

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-009

October 25, 2010

AGRICULTURE FINANCIAL SERVICES CORPORATION

Case File Number F4918

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that the Agriculture Financial Services Corporation (the “Public Body”) disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

The Public Body allegedly disclosed information about the Complainant’s farming operation, financial numbers, livestock, feed, equipment, crop insurance contract, insurance options, claims for payment and dollar values received for them. The Adjudicator found that none of this information was the Complainant’s “personal information” as defined under section 1(n) of the Act, as it was not about him in his natural or personal capacity, and it did not otherwise have a personal dimension. Rather, the information was business information about the Complainant’s sole proprietorship, which farms and grows crops.

As the Public Body did not disclose the Complainant’s personal information, the Adjudicator concluded that the Public Body could not have disclosed his personal information in contravention of the Act.

Statutes and Regulation Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 17, 40, 40(1)(b), 40(1)(c), 40(1)(k)(ii), 40(1)(l) and 72; *Agriculture Financial Services Corporation Act*, R.S.A. 2000, c. A-12; *Agriculture Financial Services Regulation*, Alta. Reg. 99/2002, s. 27(1).

Authorities Cited: **AB:** Orders 96-019, F2002-006, F2004-026, F2006-019, F2006-030, F2007-019 and F2008-020. **ON:** Orders P-16 (1988) and PO-2645 (2008).

I. BACKGROUND

[para 1] In a letter dated April 3, 2009, the Complainant complained to this Office that the Agriculture Financial Services Corporation (the “Public Body”) disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

[para 2] The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Complainant requested an inquiry by letter dated November 10, 2009. A written inquiry was set down.

II. INFORMATION AT ISSUE

[para 3] The information that the Public Body allegedly disclosed in contravention of the Act is described below.

III. ISSUES

[para 4] The Notice of Inquiry, issued April 28, 2010, set out the following issues:

Did the Public Body disclose the Complainant’s personal information as that term is defined in section 1(n) of the Act?

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

IV. DISCUSSION OF ISSUES

A. Did the Public Body disclose the Complainant’s personal information as that term is defined in section 1(n) of the Act?

[para 5] Section 1(n) of the Act defines “personal information” as follows:

1(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,

(iii) the individual’s age, sex, marital status or family status,

- (iv) *an identifying number, symbol or other particular assigned to the individual,*
- (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
- (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*
- (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 6] In inquiries involving the alleged unauthorized disclosure of personal information, the initial burden of proof normally rests with the complainant, in that the complainant has to have some knowledge, and adduce some evidence, regarding what personal information was disclosed, and the manner in which the personal information was disclosed; the public body then has the burden to show that its disclosure of personal information was in accordance with the Act (Order F2006-019 at para. 51; Order F2007-019 at para. 8).

[para 7] Under the *Agriculture Financial Services Corporation Act*, the Public Body insures eligible persons under a crop insurance plan. The Complainant says that the Public Body orally disclosed his personal information during a meeting on November 3, 2006, which was held to discuss his son's insurance contract and eligibility. The meeting was attended by the Complainant, another individual who was acting as a witness, and two of the Public Body's employees.

[para 8] A public body's oral disclosure of recorded personal information falls within the purview of the Act (see, e.g., Order F2006-019 at para. 83). Here, the Public Body does not dispute that its employees orally disclosed information at the meeting on November 3, 2006. The Public Body acknowledges that it "may have disclosed information relating to the Complainant's carry over grain, grain storage and yield verification in order to establish an increased understanding of the status of the farming relationship between [the Complainant's son] and the Complainant to attempt to finalize production for yields insured in 2006 by [the Complainant's son]". The Public Body also does not argue that the information that was disclosed was not recorded. However, it argues that its employees did not disclose any of the Complainant's "personal information" as defined under the Act.

[para 9] The Public Body submits that its mandate is to offer crop insurance products to insured persons, but that it does not deal with individuals in their personal capacity. It says that it is legally restricted to dealing with individuals in their business capacity under section 27(1) of the *Agriculture Financial Services Regulation*, in that “[a] person is eligible for crop insurance if that person operates a farm in Alberta and is or will be (a) making decisions for cultural and cropping practices for that farm, (b) directly responsible for work involved in producing insurable crops and for paying for that work, and (c) receiving the majority share of the proceeds from the sale or disposition of insurable crops”. The Public Body notes that, under its Contract of Insurance, an “Insured” can be an “individual” – in addition to a partnership, joint venture or corporation – but that the Insured “must be engaged in the business of growing and harvesting a crop, directly or as a custom farm employer and be legally, financially and operationally independent...”.

[para 10] Given the provisions of the *Agriculture Financial Services Regulation* and the terms of the Contract of Insurance, the Public Body says that it deals with individuals in their capacity as operators of a farm who make farming decisions, who receive farm proceeds, and who are in the business of growing and harvesting a crop. It effectively argues that the information alleged to have been disclosed at the meeting on November 3, 2006 was what I will call the Complainant’s “business information”, as opposed to his “personal information”. The Public Body submits that there is nothing in the Complainant’s submissions to suggest that the representatives of the Public Body disclosed any information other than information relating to the Complainant’s farming operation, his farm production, or his custom farming business.

