

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-026

January 23, 2001

ALBERTA HUMAN RESOURCES AND EMPLOYMENT

Review Number 1773

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicants made a request to the Public Body for access to the complaint letters sent to the Public Body by the Third Parties. The complaint letters alleged that the Applicants conducted themselves improperly. The Public Body withheld the letters under section 16 of the Act. The Commissioner decided that the letters should be disclosed except for the names of other individuals referred to in the letters.

Statutes Cited: *Veterinary Profession Act*, S.A. 1984, c. V-3.1, *Freedom of Information and Protection of Privacy Act* S.A. 1994, c. F-18.5, ss. 1(1)(n), 16 (1), 16(4), 16(5), 67(1)(2), 68.

Authorities Cited: **AB:** Order 97-002; **B.C.:** Order 34-1995; **Ont.:** Orders P-738, P-656, P-937.

I. BACKGROUND

[para. 1.] The Applicant was a former employee of the Alberta Veterinary Medical Association (the "AVMA"). Alberta Human Resources and Employment (the "Public Body") administers the *Veterinary Profession Act*, S.A. 1984, c. V-3.1, and oversees the activities of the AVMA.

[para. 2.] In 1999, the Public Body informed the Applicant and the AVMA that certain individuals ("Third Party A" and "Third Party B") had sent letters of complaint to the Public Body accusing the AVMA and the Applicant of improper conduct with respect to the regulatory activities of the AVMA. The Applicant was advised that the letters accused the Applicant and the officials of the AVMA of racist conduct, acting with bias, and of using the disciplinary process of the AVMA for improper purposes.

[para. 3.] The specifics of these allegations were not disclosed to the Applicant; however, the Public Body advised the Applicant and the AVMA of the general content of the letter. The Public Body's administrative investigation of the allegations, according to the Public Body, culminated in a review of the *Veterinary Profession Act*.

[para. 4.] On August 10, 1999, the Applicant and the AVMA applied jointly for access to the letters under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Request for Access states:

Myself and the Alberta Veterinary Medical Association Council would like to receive copies of letters received by the Ministry of Labour and Human Resources from [the Third Parties] between April 1999 and August 1999. These letters contain information related to myself and/or council members or the Association as a whole. I have responded to the Ministry regarding these letters but have not seen or received a copy of them.

[para. 5.] I will refer to the Applicant and the AVMA collectively as the "Applicants".

[para. 6.] The Public Body refused to disclose the letters and cited section 16 (unreasonable invasion of a third party's personal privacy) of the Act as its authority to withhold the letters.

[para. 7.] On December 9, 1999, the Applicants requested a review of the Public Body's decision. Mediation was unsuccessful and the matter was set down for a written inquiry. On October 16, 2000, I completed the written inquiry.

II. RECORDS

[para. 8.] The Public Body withheld three letters in their entirety under section 16 of the Act:

- Letter #1: Dated July 20, 1999, written to the Minister of Labour, two pages, written by Third Party A.
- Letter #2: Dated June 10, 1999, written to the Minister of Human Resources and Employment, two pages, written by Third Party B.
- Letter #3: Dated May 12, 1999, written to Minister of Labour, two pages, written by Third Party B.

[para. 9.] In this Order, I will refer to each letter by letter number where necessary, and will refer to all the letters collectively as the "Letters".

III. ISSUE

[para. 10.] There is one issue in this inquiry: Does section 16 apply to the Letters?

IV. DISCUSSION OF THE ISSUE: Does section 16 apply to the Letters?

a) Position of the Parties

(i) Applicants' Position

[para. 11.] The Applicants argue that since the letters are about the Applicant, the Letters contain the personal information of the Applicant and should be disclosed to the Applicant. With respect to the Third Parties' personal information, the Applicants submit that it would not be an unreasonable invasion to disclose the Letters to the Applicants.

