



Office of the Information and
Privacy Commissioner of Alberta

Investigation Report F2015-IR-01

*Investigation into the Government of Alberta's disclosure
of public service salary, benefit and severance information*

November 19, 2015

Service Alberta

Investigations F7846 and F7851

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Commissioner's Message

This report presents the findings and recommendations from investigations conducted by my office concerning the Government of Alberta's disclosure of public service salary, benefit and severance information. These investigations were initiated on my own motion to:

- Examine whether Service Alberta complied with the *Freedom of Information and Protection of Privacy Act* (FOIP Act) in preparing for the disclosure of public service salary, benefit and severance information on January 31, 2014; and
- Review whether the public disclosure of salary, benefit and severance information on January 31, 2014 was in compliance with the FOIP Act.

The investigations found that in general, the authorities required under the FOIP Act to collect, use and disclose personal information were not in place during preparation for the January 31, 2014 disclosure. Some may see this as mere technical non-compliance with the FOIP Act during the period January 7 to 20, 2014, as once Treasury Board Directive No. 1/2014 (the Directive) was signed by the Chair of the Treasury Board on January 20, 2014, the Directive provided the requisite authority for Service Alberta to collect, use and disclose the personal information. In my view, however, this situation speaks to the need for all public bodies contemplating a new initiative with potential access and privacy implications to identify the risks and clearly identify their authority under the FOIP Act *before* moving forward.

In this case, Service Alberta informed my office that "it initiated a Privacy Impact Assessment (PIA) for the public disclosure immediately to ensure privacy impacts were addressed. The PIA is in draft form." Although asked to provide a copy of the draft PIA to my office for this investigation, Service Alberta did not do so. Instead, in comments Service Alberta provided on November 13, 2015, concerning a draft of this report, Service Alberta said it "considered its submission to the OIPC on April 30, 2014, provided all the information flows and respective FOIP authorities that would be identified in a Privacy Impact Assessment."

As an aside to these investigations, I note that the Public Service Compensation Disclosure Policy (the Disclosure Policy) announced by the Government of Alberta (GoA) on December 19, 2013 says that "Agencies, Boards and Commissions of the Government of Alberta will be expected to develop an equivalent policy for their organizations".

Agencies, boards and commissions listed in Schedule 1 of the FOIP Regulation are public bodies that are subject to the FOIP Act. As such, they must follow the rules established by the FOIP Act when collecting, using and disclosing personal information.

The Directive, which gives effect to the Disclosure Policy, states that it applies to employees within a "department" of the GoA established under section 2 of the *Government Organization Act* (GOA). It is my understanding that the Directive does not currently extend to agencies, boards and commissions as they are not "departments". Therefore, the Directive is not authorization for agencies, boards and commissions that are subject to the FOIP Act to collect, use and disclose personal information for the purposes of proactive disclosure of public service salary, benefit and severance information.

If the agencies, boards and commissions that are subject to the FOIP Act are considering proactive disclosure of salary, benefit and severance information of their current or former employees, they must

establish their authority to do so independent of the Directive. It may be that Bill 5, the *Public Sector Compensation Transparency Act*, introduced by the Government of Alberta on November 5, 2015, will provide the requisite authority if and when it comes into force. In any event, even if Bill 5 does provide the necessary authority, I recommend that agencies, boards and commissions complete both a Privacy Impact Assessment and an Access Impact Assessment *before* commencing any activities to prepare for disclosure to ensure they are acting in accordance with the FOIP Act. My office would be pleased to review and comment on any such documents.

Jill Clayton
Information and Privacy Commissioner

INTRODUCTION

- [1] On December 19, 2013, the Government of Alberta (GoA) issued a news release to announce its new policy to publicly disclose salary, benefit and severance amounts for government employees with base salaries over \$100,000. The news release stated the first disclosure would be posted online by January 31, 2014, and that subsequent disclosures would be posted in June and December.
- [2] On January 27, 2014, the Information and Privacy Commissioner (Commissioner) received a complaint from an individual alleging that Service Alberta's compilation of personal information to prepare for the salary and compensation disclosure may be in contravention of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).
- [3] Given the number of individuals potentially affected by the salary and compensation disclosure, the Commissioner decided to place the complaint in abeyance and initiate an investigation on her own motion under section 53(1)(a) of the FOIP Act. This section states the Commissioner has the power to "conduct investigations to ensure compliance with any provision of this Act".
- [4] In a letter dated January 31, 2014, the Commissioner informed Doug Griffiths, then Minister of Service Alberta, that she was initiating an investigation to examine whether the collection, use and disclosure of personal information in preparation for the January 2014 disclosure was in compliance with the FOIP Act (file F7846).
- [5] On January 31, 2014, the GoA posted the first disclosure of salary, benefit and severance amounts for government employees with base salaries of more than \$100,000 in fiscal years 2012 and 2013.
- [6] Subsequently, the Commissioner received three complaints from individuals whose information was disclosed. The Commissioner decided not to proceed with multiple investigations but instead placed the complaints in abeyance and initiated a second investigation on her own motion under section 53(1)(a) of the FOIP Act to review whether the public disclosure was in compliance with the FOIP Act. The Commissioner notified the Minister of Service Alberta of this investigation (file F7851) on February 7, 2014.
- [7] The Commissioner authorized me to investigate both matters. This report outlines my findings and recommendations.

Background

- [8] On December 19, 2013, the GoA issued a news release announcing its new Public Service Compensation Disclosure Policy (the Disclosure Policy). The Disclosure Policy itself was included with the news release as a "Backgrounder".
- [9] The Disclosure Policy says that its purpose is "to improve accountability and transparency and enhance confidence in the use of public funds through routine disclosure of public service salary, benefit and severance information".

[10] The Disclosure Policy states the following ...

The policy applies to

- Deputy Ministers
- Senior Officials appointed by an Order in Council and paid directly by the Government of Alberta
- Political staff appointed under the Executive Assistant Order and
- Employees as defined under the *Public Service Act*;

who receive more than the threshold amount of base salary or severance payment above \$100,000 in a year and are employees of:

- The Offices of Ministers and Associate Ministers; and
- Government of Alberta departments established under section 2 of the *Government Organization Act*.

...

The policy will be applied to all employees active on or after April 23, 2012.

...

- The Government of Alberta will make available to the public:
 - the amount of compensation provided in the previous year for each disclosed employee;
 - the amount of severance paid to each disclosed employee;
 - the salary range for each disclosed employee; and
 - where applicable the employee's employment contract and termination agreement.
- Disclosed information will be posted to a web portal accessible through the main Government of Alberta website (www.alberta.ca).
- Information will be released semi-annually no later than June 30 and December 31.
- Salary, benefit and severance information shall be generated directly from government systems to demonstrate integrity and authenticity of disclosed information.

...

Disclosed information must, at a minimum, include the following:

- Employee name as shown in payroll records;
- The position title last held by the employee in the calendar year;
- The office or department of the employee;
- The amount of base salary, cash benefits, non-cash benefits, and severance paid to the employee in the previous year;

- The salary range of the employee; and
 - Where applicable the employee's employment contract and termination agreement.
- [11] The Disclosure Policy also states that it "will be brought into effect by a Treasury Board Directive."
- [12] Treasury Board Directive No. 1/2014 (called the Compensation Disclosure Directive and referred to in this report as "the Directive") was signed by the Chair of the Treasury Board on January 20, 2014.
- [13] The Directive reiterates the Disclosure Policy and provides additional information, including:
- The Minister of Service Alberta is responsible for the Directive. If there is no Minister of Service Alberta, responsibility for the Directive can be given to a minister designated by the President of Treasury Board and Minister of Finance (section 2(1)(d) of the Directive).
 - The Directive does not apply to individuals who, prior to April 23, 2012, ceased to be employees within any of the identified classes (section 3(1)(d)).
 - The Treasury Board may exempt from the application of the Directive any information the disclosure of which, in its assessment, could unduly threaten an individual's safety (section 3(3)).
 - The Minister of Service Alberta shall exclude from disclosure information in which an employee has a contractual or other legal right of confidentiality that was acquired prior to the date of the Directive, unless the employee waived that right in writing (section 5).
 - The Minister of Service Alberta shall exclude from disclosure any information, other than information directly related to compensation or a Termination Allowance, that in the Minister's assessment would be an unreasonable invasion of privacy of the employee (section 6).
 - The Minister of Service Alberta may delegate to officials of the Minister's department or officials of any other department any functions under the Directive (section 7).

