

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2004-004**

May 10, 2004

**ALBERTA LEARNING**

Review Numbers 2576, 2577 and 2633

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

**Summary:** The Applicant submitted access requests for information under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to Alberta Learning (the “Public Body”). Not satisfied with the information provided by the Public Body, the Applicant questioned whether the Public Body conducted adequate searches for responsive records. The Applicant also complained that the Public Body disclosed her personal information to another public body, without authority. The Applicant further questioned whether the Commissioner had the jurisdiction to conduct the inquiry.

The Commissioner found that he had the jurisdiction to conduct the inquiry, the Public Body conducted adequate searches for responsive records, and the Public Body had the authority to disclose the Applicant’s personal information.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1) and 40(1)(c).

**Cases Cited:** *Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623.

## **I. BACKGROUND**

[para 1] In September 2002, the Applicant requested information from Alberta Learning (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Applicant asked for all personal records in the Office of the Minister of Learning (the “Minister”) and for general information in the form of copies of any replies or correspondence received or sent regarding correspondence from the Minister’s Executive Assistant to Grant MacEwan College’s Board of Governors (“Grant MacEwan College”).

[para 2] In October 2002, the Public Body provided responsive records to the Applicant. The Applicant believed that documents may be missing and therefore concluded that the Public Body did not conduct an adequate search for responsive records. The Applicant requested that this Office review the Public Body’s response. This Office opened Review Number 2576.

[para 3] In October 2002, the Applicant believed that the Public Body should have records regarding “follow up” actions referred to by the Assistant Deputy Minister of the Public Body and made another access request for information on the “follow up” actions. The Public Body responded that “follow up” records did not exist. The Applicant believed that the Public Body did not conduct an adequate search for responsive records. The Applicant again requested that this Office review the Public Body’s response. This Office opened Review Number 2633.

[para 4] In October 2002, the Minister’s Executive Assistant received an e-mailed complaint from the Applicant about Grant MacEwan College. The Executive Assistant forwarded the e-mail complaint to Grant MacEwan College for review. The Applicant further complained to this Office that the Minister’s Executive Assistant provided the Applicant’s personal e-mail address, name and particulars of her complaint to the Chair of Grant MacEwan College in contravention of the Act. This Office opened Review Number 2577.

[para 5] Mediation was authorized on all of the reviews and was unsuccessful. The matters were set down for a written inquiry.

[para 6] In November 2003, the Applicant served notice on this Office that she intended to make the question of jurisdiction over the inquiry an issue in the inquiry. I allowed that issue and added it as a preliminary issue.

## **II. RECORDS AT ISSUE**

[para 7] As the issues concern the adequacy of the search and a complaint by the Applicant, the records themselves are not directly at issue.

### III. ISSUES

[para 8] The issues in this inquiry are:

- A. Did the Public Body conduct an adequate search for responsive records, as required by section 10(1) of the Act? This issue applies to Review Number 2576.
- B. Did the Public Body have the authority to disclose the Applicant's personal information, as provided by section 40(1) of the Act? This issue applies to Review Number 2577.
- C. Did the Public Body conduct an adequate search for responsive records, as required by section 10(1) of the Act? This issue applies to Review Number 2633.

[para 9] I have added the following issue, which I will deal with as a preliminary issue:

Do I have jurisdiction to conduct the inquiry into the issues raised by the Applicant?

### IV. DISCUSSION OF THE ISSUES

#### **PRELIMINARY ISSUE: Do I have jurisdiction to conduct the inquiry into the issues raised by the Applicant?**

[para 10] The Applicant argued generally that there is a reasonable perception of "institutional bias" on the part of the Office against the Applicant based on reviews the Applicant previously brought before this Office involving Grant MacEwan College. My Adjudicator declared a conflict on those reviews. The Applicant argued that the conflict on those reviews must cause the Office to lose jurisdiction in this inquiry, which peripherally involves Grant MacEwan College. It appears the Applicant thinks that because the Adjudicator's potential bias was accepted by me previously, the Applicant's reasoning is that I will also be biased in this inquiry.

[para 11] In its submission, the Public Body cited *Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623, where the Court stated that the test to ensure fairness and to assess if there is a reasonable apprehension of bias is whether a reasonably informed bystander would perceive bias on the part of an adjudicator.

[para 12] The Public Body argued that the Applicant is confusing the reasonable apprehension of bias on the part of my Adjudicator in the previous reviews, with the reviews addressing the Public Body. I am the one, not my Adjudicator, who is reviewing the issues in this particular inquiry (Review Numbers 2576, 2577 and 2633). Furthermore, the issues in this inquiry concern the Public Body and not Grant MacEwan College. The Public Body concluded that I have jurisdiction to conduct this inquiry and that my jurisdiction is not tainted by any bias against or in favour of either party to this inquiry. I agree.

[para 13] I am not biased regarding the Applicant or the Public Body. The fact that this Office has dealt with the Applicant on other reviews does not in itself and in this inquiry constitute bias. If I did have any sense of “institutional bias” or for that matter any other kind of bias in this regard, I would not hesitate to acknowledge it. There has been a misunderstanding by the Applicant, prompting her to raise the issue of bias. As I am not biased, I have jurisdiction to conduct the inquiry into the issues raised by the Applicant.

**ISSUE A: Did the Public Body conduct an adequate search for responsive records, as required by section 10(1) of the Act?**

[para 14] Section 10(1) reads:

*10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 15] The Applicant argues that the Public Body, if unable to locate the records requested by the Applicant, is required to inform the Applicant of the results of the search and of the steps taken. The Applicant argues that the Public Body failed to provide the required information and referenced various Orders in support.

