

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2013-31**

October 2, 2013

**CENTRAL ALBERTA CHILD AND FAMILY SERVICES  
AUTHORITY (REGION 4)**

Case File Number F6124

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant complained that the Central Alberta Child and Family Services Authority (Region 4) (the Public Body), her employer, collected, used, and disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act).

The Adjudicator found that the purpose for which the Public Body collected the Complainant's personal information was to manage employees – specifically, to manage the Complainant in relation to medical restrictions that impacted the duties she was able to perform. The Adjudicator further found that the use the Public Body made of the Complainant's personal information was consistent with the purpose for which it was collected and that the personal information was disclosed also for the purpose of managing employees. Finally, the Adjudicator found that the Public Body disclosed the Complainant's personal information only to the extent necessary to meet its purpose.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 39, 40, and 72.

**Authorities Cited: AB:** Order F2005-003.

## I. BACKGROUND

[para 1] In October of 2010, the Complainant was an employee of Central Alberta Child and Family Services Authority (Region 4) (the Public Body). She was asked to assist in inventory duties which she felt she was not medically able to perform, which involved some lifting. So, on October 25, 2010, she provided the Office Administrator with a note from her doctor which stated that due to the Complainant's medical condition, she could not perform tasks that involve heavy lifting (the first note). According to the Public Body, the first note was provided by the Office Administrator to the Office Manager and to the Complainant's Supervisor.

[para 2] In July of 2011, the Complainant was asked to cover the duties of an employee in another unit (other unit). According to the Complainant, she attempted to perform the job duties in the other unit, but this caused her medical condition to worsen. As a result, on July 22, 2011, she went to her doctor and asked for another note stating that the nature of the work in the other unit could cause her medical condition to get worse (the second note). She was not asked by the Public Body to get the second note but felt compelled to do so. She gave this note to her Supervisor (who was acting as office administrator while the permanent Office Administrator was away). According to the Public Body, the second note was given by the Complainant's Supervisor to the Office Administrator when she returned and to the Office Manager. According to the Complainant, the contents of the note were shared by her Supervisor with at least three other employees during a meeting which took place shortly after she provided the note to her Supervisor. All of these employees were administrative supervisors, but only one of them was the supervisor of the other unit in which the Complainant was asked to cover duties.

[para 3] The Complainant also states that she was asked to attend a meeting with her Supervisor and the Office Administrator in September of 2011. In this meeting she was asked a series of questions about her medical condition, which she refused to answer. She argues that this meeting contravened the Act.

[para 4] The Office of the Information and Privacy Commissioner (this Office), received a complaint from the Complainant on March 9, 2012 that the Public Body had disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act). The Commissioner assigned a portfolio officer to mediate and attempt to resolve the issues between the parties but this was unsuccessful and on July 3, 2012, this Office received a Request for Inquiry. As part of the Request for Inquiry, the Complainant requested an oral inquiry. Her request was granted. On March 26, 2013, the Notice of Inquiry was issued. I received preliminary submissions from both parties in advance of the oral inquiry, which was held on September 17, 2013. At the oral inquiry, I heard evidence from the Complainant, her Supervisor, and the Office Administrator, as well as submissions and arguments from the Complainant and the Public Body.

## II. ISSUES

[para 5] The Notice of Inquiry dated March 26, 2013, sets out the issues for this inquiry as follows:

- A. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**
- B. Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?**
- C. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**

## III. DISCUSSION OF ISSUES

- A. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**

[para 6] During the course of giving evidence at the oral inquiry, the Complainant indicated that she was not concerned with the collection of her personal information (the information in the doctor's notes), but with the use/disclosure of her personal information. However, during the oral inquiry she also raised concerns about a meeting she was asked to attend with her Supervisor and the Office Administrator in which she was asked about her medical condition and what duties she could and could not perform. The Complainant refused to answer their questions. Therefore, at least insofar as the meeting with her Supervisor and the Office Administrator are concerned, the Complainant seems to take issue with the Public Body's collection of her personal information. For this reason, I will make a finding as to whether the Public Body properly collected the Complainant's personal information.

[para 7] The Public Body argued in its submission that it complied with sections 33 and 34 of the Act. Specifically, it argued that the collection was necessary for operating a program of the Public Body (section 33(c)) and noted that information was collected directly from the Complainant.

[para 8] The relevant portions of sections 33 and 34 of the Act state:

*33 No personal information may be collected by or for a public body unless*

...

*(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

*34(1) A public body must collect personal information directly from the individual the information is about...*

[para 9] The personal information in the Complainant's doctor's notes was collected by the Public Body directly from the Complainant; therefore, the Public Body complied with section 34 of the Act.

