

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-03

January 29, 2016

ALBERTA HEALTH SERVICES

Case File Numbers F6724, F6725, F6726, F6727 and F6728

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Summary: Order F2015-10 was issued on April 20, 2015. This Order resulted from a request for review by a Third Party of a decision by Alberta Health Services (the Public Body) to disclose records containing information about expense claims made by the Third Party. The Order left certain issues outstanding which were to be resolved by discussions among the parties, involving the Adjudicator as necessary. The Adjudicator reserved jurisdiction over these matters, and said she would issue a second Order in the present inquiry for any issues that could not be resolved.

Following discussions with the parties, the Public Body provided a second proposed release package. The Third Party raised some objections, and the Adjudicator issued specific instructions with respect to some of these matters, and asked the parties to provide any further evidence they regarded as relevant to particular items. The Public Body provided a letter explaining how it had, in its view, complied with these instructions.

The Adjudicator required some further adjustments to be made.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 30, 72.

Orders Cited: **AB:** Order F2009-037; F2015-10.

I. BACKGROUND

[para 1] This inquiry arises from requests to the Public Body under the *Freedom of Information and Protection of Privacy Act* (“the FOIP Act”, or “the Act”), in August and September 2012, by five requestors, for records relating to the expense claims filed by a person who had been the CEO of the Capital Health Region (the Third Party).

[para 2] The Public Body notified the Third Party indicating its intention to disclose the records with some severing of particular kinds of personal information. The Third Party objected to some aspects of the proposed disclosure, but the Public Body decided to disclose most of the records with redactions as originally proposed. The Third Party requested a review.

[para 3] Mediation/investigation was not successful, and the Third Party requested an inquiry on January 6, 2014. Two of the Requestors participated as affected parties.

[para 4] An inquiry was held with respect to most of the information (excepting that discussed at para 8 below), and an order was issued on April 20, 2015 (Order F2015-10).

[para 5] The initial order left some outstanding matters to be resolved by way of discussion between the Public Body and Third Party, with any matters still outstanding thereafter to be resolved in a second order. (Since this involved a review and discussion of some of the records, the Affected Parties were not asked to participate.)

[para 6] As a consequence of these discussions, on July 8, 2015, the Public Body provided a new proposed release package to the Third Party and to me. On July 17, 2015, the Third Party commented on this proposed release, raising some additional concerns about what was to be released. On October 23, 2015, I issued specific instructions with respect to some of these outstanding matters, and asked the parties to provide any further evidence they regarded as relevant to particular items.

[para 7] The Public Body provided additional comments on December 3, 2105, but the Third Party provided nothing further. A few items remained outstanding, which are dealt with in this Order.

[para 8] In the course of reviewing the records at issue, I noted that they included information of third parties who had not been notified by the Public Body under section 30 of the Act, although it did not seem clear whether some of them may have been acting in personal rather than representative capacities. With respect to that information, I decided to hold a second part to the inquiry dealing specifically with the information of these other third parties. This Order does not deal with the disclosure of information about those third parties, except to clarify who they are and what information will be dealt with in Part 2 of the inquiry, and to specify that the Public Body is not to disclose that information until it is dealt with in Part 2 of the inquiry.

INFORMATION AT ISSUE

[para 9] The issues that remain to be decided in this part of the inquiry are with respect to the following information:

- information that had been redacted in the original response, but was no longer redacted in the most recent release package
- information related to reimbursed expenses or trips that had been arranged but not taken
- the Third Party's signatures
- the names of other third parties who are to be dealt with in Part 2 of this inquiry (that is, which third parties are to be dealt with in this way)
- the personal information associated with names of other third parties who are to be dealt with in Part 2 of this inquiry (that is, which information is to be dealt with in this way).

III. ISSUES

[para 10] The issues are how each of the items above is to be dealt with.

IV. DISCUSSION OF ISSUES

Information that had been redacted in the original response, but was no longer redacted in the most recent proposed release package

[para 11] The Public Body has removed the redactions from a small amount of particular information which it had redacted in its original response. The Third Party says this consists of pages 18, 390, 895, 899, 900 1054, and 1231. (With respect to page 18, my copy of the proposed new release package does not indicate that any existing redaction has been removed from that page.)

