

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2011-014

November 8, 2011

ALBERTA ENERGY

Case File Number F5491

Office URL: www.oipc.ab.ca

Summary: The Complainant, who is a commissioner for oaths, made a complaint that Alberta Energy, (the Public Body), had disclosed her personal information in contravention of Part 2 of the FOIP Act, when it posted a document containing her name and signature on the internet.

The Adjudicator found that the commissioner for oaths had signed the document in her capacity as a commissioner for oaths. The Adjudicator found that the name and signature of the Complainant were information about the Complainant acting in a statutory capacity, and were not personal information about the Complainant. The Adjudicator confirmed that the Public Body had not contravened Part 2 of the FOIP Act when it posted the document on the internet.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 40, 72 *Commissioner for Oaths Act*, R.S.A. 2000, C-20, s. 12, 15; *Metallic and Industrial Minerals Exploration Regulation*, Alberta Regulation 213/98, s.40

Authorities Cited: **AB:** Orders F2008-028, F2009-026

I. BACKGROUND

[para 1] On August 19, 2010, the Complainant, who is an employee of Alberta Energy (the Public Body) and is also a Commissioner for Oaths under the *Commissioner*

for Oaths Act, made a complaint that Alberta Energy, (the Public Body), disclosed her signature in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when it posted on its website a mineral assessment report containing an affidavit she had signed.

[para 2] The Commissioner authorized mediation to resolve the complaint. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 3] Both the Complainant and the Public Body provided initial and rebuttal submissions for the inquiry.

II. ISSUE

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

III. DISCUSSION OF ISSUE

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

[para 4] The Complainant argues the following:

The Complainant submits that the release of the Commissioner of Oaths signature from the internet is a release of personal information in an unreasonable manner since it is unnecessary and exposes her to possible identity theft, in contravention of section 40(4) of the *Freedom of Information and Protection of Privacy Act*. The Complainant has no objection to a release of the record arising from a request for information under FOIP. The Complainant submits it is an unreasonable invasion of privacy and increases her risk of identity theft to have the records posted on the internet with her signature. It has also caused her some emotional stress. A reasonable compromise would be to redact her signature on the website, leave her name on the document and indicate it was signed by her (AND indicate that the original is available upon request under FOIP).

The Complainant submits that section 17(2)(e) of FOIP only authorizes the disclosure of general information respecting a person’s job such as salary range, duties, or title (i.e. “lawyer for Alberta Justice representing Alberta Energy”). It does not authorize release of actual work product of an employee. Section 17(2)(e) authorizes the release that she is a Commissioner of Oaths but not any work product, such as in this one, her signature. Likewise, it authorizes the release of information that a person is a lawyer but not a legal opinion produced by that employee. Section 17(2)(e) was never intended to and does not apply to actual work product produced by a person. As personal information is at stake, section 17(2)(e) should be interpreted narrowly.

The Complainant submits that under section 17(4)(g)(i) of the FOIP Act, the release of the Commissioner of Oaths name when it appears with other personal information about the third party (i.e. the Commissioner of Oaths signature) is presumed to be an unreasonable invasion of privacy. While appointment as a Commissioner of Oaths is not sensitive or private, a person’s signature is personal information and is sensitive and private; not something to be displayed on the internet unless the reasons to do so are unavoidable and compelling.

[para 5] In turn, the Public Body argues that disclosure of the Complainant's signature was not an unreasonable invasion of the Complainant's personal privacy and was therefore authorized by section 40(1)(b) of the FOIP Act. The Public Body states:

The DOE is sensitive to the precedent that could be set by severing the signature from the records. The DOE submits that this action would undermine the openness and accountability premise upon which government is expected to operate and compromises the integrity of the appointment of a Commissioner for Oaths.

The DOE submits that overall, removing the signature would create an incredibly dangerous and conflicted position. The signature of the Complainant was disclosed in the required format of the *jurat* and is being disclosed in a manner consistent with circumstances under which the signature was provided – within the Mineral Assessment report as a Commissioner for Oaths. The reports are deemed publically available after a one-year period of confidentiality.

