

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-38

October 11, 2013

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F6209

Office URL: www.oipc.ab.ca

Summary: The Complainant, who was a student of the Staff College run by Alberta Justice and Solicitor General (the Public Body), complained that the Public Body used or disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act), when an employee of the Public Body sent his name and mid-term examination mark to two other employees of the Public Body. The Complainant also complained that by sending this information via e-mail, the Public Body failed to make adequate security arrangements to protect his personal information, contrary to the Act.

The Adjudicator found that the Public Body had used and/or disclosed the Complainant's personal information for a purpose that was consistent with the purpose for which it was collected and, therefore, complied with sections 39 and 40 of the Act. The Adjudicator also found that the Public Body had made reasonable security arrangements against unauthorized access, collection, use, or disclosure of the Complainant's personal information (which was sent via e-mail) in accordance with section 38 of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 38, 39, 40, 72, and 92.

I. BACKGROUND

[para 1] In 2011, the Complainant was a student attending a training program operated by Alberta Justice and Solicitor General (the Public Body). According to the parties' submissions, on October 4, 2011, an employee of the Public Body (the Training Sergeant) sent an e-mail containing the Complainant's name and a grade he received on an examination to other employees of the Public Body (the Program Coordinator and the Inspector overseeing the Program) without the Complainant's consent.

[para 2] On May 22, 2012, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office) claiming that by sending his personal information via e-mail, the Public Body had failed to make reasonable security arrangements to protect his personal information in contravention of section 38 of the *Freedom of Information and Protection of Privacy Act* (the Act). He also claimed that his personal information had been disclosed in contravention of the Act. Finally, the Complainant also requested that this alleged breach be dealt with under section 92 of the Act (offences and penalties).

[para 3] The Commissioner authorized a portfolio officer to investigate and attempt to resolve the issues between the parties but this was unsuccessful and on July 9, 2012, the Complainant requested an inquiry. On March 28, 2013, the parties were sent a Notice of Inquiry. I received both initial and rebuttal submissions from both parties.

II. INFORMATION THAT IS THE SUBJECT OF THE COMPLAINT

[para 4] The information that is the subject of the complaint is the Complainant's personal information sent via e-mail on October 4, 2011.

III. ISSUES

[para 5] The Notice of Inquiry dated March 28, 2013 states the issues in this inquiry as follows:

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

[para 6] Although the Complainant raised the issue of the applicability of section 92 of the Act (the offence and penalty section) in both his complaint and in his submissions, I will not be adding this as an issue in this inquiry. For the reasons below, I find that the

Public Body did not contravene the Act and therefore, section 92 of the Act is not applicable in this inquiry.

IV. DISCUSSION OF ISSUES

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

[para 7] Section 39 of the Act governs how a Public Body may use personal information. The portions of section 39 of the Act that are relevant in this inquiry state:

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.

...

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[para 8] In order for section 39 of the Act to apply, the information in question must be the Complainant's personal information and must be information that was used by the Public Body.

[para 9] Personal information is defined by the Act 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 10] The information at issue is the Complainant's name and his grade on a midterm exam. This information falls within the definition of "personal information" found in section 1(n) of the Act.

[para 11] As well, I find that one employee of the Public Body sending the information at issue via e-mail to two other employees of the Public Body is a use of the information.

[para 12] Given my findings above, the Applicant has satisfied his evidential burden and proved that the Public Body used his personal information. In order for the Public Body to have used the Applicant's personal information in accordance with section 39 of the Act, the Public Body must establish that the information was used either:

- for the purpose for which the information was collected or compiled or for a use consistent with that purpose,
- with the consent of the Applicant, or
- for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

[para 13] The Applicant submits that he did not consent to the use of his information and the Public Body has not argued otherwise.

[para 14] The Public Body argues that it was authorized to use the information pursuant to section 39(1)(c) of the Act. It submits that it used the Applicant's personal information for a purpose for which the information could have been disclosed to the Public Body pursuant to section 40(1)(c), 40(1)(h), 40(1)(l) or 40(1)(x) of the Act. I will not make any findings on the applicability of section 39(1)(c) of the Act because, for the reasons below, I believe that the information was used for a purpose that was consistent with the reason for which it was collected (section 39(1)(a)).

[para 15] Section 33 of the Act governs when a Public Body is permitted to collect personal information. It states:

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

(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,

(b) that information is collected for the purposes of law enforcement, or

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

[para 16] At the time the information was collected, the Complainant was a student in a Correctional Peace Officer/Sheriff Recruit Training Program (the Program) run by the Public Body at the Staff College. The Program would constitute an “operating program” or “activity” of the Public Body as those terms are used in section 33(c) of the Act.

