearly a year before we discovered it*".

[2] In response to the complaints, the Commissioner authorized an investigation. Section 53(2)(e) of the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act") allows the Commissioner to investigate complaints regarding the collection, use or disclosure of personal information by public bodies.

**II. INVESTIGATION FINDINGS**

**Background Information**

[3] The Complainants and the Third Party were employed with the same employer ("the Employer"). In 2000, the Third Party donated a collection of records to the University Archives. The records related to a labour dispute between the Employer and a union.

[4] The University Archives accepted the donation and the records were deposited in the archives in a number of transfers. A file list of the records was placed in the archives' reference room and website in 2004.

[5] Subsequently, the University Archives was notified by the Complainants' legal counsel that the records deposited by the Third Party contained personal and private records of the Complainants. The Complainant's legal counsel requested that the records about the Complainants be removed from the archives or returned to the Complainants.

### **Application of the FOIP Act**

[6] The Complainants say the Employer did not authorize the release of their records to the Third Party and that the Employer had no knowledge that the Third Party compiled the collection of records.

[7] The Complainants are unclear as to how the Third Party obtained their records. The Complainants say another employee may have disclosed some of the records to the Third Party. The Complainants also say a union representative and a union lawyer provided records about the Complainants to the Third Party. The Complainants asked the Commissioner to investigate the actions of the Third Party, the union representative and the union lawyer.

[8] The FOIP Act applies to "public bodies" such as provincial government departments, municipalities, universities, public school boards and regional health authorities. Public bodies are defined under section 1(p) of the FOIP Act.

[9] The University Archives is part of the University of Calgary, which is a public body subject to the FOIP Act.

[10] The Employer and the union are not public bodies. As they are not subject to the FOIP Act, the Commissioner has no jurisdiction over the actions of the Third Party, the union representative or union lawyer under the FOIP Act. The Commissioner cannot review or investigate matters that are outside his jurisdiction.

[11] On January 1, 2004, Alberta's *Personal Information Protection Act* (PIPA) came into effect. PIPA applies to organizations such as the Employer and the union. However, the actions of the Third Party, the union representative and the union lawyer occurred before PIPA came into force. As the obligations under PIPA did not exist before January 1, 2004, the Employer and the union could not be in breach of PIPA.

### **Section 4(1)(j) of the FOIP Act**

[12] Section 4 of the FOIP Act establishes the jurisdiction of the FOIP Act. Under section 4(1), the FOIP Act applies to all records in the custody or under the control of a public body except for those records which are specifically excluded from the application of the FOIP Act. If a record falls under one of the subsections of section 4(1), the FOIP Act does not apply to the records.

[13] Section 4(1)(j) of the FOIP Act states:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

*(j) material that has been deposited in the Provincial Archives of Alberta or the archives of a public body by or for a person or entity other than a public body,*

[14] Section 4(1)(j) of the FOIP Act has two requirements:

- The material has been deposited in the Provincial Archives of Alberta or the archives of a public body; and
- The material was deposited by a person or entity other than a public body. In other words, a public body cannot be involved in the deposit except as a recipient of the record deposited.

[15] The records deposited would be “material”. The records were deposited in the University Archives, which is the archives of the University of Calgary. The University of Calgary is a public body. Therefore, the records meet the first requirement of section 4(1)(j) of the FOIP Act.

[16] The records were deposited by the Third Party. The Third Party is not a public body. Therefore, the records meet the second requirement of section 4(1)(j) of the FOIP Act.

[17] As the records at issue for the Complainants are excluded from the application of the FOIP Act by section 4(1)(j) of the FOIP Act, the University Archives cannot have disclosed the Complainants’ personal information in contravention of Part 2 of the FOIP Act.

### III. CONCLUDING COMMENTS

[18] In conclusion, the FOIP Act does not apply to the records deposited in the University Archives by the Third Party. Therefore, the University of Calgary cannot have disclosed the Complainant's personal information in contravention of Part 2 of the FOIP Act.

[19] The University of Calgary says it closed public access to the records in relation to the Complainants upon being notified of the Complainants' issues. The University of Calgary has presented a proposal to the Complainants to resolve their issues and is awaiting a response from the Complainants.

[20] This case can now be closed.

Submitted by,

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