[para 10] Further, this Office has previously found that managing employees is an operating program or activity of the Public Body as those terms are used in section 33(c) of the Act. However, the Public Body must collect only what is necessary for the purpose of managing employees (see Order F2005-003). The information collected by the Public Body in the doctor's notes was generally what the Complainant's medical condition was and what that condition prevented her from doing. Given that the information in the doctor's notes related to what job duties the Complainant could and could not do, I believe that collecting this information directly related to and was necessary for the Public Body in order to manage its employee (the Complainant). The Public Body would need to know what the Complainant could do so that it could make arrangements for modified work duties and make staffing decisions that would accommodate the Complainant's medical condition.

[para 11] As for the information the Public Body attempted to collect in the meeting between the Complainant, her Supervisor, and the Office Administrator, I find that there was no collection of the Complainant's personal information, for two reasons. The first is that personal information is defined by section 1(n) of the Act as recorded information, and no recorded information was collected. Secondly, the Complainant refused to answer the questions that were asked of her, so there was not a collection of personal information at all – either verbal or otherwise.

[para 12] Therefore, I find that the Public Body complied with sections 33 and 34 of the Act when it collected the Complainant's personal information contained in the first and second notes and that no personal information was collected by the Public Body in the meeting involving the Complainant, her Supervisor, and the Office Administrator. As a result, I will deal with only the Complainant's personal information in the first and second notes for the remainder of this Order

**B. Did the Public Body use the Complainant’s personal information in contravention of Part 2 of the Act?**

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

[para 13] The sharing of the Complainant’s personal information between employees of the Public Body could be defined either as a use or a disclosure among employees of the Public Body. The same considerations apply whether it is a use or a disclosure; therefore, I will deal with issues B and C together.

*i. Use of Information:*

[para 14] The Public Body argues that it used the Complainant’s personal information in accordance with section 39 of the Act. Specifically, the Public Body states that it was permitted to use the Complainant’s personal information pursuant to sections 39(1)(c) and 40(1)(x) of the Act. However, for the reasons below, I find instead that the Public Body was permitted to use the Complainant’s personal information under section 39(1)(a) of the Act.

[para 15] Section 39(1) of the Act states:

*39(1) A public body may use personal information only*

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

*(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*

*(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

[para 16] The Public Body states that it disclosed the Complainant’s information in accordance with section 40(1)(x) of the Act which states:

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

...

*(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body,*

[para 17] I have already found that the Public Body’s purpose in collecting the Complainant’s personal information was to manage its employees and, more specifically, to manage the Complainant.

[para 18] The Public Body states that the Complainant's personal information contained in the first note was disclosed by the Office Administrator to the Office Manager, and to the Complainant's Supervisor. At the oral inquiry, the Office Administrator gave evidence that at the time of the disclosure, she managed 8-10 programs and directly supervised the Administrative Supervisors in the office (one of whom was the Complainant's Supervisor). One of her duties is to ensure that duties within the program areas are covered and to deal with Human Resources for staffing issues. She also stated that the Office Manager is her direct supervisor. The Office Manager manages the entire office and is the person who, after consultation with Human Resources, ultimately makes the decision if an employee will be granted accommodation for modified duties.

[para 19] The Office Administrator testified that the protocol which was in place and followed at the time the Complainant asked to have her work duties modified was that medical notes were to be provided by the employee asking for modified duties to the Office Administrator. The Office Administrator would then pass the note on to the Office Manager and the employee's supervisor. She testified that this was the process that was followed with both the first and second note. The Complainant stated that she did not believe that there was a protocol in place and that she had been advised by the Office Manager that the latter knew nothing about the Complainant's medical condition or her requests for modified duties. I believe that whether there was an official protocol in place or not is not relevant in this inquiry. What is relevant is to whom the information was disclosed and if the use or disclosure of the information was done in accordance with the Act.

[para 20] I find as a fact that the first note was disclosed by the Office Administrator to the Office Manager, and to the Complainant's Supervisor. I also find that the purpose of disclosing this information was to manage personnel. Specifically, the purpose of the disclosure was to manage the Complainant, and find appropriate duties she could perform given her medical restrictions. As well, considering that the Complainant would be working modified duties, I believe that the disclosure was necessary to more broadly manage the personnel within the office, ensuring that there was adequate staffing to complete inventory. Therefore, I find that this use of the Complainant's personal information was consistent with the purpose for which it was collected.

[para 21] At the time the second note was collected by the Public Body, the Complainant had been asked to cover in the other unit and felt she could not do so. She had already begun her work in the other unit when she provided her second note to her Supervisor (who was acting as Office Administrator at the time). I find that the second note was disclosed by the Complainant's Supervisor to the Office Administrator, and to the Office Manager. I find that the purpose of this disclosure was also to manage personnel. Specifically, it was provided to explain the basis for transferring the Complainant back to her unit and also to ensure that there was adequate personnel covering the position in the other unit. Therefore, these uses of the second note were for a purpose that was consistent with the reason that it was collected.