[para 11] In his complaint, the Complainant says that the Public Body’s employees “presented my operation, as well as my financial numbers at the time”. Given the context, I take the reference to his “operation” to be to his farming operation and the reference to his “financial numbers” to be to the financial numbers in relation to that farming operation.

[para 12] In his request for inquiry, the Complainant refers to the Public Body’s disclosure of his “personal contract, consulting, between the Public Body and myself”, its disclosure of “[t]he number of livestock, what is fed to these animals, the equipment I use in this operation”, and its disclosure of “the value of my personal CAIS [Canadian Agricultural Income Stabilization Program] claims”.

[para 13] In his submissions, the Complainant again says that the Public Body’s employees “exposed my personal consulting contract with the public body”. He also says that they “accused me of stealing and hiding [my son’s] grain [and] feeding this lost grain to livestock”, and that they then corrected “my livestock situation [by acknowledging that] I have not owned livestock for several years before this meeting”. The Complainant adds that the Public Body “discussed my Insurance options ... if I ever wanted to get Crop Insurance ever again”. He says that, later in the meeting, “[m]y consulting contract and dollar values were again disclosed as well as my numerous outstanding claims and the zero dollar value I would receive for them”.

[para 14] Finally, I note that the Public Body indicates that, at some point, the Complainant also alleged disclosure of his “management practices”.

[para 15] On my review of all of the alleged disclosures by the Public Body, as just set out, I find that the Public Body did not disclose the Complainant’s personal information. Under section 1(n), “personal information” is recorded information about an identifiable *individual*, which means a human being (Order 96-019 at para. 67) acting in his or her natural capacity (Order F2002-006 at para. 92). The Public Body cites the following passage:

The use of the term “individual” in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended “identifiable individual” to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make it clear. The types of information enumerated under ... the Act as “personal information” when read in their entirety, lend further support to [the] conclusion that the term “personal information” relates only to natural persons. [Order F2002-006 at para. 92, citing Ontario Order P-16 (1988) at p. 19.]

[para 16] The above makes a distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual’s business, whether it happens to be a sole proprietorship, partnership, unincorporated association, corporation or any other type of entity. Even where an individual is the only person connected to a business, so that it might be argued that information about the business is also information about the individual, it has been concluded that there is no “personal information” within the definition set out in the Act (Order F2002-006 at paras. 90 and 93).

[para 17] Further, information about the performance of work responsibilities or the business activities of an individual is not, generally speaking, personal information about that individual, as there is no personal dimension (Order F2004-026 at para 108; Order F2006-030 at para. 10; Order F2008-020 at para. 27). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting their work or business as “about them” (Order F2006-030 at para. 12; Order F2008-020 at para. 28). Having said this, where there is associated information suggesting that an individual performing work-related or business responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual, the record of the act or activities and information about them potentially has a personal dimension, and thus may be the individual’s personal information (Order F2006-030 at paras. 12, 13 and 16; Order F2008-020 at para. 28).

[para 18] Here, the information that the Public Body possibly disclosed consists of information about the Complainant’s farming operation and its financial numbers;

information about livestock, feed and equipment; information about CAIS claims and payments; information about a crop insurance contract, insurance options, insurance claims and dollar values received for them; information about management practices; and information about carry over grain, grain storage and yield verification. None of this information is about the Complainant in his personal or natural capacity. Rather, it is business information about the Complainant's sole proprietorship, which farms and grows crops. I see that the Complainant also refers in his submissions to a "Ltd." company, so some of the foregoing information may also be about a corporation.

[para 19] To the extent that the information indirectly relates to the Complainant as an individual, I find that none of it has a sufficiently personal dimension, so as to render it "personal information" within the meaning of the Act. I note that a similar conclusion was reached in an Ontario Order that discussed information in relation to individuals operating a farming business [Ontario Order PO-2645 (2008) at paras. 16 to 24]. I considered whether the meeting that the Public Body held on November 3, 2006 – during which there was a discussion of whether the Complainant and his son were affiliated for the purpose of an insurance claim, a discussion of whether the son was properly eligible, and a discussion of some of the Complainant's own claims – created a context in which there was a suggestion of wrongdoing on the part of the Complainant, or in which disclosure of information would reflect negatively on the Complainant, so as to add a personal dimension to the information. I did not find this to be the case. While the Complainant says that one representative of the Public Body initially accused him of hiding his son's grain and feeding it to livestock, he says that the other representative immediately corrected this misunderstanding. On the whole, I find no circumstance that rendered any part of the discussion a disclosure of the Complainant's "personal information".

