

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER 2001-032

December 28, 2001

## ALBERTA HUMAN RESOURCES AND EMPLOYMENT

Review Number 1982

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

**Summary:** The Applicant alleged that Alberta Human Resources and Employment (the “Public Body”) disclosed the Applicant’s personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act*. The Adjudicator found that the Public Body did not disclose the Applicant’s personal information.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(n), 1(1)(n)(i), 1(1)(n)(i) to (ix), 16, 55(1), 55(1)(a), (b) and (c), 56, 62(3), 63(1), 64, 68; Part 2.

**Authorities Cited:** **AB:** Order 2000-026, Practice Note 7; **ON:** Order P-666.

**Cases Cited:** *Thompson Newspapers Ltd. v. Canada (Director of Investigation & Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425.

### I. BACKGROUND

[para 1] On May 12, 1999, the Applicant wrote a complaint letter to the then Minister of Alberta Labour, accusing the Alberta Veterinary Medical Association (the “AVMA”), and a named individual (“X”) within the AVMA, of racist conduct, acting with bias, and using the disciplinary process of the AVMA for improper purposes.

[para 2] On June 10, 1999, the Applicant wrote a complaint letter to the Minister of Alberta Human Resources and Employment (the “Public Body”), the public body that had assumed responsibilities for Alberta Labour. The Applicant reiterated the complaint set out in the May 12, 1999 letter. The Minister directed the Public Body to address the Applicant’s complaints.

[para 3] On August 1, 2000, the Applicant filed a privacy complaint with the Commissioner’s office. The Applicant alleged that, during the Public Body’s investigation into the Applicant’s complaints, employees of the Public Body disclosed the Applicant’s identity and the contents of the Applicant’s letters to two individuals within the AVMA. The Applicant accused the Public Body of unauthorized disclosure of the Applicant’s personal information, contrary to the *Freedom of Information and Protection of Privacy Act* (the “Act”).

[para 4] The Commissioner assigned a Portfolio Officer to investigate the Applicant’s privacy complaint. When the Portfolio Officer completed the investigation, the Applicant was not satisfied with the results. The Applicant requested a review under section 62(3) of the Act, which reads:

*62(3) A person who believes that the person’s own personal information has been collected, used or disclosed in violation of Part 2 may ask the Commissioner to review that matter.*

[para 5] The matter was set down for a private oral inquiry. The Public Body provided an advance written submission for the inquiry. That submission included certain evidence that I accepted *in camera*. The Applicant did not provide an advance written submission, but was present for the oral inquiry.

## **II. RECORDS AT ISSUE**

[para 6] In this inquiry under section 62(3) of the Act, there are no records directly at issue.

## **III. ISSUE**

[para 7] The Notice of Inquiry set out one issue for the inquiry:

Did the Public Body disclose the Applicant’s personal information in violation of Part 2 of the Act?

## **IV. DISCUSSION OF THE ISSUE**

### **A. Preliminary matters**

[para 8] At the inquiry, the Applicant had the following complaints.

[para 9] First, the Applicant objected to my hearing the case as Adjudicator. The Applicant said that he expected an inquiry before the Commissioner. I informed the Applicant that I had been delegated the authority to hear the inquiry, and that I would note his objection for the record.

[para 10] Second, I commented that I did not receive a written submission from the Applicant. He said that he was a busy man. When I asked if the Applicant would be bringing witnesses and calling evidence, the Applicant said that he did not know the process and did not know that was possible. He stated that the process was prejudicial and biased. I note that the Notice of Inquiry provided to the Applicant says “Enclosed for your reference is an information sheet on the oral inquiry process.” The sheet on the oral inquiry process contains a section on presentation of evidence and submissions at an oral inquiry. Consequently, I do not agree with the Applicant’s view that the process is prejudicial and biased.

[para 11] Third, the Applicant complained about the results of the Portfolio Officer’s investigation into his privacy complaint. He claimed that the Portfolio Officer who conducted the investigation was biased. I informed the Applicant that I had no knowledge of the contents of the investigation report, except what the Applicant was telling me. I provided the Applicant with Practice Note 7, which explains the investigation and inquiry processes as being two separate processes in this office.