[para 16] The Public Body provided specific arguments, documentary evidence and Order references on the application of section 10(1) of the Act in support of its arguments that it met the obligations specified in section 10(1) of the Act. The Public Body argued that responsive records were provided to the Applicant within the time limits set out in the Act. The Public Body also provided me with clear documentary evidence, in the form of a letter and a series of e-mails that it provided the Applicant with necessary details involved with the search and the results of the search associated with responding to her access request.

[para 17] Weighing the evidence and arguments before me, I find that the Public Body conducted an adequate search for responsive records, as required by section 10(1) of the Act.

**ISSUE B: Did the Public Body have the authority to disclose the Applicant’s personal information, as provided by section 40(1) of the Act?**

[para 18] Section 40(1)(c) of the Act reads:

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

(c)for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

[para 19] Section 40(1) of the Act provides a public body with authority to disclose personal information.

[para 20] Under section 65(3) of the Act, a person who believes that the person’s own personal information had been collected, used or disclosed in contravention of the Act may ask me to review the matter.

[para 21] The Applicant complained that the Minister’s Executive Assistant, in the course of attempting to assist the Applicant by addressing her concerns with respect to Grant MacEwan College, disclosed personal information by providing Grant MacEwan College with her e-mail address, name and communications regarding Grant MacEwan College.

[para 22] The Applicant believes that the Public Body in disclosing her personal information did so with “reckless indifference or willful blindness to the lack of statutory authority for the Act”.

[para 23] Section 1(1)(n)(i) to (ix) of the Act defines personal information and includes the Applicants name, e-mail address and the identifiable information and I accept that the information at issue is personal information.

[para 24] In this case the e-mails of the Applicant to the Executive Assistant often referred to unsuccessful attempts to have their complaint addressed by Grant MacEwan College. The Applicant was known to Grant MacEwan College and the Minister’s Office would not have been able to assist the Applicant without providing the personal information required. By doing so the Public Body disclosed the personal information as it believed there were compelling reasons for it to do so.

[para 25] The Applicant argued that the Public Body may have wished to expedite the concerns of the Applicant to be addressed but it has not proved an appropriate authority for which the Public Body was permitted to share the information with another public body.

[para 26] In these circumstances it was not unreasonable for the Applicant, in making the request for assistance of the Public Body and understanding the working

relationship between Public Body and Grant MacEwan College, to have expected that the personal information would have to be disclosed in order for the Public Body to effectively address the issues raised. Section 40(1)(c) allows a public body the authority to disclose personal information if the disclosure of the personal information was necessary for the purpose for which the information was collected or for a use consistent with that purpose.

[para 27] The Public Body, in this case the Executive Assistant, has the authority to exercise discretion under section 40(1)(c) of the Act and to disclose the personal information provided as sharing the information with Grant MacEwan College was necessary for the addressing the concerns raised by the Applicant.

[para 28] In arriving at a decision to disclose the personal information the Public Body considered the legislative authority joining the two bodies to work together and for the Public Body to oversee the activities of the Grant MacEwan College. This was the very reason the Applicant sought the assistance of the Public Body.

[para 29] The circumstances surrounding the disclosure of the information was that the Public Body was motivated with the intent of addressing the complaints and concerns raised by the Applicant with respect to Grant MacEwan College. To be in a better position to assist the Applicant the Public Body needed to share this information with Grant MacEwan College. In addition, it would not be unreasonable for the Applicant, in making the request for assistance of the Public Body, to have expected that the personal information would have to be disclosed in order for the Public Body to effectively address the issues raised by her.

[para 30] I find that the information was disclosed for the purpose for which the information was collected and that the action of disclosure by the Public Body was consistent with that purpose.

[para 31] I find that the Public Body had the authority to disclose the Applicant's personal information, as provided by section 40(1)(c) of the Act.

**ISSUE C: Did the Public Body conduct an adequate search for responsive records, as required by section 10(1) of the Act?**

[para 32] The Minister's Executive Assistant advised the Assistant Deputy Minister for the Public Body about the Applicant's e-mailed complaint regarding Grant MacEwan College. The Applicant subsequently made an access request for all records associated with communications between the Minister's Executive Assistant and the Assistant Deputy Minister. The Applicant speculates that there must have been further follow-up and communication between the Minister's Executive Assistant and the Assistant Deputy Minister.

[para 33] The Public Body provided Applicant with responsive records and the Applicant believed that other records still existed. In my view the Public Body provided the Applicant with a clear written account of the record searches held and of the additional records searches performed. The copy of the record search evidence in the correspondence of the Public Body before me supports the finding in favour of the adequacy of the record searches conducted. There is no evidence that the follow-up communications the Applicant thought must exist, do not.

[para 34] Weighing the evidence and arguments before me, I find that the Public Body conducted an adequate search for responsive records, as required by section 10(1) of the Act.

## **V. ORDER**

[para 35] As I am not biased, I have jurisdiction to conduct the inquiry into the issues raised by the Applicant.

[para 36] The Public Body conducted an adequate search for responsive records, as required by section 10(1) of the Act (Review Number 2576).

[para 37] The Public Body had the authority to disclose the Applicant's personal information, as provided by section 40(1)(c) of the Act (Review Number 2577).

[para 38] The Public Body conducted an adequate search for responsive records, as required under section 10(1) of the Act (Review Number 2633).

[para 39] Given my findings, there is no Order to make under section 72 of the Act.

Frank Work, Q.C.  
Information and Privacy Commissioner