It was confirmed by the Alberta Geological Survey for reports created under the relevant statute (Section 40 of the [Metallic and Industrial Minerals Exploration Regulation]) Mineral Assessment reports have been available in paper form under a routine process since 1999. The records became available electronically online in 2001. The processes for paper-based and electronic access have never required authorization to gain access, therefore employing an “upon request only process” was not necessary, practical or cost effective. The time frame for electronic access actually predates the date of the Complainant's signature.

The DOE submits that disclosure of the signature is consistent with circumstances under which the signatory (the Complainant) provided it. The public body employee commissioned the Mineral Assessment reports, in an official capacity, knowing the *jurat* becomes part of the document and is contained in a record deemed publicly available after a one-year confidentiality period under the MIMER. The DOE submits that disclosure of the Commissioner for Oaths signature to be reasonable, in no way excessive, and therefore in accordance with section 40(4).

[para 6] In order to answer the question of whether the Public Body has disclosed the Complainant's personal information in contravention of Part 2 of the FOIP Act, I must first consider whether the Complainant's name and signature as they appear on the document that is the subject of this complaint are her personal information, and, if so, determine whether the Public Body's action of posting this document on the internet contravened Part 2 of the FOIP Act.

[para 7] Section 1(1)(n) defines personal information under the FOIP Act:

I 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,*
 - (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;*

Personal information under the FOIP Act is information about an identifiable individual that is recorded in some form.

[para 8] However, individuals do not always act on their own behalf. Sometimes individuals may act on behalf of others, as an employee does when carrying out work duties for an employer. In other cases, an individual may hold a statutory office, and the actions of the individual may fulfill the functions of that statutory office. In such circumstances, information generated in performance of these roles may not necessarily be about the individual who performs them, but about the Public Body for whom the individual acts, or about the fulfillment of a statutory function.

[para 9] The Applicant argues that the Complainant's name and signature are "work product" and notes that work product is not addressed by section 17(2)(e) of the FOIP Act. Section 17(2)(e) states:

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

- (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council...*

While I agree with the Applicant that section 17(2)(e) does not address work performed by an individual in the individual's capacity as an employee, it does not follow from the fact that section 17(2)(e) does not apply to such information that the information is personal information or that it would be an unreasonable invasion of personal privacy to disclose it.

[para 10] In Order F2008-028, the Adjudicator reviewed the decisions of this office that address information about individuals acting in an official capacity, and concluded that information about individuals acting in an official or professional capacity is not

personal information to which section 17 of the FOIP Act can apply. He concluded the following:

In many of the records at issue, the Public Body applied section 17 of the Act to the names, job titles and/or signatures of individuals who sent or received correspondence, or who acted in some other way, in their capacities as politicians, employees of the Public Body, other government officials, or representatives of other bodies, businesses and organizations...

I find that section 17 does not apply to the foregoing names, job titles and signatures. First, in the case of government officials and employees (although not individuals associated with other organizations and businesses), section 17(2)(e) indicates that disclosure of their job titles and positions (i.e., employment responsibilities) is expressly not an unreasonable invasion of their personal privacy (Order F2004-026 at para. 105). Second, many previous orders of this Office have made it clear that, as a general rule, disclosure of the names, job titles and signatures of individuals acting in what I shall variably call a “representative”, “work-related” or “non-personal” capacity is not an unreasonable invasion of their personal privacy. I note the following principles in particular (with my emphases in italics):

Disclosure of the names, job titles and/or signatures of individuals is not an unreasonable invasion of personal privacy where they were acting in *formal* or *representative* capacities (Order 2000-005 at para. 116; Order F2003-004 at paras. 264 and 265; Order F2005-016 at paras. 109 and 110; Order F2006-008 at para. 42; Order F2008-009 at para. 89).

