

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-62

December 12, 2016

ALBERTA HEALTH SERVICES

Case File Number F8700

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that her employer, Alberta Health Services (the Public Body) used or disclosed her personal information on two occasions in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act).

The Adjudicator found that the Public Body did use the Complainant's personal information in contravention of the Act when an invoice containing her personal information was given to her by a co-worker. The Adjudicator further found that the Public Body had breached the Act when her personal information about her leave/suspension was shared with other Public Body employees without authority under section 39 or 40 of the Act.

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

Authorities Cited: AB: Order P2006-008.

Cases Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2009 ABQB 112.

I. BACKGROUND

[para 1] The Complainant complains that her personal information was disclosed by her employer, Alberta Health Services (the Public Body) contrary to the *Freedom of Information and Protection of Privacy Act* (the Act) in two instances.

[para 2] First, on November 12, 2013, the Complainant provided her Manager with a Provincial Invoice Request for Salary Replacement from the College and Association of Registered Nurses of Alberta (the form) for her approval. According to the Public Body, the form included the Complainant's name, title, hourly rate, amount of invoice and purpose of invoice. According to the Complainant, the Complainant's Manager signed the form and gave it to one of the Complainant's co-workers to deliver to the Complainant in her office which was in another hallway, through multiple security doors. The Complainant argues that this was a breach of the Act because her co-worker could have seen her personal information on the form.

[para 3] According to the Public Body, who provided me a sworn affidavit from the Complainant's Manager, the Complainant's Manager signed the form and put it in an unsealed envelope and gave it to one of the Complainant's co-workers to hand to the Complainant who was outside the Complainant's Manager's office and within sight of the Manager.

[para 4] Second, the Complainant alleges that senior management at a medical centre disclosed to an employee in the Communications department of the Public Body and to an Educational Consultant that she was suspended and that this disclosure was not permitted under the Act. According to the Public Body, the employee in the Communications department and the Educational Consultant were told the Complainant was on leave. The Public Body states that the reason for conveying this information was to explain that an article about the Complainant needed to be removed from a newsletter and replaced with another story. The Complainant disputes that this is a reasonable explanation on the basis, first, that the suspension was not justified, and second, that the suspension was not a valid reason to pull the article.

[para 5] On November 16, 2014, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office). Mediation was authorized but did not resolve the issues between the parties and on November 2, 2015, the Complainant requested an inquiry. I received submissions from both parties.

II. ISSUES

[para 6] The Notice of Inquiry dated May 16, 2016 states the issues in this inquiry as follows:

1. Did the Public Body disclose the Complainant's personal information?
2. If yes, was this disclosure in contravention or in compliance with Part 2 of the Act? In particular, was the disclosure authorized under section 40(1) and 40(4)?

III. DISCUSSION OF ISSUES

1. Did the Public Body disclose the Complainant's personal information?

[para 7] Personal Information is defined in section 1(n) of 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 8] The information that the Complainant believes was disclosed by the Public Body in the first instance was her name, title, and salary information. In the second instance, the Complainant believes that her name and information about her suspension or leave was disclosed by the Public Body. The Complainant's name, title, salary, and information about her being suspended or on leave are all her personal information pursuant to section 1(n)(i) and (vii) of the Act.

[para 9] That being said, there is some question as to whether the Complainant's personal information was actually disclosed in the first instance. The Public Body states that the Complainant's Manager put the invoice in an envelope that was not sealed and gave that envelope to a co-worker who handed it to the Complainant. The Public Body further submits that the co-worker who delivered the envelope remained in the Complainant's Manager's sight

between the time that she handed the envelope to the co-worker and it was delivered to the Complainant, who was not far away. Therefore, the Public Body submits that the invoice stayed in the envelope and was not viewed by anyone other than the Manager who approved it and the Complainant. The Public Body provided me with an affidavit sworn by the Complainant's Manager stating these facts.

[para 10] The Complainant's recollection of these events differs significantly. She states that she was provided with the invoice by a co-worker, and that when the co-worker provided the invoice to her, the Complainant was in her office. The Complainant says that her office is down the hall from her Manager's office and through multiple security doors. She alleges that when she received the invoice, it was not in an envelope. She states that if the invoice had been in an envelope, she would not have complained. She also questions the reasonableness of the Public Body's version of events because if she were outside her Manager's office, she believes the Manager would have just handed her the invoice. The Complainant provided me with a sworn affidavit outlining her version of events.