Scope of Investigation

- [14] This investigation was limited to the application of the FOIP Act to the collection, use and disclosure of personal information pursuant to the Disclosure Policy and Directive. I did not evaluate the Disclosure Policy or the Directive from a policy perspective. Furthermore, I did not examine how Alberta's Disclosure Policy and Directive aligns with other jurisdictions that may have similar disclosure policies in place.
- [15] During the course of my investigation, I communicated with the FOIP Coordinator for Service Alberta in writing and by telephone.

- [16] On February 25, 2014, I wrote to Service Alberta requesting information for my investigations. I asked Service Alberta to respond by March 14, 2014. Service Alberta said it required additional time to compile its response.
- [17] I received Service Alberta's submission on April 30, 2014. The cover letter accompanying the response indicated the following: "You will note that some information has been severed in order to protect legal privilege." In reviewing Service Alberta's submission, it appears some information was redacted, blacked out or whited out. I use the word "appears" because the redaction is not obvious without close examination.
- [18] Following my review of Service Alberta's submission, I asked Service Alberta on June 17, 2014 to provide additional information/clarification, and specifically to:
- confirm whether there are any written procedures or policies for proposing and approving Treasury Board directives;
 - provide any governance documents or a description of the process for constituting Treasury Board meetings and approving agenda items or directives, including any information on the quorum required to approve Treasury Board Directives;
 - provide the delegation authority for Peter Watson, then Deputy Minister for Executive Council, to approve Treasury Board Directives on behalf of the Chair at a Treasury Board meeting held on January 13, 2014;
 - provide the list of attendees at the January 13, 2014 Treasury Board meeting;
 - provide the most recent copy of Service Alberta's draft privacy impact assessment for implementation of the Disclosure Policy.
- [19] I received no further information from Service Alberta before completing a draft of this report. I provided Service Alberta with the draft report on October 28, 2015, requesting they identify any "consequential deficiencies". On October 29, 2015, Service Alberta forwarded the following information as had been provided to Service Alberta by Treasury Board on July 8, 2014:
- "We do not have a written policy or procedure regarding the approval of Treasury Board Directives. We have many years of practice guiding the process."
 - Decisions of Treasury Board are "documented by a meeting record and specific decisions are communicated to the relevant Minister or Minister(s) by the President of Treasury Board and Minister of Finance... there is no particular quorum required for Treasury Board Committee."
 - An excerpt of the meeting record for January 13, 2014 Treasury Board Committee meeting was provided. Under the heading of "Administrative Item" it indicates "Treasury Board approved the Compensation Disclosure Directive. The Board delegated the determination of individual exemptions from the application of this

Directive to the Deputy Minister of Executive Council for the purposes of the January 31 disclosure.”

- Treasury Board confirmed Peter Watson, then Deputy Minister for Executive Council, “was NOT delegated authority to approve Treasury Board Directives, rather, he was given authority to approve exemptions under this specific directive.”
 - Treasury Board stated “Attendance at Treasury Board meeting [sic] is not formally recorded.”
 - “Treasury Board and Finance had no involvement in a privacy impact assessment in regard to the Compensation Disclosure Directive.”
- [20] Service Alberta stated they believed they had provided the above information to me in response to my questions of June 17, 2014. However, I did not receive the information before completing my draft report with findings. Service Alberta also said they could “not find the actual email on record.”
- [21] Service Alberta provided additional comments on the draft report on November 13, 2015. These comments have been addressed, where appropriate, throughout this report.
- [22] In any event, the information provided by Service Alberta on October 29, 2015 and on November 13, 2015, did not change my findings as originally set out in the draft report.

Issues

- [23] The following issues were identified for this investigation:
1. Is the information at issue “personal information” as defined by section 1(n) of the FOIP Act?
 2. If the information is “personal information,” did Service Alberta collect, use or disclose personal information in the IMAGIS database to prepare for the January 31, 2014 disclosure and, if so, was the collection, use, or disclosure authorized under the FOIP Act?
 3. If the information is “personal information,” did Service Alberta collect, use or disclose personal information in employment contracts and termination agreements to prepare for the January 31, 2014 disclosure and, if so, was the collection, use, or disclosure authorized under the FOIP Act?
 4. If the information is “personal information,” was the public disclosure on January 31, 2014 in compliance with the FOIP Act?

Chronology of Events

- [24] In its submission for this investigation, Service Alberta said that following the GoA’s December 19, 2013, announcement of the Disclosure Policy, Don Scott, then Associate Minister of Accountability, Transparency and Transformation “tasked Service Alberta to lead the project.”

[25] Service Alberta reported the following:

- Subsequent to the December 19, 2013 announcement of the Disclosure Policy, Service Alberta created two teams to work on compiling data in preparation for the January 31, 2014 disclosure: the Compliance Reporting Team (CRT) and the Technical Team (TT).
- Between January 7-10, 2014, the CRT extracted the following information from the IMAGIS database¹ (IMAGIS) that met the criteria for application of the Disclosure Policy:
 - name of employee
 - position
 - department (Ministry)
 - employee ID number
 - names of terminated employees
 - home address of terminated employees

The CRT provided information in the first four bullets and mock salary data to the TT for the purpose of developing the technical platforms required to implement the Directive, including the creation of a site that GoA departments could use to review employee information, upload employment contracts and termination agreements, and redact documents. This site is referred to in this report as the Upload Tool.

- On January 13, 2014, the Directive was discussed at a Treasury Board meeting. According to Service Alberta, the Directive was “approved” at this meeting.
- On January 14, 2014 the CRT extracted three datasets from IMAGIS as follows:
 - The first dataset identified current employees that met the criteria set out in the Directive and included: name of employee, department (Ministry), base salary, and amount of cash benefits and non-cash benefits.
 - The second dataset included names of active and inactive contract employees who met the criteria set out in the Directive.
 - The third dataset included names of terminated employees who had received a severance payment as per the criteria set out in the Directive.
- On January 15, 2014, the Deputy Minister (DM) of Service Alberta emailed datasets of the above information to the DMs of each GoA department along with the following:
 - A draft letter for DMs to send to current employees to notify them about the Directive, as well as a “department specific email list for current employees (government email addresses)”.²

¹ According to Service Alberta’s April 30, 2014 submission “IMAGIS is the database in which the employee payroll information used to compile the compensation disclosure list is housed. This database is corporately maintained by Service Alberta.” When departments hire new employees, and on an ongoing basis as part of administering the employment relationship, departments enter information into IMAGIS for “the delivery of a common or integrated payroll system.”

- A draft letter for DMs to send to terminated employees to notify them about the Directive, as well as a list of contact addresses for these former employees.
 - An internal Public Service Compensation Disclosure Q & A regarding the Directive.
 - Guidelines for redacting contracts and severance agreements.
- On or about January 15, 2014, the CRT provided the three datasets described above to the TT for uploading to the Upload Tool.
- On January 16, 2014, Service Alberta sent three separate emails to GoA department Human Resources (HR) offices as follows:
 - An email from the Manager of the CRT explaining the criteria used to extract the three datasets from IMAGIS under the Directive.
 - An email from Service Alberta's Assistant Deputy Minister of Shared Services, which included:
 - A list of all current and terminated employees within the scope of the Directive. The HR offices were asked to review and validate the list for their respective departments and identify any employees whose anonymity should be considered for protection or exclusion. Finalized lists were to be returned to Service Alberta by January 22, 2014.
 - A list of active and inactive contract employees, as well as terminated employees that received severance payments. The HR offices were asked to gather related employment contracts and termination agreements for their respective departments.
 - An email from Service Alberta's Executive Director of Service Development and Quality which provided links to the Upload Tool and directions to upload department employment contracts and termination agreements by January 20, 2014. According to Service Alberta, January 16, 2014 was "the first date that any employee, outside of the Service Alberta teams working on the initiative, was granted access" to the Upload Tool with the IMAGIS datasets.
- On January 20, 2014, the Directive was signed by the Chair of the Treasury Board.
- On January 20, 2014, GoA department FOIP Coordinators or designates were granted access to the Upload Tool to complete redaction of employment contracts and termination agreements in compliance with the FOIP Act. The FOIP Coordinators were requested to complete the redaction by January 22, 2014.

² It is not clear from Service Alberta's April 30, 2014 submission when or where the email addresses came from. After reviewing the draft report provided to them on October 28, 2015, Service Alberta advised that the email addresses are publicly available on the GoA website. However, Service Alberta neither confirmed or denied that the email addresses disclosed to DMs on January 15, 2014, were extracted from IMAGIS.