[para 17] If I understand the Public Body’s submissions correctly, the Program was used by the Public Body to assess individuals’ suitability for employment with the Public Body as a Correctional Peace Officer or Sheriff. Therefore, if an individual was able to satisfy the requirements of the Program, he or she would be eligible for employment with the Public Body as a Correctional Peace Officer or Sheriff. As part of the Program, individuals are given examinations to test skills and knowledge. I assume in order to fulfill the requirements of the Program, individuals have to pass the examinations. Given the nature of the Public Body’s operating program or activity, I find that collecting the names of individuals’ attending the Program and individuals’ examination grades was necessary. More specifically, I find collecting the Complainant’s name and his mid-term examination grade was necessary for an operating program or activity of the Public Body.

[para 18] As I have found that the collection of the information at issue by the Public Body was permitted by section 33(c) of the Act, it is necessary to examine if the purpose for the collection was consistent with the use that the Public Body made of the information at issue.

[para 19] The Public Body submits that the purpose of collecting the Complainant’s personal information (in this case his name and mid-term grade) was to assess the Complainant’s suitability for the performance of the duties of employees of the Public Body. The Complainant failed his mid-term examination. As a result, his name and grade (along with the names and grades of the other individuals who failed the exam) were sent by the Training Sergeant to the Program Coordinator and copied to the Inspector overseeing the Program. The Public Body submits that this information was shared among these employees of the Public Body in order to help them determine if the

Complainant was suitable for the job for which he was being trained – that is, it was used for the same purpose for which it was collected.

[para 20] The Complainant argues that his grade ought to have been shared only with employees of the Public Body who were grading the exam or were providing feedback on the exam. The focus of the Complainant’s argument is that his information should not have been sent to the Inspector who oversees the Program, but his argument seems to be based mainly on his views that the Inspector is not reputable rather than on what the Inspector was to do with the information. The Complainant also seems to believe that there was some sort of ulterior and underhanded motive for the Training Sergeant’s decision to send the Complaint’s examination marks to the Inspector. However, I note that the Complainant’s mid-term examination mark was sent to the Inspector along with the names and grades of all of the other individuals who failed the exam. The Complainant was not singled out.

[para 21] I find that the Public Body sent the Complainant’s name and mid-term examination grade to the Project Coordinator and to the Inspector in charge of the program so they could use this information to assess the Complainant’s suitability for employment (the Public Body’s stated purpose). According to the information I have, the Program Coordinator and the Inspector who oversaw the Program were at least partially responsible for determining the next step to take with individuals who were not meeting the requirements of the Program; they would therefore need to be kept apprised of individuals who failed exams. The Complainant’s argument about the limited group of people who ought to be advised of his grade (and specifically his argument that the Inspector should not be advised) is not supportable. Therefore, I find that the purpose for the collection of the Complainant’s personal information was consistent with the purpose for which it was used, and the information was used in accordance with section 39(1)(a) of the Act.

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

[para 22] Given my finding that the information at issue was a use within the terms of section 39 of the Act, I do not need to make a finding as to whether the Complainant’s personal information was disclosed in accordance with the Act. However, if I am incorrect, and e-mailing the Complainant’s name and mid-term examination grade to other employees of the Public Body was a disclosure and not a use, I would still find that the Public Body properly disclosed the information at issue pursuant to section 40(1)(c) of the Act which states:

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...

C. Did the Public Body fail to protect the Complainant's personal information in contravention of Part 2 of the Act?

[para 23] The Complainant argues that by sending his name and mid-term examination grade via e-mail, the Public Body failed to adequately protect his personal information in accordance with the Act. He argues that e-mail is not a secure way of sending information.

[para 24] Section 38 of the Act requires a public body to protect personal information by making reasonable security arrangements. Section 38 of the Act states:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 25] The Public Body submitted that the e-mail was sent by an employee of the Public Body to two other employees of the Public Body. The Applicant maintains that this was not a secure method of using his personal information and stated, in rebuttal, that the Public Body provided no proof of its security.

[para 26] The Public Body submitted:

E-mail is the Public Body's system for exchanging electronic messages, including attachments of information and material. Messages exchanged between two Public Body e-mail accounts remain within the corporate computing network and are protected from disclosure to an adequate level. There are no external servers as the system is internal to GoA employees.

The Public Body owns, or is accountable for, all equipment related to its information systems and for the contents of all files stored or transmitted on its equipment or systems...

...In addition, the Corporate Information Security Office monitors use of the information technology system including workstations, e-mail and internet access for security threats to government information and information technology systems such as virus, unauthorized access or unauthorized disclosure of information.

All Public Body employees are provided with access to the email and are provided with a user name and password. In addition, all Public Body employees must use the internet and e-mail in a manner that is appropriate and consistent with the laws of Canada, the Official Oath of Office, the Code of Conduct and Ethics for the Public Service of Alberta, and any applicable Supplementary Code of Conduct and Ethics.

[para 27] Based on these submissions, I find that the Public Body has made reasonable security arrangements against risks of unauthorized access, collection, use, or disclosure

of the information at issue. Therefore, I find that the Public Body has complied with section 38 of the Act.

V. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I find that the Public Body used or disclosed the Complainant's personal information in accordance with the Act.

[para 30] I find that the Public Body complied with section 38 of the Act.

Keri H. Ridley
Adjudicator