[para 12] The Public Body says the newly-*unredacted* information consists of barcodes, which is not personal information. However, only a small part of the information consists of barcodes¹; other information, relating to taxis and private cars and drivers, as well as some airline ticket information, was formerly redacted as non-responsive, but the redactions have been removed.

[para 13] Since this inquiry can deal only with information that the Public Body initially said it was going to disclose (the disclosure of which is the subject of the Applicant's objection), newly-*unredacted* information does not, strictly speaking, form part of this inquiry. However, I will comment on this issue since it has already been dealt with to some degree.

¹ In fact, I found only a single instance of such a change, on page 390.

[para 14] With respect to barcodes in particular, the Public Body justified its action by saying that barcodes have no personal dimension. It is not clear to me what these barcodes represent. No argument was made about this, and I can imagine at least some circumstances in which a barcode appearing on a document owned or possessed by an individual could, if it could be read, indicate something personal about them. The particular barcodes may not in fact contain such personal information. However, if this information were part of the present inquiry, this question would, in my view, have to be decided on the basis of evidence, rather than a bare assertion.

[para 15] As to information which the Public Body formerly redacted as unresponsive to the request, but has now *unredacted*, I presume it did this because it now regards the information as responsive. If it is correct about this, it would be necessary to subject it to the same analysis as the rest of the information. The conclusions already reached for the greatest part of the information might be a good predictor of the outcome, but could not determine that outcome until the exercise was performed, and at present, I have no jurisdiction to perform it.

[para 16] Therefore, if the redactions are to be removed as the Public Body now proposes, the Third Party could now ask for a new review specifically in relation to the information in the package that was formerly redacted but is now being proposed for release. I am not suggesting this would be a sensible course for such a relatively small amount of information. However, it remains the case that the information is outside the scope of this inquiry, and I can make no conclusive determination about it. These items of information may not be part of the final release package with which this order deals; therefore, they must again be redacted from the pages on which they appear.

Personal information related to reimbursed expenses or trips arranged but not taken

[para 17] The Third Party asserts the Public Body is now proposing to release more information about reimbursed expenses and trips not taken (for which payments were refunded) than that which I described as disclosable for this kind of information in paras 58 and 59 of Order F2015-10. The Public Body responded that it performed these redactions appropriately.

[para 18] It is important for the present purpose to distinguish between expenses that were expneded and then reimbursed, and refunds for trips that were arranged but not taken (which could possibly involve reimbursement of administration fees).

[para 19] Reimbursed expenses for other third parties who may not have been acting in a professional capacity will be dealt with in the second part of this inquiry.

[para 20] Reimbursed expenses of the Third Party are found on pages 969 to 972 (the descriptions are redacted but not the amounts), 1036 (which refers to reimbursed private expenses but does not redact the amounts), and 1044 (where the descriptions of expenses are entirely unredacted, though partially obscured by the reimbursement cheque).

[para 21] The Public Body says all of these amounts were expended on trips taken in a representative capacity, and that the personal elements are appropriately redacted.

[para 22] In the discussion about this kind of information in Order F2015-10, I said (at para 59):

... for expenses for which the Third Party can produce evidence of reimbursement, or that an apparent expense, such as for a trip, was not actually incurred. I will order disclosure only of the parts that do not reveal unnecessary personal information.

[para 23] In Order F2009-037, which I cited, the former Commissioner held with respect to reimbursed expenses that only the third party's name, the dates on which he used a credit card for personal purposes, and the dollar amounts of such personal purchases, had to be disclosed, but not the names and locations of the vendors from which the personal purchases were made.

[para 24] The reason for redacting personal elements such as location and vendor for expenses that are reimbursed presupposes that the reason for reimbursing the payments was that the expenses were personal. The reasoning does not apply where the expenses are not personal. Thus, assuming the Public Body is right that attendance at a particular venue was in a representative capacity, I agree the *location* is not personal information, and need not be redacted. The remaining redactions of descriptive information about expenditures that were personal are appropriate. (This was not done for page 1044, and should be.)

[para 25] Page 1036 also describes expenses which were reimbursed or “paid privately”, though it is unclear by whom. This descriptive information should be redacted if the records disclose the reimbursement.