- During the week of January 20, 2014, department DMs notified individuals affected by the Directive. Current employees were notified via government email addresses, and a letter was sent to the most current contact address for terminated employees. The Public Service Commissioner notified senior officials in writing.
- Individuals were referred to their respective department's HR office or to Corporate Human Resources and given an opportunity to review their information in advance of the public disclosure.
- During the week of January 27, 2014, preparation continued for disclosure on the public website. This included the following activities:
 - demonstrations to senior officials;
 - a final information dataset from IMAGIS was provided to the TT for migration to the live site;
 - information was moved to the "staging site", a precursor to the final production site for the public website. The CRT performed a quality assurance review of the data in the staging site, including to ensure contracts and termination agreements were associated with the correct individual.
 - On January 31, 2014, salary, benefit and severance information was disclosed publicly on the GoA Expense Disclosure Website.

Analysis and Findings

ISSUE #1: Is the information at issue “personal information” as defined by section 1(n) of the FOIP Act?

[26] The information at issue includes:

- information that Service Alberta extracted from the IMAGIS database (starting January 7, 2014) to prepare for the January 31, 2014 public disclosure;
- information that Service Alberta extracted from IMAGIS and disclosed³ back to GoA departments so they could verify accuracy and contact affected individuals, among other things;
- information in employment contracts and termination agreements that departments posted to the Upload Tool created by Service Alberta;
- information that was disclosed January 31, 2014 on the GoA Expense Disclosure Website.

³ Service Alberta disputes that it “disclosed” information back to the departments, with the exception of lists of individuals for which contracts and termination agreements were required, instead characterizing this as a “use” of information. I disagree with Service Alberta, for reasons set out in paragraphs [94] – [117] of this report.

[27] The table below sets out the information that fall into each of these categories.

Information	Extracted from IMAGIS	Disclosed by Service Alberta to GoA departments	Posted by GoA departments to Upload Tool	Disclosed publicly January 31, 2014
Name of employee (including contract employees, and former employees that received severance payments)	X	X		X
Employee ID number	X			
Position or job title	X	X		X
Classification ⁴				X
Year of employment	X	X		X
Department or Office	X	X		X
Base Salary	X	X		X
Cash benefits (amount)	X	X		X
Non-cash benefits (amount)	X	X		X
Current government email address ⁵	X	X		
Home address (for former employees)	X	X		
Termination agreement (includes severance amount)			X	X
Employment contract			X	X

⁴ "Classification" is published on the Expense Disclosure Website. However, the Directive does not mandate the disclosure of this information. I assumed that Service Alberta extracted this information from the IMAGIS database, although Service Alberta did not provide any information in its April 30, 2014 submission about extracting or compiling this information. After reviewing the draft report, however, Service Alberta indicated that classification provides the "most recent salary range" that is identified for disclosure in the Directive. Service Alberta noted that disclosure of classification and salary range are identified in section 17(2)(e) as not being an unreasonable invasion of privacy. I have addressed the argument about unreasonable invasion of privacy in paragraphs [88] – [93] of this report.

⁵ See footnote 2.

- [28] Section (1)(n) of the FOIP Act defines “personal information” as “recorded information about an identifiable individual”. It sets out a non-exhaustive list of what personal information includes. The following sections are relevant:
- 1 In this Act...
- (n) “personal information” means recorded information about an identifiable individual, including
- (i) the individual’s name, home or business address or home or business telephone number...
 - (iv) an identifying number, symbol or other particular assigned to the individual...
 - (vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,
- [29] In my view, the information used to prepare for the January 31, 2014 public disclosure and the information disclosed publicly on January 31, 2014, qualifies as “personal information” as defined by section 1(n) of the FOIP Act.
- [30] The information is about identifiable individuals and is recorded in the IMAGIS database and in employment contracts and termination agreements. It includes names, government email addresses, home addresses and identifying numbers (employee ID number), which qualify as personal information pursuant to sections 1(n)(i) and (iv) of the FOIP Act.
- [31] Much of the information is financial and employment history, pursuant to section 1(n)(vii) of the FOIP Act, including: position; department (Ministry); amount of base salary, amount of cash and non-cash benefits, and certain information in employment contracts (such as term of contract, remuneration and benefits) and termination agreements (including severance amount).⁶
- [32] “Year of employment” appears to have been extracted from IMAGIS between January 7-14 to verify if an employee fell within the parameters set out in the Directive. In my view, year of employment, in conjunction with the above information, is also employment history and therefore qualifies as personal information.

Finding #1: The information used to prepare for the January 2014 disclosure, and the information disclosed on January 31, 2014, is “personal information” as defined by the FOIP Act.

ISSUE #2: If the information is “personal information,” did Service Alberta collect, use or disclose personal information in the IMAGIS database to prepare for the January 31, 2014 public disclosure and, if so, was the collection, use or disclosure authorized under the FOIP Act?

Collection of personal information in the IMAGIS database

- [33] Most of the personal information used to prepare for the January 31, 2014 disclosure is information that Service Alberta extracted from the IMAGIS database.

⁶ OIPC Order F2001-020 says that “Standard boilerplate clauses in a severance agreements”, such as confidentiality and indemnification clauses, are not personal information (para. 12).

- [34] Service Alberta has described the IMAGIS database as an “HR Management/payroll services” database that is “corporately maintained” by Service Alberta. When departments hire new employees, and on an ongoing basis as part of administering the employment relationship, departments enter information into IMAGIS. IMAGIS contains a repository of payroll data for the GoA.
- [35] When departments enter personal information into IMAGIS, they disclose personal information to Service Alberta; at the same time, Service Alberta collects the personal information.
- [36] Service Alberta says section 33(c) of the FOIP Act, in combination with section 34(1) and section 40(1)(i), authorizes it to collect the personal information of GoA employees via the IMAGIS database as follows:
- Section 33(c) says a public body may collect personal information that “relates directly to and is necessary for an operating program or activity of the public body”.
 - Section 34(1) authorizes the *indirect* collection of this personal information from the GoA departments:
 - 34(1) A public body must collect personal information directly from the individual the information is about unless...
 - (b) the information may be disclosed to the public body under Division 2 of this Part,
 - Section 40(1)(i) is found in Division 2, and permits a public body to disclose personal information to *another* public body when two or more public bodies are working together to provide or deliver a common or integrated program or service. Section 40(1)(i) says:
 - 40(1) A public body may disclose personal information only...
 - (i) 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,
- [37] The FOIP Bulletin published by Service Alberta and titled “Common or Integrated Programs or Services” defines a common or integrated program as follows...
- ... a single program or service that is provided or delivered by two or more public bodies. The program or service may have several distinct components, each of which is provided or delivered by a separate public body. These components together comprise the common program or integrated service.
- [38] I understand Service Alberta is saying that the FOIP Act authorizes it to collect personal information indirectly from the GoA departments for the delivery of HR Management/payroll services, which is an “operating program or activity” of Service Alberta. Service Alberta is responsible for the creation of payroll data for all of the GoA. The payroll data is housed in the IMAGIS database which Service Alberta maintains.

- [39] GoA Departments enter personal information into IMAGIS on an ongoing basis with respect to their employees, thereby disclosing personal information to Service Alberta. The departments are authorized by section 40(1)(i) to disclose certain employee information to Service Alberta because the disclosure is necessary for the “delivery of a common or integrated payroll system”.
- [40] Given the above, Service Alberta said there was no *new* collection of personal information pursuant to the Directive since the data was already in the IMAGIS database. *These disclosures were made prior to and independent of the Disclosure Policy and Directive, and were for the purpose of delivering a common or integrated payroll system.*
- [41] I agree that when Service Alberta extracted personal information from IMAGIS to prepare for the January 31, 2014 disclosure, there was no *new* collection of personal information by Service Alberta. Service Alberta already had custody or control of personal information in the database as the database is “corporately maintained” by Service Alberta. Instead, personal information already in the database was accessed by Service Alberta to prepare for the January 31, 2014 disclosure. Previous orders issued by the OIPC have said that “access” is not the same as “collection” (Order 2000-002, paras. 99-101).

Finding #2: Service Alberta did not collect personal information when it accessed data from the IMAGIS database to prepare for the January 31, 2014 disclosure.