Disclosure of the names, job titles and/or signatures of individuals acting in their *professional* capacities is not an unreasonable invasion of personal privacy (Order 2001- 013 at para. 88; Order F2003-002 at para. 62; Order F2003-004 at paras. 264 and 265).

The fact that individuals were acting in their *official* capacities, or signed or received documents in their capacities as public officials, weighs in favour of a finding that the disclosure of information would not be an unreasonable invasion of personal privacy (Order F2006-008 at para. 46; Order F2007-013 at para. 53; Order F2007-025 at para. 59; Order F2007-029 at paras. 25 to 27).

Where third parties were acting in their *employment* capacities, or their personal information exists as a consequence of their activities as *staff performing their duties* or as a *function of their employment*, this is a relevant circumstance weighing in favour of disclosure (Order F2003-005 at para. 96; Order F2004-015 at para. 96; Order F2007-021 at para. 98; Order F2008-016 at para. 93).

I further note that the foregoing principles have been applied not only to the information of employees of the particular public body that is a party to the inquiry, but also to that of employees of other public bodies (Order F2004-026 at paras. 100 and 120), representatives of organizations and entities that are not public bodies (Order F2008-009 at para. 89; Order F2008-016 at para. 93), individuals acting on behalf of private third party businesses (Order 2000-005 at para. 115; Order F2003-004 at para. 265), individuals performing services by contract (Order F2004-026 at paras. 100 and 120), and individuals acting in a sole or independent capacity, such as lawyers and commissioners for oaths (Order 2001-013 at paras. 87 and 88; Order F2003-002 at para. 61). In my view, therefore, it does not matter who the particular individual is in order to conclude, generally, that section 17 does not apply to personal information that merely reveals that an individual did something in a formal, representative, professional, official, public or employment capacity. It has also been stated that records of the performance of work responsibilities by 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 F2007-021 at para. 97). Absent a personal aspect, there is no reason to treat the records of the acts of individuals conducting the business of government – and by extension other bodies and organizations – as “about them” (Order F2006-030 at para. 12). In other words, although the

names of individuals are always their personal information [as it is defined as such in section 1(n)(i) of the Act], the fact that individuals sent or received correspondence – or conducted themselves in some other way in connection with their employment, business, professional or official activities, or as representatives of public bodies, businesses or organizations – is not personal information to which section 17 can even apply.

The present inquiry provides a useful distinction. I concluded above that disclosure of the names, job titles and other identifying information of members of the general public – who wrote correspondence or otherwise interacted with the Public Body in their private or personal capacities – would be an unreasonable invasion of their personal privacy. By contrast, when the records at issue merely reveal that individuals acted in their work-related or non-personal capacities, or did something as representatives of a public body, business or organization, section 17 does not apply to their names, job titles or signatures.

[para 11] In Order F2009-026, I said:

If information is about employees of a public body acting in a representative capacity the information is not personal information, as the employee is acting as an agent of a public body. As noted above, the definition of “third party” under the Act excludes a public body. In Order 99-032, the former Commissioner noted:

The Act applies to public bodies. However, public bodies are comprised of members, employees or officers, who act on behalf of public bodies. A public body can act only through those persons.

In other words, the actions of employees acting as employees are the actions of a public body. Consequently, information about an employee acting on behalf of a public body is not information to which section 17 applies, as it is not the personal information of a third party. If, however, there is information of a personal character about an employee of a public body, then the provisions of section 17 may apply to the information. I must therefore consider whether the information about employees in the records at issue is about them acting on behalf of the Public Body, or is information conveying something personal about the employees.

[para 12] The question to be determined is whether the Complainant signed the mineral assessment reports in her personal capacity or in an official capacity. Both parties agree that the Complainant signed reports as part of her job duties. Both parties also agree that the Complainant is a commissioner for oaths in Alberta and signed the reports in that role.