(ii) Public Body's Position

[para. 12.] The Public Body relied upon section 16(1), and several of the presumptions under section 16(4) to withhold the Letters:

- 16(4)(d) (the personal information relates to employment or educational history),
- 16(4)(f) (the personal information consists of personal recommendations or evaluations),
- 16(4)(g) (the personal information consists of the Third Parties' names when it appears with other personal information about the Third Parties),
- 16(4)(h) (the personal information indicates the Third Parties' associations).

[para. 13.] The Public Body stated that it considered the following circumstances under section 16(5):

- 16(5)(e) (the Third Parties would be exposed unfairly to financial or other harm),
- 16(5)(f) (the Third Parties' personal information has been supplied in confidence),
- 16(5)(h) (the disclosure of the Third Parties' personal information may unfairly damage the reputation of any person referred to in the record requested by the Applicant).

(iii) Third Parties' Position

[para. 14.] Third Party A and Third Party B submit that the disclosure of the letters they have written would be an invasion of their privacy. They consider it their democratic right to be able to write to elected members of the government on a confidential basis about issues that concern the Third Parties.

[para. 15.] Moreover, the Third Parties fear that the AVMA may launch a lawsuit against the Third Parties for bringing these problems to the attention of elected officials. Such a lawsuit would, in turn, result in financial or mental harm to the Third Parties.

b) Analysis

[para. 16.] For section 16(1) to apply, there must first be personal information of third parties.

i) Do the Letters contain “personal information” of third parties?

[para. 17.] Personal information is defined in section 1(1)(n) of the Act. The relevant portions of 1(1)(n) read as follows:

1(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,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

...

(vii) information about the individual's educational, financial, employment or criminal history...

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

Letter #1

[para. 18.] The address block contains the Minister's name, position and business address. Therefore, it is the Minister's personal information (section 1(1)(n)(i)(ii)(vii)).

[para. 19.] Also present are Third Party A's name, business address, association, information about Third Party A's financial and employment history and own personal views and opinions about the AVMA (section 1(1)(n)(i)(ii)(vii)(ix)). Therefore, this information is Third Party A's personal information.

[para. 20.] In paragraph #5 of page 2, Third Party A names two other individuals. These two names would be the personal information of those individuals.

[para. 21.] Third Party A copied this letter to three Members of the Legislative Assembly. These three names would be the personal information of those Members.

Letter #2

[para. 22.] The address block contains the Minister's name, position and business address. Therefore, it is the Minister's personal information (section 1(1)(n)(i)(ii)(vii)).

[para. 23.] Also present are the Third Party B's name, address and his own personal views and opinions about the AVMA (section 1(1)(n)(i)(ix)). Therefore, this information is Third Party B's personal information.

[para. 24.] However, in paragraph #2, Third Party B names the Applicant and states an opinion about the Applicant. Therefore, paragraph #2 contains the Applicant's personal information (section 1(1)(n)(i)(viii)).

[para. 25.] In addition, Third Party B names an individual and that individual's association in paragraph #4. The name and association would be that individual's personal information (section 1(1)(n)(i)(ii)).

Letter #3

[para. 26.] The address block contains the Minister's name, position and business address. Therefore, it is the Minister's personal information (section 1(1)(n)(i)(ii)(vii)).

[para. 27.] Also present are Third Party B's name, address and Third Party B's own personal views and opinions about the AVMA (section 1(1)(n)(i)(ix)). Therefore, this information is Third Party B's personal information.

[para. 28.] However, in paragraph #3 of that letter, Third Party B names the Applicant and expresses an opinion about the Applicant. Therefore, paragraph #3 contains the Applicant's personal information (section 1(1)(n)(i)(viii)).

[para. 29.] In addition, Third Party B names another individual and that individual's association in paragraph #4. The name and association would be that individual's personal information (section 1(1)(n)(i)(ii)).

[para. 30.] In paragraph #10, Third Party B names another individual and that individual's association. Therefore, the name and association would be that individual's personal information (section 1(1)(n)(i)(ii)).

[para. 31.] Finally, Third Party B copied this letter to three Members of the Legislative Assembly. These three names would be the personal information of those Members.