Use of personal information in the IMAGIS database

- [42] Service Alberta reported that, starting January 7, 2014, it extracted personal information from the IMAGIS database to prepare for the January 31, 2014 public disclosure. When Service Alberta extracted personal information from IMAGIS to develop the technical platforms, compile information datasets for emailing to the GoA departments, perform quality assurance reviews and migrate information to the staging and final live sites, these were uses of personal information under FOIP.
- [43] Section 39 of the FOIP Act sets out the rules for using personal information. It says:
 - 39(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,
 - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or
 - (c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.
- [44] Service Alberta said its use of personal information to prepare for the January 31, 2014 public disclosure was permitted under section 39(1)(c), which authorizes use of personal information “for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43”.

[45] I understand section 39(1)(c) to mean a public body is authorized to use personal information it has received from another public body *for the purpose for which that information was disclosed to it by the other public body*. The public body disclosing the information must have authority under section 40, 42 or 43 to disclose the information.

[46] OIPC Order F2015-27 supports this interpretation of section 39(1)(c):

Neither does section 39(1)(c)...apply, since most of the sub-clauses of section 40 on which the Public Body relies do not authorize disclosure to the Public Body. The one that does authorize disclosure to the Public Body (section 40(1)(q)) does not apply, since the DDO's use of the information that had already been collected and compiled in the database was not for the purposes specified in subclauses (i) and (ii) of that provision [paragraph 37, emphasis added].

[47] Service Alberta's FOIP Guidelines and Practices (2009) manual also supports this interpretation:

This provision permits a public body to use personal information that has been disclosed to it by another public body under section 40, 42 or 43 of the Act.

For example, the Students Finance Board may disclose a student's financial information to a housing management body in order to verify the amount of rent being paid by the student (section 40(1)(l)). The housing management body can use the financial information disclosed by the Students Finance Board in order to verify the rental amount. The housing management body cannot use the personal information for any other purpose unless that use for the other purpose is authorized under another provision of section 39. [emphasis added]

[48] With this in mind, I note that the personal information that Service Alberta accessed in IMAGIS was already in IMAGIS prior to and independent of the Disclosure Policy and Directive, as it was disclosed to Service Alberta over a number of years for purposes of delivering common or integrated HR Management/payroll services. Therefore, Service Alberta's use of the personal information under section 39(1)(c) would be limited to the delivery of common or integrated HR Management/payroll services, unless otherwise "authorized under another provision of section 39" as per the example provided in Service Alberta's FOIP Guidelines and Practices (2009) manual.

[49] Service Alberta says that the following provisions under section 40 variously authorized it to use personal information previously collected for the delivery of a common or integrated payroll program, for purposes of the Disclosure Policy and Directive:

- Section 40(1)(b) (disclosure not an unreasonable invasion of a third party's privacy)
- Section 40(1)(e) (disclosure for the purpose of complying with an enactment)
- Section 40(1)(h) (disclosure necessary for the performance of duties)
- Section 40(1)(i) (disclosure necessary for delivery of a common or integrated program or service)

- [50] For ease of analysis, I have considered the disclosure provisions cited by Service Alberta in the following order: section 40(1)(e), 40(1)(i), 40(1)(h) and 40(1)(b).
- [51] With respect to contact information of terminated employees, Service Alberta asserted that its use of this information to prepare for the January 31, 2014 public disclosure was authorized by section 39(1)(a) (for the purpose for which the information was collected or compiled or for a use consistent with that purpose), in addition to 39(1)(c) by virtue of section 40(1)(b), 40(1)(i) and 40(1)(h). I have considered Service Alberta's use and disclosure of contact information of terminated employees under a separate heading below.

Section 40(1)(e) – disclosure for the purpose of complying with an enactment of Alberta

- [52] Service Alberta says that, as of the week of January 27, 2014, it was authorized under section 39(1)(c) by virtue of section 40(1)(e) to use personal information in IMAGIS to prepare for the January 31, 2014 disclosure. Section 40(1)(e) says:
 - 40(1) A public body may disclose personal information only...
 - (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,
- [53] The GoA announced the Disclosure Policy on December 19, 2013. The Disclosure Policy says it “will be brought into effect by a Treasury Board Directive.”
- [54] I considered whether or not the Directive qualifies as an “enactment of Alberta”.
- [55] Service Alberta states that section 28(1)(m) of the *Interpretation Act* defines “enactment” to mean “an Act or a regulation or any portion of an Act or regulation.” Treasury Board directives are included in the definition of “regulation” under section 1(1)(c) of the *Interpretation Act*.
- [56] I believe section 1(3) of the FOIP Regulation is applicable. Section 1(3) states:
 - 1(3) For the purposes of the Act, “enactment of Alberta” means an Act or a regulation or any portion of an Act or regulation and *includes a directive issued by the Treasury Board*. [emphasis added]
- [57] I agree the Directive is an “enactment of Alberta”.

Finding #3: Treasury Board Directive No. 1/2014 (the Directive) is an “enactment of Alberta” as defined in section 1(3) of the FOIP Regulation.

- [58] I next considered when the Directive was “issued by the Treasury Board” within the meaning of section 1(3) of the FOIP Regulation.
- [59] Black’s Law Dictionary, 8th edition, defines the verb “issue” as “To be put forth officially” or “To send out or distribute officially.”
- [60] The Directive itself says:

The Treasury Board, pursuant to sections 5, 6, and 7 of the *Financial Administration Act*, makes the directive in the attached Appendix, being the Compensation Disclosure Directive.

Treasury Board Directive No. 12 – 98 is hereby rescinded.

- [61] The Directive was signed by Doug Horner, then Minister of Finance and Chair of the Treasury Board, on January 20, 2014.
- [62] In its submission for this investigation, Service Alberta asserts that, although the Directive was signed on January 20, 2014, it was “approved” on January 13, 2014, at a Treasury Board meeting and therefore was effective or “issued” on that date.
- [63] I requested that Service Alberta provide me with a copy of the January 13, 2014 Treasury Board meeting minutes. I did not receive any response before completing a draft of this report. However, on October 29, 2015, after reviewing the draft, Service Alberta forwarded an excerpt of the meeting record for the January 13, 2014 Treasury Board meeting. The excerpt confirms that “Treasury Board approved the Compensation Disclosure Directive” at the January 13, 2014 meeting.
- [64] I asked when a Treasury Board directive takes effect; Service Alberta submitted that it takes effect upon “its approval, unless Treasury Board otherwise specifies”. I asked for a copy of the procedures and policies concerning the proposal and approval of Treasury Board directives. Service Alberta indicated there are no written procedures or policies concerning the proposal and approval of Treasury Board directives. In its original April 30, 2014 submission, Service Alberta stated “there is a process, but that process is not formally documented”. On October 29, 2015, after receiving a draft of this report, Service Alberta forwarded additional information from Treasury Board which confirmed “we do not have a written policy or procedure regarding the approval of Treasury Board Directives. We have many years of practice guiding the process.”
- [65] In my view, a plain reading of the Directive provides evidence of when it is “issued.” The Treasury Board “makes the directive in the attached Appendix, being the Compensation Disclosure Directive” and rescinds a previous directive on the same topic.
- [66] I have no further information or evidence to suggest the legally binding nature of a Treasury Board meeting other than the assertion from Treasury Board as forwarded to me by Service Alberta, that it considers directives approved when the Committee approves them. I have an excerpt of the January 13, 2014 meeting record, provided to me after Service Alberta received a draft of this report. The excerpt indicates that the Directive was approved as an “Administrative Item”. I do not know whether the contents of the Directive were tabled or discussed at the January 13, 2014 meeting, who was at the meeting, whether there was quorum, or whether anyone present could “approve” a Directive so as to bring it into force.
- [67] In my view, since the Directive was not signed until January 20, 2014 by the Chair, it was not approved or “issued” until that date. Therefore, it was not an “enactment” within the meaning of section 1(3) of the FOIP Regulation until that date.

Finding #4: The Directive was not an “enactment” within the meaning of section 1(3) of the FOIP Regulation until it was issued on January 20, 2014.

- [68] Service Alberta began compiling subsets of IMAGIS data as early as January 7, 2014, using personal information that was already in its custody or control. As the Directive was not issued until January 20, 2014, GoA departments could not have relied on it for authority to disclose personal information to Service Alberta prior to that date. Therefore, I find that any use by Service Alberta of personal information in IMAGIS prior to January 20, 2014 was not authorized under section 39(1)(c) by virtue of section 40(1)(e), since the Directive was not yet an enactment.
- [69] I agree with Service Alberta’s assertion, however, that its use of personal information during the week of January 27, 2014, to prepare for the January 31, 2014 disclosure was authorized under section 39(1)(c) by virtue of section 40(1)(e).