[para 26] The Third Party says the *amounts* of the personal expenses should also be redacted. However, the direction in Order F2015-10, which is in accordance with the earlier decisions of this office referred to therein, does not require the redaction of reimbursed *amounts*. Therefore, the amounts of the reimbursements do not need to be redacted, including on page 1044.

para 27] With respect to trips that were arranged and paid for but were in fact not taken and were refunded, the Third Party points to: page 134 (I believe the reference is to the first item on the list), 141 (relating to the same planned trip), and 184 (showing the refund); 593 and 611 (the latter shows the refund); 763, 765 and 773 (which indicate a cancelled trip and seem to show credits); and parts of 774 and 775.

[para 28] All of these trips, whether by reference to contextual information that is contained in the records, or to statements to this effect by the Public Body, appear to have been planned in a representative capacity. There is accordingly no personal information to be removed (in accordance with my direction at para 59 that unnecessary personal

information is to be deleted). I recognize that I said at para 57 of my Order that the same reasoning applies to trips planned but not taken as to expenditures that were reimbursed. However, the rationale was that the minor administrative costs associated with events that were not paid for by the Public Body did not justify a disclosure of *personal* information. Where the name and location of the vendor for a planned trip is associated only with a planned activity to be performed in a representative capacity, there is no personal information involved, hence nothing to redact.

The Third Party's signatures

[para 29] The Third Party pointed out inconsistencies in redactions of his signature, and asked that more signatures be redacted. The Public Body provided an explanation for the inconsistent severing, which is that it treated signatures as disclosable, in accordance with Order F2015-10, where a document was signed in a representative capacity, but redacted those signatures where they were not made in a representative capacity, such as where personal expenses were being reimbursed.

[para 30] This is in accordance with the Order in the earlier part of this inquiry, and I accept the Public Body's explanation. It is not required to make further redactions of signatures.

The names of other third parties who are to be dealt with in Part 2 of this inquiry

[para 31] The Third Party challenged the disclosure of information about particular other third parties, possibly suggesting the expenses in relation to these parties may not have arisen in their activities in representative capacities. The Third Party made some observations about the employment circumstances of these other parties, but these were not in my view sufficient to make a determination that the activities were in a personal capacity. I invited the Third Party to provide further evidence on this issue, but he did not do so.

[para 32] The Public Body says it had regard to the particular facts and reached the conclusion that all the names it was disclosing (which the Third Party referred to in its communications as parties F, G, H, I and J) did relate to activities in representative capacities. Since there is nothing in the records to contradict the Public Body's assertions, I will accept them, and find that since the individuals were acting in their representative capacities, disclosing the information would not be an unjustifiable invasion of their privacy. Accordingly, these names should be disclosed in the final release package whenever this determination has been made.

[para 33] I have noted in this regard that the Third Party says that the individual it refers to as party F "reimbursed" his expenses, as indicated on pages 708, 720-25, 905, 917-18. It is unclear why an individual acting in a representative capacity on behalf of the Public Body would reimburse his expenses. However, a review of these pages suggests that the expense amounts were not reimbursed, but refunded – in other words, that the arranged trips were not taken. The Public Body is asked to review this matter, and to

redact and defer consideration of this information to Part 2 if the individual was in fact not acting (or planning to act) in a representative capacity in the circumstances covered by these pages (and did in fact reimburse his expenses, in contrast to their having been refunded).

[para 34] I also noted in my communications with the parties that some names appear in these records that are not included in the Third Party's list, for example, at pages 660, 774, 783 (containing three names), 973, 974 (containing six names, though one clearly acting in a representative capacity as a matter of general knowledge), and page 1196 (where again the individual seems very likely to be acting in a representative capacity). These pages are merely randomly chosen and it seems very likely there are other such names throughout the records. In my letter to the parties of October 23, 2015, I said that I would assume the Public Body has already made the determination that all of these persons were acting in representative capacities, and that I would expect it to confirm this in its final compliance document.

[para 35] I note, however, that if the Public Body has in fact been unable to determine that persons named in the records were acting in representative capacities, it should redact them if the names clearly provide no meaningful information about expenses authorized by the Third Party. Otherwise, it should put them forward for inclusion for Part 2 of this inquiry, and redact any other information associated with their names, as discussed in the next section.