Conclusion

[para. 32.] After reviewing the severed information in the records, I find that the Public Body correctly identified some of the severed information as personal information of

Third Party A and Third Party B. However, the following Table specifies other individuals' personal information.

Letter Number	Paragraph	Whose personal information
#1	Address Block	Minister
#1	#5	Two other individuals
#1	CC'd (copied) names	Members of Legislative Assembly
#2	Address Block	Minister
#2	#2	Applicant
#2	#4	Another individual
#3	Address Block	Minister
#3	#3	Applicant
#3	#4	Another individual
#3	#10	Another individual
#3	CC'd (copied) names	Members of Legislative Assembly

[para. 33.] Section 6 of the Act gives an applicant a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant. The Applicant is an individual and has a right of access to the Applicant's personal information. However, the AVMA is not an individual, and therefore does not have personal information.

[para. 34.] Section 16 does not apply to the Applicant's personal information because the Applicant is not a "third party" for the purposes of section 16: see section 1(1)(r) of the Act. No other exceptions were claimed. Therefore, the Applicant should have access to the Applicant's personal information as identified in the table above.

[para. 35.] It is important to note that the AVMA does not have a right to access the Applicant's personal information even though the Applicant and the AVMA made a joint access request and are represented by the same counsel. Therefore, the Public Body must not disclose the Applicant's personal information to the AVMA without the Applicant's consent as prescribed by the Act.

ii) Would disclosure of the third parties' personal information be an unreasonable invasion of the third parties' personal privacy?

[para. 36.] Section 16 is a mandatory ("must") section of the Act. If section 16 applies, a public body must refuse to disclose the information.

[para. 37.] The relevant provisions of section 16 read:

16(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(d) the personal information relates to an employment or educational history,

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party

(h) the personal information indicated the third party's racial or ethnic origin or religious or political beliefs or associations.

Letter #1

[para. 38.] A Minister is named in the address block and Third Party A copied three Members of the Legislative Assembly at the end of Letter #1. I find that section 16(4)(g) applies to that personal information.

[para. 39.] I accept that sections 16(4)(d)(g) and (h) apply to Third Party A's personal information.

[para. 40.] Sections 16(4)(g)(h) apply to the two individuals named in paragraph #5.

[para. 41.] Section 16(4)(f) does not apply because the opinions expressed by Third Party A are not "personal recommendations or evaluations". Personal recommendations or evaluations must be assessments based either on measurable standards or on professional judgments and done by a person who has the authority to do these assessments. See Order 97-002.

Letter #2

[para. 42.] I find that section 16(4)(g) applies to the Minister in the address block.

[para. 43.] I accept that sections 16(4)(g) and (h) apply to Third Party B's personal information.

[para. 44.] I find that sections 16(4)(d) and (h) apply to the individual named in paragraph #4.

[para. 45.] I do not find that section 16(4)(f) applies for the reasons stated above.

Letter #3

[para. 46.] I find that section 16(4)(g) applies to the Minister in the address block and to the three Members who received copies from Third Party B.

[para. 47.] I accept that sections 16(4)(g) and (h) apply to Third Party B's personal information.

[para. 48.] I find that sections 16(4)(d) and (h) apply to the individual named in paragraph #4.

[para. 49.] I do not find that section 16(4)(f) applies for the reasons stated above.

iii) What relevant circumstances did the Public Body consider under section 16(5)?

[para. 50.] In determining whether there is an unreasonable invasion under section 16(1) or 16(4), a public body must consider the relevant circumstances under section 16(5). The relevant portions of section 16(5) read as follows:

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all of the relevant circumstances, including whether

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Circumstance section 16(5)(e) - the third party will be exposed unfairly to financial or other harm

[para. 51.] This circumstance weighs in favour of withholding a third party's personal information. I find that this circumstance does not apply.

[para. 52.] This circumstance specifies that the third party will be exposed unfairly to financial or other harm. The Third Parties have made serious allegations against the Applicant and the AVMA. Only if their allegations are unsubstantiated, will the Third Parties be exposed to financial or other harm. Given the allegations, I do not see how such exposure would be unfair.