Finding #5: Service Alberta’s use of the personal information in IMAGIS prior to January 20, 2014 was not authorized under section 39(1)(c) by virtue of section 40(1)(e) since the Directive was not yet an enactment and did not authorize the disclosure of the information to Service Alberta. I agree with Service Alberta’s assertion, however, that its use of personal information during the week of January 27, 2014, to prepare for the January 31, 2014 disclosure was authorized under section 39(1)(c) by virtue of section 40(1)(e).

- [70] Even if I am wrong about the date the Directive was issued, and instead accepted Service Alberta’s assertion that it came into effect at the Treasury Board meeting of January 13, 2014, I still find that GoA departments could not have relied on it for authority to disclose personal information to Service Alberta prior to that date. Personal information already in Service Alberta’s custody and control was not disclosed to Service Alberta under the authority of the Directive. When Service Alberta began using the information on January 7, 2014 the Directive was not yet an enactment.

Finding #6: If I am wrong about the date, and the Directive was instead “issued” on January 13, 2014, I find that Service Alberta’s use of the personal information in IMAGIS prior to January 13, 2014 was not authorized under section 39(1)(c) by virtue of section 40(1)(e) since the Directive was not yet an enactment.

Section 40(1)(i) – disclosure necessary for the delivery of a common or integrated program or service

- [71] Service Alberta said it was authorized under section 39(1)(c) by virtue of section 40(1)(i) to use personal information it extracted from the IMAGIS database on January 7, 10, 14, 15, 16, 20, and during the week of January 27, to prepare for the January 31, 2014 disclosure. Section 40(1)(i) states:

40(1) A public body may disclose personal information only...

- (i) 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,

- [72] As previously described, Service Alberta submitted that it collects personal information in the IMAGIS system for the purpose of delivering common or integrated HR Management/payroll services, which is an “operating program or activity” of Service Alberta. Further, GoA departments are authorized by section 40(1)(i) to disclose certain employee information to Service Alberta because the disclosure is necessary for the “delivery of a common or integrated payroll system”.
- [73] I previously said that, in my view, section 39(1)(c) allows a public body to use personal information it has received from another public body *for the purpose for which that information was disclosed to it by the other public body*.
- [74] In its original submission of April 30, 2014, Service Alberta stated that the delivery of common or integrated HR Management/payroll services “includes the explicit intent of making resource allocation decisions and analysis of payroll information. Service Alberta is responsible for the creation of payroll data.” And, “as an employer, the GoA is required by the Canada Revenue Agency to generate the payroll information for income tax purposes such as T4 preparation.” Service Alberta repeatedly referred to itself as “the provider of common or integrated payroll services to the other departments.”
- [75] In its comments on the draft report, which it provided on November 13, 2015, Service Alberta asserted that “it is SA’s position that implementation of the Disclosure Policy is adjunct to, and part of, the delivery of common and integrated HR Management/payroll services.”
- [76] I understand Service Alberta is saying that its use of information in the IMAGIS database, previously provided to it by various GoA departments as part of the delivery of common and integrated HR Management/payroll services, is for the same purpose as using information to prepare for the proactive disclosure of GoA salary, benefit and severance information.
- [77] I disagree. Service Alberta’s use of personal information in the IMAGIS database to prepare for the January 31, 2014 salary disclosure was not for the purpose of delivering a common and integrated HR Management/payroll service. Instead, Service Alberta used the information to prepare for implementation of the Disclosure Policy, which states:

The purpose of this policy is to improve accountability and transparency and enhance confidence in the use of public funds through routine disclosure of public service salary, benefit and severance information.
- [78] In my view, Service Alberta’s use of personal information in IMAGIS to prepare for the January 2014 disclosure is for a purpose that is different from the purpose for which the information was disclosed to Service Alberta (delivering a common and integrated HR Management/payroll services). The public disclosure of salary, benefit and compensation information was a *new policy* introduced by the GoA in December 2013. Prior to the disclosure on January 31, 2014, there had been no proactive disclosure of this information for GoA employees. Beyond simply making the assertion, Service Alberta did not provide any information in this investigation to persuade me that delivering a common and integrated

HR Management/payroll service was the same, or “adjunct to”, the purpose of the Disclosure Policy, which was “to improve accountability and transparency and enhance confidence in the use of public funds through routine disclosure of public service salary, benefit and severance information”. Therefore, Service Alberta cannot rely on section 39(1)(c) by virtue of 40(1)(i) as its authority to use personal information in IMAGIS to prepare for the January 2014 disclosure.

- [79] This finding is further supported when read in conjunction with section 39(4) that restricts the use of personal information collected with authority under section 39(1) to use “only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.” The “purpose” for the use was for the provision of a common or integrated payroll system which, in my view, is not connected to or necessary for use to compile information for the Disclosure Policy.

Finding #7: Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(i) (disclosure necessary for the delivery of a common or integrated program or service) to use personal information in IMAGIS prior to January 20, 2014 to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the personal information to Service Alberta for this purpose. GoA departments disclosed the personal information to Service Alberta for the provision of a common and integrated HR Management/payroll service which is a different purpose from implementation of the Disclosure Policy and Directive.

Section 40(1)(h) – disclosure to an officer or employee of the public body

- [80] Service Alberta says it was authorized under section 39(1)(c) by virtue of section 40(1)(h) to use personal information it extracted from IMAGIS on January 7, 10, 14, and 15, to prepare for the January 31, 2014 disclosure. Section 40(1)(h) says:
- 40(1) A public body may disclose personal information only...
- (h) 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,
- [81] As stated earlier, Service Alberta reported that it collects personal information of employees from GoA departments at the time of hire, and continuously throughout the relationship with the employee, in order to deliver common and integrated HR Management/payroll services. The IMAGIS database contains a repository of human resource and payroll information for the GoA. The Assistant Deputy Minister of Shared Services and employees and officers in Service Alberta are responsible for the administration of the IMAGIS database.
- [82] Service Alberta’s duties, prior to the explicit authority set out in the Directive, were to manage personal information in the IMAGIS system for the purposes of providing common and integrated HR Management/payroll services to the GoA.

- [83] The Disclosure Policy, announced December 19, 2013, makes no reference to Service Alberta's officers and employees having duties with respect to proactive disclosure of salary, benefit, and severance information.
- [84] The Disclosure Policy was brought into effect by the January 20, 2014 Directive. It is the Directive that assigns roles, responsibilities and duties to officers and employees of Service Alberta, as well as the Minister of Service Alberta.
- [85] Starting January 7, 2014, Service Alberta began compiling personal information from IMAGIS to prepare for the January 31, 2014 disclosure, using personal information that was already in its custody or control. GoA departments had previously disclosed the personal information to Service Alberta to perform the duties required to deliver common and integrated HR Management/payroll services to the GoA.
- [86] However, until the Directive was issued on January 20, 2014, Service Alberta, its officers and employees, had no duties related to the public disclosure of public service salary, benefit and severance information.
- [87] Therefore, I find that Service Alberta's use of personal information in IMAGIS to prepare for the January 31, 2014 disclosure was not authorized under section 39(1)(c) by virtue of section 40(1)(h). GoA departments were not authorized under section 40(1)(h) to disclose the information to Service Alberta for purposes of the Directive because Service Alberta's officers and employees had no duties or responsibilities related to the public disclosure of salary, benefit and severance information before the Directive was issued on January 20, 2014.

Finding #8: Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(h) (disclosure necessary for the performance of duties of an officer or employee of the public body) to use personal information in IMAGIS prior to January 20, 2014 to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the information to Service Alberta under section 40(1)(h) for this purpose. Service Alberta's officers and employees had no duties or responsibilities related to the disclosure of public service salary, benefit and severance information before the Directive was issued.

Section 40(1)(b) – disclosure not an unreasonable invasion of a third party's privacy under section 17

- [88] Service Alberta said it was authorized under section 39(1)(c) by virtue of section 40(1)(b) to use some of the personal information it extracted from IMAGIS on January 7, 10, 14, 15, 20, and during the week of January 27, to prepare for the January 31, 2014 disclosure. Section 40(1)(b) says:
 - 40(1) A public body may disclose personal information only...
 - b)if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,
- [89] Section 17(2) sets out a prescribed list of circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy under the FOIP Act. Service Alberta says section 17(2)(e) is relevant:

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's privacy if...