[para 22] The contentious issue revolves around a meeting that occurred shortly after the Complainant provided the second note to her Supervisor. According to the Complainant, she witnessed her Supervisor take her note and ask another supervisor to attend a meeting. The Complainant provided a note from a co-worker (who did not give evidence at the oral inquiry) which states that the Complainant's Supervisor carried what appeared to be the Complainant's second note into a meeting attended by the Complainant's Supervisor and the other three administrative supervisors from the office. Although the Complainant's co-worker did not hear what was discussed in the closed door meeting, the Complainant believes that the second note was disclosed to the other administrative supervisors.

[para 23] The Complainant's Supervisor testified at the oral inquiry that after getting the Complainant's second note, she held a meeting with two other administrative supervisors. One of the supervisors supervised the other unit (in which the Complainant was asked to cover duties of another employee). The other was the supervisor of the unit from which an employee was taken to cover the Complainant's position while she was covering duties in the other unit. She states that the note was never disclosed, nor were its specific contents discussed. The purpose of the meeting was to advise the other supervisors that the Complainant could not cover duties in the other unit, and to plan what to do regarding staffing because of this.

[para 24] The Complainant noted that nothing actually happened after the supervisors met and therefore she questions the stated purpose of the meeting. Her Supervisor explained that the decision was made to monitor the situation and it was decided that no one was needed to cover duties in the other unit after all.

[para 25] The Public Body's evidence regarding the meeting is to be preferred to the Complainant's speculations since it was given by a person who was in attendance at the meeting. I believe that the Complainant's Supervisor was a credible witness. The Complainant's co-worker was not in the meeting and could not say what was discussed.

[para 26] According to the Complainant, a third administrative supervisor from the office was also at the meeting. Although this evidence is at odds with the evidence given by the Complainant's Supervisor at the oral inquiry, I do not believe anything turns on it. I believe disclosing the limited amount of information described in paragraph 23 (that the Complainant could not perform the duties in the other unit) to the third supervisor would still have been done for the purpose of managing employees (a use that is consistent with the purpose for which it was collected) because staffing changes could have affected any of the units for which the supervisors were responsible.

[para 27] To conclude, I find that the second note was not disclosed to the other supervisors and that the contents of the note were not discussed beyond the fact that the Complainant could not continue to cover duties in the other unit. As a result, I find that the Public Body complied with section 39 of the Act when it used the Complainant's personal information.

ii. *Disclosure of information:*

[para 28] As I noted above, if the use of the Complainant's personal information were considered a disclosure, the same considerations would apply as those just discussed, and I would conclude that the Public Body properly disclosed the Complainant's personal information in accordance with section 40(1)(x) of the Act.

[para 29] Section 40(1)(x) of the Act allows a Public Body to disclose information for the purpose of managing or administering personnel. Section 40(1)(x) of the Act states:

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

...

*(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body,*

[para 30] For the reasons above, I find that the information was disclosed for the purpose of managing the Complainant specifically and, more generally, for managing personnel within the office insofar as this was necessary to accommodate the Complainant's medical restrictions.

[para 31] In order to comply with section 40 of the Act, the Public Body must also show that it disclosed personal information only to the extent necessary to meet its purpose. Section 40(4) of the Act states:

*40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

[para 32] At the oral inquiry, counsel for the Public Body submitted that it was necessary to disclose the entirety of the doctor's notes to the Complainant's Supervisor, Office Administrator, and Office Manager because the notes gave adequate details as to what the Complainant's medical restrictions were. I agree. The notes contained information about what the Complainant's condition was generally, how her condition was affected by various work duties, and what duties would be most appropriate for her. This information would have been necessary for the Complainant's Supervisor, Office Administrator, and Office Manager to have, to determine what duties the Complainant could be asked to do. It was also necessary for the Office Manager to have this information to determine if the Complainant ought to be assigned modified duties given the medical opinion of her doctor.

[para 33] As I have accepted that only limited information was disclosed to the other administrative supervisors, I also find that the Public Body disclosed the Complainant's personal information to these individuals that was necessary for them to plan for personnel changes, given the fact that the Complainant could not cover duties in the other unit.



[para 34] For the reasons above, I find that the Public Body properly used/disclosed the Complainant's personal information in accordance with sections 39 and 40 of the Act.

#### **IV. ORDER**

[para 35] I make this Order under section 72 of the Act.

[para 36] I find that the Public Body properly collected, used, and disclosed the Complainant's personal information in accordance with the Act.

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Keri H. Ridley  
Adjudicator