Circumstance section 16(5)(f)- the personal information has been supplied in confidence

[para. 53.] This circumstance weighs in favour of withholding a third party's personal information. I find that this circumstance does not apply because the Third Parties' expectation of confidentiality is not reasonable for two reasons.

[para. 54.] First, every one of the three letters requests the Public Body to undertake a review of the AVMA disciplinary process. Third Party A requests that the Minister appoint an ombudsman to provide for an impartial and autonomous review. Third Party B requests that there be an impartial ministerial investigation.

[para. 55.] I also note that the Letters were not solicited by the Public Body but were written voluntarily. When making serious allegations and requesting investigations, the Third Parties ought to have expected that the contents of their complaints and their identities would be disclosed so the Applicants could respond to the allegations. The Third Parties were seeking a remedy for their complaints, so they must have known that disclosure of the contents of the letters, including their personal information would be necessary.

[para. 56.] Second, Letter #1 and Letter #3 were copied to three Members of the Legislative Assembly. I find that this is evidence that shows that the Third Parties did not expect their Letters to be confidential communications. I also note that both Third Parties do not request in their letters that their complaints be kept confidential.

-
Circumstance section 16(5)(h) - the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant

[para. 57.] This circumstance weighs in favour of withholding the names of individuals referred to in the Letters by the Third Parties. However, in my view, this circumstance does not apply to the Third Party A's and Third Party B's' personal information for the same reasons as set out above with respect to the circumstance set out in section 16(5)(e).

Other relevant circumstances

[para. 58.] The list of relevant circumstances under section 16(5) is not exhaustive. Therefore, there may be other relevant circumstances that a public body must also consider.

[para. 59.] The Public Body stated in its submission:

The third parties sent letters to the Minister of Human Resources and Employment who is responsible for the Veterinary Professions Act...Under the Veterinary Professions Act the Minister does not have the authority to take action, however the letters received by the Minister did initiate an administrative investigation. The Professions and Occupations branch mediated the review of concerns raised by the third parties and the Alberta Veterinary Medical Profession. The third parties had some broad issues relating to the Alberta Veterinary Professions Act. Through individual meetings with each side the Minister took the position to propose amendments to the "Disciplinary Process" of the Act....

The Applicant was advised in general of the contents of the letters by the Professions and Occupations branch and meetings were held regarding the concerns. The Public Body submits that the Applicant has had the opportunity to respond to allegations

...The complaints received by the Ministry have impacted a proposed change to the Veterinary Professions Act. The third parties had an expectation of confidentiality and therefore the release could effect [sic] the process of receiving information in the future. Individuals may be reluctant to draw the government's attention to issues and concerns with Associations that a Ministry has a responsibility to, if they cannot do so in an anonymous way. The proper operation of any Association and continued support by the public is very much in the public interest.

[para. 60.] The Letters contain serious allegations which not only directly affect the reputation and stature of the Applicant and the AVMA but potentially the Applicant's livelihood and professional status as well. Moreover, both Third Party A and Third Party B emphatically requested that the Public Body act on their complaints.

[para. 61.] In this situation, the Public Body did act upon the Letters by conducting an investigation which, I understand, led to an amendment of the *Veterinary Profession Act*. One of the Act's basic objectives is to provide Albertans with an open, transparent, and accountable government. I believe that disclosure of the Letters would be in accordance with this objective.

[para. 62.] As a result, with one exception (discussed below) it would not be an unreasonable invasion of Third Party A's and Third Party B's personal privacy to disclose their personal information contained in the Letters. In an open, transparent and accountable government, Albertans should have disclosure of the information upon which the government took measures, initiated investigations, and amended legislation.