(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,

- [90] In my view, some of the personal information Service Alberta extracted from IMAGIS and used to prepare for the January 31, 2014 public disclosure is information that could fall under section 17(2)(e). For example, name of employee, position, and amount of discretionary cash and non-cash benefits is all personal information that has been considered in previous OIPC Orders, and has been found to fall under section 17(2)(e) (see OIPC Orders F2001-020, F2006-007). Section 40(1)(b) authorizes the disclosure of this personal information as it would not be an unreasonable invasion of a third party's personal privacy.
- [91] However, I previously said that section 39(1)(c) allows a public body to use personal information it has received from another public body *for the purpose for which that information was disclosed to it by the other public body*. Therefore, the question before me is: for what purpose did the GoA departments disclose the information in IMAGIS to Service Alberta? A public body does not disclose personal information simply because it would not be an unreasonable invasion of a third party's personal privacy to do so – it discloses the information for some specific reason or purpose – for example, the public body needs to fulfill an access request and disclosing some personal information is authorized because it is not an unreasonable invasion of a third party's personal privacy.
- [92] In Order 2001-020, the former Commissioner said that one of the purposes of what is now section 17(2)(e) is to permit “the release of information about the employment benefits and responsibilities of public employees, allowing a degree of transparency in relation to the compensation and benefits provided to public employees.” I take from this that in order to achieve a measure of transparency and public accountability, a public body may, in certain circumstances, disclose some personal information and it would not be an unreasonable invasion of a third party's privacy to do so.
- [93] In this case, why did the GoA departments originally disclose the information at issue to Service Alberta? Was it for purposes of transparency and accountability? Service Alberta has already stated that it collected the personal information for the purposes of delivering common and integrated HR Management/payroll services, an “operating program or activity” of Service Alberta. As already noted above, the purpose of the Policy and Directive may have been to “to improve accountability and transparency and enhance confidence in the use of public funds”, but the Policy and Directive were neither in force nor even thought of at the time Service Alberta originally collected the personal information in IMAGIS. Instead Service Alberta collected the information prior to and independent of the Disclosure Policy and Directive, and for the purposes of delivering common and integrated HR Management/payroll services, not “to improve accountability and transparency and enhance confidence in the use of public funds”.

Finding #9: Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(b) (disclosure not an unreasonable invasion of a third party's privacy) to use personal information in IMAGIS to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the information to Service Alberta under section 40(1)(b) for this purpose. The GoA departments disclosed the personal information to Service Alberta for the purpose of delivering common and integrated HR Management/payroll services, not "to improve accountability and transparency and enhance confidence in the use of public funds" and not because "it would not be an unreasonable invasion of third party's personal privacy".

Disclosure of personal information in the IMAGIS database

- [94] As already noted, Service Alberta extracted personal information datasets from IMAGIS between January 7 and 14, 2014, and then provided some of this personal information back to GoA departments and HR offices on January 15 and 16, 2014.
- [95] In its comments on the draft of this report, Service Alberta noted that it "did not disclose personal information to departments; rather [it] used the information to provide the necessary data to each department on behalf of each department." Further, Service Alberta "characterized this as a use [authorized by] (s. 39(1)(c) by virtue of s. 40(1)(i))."
- [96] I understand Service Alberta's submission to mean it did not disclose personal information back to the departments, but rather "used" the information when it provided personal information identifying specific employees affected by the Disclosure Policy and Directive back to the GoA departments.
- [97] I disagree with Service Alberta's claim that it was only "using" personal information when it provided personal information extracted from IMAGIS back to GoA departments.
- [98] Service Alberta's FOIP Guidelines and Practices (2009) manual says that "Use of personal information means employing it to accomplish the public body's purposes, for example, to administer a program or activity, to provide a service or to determine eligibility for a benefit." Further, "Disclose means to release, transmit, reveal, expose, show, provide copies of, tell the contents of, or intentionally or unintentionally give personal information by any means to someone." I believe these descriptions provide guidance in this matter.
- [99] Service Alberta "used" personal information when it extracted and manipulated personal information stored in the IMAGIS database for purposes of preparing for the public disclosure. I have already addressed Service Alberta's authority, or lack of authority, to use personal information for this purpose. However, when Service Alberta provided information it previously collected for purposes of delivering HR Management/payroll services *back* to GoA departments for an entirely new and different purpose – to prepare for the public disclosure of salary, benefit and severance information, this was a disclosure. In my view, this was a "release", "transmittal", "revelation", or "provision" of information by Service Alberta to GoA departments.
- [100] Further, I note that, with respect to common or integrated programs, sections 39 and 40 of the FOIP Act contemplate only the *use* of personal information by the public body that

collected it, and the *disclosure* of personal information between public bodies. There are no provisions in the FOIP Act that support characterizing as a use rather than a disclosure of personal information the exchange of personal information between public bodies who are parties to a common or integrated program.

- [101] Finally, I note that Service Alberta did not provide any argument or rationale for claiming that providing information back to the GoA departments was a use, rather than a disclosure, beyond asserting that this was the case. For the reasons set out above, in my view, when Service Alberta extracted personal information datasets from IMAGIS between January 7-14, 2014, and then provided some of this personal information back to GoA departments and HR offices on January 15 and 16, 2014, this represented a disclosure of personal information.
- [102] The only authority Service Alberta cited authorizing its disclosure of IMAGIS datasets back to GoA departments was section 40(1)(i), and only for “lists of individuals to departments’ HR officials for which contracts and termination agreements were required on January 16, 2014”.
- [103] Section 40(1)(i) says:
 - 40(1) A public body may disclose personal information only...
 - (i) 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,
- [104] I originally assumed the common or integrated program or service that Service Alberta was referring to was the implementation of the Disclosure Policy and Directive. However, in its comments on the draft of this report, Service Alberta stated that:

... as a common or integrated service provider of HR Management/payroll services, when departments need and require employee data to carry out their policies, programs and activities (in this case develop the necessary architecture and correct employee lists pursuant to the mandated Disclosure Policy), SA is involved in that process as the common and integrated HR Management/payroll services provider.
- [105] Service Alberta also said that “if departments need employee data to implement the Disclosure Policy or otherwise, then SA provides this information to the departments who control the information in question.”
- [106] Based on these submissions, it is not clear to me what common or integrated program Service Alberta is referring to.
- [107] If it is the delivery of common and integrated HR Management/payroll services, I have already found above that this purpose is not the same as “improv[ing] accountability and transparency and enhanc[ing] confidence in the use of public funds through routine disclosure of public service salary, benefit and severance information.”

- [108] If Service Alberta is referring to implementation of the Disclosure Policy and Directive as a common or integrated program, I have already found that the Directive was not in force until January 20, 2014. This means that there was no common or integrated program for the public disclosure of salary and benefits information until that date.
- [109] As the common or integrated program for the delivery of HR Management/payroll services was not the same as the public disclosure of salary benefit and severance information, and there was no common or integrated program for public disclosure until January 20, 2014, I find that Service Alberta's disclosure of personal information in IMAGIS to HR offices and the DMs on January 15 and 16 to prepare for the January 31, 2014 public disclosure was not authorized under section 40(1)(i).

Finding #10: Service Alberta's disclosure of personal information extracted from IMAGIS to GoA department Deputy Ministers and HR offices on January 15 and 16, 2014, was not authorized under section 40 (1)(i).

Use and disclosure of contact information of terminated employees

- [110] Service Alberta reported that it extracted and compiled terminated employees' home addresses from the IMAGIS database between January 7 and 10, 2014 for the purpose of creating a list of addresses to provide to GoA departments to notify about the pending public disclosure under the Directive.
- [111] In its submission received on November 13, 2015, Service Alberta stated that it "did not submit that it disclosed this data... [rather] SA used the data for a common and integrated service and provided the information back to each department for its own use."
- [112] I agree that when Service Alberta extracted and compiled this information, this was a use of information in the IMAGIS database. For the reasons stated above (paragraphs 96-100), I maintain that when Service Alberta provided this information to GoA department DMs on January 15, 2014 so that departments could contact individuals to inform them about the Disclosure Policy and Directive, this was a disclosure by Service Alberta.
- [113] Service Alberta only provided its authority for its use of the contact information of terminated employees to prepare for the January 31, 2014 public disclosure. It says its use was authorized by section 39(1)(a), which says:
 - 39(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,
- [114] Service Alberta submitted that its use of the terminated employees' contact addresses was in accordance with section 39(1)(a) because the information was originally collected at the time of termination to enable contacting the terminated employee.
- [115] Service Alberta did not provide its authority for disclosing the information (presumably because Service Alberta maintains this was not a disclosure, but rather a use) back to GoA

departments on January 15, 2014, but I assume it would rely on section 40(1)(c) which authorizes the disclosure of personal information for the purpose for which the information was collected or compiled, or a use consistent with that purpose.