[para 20] In his request for an inquiry and his submissions, the Complainant says that the Public Body disclosed information about his "consulting contract and dollar values", arguing that it has nothing to do with his business of growing crops. The Complainant writes that this contract was "with" the Public Body. The Public Body responds that it does not have a consulting contract with the Complainant and that it believes that he is referring to his crop insurance contract.

[para 21] Even if the Complainant is referring to a contract other than his crop insurance contract with the Public Body, I would still find that the information in relation to the contract is not the Complainant's personal information. A "consulting" contract, and the "values" associated with it, is still business information, as it is about a business endeavor or enterprise. Moreover, it is business information even if the contract is not with the Public Body at all. It is the nature of the information – not the Public Body's relationship to it – that determines whether it is "personal information". In other words, the contract in question can indeed have nothing to do with the Complainant's business of growing crops, and therefore nothing to do with the Public Body, but it is still business information rather than personal information. The same holds for information about the "Ltd." company, which the Complainant says is not involved in growing crops and does not have crop insurance with the Public Body. To the extent that any of the information

alleged to have been disclosed by the Public Body relates to this company, as opposed to the Complainant's farming operation or his crop growing, it is still business information.

[para 22] By the same token, just because the Public Body deals with the Complainant in his business capacity does not necessarily mean that everything that it discloses in relation to the Complainant is business information rather than personal information. Hypothetically-speaking, the Public Body might have disclosed the Complainant's personal information. However, it did not do so in this case.

[para 23] The Complainant argues that the Public Body has previously treated information about its dealings with himself and his son as personal information. He says so because, on October 21, 2009, he asked the Public Body for his son's wheat yield guarantees, premiums, margins and inventory, yet the Public Body refused to disclose this information to him. It refused on the basis that the Complainant was not his son's authorized representative, as explained in a response from the Public Body's lawyer on October 23, 2009. The Complainant argues that, if he is not entitled to know his son's information without consent, his son and the witness who attended the November 3, 2006 meeting must likewise not be entitled to know the Complainant's information.

[para 24] The Public Body's refusal to disclose information to the Complainant has nothing to do with whether the information allegedly disclosed at the November 3, 2006 meeting was the Complainant's personal information. A public body might hypothetically refuse to disclose personal information, and it might also hypothetically refuse to disclose business information. The lawyer's letter of October 23, 2009 makes no mention of what type of information the Public Body considered the information requested by the Complainant to be. Finally, and more importantly, any prior view or determination on the part of the Public Body, as to whether particular information is or is not personal information, has no bearing on my conclusions in this inquiry. As the Commissioner's delegate, it is up to me to decide whether information is or is not personal information within the meaning set out in the Act.

[para 25] In his submissions, the Complainant disputes the Public Body's determination that he and his son are "Associates" for the purpose of a crop insurance claim. He also says that some of his past claims have not been paid out by the Public Body, when he believes that he is entitled to compensation and disputes the Public Body's allegation that he wrote a letter in which he "cancelled" his claims. He further argues that an affidavit sworn by a representative of the Public Body, who attended the November 3, 2006 meeting, does not contain the whole truth.

[para 26] My finding that the Public Body did not disclose the Complainant's personal information has nothing to do with its determinations regarding the Complainant's associate status and insurance claims, and has nothing to do with facts that the Complainant alleges to be missing or misleading in the Public Body's affidavit. My finding is based on the nature of the information that the Complainant says was disclosed by the Public Body at the meeting on November 3, 2006. Even if the Public Body is wrong in its decisions regarding the Complainant's associate status and insurance claims,

the information allegedly disclosed at the meeting was still business information rather than personal information.

[para 27] I conclude that the Public Body did not disclose the Complainant's personal information as that term is defined in section 1(n) of the Act.

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

[para 28] Under Part 2 of the Act, a public body may disclose an individual's personal information if one or more of the purposes or circumstances set out in section 40 is present. In the event that I found that there was a disclosure of the Complainant's personal information, the Public Body argues that it had the authority to disclose the information under section 40(1)(b) (disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17), section 40(1)(c) (disclosure is for the purpose for which the information was collected or compiled or for a use consistent with that purpose), section 40(1)(k)(ii) (disclosure is for the purpose of making a payment owing by the Government of Alberta or by a public body to an individual) and/or section 40(1)(l) (disclosure is for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit).

[para 29] If a complainant points to evidence that his or her personal information has been disclosed by a public body, the public body then has the onus to establish that its disclosure of the personal information was authorized under the Act (Order F2007-019 at para. 9). Because I have concluded, in the preceding part of this Order, that the Public Body in this inquiry did not disclose the Complainant's personal information, the Public Body does not have to justify its disclosure of any information that the Complainant says was disclosed at the meeting on November 3, 2006.

[para 30] I conclude that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

V. ORDER

[para 31] I make this Order under section 72 of the Act.

[para 32] I conclude that the Public Body did not disclose the Complainant's personal information as that term is defined in section 1(n) of the Act. I therefore also conclude that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

Wade Riordan Raaflaub
Adjudicator