[para 12] Finally, the Applicant took exception with the use of the word “harassment” in the Public Body’s submission. The Public Body explained that the Commissioner used this word in paragraph 64 of Order 2000-026 when quoting certain cases from another jurisdiction. The Public Body said it used the word “harassment” in referring to Order 2000-026 and those cases. I am satisfied that the Public Body did not use this word in referring to the Applicant.

### **B. Chronology and evidence**

[para 13] I have set out below the chronology and evidence provided to me by way of oral and written submissions, including the Public Body’s *in camera* written submission.

[para 14] The Applicant’s May 12, 1999 complaint letter to the then Minister of Alberta Labour said that the matter of the complaint originated after the Applicant phoned a member of the AVMA Discipline Committee (the “Discipline Committee”) to discuss how the AVMA disciplinary process continued to be biased. During that telephone conversation, the Applicant said that the member of the Discipline Committee

provided the Applicant with insights into cases the Discipline Committee had adjudicated. The Applicant says that one particular comment by the member of the Discipline Committee confirmed the Applicant's suspicions that the discipline process of the AVMA was tainted.

[para 15] The Applicant's June 10, 1999 complaint letter to the Minister of Alberta Human Resources and Employment reiterated the complaint set out in the May 12, 1999 letter. The Applicant again cited the comment made to the Applicant by the member of the Discipline Committee. The Applicant referred to a telephone conversation the Applicant had with the Minister's public member appointment to the AVMA (the "Public Member"). The Applicant also referred to a May 1999 meeting between the then Minister of Alberta Labour and unnamed individuals from the AVMA. I note that the Applicant copied his June 10, 1999 letter to three Members of the Legislative Assembly.

[para 16] In a June 25, 1999 letter referred to but not provided in the Public Body's *in camera* submission, the Minister of the Public Body directed Professions and Occupations to address general issues of concern identified by the Applicant and others respecting the activities of the AVMA.

[para 17] On July, 20, 1999, another individual ("Y") wrote a complaint letter about the AVMA, and sent that letter to the Minister of Alberta Labour. In the Applicant's May 12, 1999 and June 10, 1999 letters, the Applicant said that he was a friend of Y, towards whom X was "extremely biased and prejudiced".

[para 18] On August 10, 1999, X and the AVMA applied under the Act to the Public Body, for access as follows:

Myself and the Alberta Veterinary Medication Association Council would like to receive copies of letters received by the Ministry of Labour and Human Resources from [the Applicant] and [Y] between April, 1999 and Aug., 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 19] During the inquiry, the Applicant referred to a meeting he attended with individuals from Professions and Occupations. The Public Body's *in camera* evidence is that that meeting took place on September 8, 1999. At that time, the Applicant, Y and others met with representatives of the Public Body, including Professions and Occupations. The Public Body's *in camera* evidence is that the Applicant said he advised that he had personally invited the President and the Public Member of the AVMA to attend that meeting.

[para 20] On the access request of X and the AVMA, the Public Body consulted with the Applicant and Y under section 29 of the Act, and decided to refuse access to the letters. The Public Body's November 12, 1999 letter to X says:

We have reached a decision regarding your request for access to letters received from [the Applicant] and [Y] relating to yourself and/or council members of the Association as a

whole...After considering all relevant factors, including representations received from the third parties whose interests could be affected by the disclosure of the records, we have refused access to the requested records...

[para 21] The Public Body cited section 16 of the Act (unreasonable invasion of a third party's personal privacy) as its authority to refuse access.

[para 22] On December 9, 1999, the lawyer representing X and the AVMA (the "agent") requested that the Commissioner review the Public Body's decision not to disclose the letters to which X and the AVMA requested access.