- [116] I agree that Service Alberta's use and disclosure of this personal information to GoA departments to contact terminated employees to advise them of the pending Directive is the same as the purpose for which the information was collected.
- [117] As noted in paragraph [51] of this report, Service Alberta also stated that its use of contact information of terminated employees was authorized under section 39(1)(c) by virtue of sections 40(1)(b), 40(1)(i), and 40(1)(h). I do not need to consider these authorities as I have already found the use to be authorized under section 39(1)(a).

Finding #11: Service Alberta's use and disclosure of terminated employees' contact addresses for the purpose of notifying former employees about the Directive was authorized under section 39(1)(a) and section 40(1)(c) as the information was originally collected for the purpose of contacting employees about matters related to their employment.

ISSUE #3: If the information is “personal information,” did Service Alberta collect, use or disclose personal information in employment contracts and termination agreements to prepare for the January 31, 2014 public disclosure and, if so, was the collection, use or disclosure authorized under the FOIP Act?

- [118] As was already noted above, most of the personal information used to prepare for the January 31, 2014 disclosure was information that was already in Service Alberta's custody and control and extracted from the IMAGIS database. Some of the personal information, however, was contained in employment contracts and termination agreements.
- [119] In its submission for this investigation, Service Alberta said employment contracts and termination agreements are held by each department's HR office and each department was responsible for uploading employment contracts and termination agreements to the Upload Tool. Each department was also individually responsible for reviewing the documents and deciding what information would be redacted.
- [120] After the departments uploaded and redacted the documents, Service Alberta's TT copied the documents into the staging site for subsequent public disclosure on January 31, 2014 on the GoA Public Disclosure Website.
- [121] In my view, when the departments uploaded the employment contracts and termination agreements to the Upload Tool created by Service Alberta's TT, this constituted a new collection of personal information by Service Alberta since personal information included in employment contracts and termination agreements was not already in Service Alberta's custody or control.

Finding #12: Service Alberta collected personal information when GoA departments uploaded employment contracts and termination agreements to the Upload Tool created by Service Alberta. This is a new collection of personal information which was not previously in the custody or under the control of Service Alberta.

- [122] I next considered whether Service Alberta had authority under the FOIP Act to collect personal information in employment contracts and termination agreements from GoA departments to prepare for the January 31, 2014 disclosure.
- [123] Section 33 of the FOIP Act sets out the rules for collecting personal information. It says:
- 33 No personal information may be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,
 - (b) that information is collected for the purposes of law enforcement, or
 - (c) that information relates directly to and is necessary for an operating program or activity of the public body.
- [124] Service Alberta said its collection of personal information in the employment contracts and termination agreements was permitted under section 33(c) of the FOIP Act, which authorizes a public body to collect personal information that “relates directly to and is necessary for an operating program or activity of the public body”.
- [125] Service Alberta said that the personal information contained in the employment contracts and termination agreements was “directly related to and necessary for an activity of the departments”.
- [126] It may be that the original collection of the personal information in the contracts and agreements by GoA departments themselves was “directly related to and necessary for an activity of the departments.” However, this statement does not account for Service Alberta’s authority to collect this personal information from the departments to prepare for the January 31, 2014 salary and compensation disclosure. That is, a department’s authority to collect personal information does not give Service Alberta authority to collect the personal information from the department. Service Alberta and each provincial government department are separate public bodies under the FOIP Act. Each public body must have its own authority to collect personal information.
- [127] Section 33(c) of the FOIP Act allows a public body to collect personal information if that information relates directly to and is necessary for an operating program or activity of *that* public body. Therefore, Service Alberta has the burden to prove that its own collection of personal information from the departments via the Upload Tool was authorized under section 33 of the FOIP Act.
- [128] Service Alberta did not provide any additional information about why its collection of personal information in employment contracts and termination agreements was necessary for an operating program or activity of Service Alberta, or what “operating program or activity” it was referring to.

- [129] The collection of the personal information cannot have been necessary for the delivery of a common or integrated HR Management/payroll service, as Service Alberta had never previously collected this information. It only collected the personal information in order to prepare for the January 31, 2014 public disclosure of salary and benefits information. In my view, there was no “operating program or activity” related to public disclosure of this personal information until the Directive became effective on January 20, 2014, at which date the collection would have been authorized by section 33(a) or (c). Therefore, section 33(a) or (c) cannot be used as Service Alberta’s authority to collect the personal information in contracts and termination agreements prior to this date.
- [130] Service Alberta’s collection of the information in contracts and termination agreements occurred as early as January 16, 2014, when departments were given access to the Upload Tool. In my view, Service Alberta was not authorized to collect this personal information at that time.
- [131] As I have found that Service Alberta was not authorized to collect personal information in employment contracts and termination agreements until January 20, 2014, when the Directive was enacted, I did not consider whether Service Alberta was authorized to use the information prior to the Directive enactment date. If Service Alberta did not have authority to collect the information, it did not have authority to use it until the Directive was in effect.
- [132] As an aside, I note that in its November 13, 2015 comments on the draft of this report, Service Alberta stated that “while access by departments was provided as of January 16, 2014, the departments had until January 22, 2014 to upload contracts and termination agreements. This was a technical collection done at a systems level.” And further, “Collection, use and disclosure at a systems level is not generally required to be associated with FOIP Act authorities. That is, FOIP authorities are not assigned for our technical systems personnel work with data uploaded into public bodies’ systems SA was providing this technical capacity as part of the common and integrated HR Management/payroll services.”
- [133] This additional information from Service Alberta does not change my findings in any way, although it does raise questions regarding what Service Alberta means by referring to a “technical collection done at a systems level.” I am also unsure as to why Service Alberta would state that “collection, use and disclosure at a systems level is not generally required to be associated with FOIP Act authorities” given that the FOIP Act applies to all records in the custody and control of a public body, and all collections, uses and disclosures. There is no exception to the application of the FOIP Act for “technical collection done at a systems level.”

Finding #13: Service Alberta did not establish its authority to collect the personal information in employment contracts and termination agreements from GoA departments via the Upload Tool prior to the Directive coming into force on January 20, 2014. Therefore, I find Service Alberta’s collection of this personal information was not authorized under the FOIP Act prior to that time. If Service Alberta did not have authority to collect the personal information, it did not have authority to use it until the Directive was in effect.

ISSUE #4: If the information is “personal information”, was the public disclosure on January 31, 2014 in compliance with the FOIP Act?

- [134] On January 31, 2014, Service Alberta publicly disclosed the following personal information of deputy ministers, senior officials appointed by an Order in Council and paid directly by the GoA, employees within the offices of a Minister or the Premier, and employees as defined under the *Government Organization Act*:
- Name of employee
 - Ministry
 - Position
 - Classification
 - Year (of employment)
 - Salary (amount)
 - Cash benefits (including “earnings such as overtime, vacation payout, northern allowance, vehicle allowance and lump sum payments”)
 - Non-cash benefits (including “government’s share of employee benefits and contributions, including pension, medical and dental coverage, group life insurance and disability plans”)
 - Severance (amount); and
 - PDF copies of employment contracts and termination agreements, where applicable.
- [135] Section 40 of the FOIP Act sets out the circumstances in which a public body may disclose personal information. Section 40(1) says:
- 40(1) A public body may disclose personal information only...
- (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,
- [136] The January 31, 2014 public disclosure was pursuant to the Directive signed by Treasury Board on January 20, 2014. I have already found that the Directive qualifies as an enactment for purposes of FOIP. I have also found that the Directive was issued, or came into effect, on January 20, 2014.
- [137] The Directive reads, in part:
- 2(1) In this Directive:
- ...
- (d) “Minister” means the Minister of Service Alberta or, if at any time there is no Minister of Service Alberta, a minister designated by the President of Treasury Board and Minister of Finance as having responsibility under this Directive;
- ...
- 4(1) Subject to sections 3(3), 5 and 6, the Minister shall:

