

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-035

May 27, 2002

UNIVERSITY OF CALGARY

Review Number 2013

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

Summary: The Complainant alleged that the Public Body had breached his privacy when an email conversation between the Complainant and the Chair of the faculty in which he teaches was given to a colleague. The Adjudicator found that most of the personal information in the records was information about the Chair and the colleague. Therefore, the Public Body did not breach the Complainant's privacy.

Statutes Considered: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c-F-25, ss. 1(n) [previously section 1(1)(n)], s. 40 [previously section 38], s. 72 [previously section 68].

I. BACKGROUND

[para 1] In September of 2000, the Complainant made an allegation to the Office of the Information and Privacy Commissioner about the release of email messages by a faculty member at the University of Calgary (the Public Body). The complaint was made under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The complaint was investigated and the parties were made aware of the Portfolio Officer's findings. The Complainant was not satisfied with the resolution of his complaint and requested that an inquiry be held.

[para 2] The matter was set down for a written inquiry. The Complainant requested and was granted an extension of time to submit his initial brief. Both parties submitted initial written briefs and written rebuttal briefs. In conducting this inquiry, I am aware that there was an allegation by the Complainant about the Public Body to this office. In the Complainant's initial submission, he requested that his original letter of complaint be included as part of his submission. Other than the Complainant's letter of complaint, I have not reviewed any of the correspondence on our file prior to the Complainant's request for an inquiry. In other words, I am not aware of any information about the investigation or any attempts by the Portfolio Officer to resolve the Complainant's allegation. In addition, I have not reviewed the Portfolio Officer's findings.

[para 3] The Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Consequently, all section numbers referred to in this Order reflect the new numbering. Where section numbers are listed, the previous numbers have also been included as follows: section 10(1) [previously section 9(1)]. Unless otherwise noted, the text of each section remains the same.

II. RECORDS AT ISSUE

[para 4] The records at issue in this inquiry are as follows:

Email messages between the Complainant and another faculty member, dated December 9, 1999. These email messages contain a series of forwarded messages to and from both parties and can be characterized as an electronic conversation.

III. ISSUE

[para 5] There is one issue for this inquiry. In the notice of inquiry, the issue was set out as follows:

Unlawful disclosure of personal information under section 38 [now section 40].

[para 6] I will deal with this issue as stated below:

Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the FOIP Act?

IV. DISCUSSION OF THE ISSUE

A. Factual Background Information

[para 7] The substance of the Complainant's allegation is that the Public Body disclosed an email message (or messages) to a colleague (the Colleague), thereby breaching the Complainant's privacy. The email message contains an electronic conversation with transmissions between the Complainant and the Area Chair (the Chair) of the faculty in which the Complainant and the Colleague are professors.

[para 8] The electronic conversation began on the topic of teaching assignments. In particular, the teaching of a specific course apparently developed, and usually presented, by the Complainant was the focus of discussion. The conversation shifted to include a discussion of the Colleague. During this portion of the electronic conversation, the Complainant was very critical of the Colleague's qualifications and the quality of his teaching.

[para 9] The Public Body included a copy of the email message, dated December 9, 1999, with its initial brief. The Public Body indicated in its brief that this was the message they believe the Complainant referred to in his allegation. Having read the Complainant's submissions, I am satisfied that this is the email referred to by the Complainant.

B. Do the Records Contain Personal Information?

[para 10] Personal information is defined in section 1(n) [previously 1(1)(n)] of the FOIP Act. The applicable articles are as follows:

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,

...

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

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

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

[para 11] I have closely examined the records at issue and have determined that they contain personal information, which falls into the following categories:

- 1) The names of the Complainant, the Chair, the Colleague, and the first names of two other faculty members.
- 2) The Complainant's opinions:
 - a) About the Colleague – This is the bulk of the personal information in the records. The Complainant is critical about the teaching abilities and actions of the Colleague.
 - b) About the actions of the Chair – There are four short passages in which the Complainant expresses his opinion about the actions of the Chair.
 - c) Generally – In the last passage of the conversation, the Complainant offers his opinion about what has happened and how he feels about it.
- 3) The Chair's opinions:
 - a) About the Colleague – In one short passage, the Chair offers her positive opinion about the Colleague's abilities.
 - b) Generally – The Chair offers opinions about the situation being discussed.
- 4) Information about the Colleague – There are two statements that appear to be factual statements about the employment history of the Colleague.