Personal information associated with names of other third parties

[para 36] The Third Party disputes that the Public Body sufficiently redacted information associated with third parties who may not have been acting in representative capacities – matters that are to be addressed in Part 2 of this inquiry. I agree that this information has not been sufficiently redacted. Where information in relation to a third party is to be addressed in Part 2, all associated information, including descriptive information and amounts, rather than merely their names, should be redacted and will be treated in Part 2. This includes any information that was associated with individuals whom the Third Party has referred to as third parties A, B, and D. The Third Party has pointed to insufficient redactions at pages 79, 104, 109, 237, 240, 242, 243, 660, 662, 665, 666, 1093 (in which one of the references to third party A is currently unredacted), 1094, 1125, 1176, 1179, 1192, 1196 (item showing reimbursement), 1199, 1202 (item showing reimbursement), 1205, 1218, 1220, 1225, 1226, 1227, 1228, 1230, 1231, 1233, 1234, 1235, 1237, 1238, 1240, and 1241. (It is unclear which items on pages 1235, 1238 and 1241 relate to reimbursements for a third party, and the Public Body may consult with the Third Party to determine this if it cannot otherwise do so.) Pages 127 and 128 are also under-redacted.

[para 37] The Public Body should redact any information associated exclusively with parties who are to be considered in Part 2 of this inquiry. Where information is at the same time associated with another party that is not in this list of individuals (for example,

a flight number or flight class that can also be associated with an individual acting in a representative capacity), it may remain unredacted.

Five separate requests

[para 38] My earlier Order raised the question of whether each of the five requestors must be given only those records that fall within the scope of their particular request. I directed that the Public Body could consult with some of the requestors to see if they were willing to accept more information than they had asked for, to save the Public Body having to tailor each response to the precise scope of the request.

[para 39] The Public Body says in its letter of December 3, 2015 that it has already indicated to the requestors that there will be two release packages because there are two parts of the inquiry.

[para 40] This somewhat misses the point of my discussion about this in the earlier Order. This was to the effect that parties were entitled to an accurate response under the Act (this duty is found in section 10) and thus to receive only what they asked for. However, the release package containing the greatest amount of information could be given to requestors who agreed, even if this would entail more information than they had requested. I can think of no reason for requestors to refuse information additional to what they asked for; however, if this were to happen, deletions would have to be made, for example of expenses of parties other than the Third Party himself.

[para 41] This consultation is still required, and should be done by the Public Body as soon as possible, so that it will be resolved by the time the period for judicial review of this Order has expired.

Final disclosure package

[para 42] I presume the Public Body will comply with its undertaking in its letter of December 3, 2015, to provide the Third Party with a final disclosure package that conforms with the directions in this Order.

Part 2 of this inquiry

[para 43] I will proceed with Part 2 of this inquiry after receiving from the Public Body any names of individuals who may not have been acting in representative capacities additional to those already identified (third parties referred to by the Third Party as A, B and D), or an indication that there are no such additional names.

V. ORDER

[para 44] I make this order under section 72 of the Act.

[para 45] I order the Public Body to redact descriptions of personal expenditures at page 1044.

[para 46] I order the Public Body to ensure any unredacted names are of individuals acting in representative capacities. For any names where this determination cannot be made, it may redact the name where it clearly imparts no meaningful information relative to expenses authorized by the Third Party. Where it does impart meaningful information, the Public Body is to redact the name but include it in a list that it provides to this office, together with contact information for the individual if available (or advise me if there are no such names in addition to third parties A, B and D).

[para 47] I order the Public Body to reconsider the situation of third party F, as discussed in para 32, so that this information may be deferred to Part 2 of this inquiry if appropriate. If it is appropriate, it is to redact this third party's name and associated information, so it may be dealt with in Part 2 of this inquiry.

[para 48] I order the Public Body to review the records and to redact all information associated with individuals whose information is to be dealt with in Part 2 (as well as their names), including on those pages identified by the Third Party and listed in paragraph 35 (with the exception of associated information that relates at the same time to another individual acting in a representative capacity, in which case the information should not be redacted).

[para 49] I order the Public Body to consult with each of the five requestors to determine if they agree to receiving the entire release package, and if they do not, to provide each requestor with only the part of the package that is responsive to their particular request.

[para 50] I order the Public Body to disclose the requested information to the requestors after making the foregoing adjustments.

[para 51] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with it.

Christina Gauk, Ph.D.
Director of Adjudication