[para 23] The request for review by X and the AVMA proceeded to inquiry. As the Applicant and Y were affected parties, the Commissioner's office notified them under section 64 of the Act. As also required by section 64 of the Act, the Commissioner's office gave the Applicant and Y a copy of the agent's December 9, 1999 request for review letter (the "agent's letter").

[para 24] On June 21, 2000, the Applicant again wrote to the Minister of Alberta Human Resources and Employment. The Applicant said that the agent's letter was evidence that the Public Body breached the Applicant's confidentiality in the Applicant's communications with the Minister's office. In his June 21, 2000 letter, the Applicant further said that he spoke with an official of the AVMA who advised that X and another person within the AVMA had spoken to and were "filled in" by a junior bureaucrat and a senior bureaucrat from the Minister's ministry.

[para 25] In the June 21, 2000 letter, the Applicant asked for a formal ministerial investigation into the breach of the Applicant's privacy. The Applicant also asked for the names of those responsible for disclosing the fact that the Applicant's letters existed, the fact that the Applicant wrote the letters and the details of the letters.

[para 26] The Minister of the Public Body asked the Public Body to investigate and report back to the Minister's office. The Public Body said it conducted an "administrative investigation".

[para 27] On August 1, 2000, the Applicant filed a privacy complaint with the Commissioner's office. That complaint alleged that, during the Public Body's investigation into the Applicant's complaints, employees of the Public Body disclosed the Applicant's identity and the contents of the Applicant's letters to two individuals at the AVMA. The Commissioner assigned a Portfolio Officer to investigate the Applicant's privacy complaint.

[para 28] On September 15, 2000, the Minister of the Public Body wrote to the Applicant with the results of the Public Body's administrative investigation. The Minister's letter said:

In response to your initial allegations with respect to the Alberta Veterinary Medical Association (AVMA), staff in the department's Professions and Occupations Unit

investigated the issues you raised. In order to complete a thorough investigation, the substance of the allegations had to be discussed with Association representatives. Assumptions may have been made by Association representatives, as to the identity of the person raising the concerns. This often occurs in any type of review, given the context of the allegations. I can assure you, based on a review of our records and interviews of staff, your personal information was not disclosed at any time.

[para 29] On September 19, 2000, the Applicant responded by letter to the Minister. The Applicant said that the agent's letter contradicted the Minister. To support his statement, the Applicant quoted an excerpt from the agent's letter, which the Applicant said was the evidence that the Public Body disclosed the Applicant's personal information.

[para 30] On October 13, 2000, the Minister wrote to the Applicant to say that the Minister was satisfied that no breach of the Applicant's personal privacy occurred through the actions of the Professions and Occupations Unit. As the Minister was aware of the Commissioner's investigation into the Applicant's concerns, the Minister said he would await that outcome.

[para 31] The Commissioner held a written inquiry into the access request of X and the AVMA. In January 2001, the Commissioner issued Order 2000-026, in which he disagreed with the Public Body's decision to refuse access to the complaint letters of the Applicant and Y. Subject to some minimal withholding of personal information (consisting of the Applicant's address and the names of individuals other than the Applicant and Y), the Commissioner ordered the Public Body to disclose the complaint letters of the Applicant and Y, including the names of the Applicant and Y.

[para 32] The Applicant was not satisfied with the results of the Portfolio Officer's investigation of his privacy complaint, and requested a review by the Commissioner.

### **C. My decision on the issue**

[para 33] I must first determine whether the Public Body disclosed the Applicant's personal information, before determining whether the Public Body disclosed the personal information in violation of Part 2 of the Act.

#### **1. Did the Public Body disclose the Applicant's personal information?**

[para 34] "Personal information" is defined in section 1(1)(n) of the Act to mean recorded information about an identifiable individual, including those items set out in section 1(1)(n)(i) to (ix). The Applicant's name would be "personal information" under section 1(1)(n)(i). The Applicant's identity would be "personal information" by reason of being recorded information about an identifiable individual.

[para 35] Did the Public Body disclose the Applicant's name or identity?