[para 13] Section 12 of the *Commissioner for Oaths Act* states:

12(1) A commissioner shall, on each affidavit, declaration, affirmation or other document that the commissioner signs in the commissioner’s capacity as a commissioner, legibly print or stamp in legible printing next to the commissioner’s signature

- (a) the commissioner’s name, and*
- (b) if the commissioner is appointed under section 6 or 7, the date on which the commissioner’s appointment terminates.*

(2) A commissioner who fails to comply with this section is guilty of an offence and liable to a fine of not more than \$100.

Section 12 requires a commissioner for oaths to include the commissioner's name and signature, and the date on which the commissioner's appointment terminates, on documents that the commissioner signs in the commissioner's capacity as a commissioner for oaths. However, an individual who is a commissioner for oaths need not comply with section 12 if the individual is not signing a document in the capacity of a commissioner for oaths.

[para 14] I find that the Complainant signed the document, reproduced in Tab 1 of the Public Body's submissions, in her capacity as a commissioner for oaths. Had she signed this declaration in her personal capacity, or in her capacity as an employee of the Public Body, the documents requiring her signature would not comply with the requirements of the legislation under which they were created.

[para 15] The document in question was created under authority of the Metallic and Industrial Minerals Exploration Regulation (MIMER). At the time the Complainant signed the document, section 40 of this Regulation stated, in part:

40(1) As soon as possible after the completion of a program of exploration, the licensee for the program shall,

...

(b) in respect of exploration that is not conducted on the location of a metallic and industrial mineral permit, submit to the Minister of Energy an assessment work report in a form consistent with National Policy 2A - Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators, as amended from time to time, or in any other form that is acceptable to the Minister of Energy.

(2) Each assessment work report submitted under subsection (1)(b) must

...

(e) be accompanied by an affidavit of the licensee or his agent attesting to the veracity of the expenses incurred in conducting that assessment work.

The Regulation contains a mandatory requirement that assessment work reports be accompanied by an affidavit of the licensee or the licensee's agent attesting to the expenses incurred in conducting the assessment. The document posted by the Public Body on the internet contains an affidavit sworn for the purposes of meeting the requirements of section 40(2)(e) of MIMER.

[para 16] Under the *Commissioner for Oaths Act*, commissioners for oaths are authorized to administer oaths and to take and receive affidavits, declarations, and affirmations. In addition, section 15 of that Act makes it an offence for anyone who is not a commissioner for oaths to do so. Section 40 of MIMER required an affidavit to accompany an assessment work report; consequently, it was necessary for a commissioner for oaths acting in that capacity to take or receive the affidavit in order to comply with both the *Commissioner for Oaths Act* and MIMER.

[para 17] Having reviewed the document the Public Body posted on the internet, I am satisfied that the Complainant signed it in her capacity as a commissioner for oaths. I am also satisfied that the Complainant's name, signature, and commission expiry date as they appear on the document do not convey anything personal about the Complainant, but instead establish that she performed her statutory function as a commissioner for oaths.

[para 18] If the name and signature of a commissioner for oaths who signs a document in that capacity were the commissioner's personal information, this would lead to the unworkable result that a public body would be required to comply with the requirements of a Part 2 of the FOIP Act whenever it collects, uses, and discloses affidavits and statutory declarations, but a private individual would not. This could potentially place public bodies at a legal disadvantage in situations where it is necessary to prove facts.

[para 19] For the reasons above, I find that the name and signature of the Complainant contained in the document posted on the internet by the Public Body are not personal information under the FOIP Act.

[para 20] As I find that the information that is the subject of this complaint is not personal information, I need not consider whether its disclosure was made in compliance with Part 2 of the FOIP Act.

IV. ORDER

[para 21] I make this Order under section 72 of the Act.

[para 22] I confirm that the Public Body did not contravene the *Freedom of Information and Protection of Privacy Act* when it posted a document containing the Complainant's name and signature on the internet.

Teresa Cunningham
Adjudicator