- (a) disclose, in respect of each Designated Employee, the following information in respect of a calendar year:
 - (i) name;
 - (ii) most recent position or appointment held;
 - (iii) most recent office or department;
 - (iv) amounts of Base Salary, Cash Benefits and Non-cash Benefits;
 - (v) most recent salary range;
 - (vi) any current contract of employment entered into by the Designated Employee
 - (A) under section 28 of the *Public Service Act*, or
 - (B) where the Designated Employee is described in section 3(1)(a), (b) or (c);
 - (vii) the total amount of any Termination Allowance the individual received or became contractually entitled to receive over one or more calendar years, together with any applicable termination agreement;
 - (b) Disclose the information set out in subsections (1)(a)(i) to (vi) on or before
 - (i) January 31, 2014 in respect of the 2012 and 2013 calendar years, and
 - (ii) each following June 30, commencing June 30, 2015, in respect of the previous calendar year;
 - (c) disclose the information set out in subsection (1)(a)(vii) on or before
 - (i) January 31, 2014 in respect of the 2012 and 2013 calendar years, and
 - (ii) each following June 30 and December 31 for the preceding six month period; and
 - (d) disclose the information under this section in a searchable format on a web portal accessible through the main Government of Alberta website.
- (2) Where feasible, the Minister shall obtain financial information for disclosure under this section directly from Government financial systems.
 - (3) A minister of the Crown shall disclose, in respect of each Designated Employee under that minister's administration, all information the Minister requests to comply with this Directive.
- [138] Section 2(1)(d) establishes that the Minister of Service Alberta is responsible for the Directive.
- [139] Section 4(1) of the Directive explicitly sets out the information that must be disclosed, and for what years. It says the information must be disclosed in a searchable format on a web portal accessible through the main GoA website.
- [140] Section 4(2) of the Directive authorizes the Minister of Service Alberta to obtain financial information for disclosure directly from GoA financial systems.
- [141] Section 4(3) authorizes ministries to disclose "all information" that the Minister of Service Alberta requests to comply with this Directive.

- [142] In my view, the Directive authorizes GoA departments to disclose information to Service Alberta for the purposes of complying with the Directive. Service Alberta is further authorized to obtain specified information for the disclosure from GoA financial systems, which would include the IMAGIS database. The Directive explicitly authorizes the public disclosure of specific personal information.
- [143] Since the Directive is an enactment of Alberta, the public disclosure by Service Alberta was authorized under section 40(1)(e) of the FOIP Act for the purpose of complying with an enactment of Alberta.

Finding #14: The January 31, 2014 public disclosure by Service Alberta was authorized under section 40(1)(e) of the FOIP Act for the purpose of complying with an enactment of Alberta (the Directive).

Summary of Findings

- [144] **Finding #1:** The information used to prepare for the January 2014 disclosure, and the information disclosed on January 31, 2014, is “personal information” as defined by the FOIP Act.
- [145] **Finding #2:** Service Alberta did not collect personal information when it accessed data from the IMAGIS database to prepare for the January 31, 2014 disclosure.
- [146] **Finding #3:** Treasury Board Directive No. 1/2014 (the Directive) is an “enactment of Alberta” as defined in section 1(3) of the FOIP Regulation.
- [147] **Finding #4:** The Directive was not an “enactment” within the meaning of section 1(3) of the FOIP Regulation until it was issued on January 20, 2014.
- [148] **Finding #5:** Service Alberta’s use of the personal information in IMAGIS prior to January 20, 2014 was not authorized under section 39(1)(c) by virtue of section 40(1)(e) since the Directive was not yet an enactment and did not authorize the disclosure of the information to Service Alberta. I agree with Service Alberta’s assertion, however, that its use of personal information during the week of January 27, 2014, to prepare for the January 31, 2014 disclosure was authorized under section 39(1)(c) by virtue of section 40(1)(e).
- [149] **Finding #6:** If I am wrong about the date, and the Directive was instead “issued” on January 13, 2014, Service Alberta’s use of the personal information in IMAGIS prior to January 13, 2014 was not authorized under section 39(1)(c) by virtue of section 40(1)(e) since the Directive was not yet an enactment.
- [150] **Finding #7:** Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(i) (disclosure necessary for the delivery of a common or integrated program or service) to use personal information in IMAGIS prior to January 20, 2014 to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the personal information to Service Alberta for this purpose. GoA departments disclosed the personal information to Service Alberta for the provision of a common and integrated HR

Management/payroll service which is a different purpose from implementation of the Disclosure Policy and Directive.

- [151] **Finding #8:** Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(h) (disclosure necessary for the performance of duties of an officer or employee of the public body) to use personal information in IMAGIS prior to January 20, 2014 to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the information to Service Alberta under section 40(1)(h) for this purpose. Service Alberta's officers and employees had no duties or responsibilities related to the disclosure of public service salary, benefit and severance information before the Directive was issued.
- [152] **Finding #9:** Service Alberta was not authorized under section 39(1)(c) by virtue of section 40(1)(b) (disclosure not an unreasonable invasion of a third party's privacy) to use personal information in IMAGIS to prepare for the January 31, 2014 public disclosure because the GoA departments did not disclose the information to Service Alberta under section 40(1)(b) for this purpose. The GoA departments disclosed the personal information to Service Alberta for the purpose of delivering common and integrated HR Management/payroll services, not "to improve accountability and transparency and enhance confidence in the use of public funds" and not because "it would not be an unreasonable invasion of third party's personal privacy".
- [153] **Finding #10:** Service Alberta's disclosure of personal information extracted from IMAGIS to GoA department Deputy Ministers and HR offices on January 15 and 16, 2014, was not authorized under section 40 (1)(i).
- [154] **Finding #11:** Service Alberta's use and disclosure of terminated employees' contact addresses for the purpose of notifying former employees about the Directive was authorized under section 39(1)(a) and section 40(1)(c) as the information was originally collected for the purpose of contacting employees about matters related to their employment.
- [155] **Finding #12:** Service Alberta collected personal information when GoA departments uploaded employment contracts and termination agreements to the Upload Tool created by Service Alberta. This is a new collection of personal information which was not previously in the custody or under the control of Service Alberta.
- [156] **Finding #13:** Service Alberta did not establish its authority to collect the personal information in employment contracts and termination agreements from GoA departments via the Upload Tool prior to the Directive coming into force on January 20, 2014. Therefore, I find Service Alberta's collection of this personal information was not authorized under the FOIP Act prior to that time. If Service Alberta did not have authority to collect the personal information, it did not have authority to use it until the Directive was in effect.
- [157] **Finding #14:** The January 31, 2014 public disclosure by Service Alberta was authorized under section 40(1)(e) of the FOIP Act for the purpose of complying with an enactment of Alberta (the Directive).

Closing Comments

- [158] It is clear that the original purpose for the collection of personal information in IMAGIS by Service Alberta was to deliver HR Management/payroll services for the GoA. This was the purpose for which GoA departments disclosed personal information to Service Alberta.
- [159] However, the December 19, 2013 announcement that salary, benefit and severance information of government employees would be proactively disclosed, resulted in personal information in the IMAGIS database being used for a new purpose that is different and distinct from the original purpose of delivering a common or integrated HR Management/payroll service.
- [160] This investigation found that Service Alberta's use of the personal information, specifically the information in IMAGIS, began before the proper authorizations were in place. As of January 20, 2014 the Directive issued by Treasury Board provided Service Alberta with the authority required to use personal information from the IMAGIS database and the information from employment contracts and termination agreements in preparation for the January 2014 disclosure. The Directive also provided the authorization required for the January 31, 2014 public disclosure.
- [161] Section 2 of the FOIP Act sets out the purposes of the Act. One of the key principles of the Act is found in section 2(b) with respect to how public bodies must control the manner in which they use and disclose the personal information they collect from individuals.
- [162] Personal information can only be collected, used and disclosed by public bodies within the authority of the Act. This includes personal information collected by the GoA from the individuals who are employed by the GoA and disclosed to Service Alberta to manage in accordance with the FOIP Act.
- [163] Simply because a public body has information does not mean it can use it without turning its mind to its authority to do so. This is why a Privacy Impact Assessment at the beginning of any endeavour that may involve collection, use and disclosure of personal information is valuable, even though it is not legally required under the FOIP Act.
- [164] Service Alberta informed me that "it initiated a Privacy Impact Assessment (PIA) for the public disclosure immediately to ensure privacy impacts were addressed. The PIA is in draft form."
- [165] I asked for a copy of the draft PIA in my letter of June 17, 2014, but did not receive a copy. Therefore, I have no evidence to indicate that Service Alberta considered its authority to collect, use, and disclose personal information prior to initiating activities to prepare for the January 31, 2014 disclosure.

Cara-Lynn Stelmack
Director, Mediation and Investigation