[para 36] The Applicant says that his conversation with an official of the AVMA and the agent's letter confirmed for him that the Public Body revealed his identity to the AVMA. The Applicant pointed to the excerpt from the agent's letter as evidence that the Public Body disclosed his personal information. I must first decide whether I can accept in evidence the excerpt from the agent's letter.

[para 37] Section 55(1) of the Act reads:

*55(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceedings, except*

*(a) in a prosecution for perjury in respect of sworn testimony,*

*(b) in a prosecution for an offence under this Act, or*

*(c) in an application for judicial review or an appeal from a decision with respect to that application.*

[para 38] Under section 55(1), I must decide the following: (i) Is the excerpt from the agent's letter "a statement made...by a person during an ...inquiry by the Commissioner..."? and (ii) Is the present inquiry "any other proceedings" for the purposes of section 55(1)?

[para 39] I find that the excerpt from the agent's letter is "a statement made...by a person".

[para 40] The agent's letter requested a review by the Commissioner. The request for review resulted in a written inquiry. Can it be said that the statement was made "during an...inquiry"?

[para 41] British Columbia's freedom of information legislation has a provision similar to section 55(1), but I could not locate any decisions under that provision.

[para 42] Ontario does not have a provision similar to section 55(1), but does have a provision similar to section 56 of the Act, which also contains the phrase "during an...inquiry". The Ontario equivalent of section 56 contains the phrase "in the course of an inquiry". In Ontario Order P-666, the Assistant Commissioner confirmed that correspondence exchanged between a party to an appeal (the equivalent to a review) and the Commissioner's office during the mediation or pre-inquiry stage of an appeal fell within the provision. In other words, the correspondence was "in the course of an inquiry".

[para 43] I adopt that interpretation. I find that the statement made in the agent's request for review letter, which initiated the inquiry process, is a statement made "during an...inquiry" for the purposes of section 55(1) of the Act. My rationale follows.

[para 44] Section 63(1) of the Act requires that a request for review be in writing. A person requesting a review often makes voluntary statements to the Commissioner, generally to provide background information to assist the Commissioner. Such information is often repeated at the inquiry stage in oral or written submissions provided for the inquiry. It would be absurd for a statement made in a submission for an inquiry to be excluded under section 55(1), but not be excluded in a request for review.

[para 45] Is the present inquiry "any other proceeding"? In *Thomson Newspapers Ltd. v. Canada (Director of Investigation & Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, Wilson J., in a dissenting judgment, agreed that "proceedings" should be given a large and liberal interpretation so as to cover any kind of proceeding, whether adjudicative or investigative. I adopt that interpretation of "proceeding". I find that this inquiry, which is adjudicative, is "any other proceeding" for the purposes of section 55(1).

[para 46] Having found that the statement made in the agent's letter meets the requirements of section 55(1), I find that the statement is inadmissible in evidence in this inquiry. The exceptions contained in section 55(1)(a), (b) and (c), which would allow the statement to be admitted into evidence, do not apply.

[para 47] Section 55(1) is a substantive provision that prohibits my admitting certain evidence. If I were to admit into evidence the agent's statement, that would be contrary to section 55(1) and would be a decision that the court could review.

[para 48] I believe that the purpose of section 55(1) is to allow persons to talk openly, completely and freely with the Commissioner, without fear of being sued or charged. Section 55(1) allows any person to say anything to the Commissioner in the course of an investigation or inquiry, without that statement or answer being used against the person in any other proceeding (except as noted), whether in a court or otherwise.

[para 49] Section 55(1) therefore serves the two-fold purpose of allowing the Commissioner to do his work under the Act, and protecting a person. But for section 55(1), it could be argued that a person might remain silent, impeding the Commissioner's work. In protecting a person, section 55(1) is a tool to enable the Commissioner to get the best and most complete information to make a decision.

[para 50] Moreover, the only reason the Applicant came into possession of the agent's letter was as a result of section 64 of the Act. I believe that section 55(1) is intended to apply to this very situation in which section 64 has required the Commissioner to give a copy of the agent's request for review letter to the Applicant as an affected party in a previous inquiry.