[para. 63.] I agree with B.C. Order No. 34-1995 that also dealt with a complaint letter. The Commissioner ordered disclosure and stated:

...Thus this Ministry's past practice of refusing to disclose copies of letters of complaint to individuals now needs to be reconsidered. Public bodies should also be careful not to state or imply that identities will be kept confidential, unless they have reasonable expectations of being

able to do so under the Act. The domains of law enforcement and whistleblowing are clear exceptions to this general statement of the principle of openness.

[para. 64.] Several Ontario Orders (Orders P-937, P-656, P-738) have adopted a similar approach with respect to complaint letters. Order P- 937 stated at page 4:

The general principle underlying the approach taken in past orders ensures that when the respondent in a harassment complaint seeks information, he/she is advised of the substance of the accusations and the identity of the complainant. In order to achieve this result, the respondent needs access to know among other things, the information provided by the complainant.

[para. 65.] In addition, I find that disclosure of the names of the Minister and Members of the Legislative Assembly who received copies from Third Party A and Third Party B does not constitute an unreasonable invasion of those individuals' personal privacy. It is clear from the Letters that these names appear in the context of the Minister's or the Members' official capacities as elected officials

[para. 66.] The one exception to disclosure is Third Party B's personal address. The Applicants want to know the information that affects their interests. The disclosure of Third Party B's personal address does not contribute to that. Therefore, on balance, I find that it would be an unreasonable invasion of Third Party B's personal privacy to disclose Third Party B's personal address.

[para. 67.] Third Party A's letter is written on Third Party A's business letterhead. Unlike Third Party B's personal address, I find that it would not be an unreasonable invasion to disclose Third Party A's business address.

iv) Did the Applicant meet the burden of proof under section 67(2)?

[para. 68.] The burden of proof in this inquiry is set out in section 67:

67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

67(2) Despite subsection (1), if the record or part of a record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[para. 69.] I have examined the evidence before me and I find that the Applicants have provided me with sufficient reasons to support the argument that disclosure of the personal information contained in the Letters would be justified under the Act, with the exception of Third Party B's personal address and the names of individuals referred to in the Letters.

(d) Conclusion under section 16

[para. 70.] I conclude that the Public Body incorrectly determined that disclosure of the Third Party A's and Third Party B's personal information is presumed to be an unreasonable invasion of Third Party A's and Third Party B's personal privacy. Therefore, I find that section 16 does not apply to Third Party A's and Third Party B's personal information, with one exception.

[para. 71.] I find that the disclosure of Third Party B's personal address contained in Letters #2 and #3 would constitute an unreasonable invasion of Third Party B's personal privacy. Therefore, Third Party B's personal address must be severed. The Applicants have not shown that disclosure of Third Party B's personal address would not be an unreasonable invasion of personal privacy.

[para. 72.] Finally, I find that the names of the individuals contained in the content of the Letters must be severed because disclosure of these individuals' names would constitute an unreasonable invasion of their personal privacy because disclosure may unfairly damage their reputations. The Applicants have not shown that disclosure of these individuals' names would not be an unreasonable invasion of personal privacy.

[para. 73.] Nonetheless, the names of the Ministers and Members of the Legislative Assembly to whom the Letters were copied may be disclosed because I find that disclosure of the Minister's and Members' names in this context would not be an unreasonable invasion of their personal privacy.

V. ORDER

[para. 74.] Under section 68 of the Act, I make the following order:

1. I require the Public Body to disclose to the Applicants the Letters except for the names of the individuals referred to by Third Party A and Third Party B and except for the personal address of Third Party B.
2. The Public Body must not disclose paragraph #2 in Letter #2 to the AVMA without the Applicant's consent as prescribed under the Act because it contains the Applicant's personal information.
3. The Public Body must not disclose paragraph #3 in Letter #3 to the AVMA without the Applicant's consent as prescribed under the Act because it contains the Applicant's personal information.
4. In order to verify compliance with the provisions of this Order, I have attached a copy of the Letters to this Order. The highlighted portions are to be withheld from the Applicants.
5. I further order that, within 50 days of being given a copy of this Order, the Public Body notify me in writing that it has complied with this Order.

Robert C. Clark
Information & Privacy Commissioner

