

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2002-020

August 7, 2002

LETHBRIDGE POLICE SERVICE

Review Number 2292

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

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* which alleged that the former Chief of the Lethbridge Police Service contravened Part 2 of the Act by verbally disclosing the Complainant's personal information to the Editor of the Lethbridge Herald. The Complainant alleged that following this unauthorized disclosure, the information was then subsequently published in that paper.

The Commissioner found that the Complainant did not meet the burden of proving that the Public Body disclosed the Complainant's personal information to the Editor of the Lethbridge Herald. As such, the Commissioner found that the Lethbridge Police Service did not contravene Part 2 of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(n) [previously s. 1(1)(n)]; 71 [previously s. 67]; 72 [previously s. 68]; Part 2.

Authorities Cited: **AB:** Orders 97-004, 97-020, 98-010.

I. BACKGROUND

[para 1] On July 22, 1999, the Lethbridge Police Service (the “Public Body”) conducted a disciplinary hearing into allegations of misconduct by a police officer (the “Complainant”) who worked for the Public Body. During those proceedings the Complainant pled guilty to four counts of discreditable conduct. On September 1, 1999, the Public Body conducted the sentencing hearing.

[para 2] On October 4, 2001, the Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to this Office. The Complainant indicated in that letter that he believed that the Public Body breached Part 2 of the Act by disclosing the Complainant’s personal information to the Lethbridge Herald. In support of his allegation, the Complainant attached a copy of an article that was published in the Lethbridge Herald which mentioned the Complainant.

[para 3] The Portfolio Officer assigned to the case investigated the allegations and provided the parties with his findings.

[para 4] On January 28, 2002, the Complainant requested that the Commissioner review whether the Public Body breached Part 2 of the Act. The matter was set down for a written inquiry.

[para 5] The Public Body submitted an initial and a rebuttal submission to this Office. The Complainant submitted an initial submission but did not submit a rebuttal.

II. ISSUE

[para 6] The issue in this inquiry is: Did the Public Body disclose the Complainant’s personal information in contravention of Part 2 of the Act?

[para 7] This issue is further divided into two subissues:

- A) Did the Public Body disclose the Complainant’s personal information to the Lethbridge Herald?
- B) If the Public Body did disclose the Complainant’s personal information, did the Public Body have authority under Part 2 of the Act to disclose this information?

[para 8] I note that the Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Although this did not result in substantive changes to the Act, various sections of the Act have been renumbered. Consequently, all section numbers referred to in this Order reflect the new numbering as well as the previous numbering.

III. BURDEN OF PROOF

[para 9] Section 71 [previously section 67] outlines the burden of proof in regard to an inquiry regarding a request for access to information. However, the Act is silent regarding who has the burden of proof in regard to a breach of privacy complaint under Part 2 of the Act. It is therefore my responsibility to determine who should have the burden of proof in such a case.

[para 10] As stated in Orders 97-004, 97-020 and 98-010, where the Act is silent as to the burden of proof, I will consider, among others, the following criteria:

- i) Who raised the issue?
- ii) Who is in the best position to meet the burden of proof?

[para 11] In this inquiry, the Applicant raised the breach of privacy complaint under Part 2 of the Act. Furthermore, I find that the Applicant is in the best position to speak to the reasons as to why he believes his personal information was disclosed. Therefore, I find that the Applicant has the burden of proving whether the Public Body disclosed the Complainant's personal information to the Lethbridge Herald.

[para 12] However, the Public Body would overwhelmingly be in the best position to speak to its authority under the Act to disclose the information. As such, if I were to find that if a disclosure of personal information occurred, the Public Body would have the burden of proving that the disclosure was authorized under Part 2 of the Act.

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

A) Did the Public Body disclose the Complainant's personal information to the Lethbridge Herald?

[para 13] The Complainant states that former Chief of the Public Body verbally disclosed the Complainant's personal information to the Editor of the Lethbridge Herald. The Complainant states that following this unauthorized disclosure, this information was then published in the Lethbridge Herald. The Complainant also states that it is unlikely that the Lethbridge Herald obtained this information from his disciplinary or sentencing hearings as the majority of the information that appeared in the article was not disclosed at those hearings. The relevant portion of that article reads as follows:

“Three employees are on medical leave, including [the Complainant], who is on long-term disability for medical reasons, of which the chief [sic] would not comment.

[The Complainant] was demoted in 1999 for inappropriate behaviour, a decision handed down following a disciplinary hearing conducted by a senior Edmonton police officer.

As for how long [the Complainant] can remain on disability, [the Chief] said that's not up to him. "It's up to the insurance carrier, who decides how long they carry them".

[para 14] The Public Body states that there is no evidence that the former Chief disclosed the Complainant's personal information. The Public Body states that the article does not state that the Public Body disclosed information about the Complainant but instead expressly stated that the "Chief would not comment".

[para 15] In addition, the Public Body states that any personal information about the Complainant that may have been received by the Lethbridge Herald was likely disclosed by the Complainant during his disciplinary and sentencing hearings. In support, the Public Body attached a transcript of these hearings.

[para 16] I have reviewed the article at issue. I find that there are three pieces of the Complainant's personal information in that article: the Complainant's name (section 1(n)(i); previously section 1(1)(n)(i)), the fact that the Complainant is on long-term disability for medical reasons the length of which will be determined by the insurance carrier (section 1(n)(vi); previously section 1(1)(n)(vi)) and the fact that the Complainant was demoted in 1999 for inappropriate behaviour following a disciplinary hearing (section 1(n)(vii); previously section 1(1)(n)(vii)).

[para 17] However, after a review of this article and all the arguments of the parties, I find that there is insufficient evidence that the former Chief of the Public Body disclosed any piece of the Complainant's personal information to the Editor of the Lethbridge Herald.

[para 18] Although the article states that the Complainant is on long-term disability for medical reasons, the article does not state that the former Chief was the source of this information. In fact, it states the opposite. It states that the former Chief "would not comment" on this situation. Furthermore, although the article cites a quotation from the former Chief regarding the length of long-term disability benefits, if read carefully, the wording of the former Chief's comments clearly indicate that his comments were made in regard to long-term disability recipients as a whole. In the article the former Chief states "It's up to the insurance carrier, who decides how long they carry them". The former Chief did not refer specifically to the Complainant.

[para 19] There is also no evidence on the face of the article to find that the former Chief disclosed information regarding the Complainant's demotion. Although the article mentions the Complainant's demotion, it does not say, or indicate, that the information came from the former Chief.

[para 20] As previously mentioned, in this inquiry, the Complainant has the burden of proving that his personal information was disclosed by the Public Body. The Complainant has not met this burden of proof. Before I am able to find that a breach of Part 2 of the Act has occurred, there must be a satisfactory level of evidence presented in support of the allegation. If this were not the case, a public body could be put into the untenable position of proving a negative (e.g. that a breach did not occur) based on any allegation raised by a complainant. This would allow complainants to use the Act, and the review process under the Act, for purposes other than what was intended.

B) If the Public Body did disclose the Complainant’s personal information, did the Public Body have authority under Part 2 of the Act to disclose this information?

[para 21] As I have found that the Public Body did not disclose the Complainant’s personal information to the Lethbridge Herald, I will not consider whether a disclosure was authorized under Part 2 of the Act.

V. ORDER

[para 22] I make the following Order under section 72 [previously section 68] of the Act.

[para 23] I find that the Public Body did not disclose the Complainant’s personal information in contravention of Part 2 of the Act.

Frank Work, Q. C.
Information and Privacy Commissioner