[para 51] Even if I could admit the agent's statement as evidence, I would find it necessary to have the evidence of one or more witnesses who could speak to the accuracy of the agent's statement.

[para 52] Since the agent's statement is inadmissible, is there other evidence to support the Applicant's claim that the Public Body disclosed the Applicant's personal information? If so, I must then decide whether, on balance, that evidence outweighs the Public Body's evidence under oath that it did not disclose the Applicant's personal information.

[para 53] At the inquiry, the Applicant said that two people within the AVMA told him that his information was disclosed when a junior and senior bureaucrat phoned. The Applicant said that his name was disclosed and the information in his letters. The Applicant says that the matter is black and white to him. The Applicant therefore concludes that someone within the Public Body is lying about the disclosure. The Applicant asked "Who is lying?"

[para 54] The persons at the AVMA with whom the Applicant spoke were not before me to give direct evidence in this inquiry. There is no direct evidence before me that any employee of the Public Body disclosed the Applicant's name or identity.

[para 55] To accept the Applicant's allegations, without direct evidence, would mean that everybody within the Public Body lied: the two persons who were interviewed by the Public Body during its administrative investigation, and the three persons who appeared before me, representing the Public Body at the inquiry (two of whom gave evidence under oath). I would be puzzled if five people would be prepared to jeopardize their careers over an alleged privacy breach, when the Public Body could have just admitted a breach, if there was one, and put in place measures to prevent a further breach. I would have ordered the Public Body to comply with its duty not to breach the Applicant's privacy.

[para 56] Furthermore, the Public Body's argument regarding Order 2000-026 is that it tried to withhold the Applicant's letters, but the Commissioner disagreed and ordered disclosure of the Applicant's letters, including the Applicant's name. In this inquiry, the Public Body characterized the Commissioner's decision as "We lost". In my view, the action of trying to withhold the Applicant's letters is inconsistent with breaching the Applicant's privacy by disclosing the Applicant's name to the same persons who requested access to the Applicant's letters.

[para 57] The Public Body's evidence of its own internal investigation is that it went through 1400 records and could not find anywhere that the Public Body had disclosed the Applicant's name or identity. The Public Body provided oral and written evidence directly from the persons involved in the administrative investigation (Tabs 3 and 5 of the Public Body's written submission). The Public Body also said it consulted with individuals who were involved in dealing with the Applicant's complaints. Those individuals said that the Applicant's name and identity were not disclosed.

[para 58] The evidence also indicates that the Applicant contacted a number of individuals within the AVMA (the President, the Public Member and the member of the Discipline Committee). Many of those contacts appear to be made by telephone. It is clear that the Applicant made those contacts before X made the access request for the Applicant's letters.

[para 59] Given the Applicant's contacts with individuals within the AVMA, I find that it was possible for X to make an accurate assumption about who wrote the letters. It is equally possible that someone within the AVMA, who had contact with the Applicant, told X about the Applicant's complaints, and that X learned the Applicant's name or identity from individuals within the AVMA with whom the Applicant had contact. X would have made the August 10, 1999 access request on the basis of assumptions about who made the complaints, or from specific knowledge gained from others within the AVMA.

[para 60] On balance, I find that the Public Body did not disclose the Applicant's name or identity to X or to another individual within the AVMA. Therefore, I find that the Public Body did not disclose the Applicant's personal information.

**2. Did the Public Body disclose the Applicant's personal information in violation of Part 2 of the Act?**

[para 61] Since I have found that the Public Body did not disclose the Applicant's personal information, I do not find it necessary to consider whether the Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act.

**V. ORDER**

[para 62] I make the following Order under section 68 of the Act.

[para 63] I find that the Public Body did not disclose the Applicant's personal information.

[para 64] Since I have found that the Public Body did not disclose the Applicant's personal information, I do not find it necessary to consider whether the Public Body disclosed the Applicant's personal information in violation of Part 2 of the Act.

Dave Bell  
Adjudicator