C. Do the Records Contain the Complainant's Personal Information?

[para 12] Personal information about the Chair or the Colleague is not at issue in this inquiry. The Chair is free to disclose her own personal information to anyone she chooses. Likewise, she is free to disclose the Colleague's personal information to the Colleague. With regards to the first names of the other colleagues, those names were used in general references about work-related matters that would likely be common knowledge to all parties concerned and are not presented with any other personal information about those individuals. All of the foregoing is not personal Information about the Complainant.

[para 13] As set out in section 1(n)(viii) and (ix) [previously section 1(1)(n) (viii) and (ix)], the Complainant's opinions about the Chair and Colleague are the personal information of the Chair and Colleague, respectively. The Complainant's opinion about these individuals is not information about the Complainant. Therefore, the Complainant's name and his general opinions in the final paragraph of the records are the only personal information about the Complainant.

D. Did the Public Body Disclose the Complainant's Personal Information in Contravention of Part 2 of the FOIP Act?

[para 14] I note that the Complainant was primarily concerned with the disclosure of his opinions about the Colleague. The Complainant did not specifically address the small amount of information that I have found to be the Complainant's personal information. This information makes up less than two lines in 91 lines of text and is interspersed with his opinion of how the Chair has handled the situation discussed. When taken in context

of the entire record, the information is inconsequential, and in and of itself, disclosure would not be an unreasonable invasion of the Complainant's privacy. Consequently, I find that the Public Body was authorized to disclose the Complainant's personal information under section 40(1)(b) [previously section 38 (1)(a.1)] of the FOIP Act.

[para 15] In his submissions, the Complainant argued that the Public Body should not have released any of the information because, in his view, the information was confidential. To support this position, the Complainant argued that his opinions constituted a confidential peer review, which was requested by the Chair.

[para 16] The Public Body stated in its submission:

The University would not agree with [the Complainant's] characterization of the information as being a peer review requested by [the Chair]. The University has a formalized peer review process that is provided under the Appointment, Promotions, and Dismissal Procedures of the University. The term "peer review" when used in the University context normally refers to that formalized process that occurs on an annual basis in accordance with established published procedures. [The Complainant's] comments were not made as part of that process, however it would be fair, in our view, to describe the comments as reflective of [the Complainant's] personal views or opinions of a colleague.

[para 17] I accept the Public Body's position and reject the Complainant's position that his views constituted a response to a request for a peer review. It was evident from the text of the records that the Chair was not asking for this type of information and that the Complainant was offering the information in a manner that could be best characterized as frustration or professional rivalry. As further evidence, I note that the Complainant began the section containing his opinions about the Colleague with the following phrase:

Perhaps this is not the forum, ...

[para 18] I conclude from this phrase that the Complainant was aware that he was not taking part in the formal peer review process when he offered the comments about the Colleague.

[para 19] The personal information characterized by the Complainant as the substance of a peer review is the Complainant's opinions of the Colleague. It is evident from the Complainant's submissions that he believes that his opinions about the Colleague are his personal information. This is not the case. I have already found that this is personal information about the Colleague and is therefore not relevant to the Complainant's privacy complaint against the Public Body.

[para 20] I note that the Complainant does not differentiate between privacy and confidentiality in his submissions. The two terms are not interchangeable. Investigation 2001-IR-008 dealt with this issue as follows:

Privacy and confidentiality are two separate matters. Part 2 of the FOIP Act protects privacy by controlling the manner in which a public body may collect, use and disclose personal information. It does not matter whether the information is confidential or not. The Commissioner has no mandate to investigate breaches of confidentiality.

[para 21] I agree with this position. Consequently, I will not consider the issue of whether the Complainant's confidentiality was breached.

E. Other Issues Raised by the Complainant

[para 22] The Complainant also argued in his submission that in May of 2001, the Chair and another colleague allegedly breached the Complainant's privacy by storage and printing of the document against the Complainant's request.

[para 23] Retention of personal information does not constitute a breach of privacy where a public body is authorized to collect the information. Collection was not an issue for this inquiry, nor was use of the personal information. Therefore, I will not consider those issues.

[para 24] The Complainant also argued that release of the email was motivated by personal malice on the part of the Chair. I have already found that the disclosure of the small amount of the Complainant's personal information was not an unreasonable invasion of the Complainant's privacy under section 40(1)(b) [previously section 38(1)(a.1)]. Therefore, I do not intend to deal further with the issue of disclosure.

V. ORDER

[para 25] For the reasons previously stated, I make the following order under section 72 [previously section 68] of the FOIP Act.

[para 26] I find that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the FOIP Act.

Dave Bell
Adjudicator