[para 11] Based on the evidence I do have, I prefer the evidence of the Complainant. My reason for this is that I believe that the Complainant's recollection of events would be more accurate because this was an event in which she took a keen interest. To the Manager, signing and delivering an invoice would likely have been a mundane event and not one regarding which she would necessarily have taken particular note. In addition the Manager's affidavit was sworn almost three years after the event.

[para 12] Therefore, I find on a balance of probabilities, that the invoice was not provided in an envelope to the Complainant and that the co-worker gave it to her in her office. The Public Body further submits that even if the invoice was not in an envelope, there is no evidence that Complainant's personal information was viewed by her co-worker. In my view, if, which I accept, the co-worker was able to view the information this constitutes a disclosure to her whether she actually did so or not.

[para 13] The Act does not speak directly to who has the burden of proof in these instances. However, in Order P2006-008 the former Commissioner set out where the burden of proof lies in both the *Personal Information Protection Act* and the Act. He stated:

Relying on these criteria in Order P2005-001, I stated that a complainant has to have some knowledge of the basis of the complaint and it made sense to me that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it has authority under the Act to collect, use and disclose the personal information.

This initial burden is what has been termed the "evidential burden". As I have said, it will be up to a complainant to adduce some evidence that personal information has been collected, used or disclosed. A complainant must also adduce some evidence about the manner in which the collection, use or disclosure has been or is occurring, in order to raise the issue of whether the collection, use or disclosure is in compliance with the Act...

As the Complainant has raised the initial issue as to the reasonableness of the Organization's collection of personal information, it will be the Organization who will be best placed to demonstrate the reasonableness of such collection and the other issues raised in this inquiry. The

Complainant has raised a *prima facie* case. The Organization is far better placed than the Complainant to meet the burden of proof with regard to the issues touching its commercial activities, the authority and reasonableness of its collection of personal information and the security and notification arrangements undertaken...

(Order P2006-008 at paras 10, 11 and 17)

[para 14] Order P2006-008 was cited with approval and used to assess the burden in a FOIP matter by the Court of Queen's Bench in *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2009 ABQB 112 at para 108.

[para 15] Therefore, the Complainant must first meet her evidential burden to provide evidence that her personal information was disclosed. I believe that she has discharged this burden.

[para 16] In the second instance, the Public Body has admitted that the Director of Surgery told the Director of Health Standards and Practice about the suspension/leave and that the Director of Health Standards and Practice told an employee in Communications and an Educational Consultant about the Complainant's suspension/leave. Although there is some disagreement about whether the information that was disclosed, was about a suspension or a leave, I do not believe that this is a material distinction insofar as section 40 of the Act is concerned as it is her personal information in either case. Therefore, I will not make a finding on this.

2. If yes, was this disclosure in contravention or in compliance with Part 2 of the Act? In particular, was the disclosure authorized under section 40(1) and 40(4)?

First Disclosure:

[para 17] The Public Body's submissions argue that the Complainant did not meet her burden of proof regarding the first disclosure. Therefore, it gave no justification for the disclosure, because, in its view, it did not happen.

[para 18] As I have found that the Manager disclosed the personal information to the co-worker, I must determine if providing the invoice to the Complainant's co-worker was a disclosure, if the disclosure was authorized by section 40 of the Act.

[para 19] On review of section 40 of the Act, I do not believe that this disclosure to the Complainant's co-worker was authorized by the Act. I specifically considered that it could be part of the administering or managing of the Complainant. 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 20] I believe that reimbursing an employee for a legitimate claim would likely be part of managing or administering that employee. However, section 40(4) of the Act requires that the

disclosure be only to the extent necessary to carry out the management or administration of the Complainant. It 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 21] I do not believe that providing the details of the invoice to the Complainant's co-worker was necessary to reimburse the Complainant or even to advise the Complainant that her claim was approved.

[para 22] As a result, I find that the Public Body breached the Act when it provided the information in the invoice to the Complainant's co-worker.

Second Disclosure:

[para 23] The Public Body argues that it was authorized to use and/or disclosure the Complainant's personal information pursuant to sections 39(1)(c), 40(1)(h) and 40(1)(x) of the Act. Section 39(1) of the Act provides:

39(1) A public body may use personal information only
...
(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

[para 24] The Public Body argues that because it would have been authorized to disclose the Complainant's personal information to the Communications employee and to the Educational Consultant pursuant to sections 40(1)(h) and 40(1)(x) of the Act, section 39(1)(c) of the Act permits the use of the information. The relevant portions of section 40 state:

40(1) A public body may disclose personal information only
...
(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,
...
(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body,
...
(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 25] I take the Public Body's submissions on this point to be that the information sharing between the Complainant's Manager and the Communications employee and the Educational Consultant were both a use of the information and a disclosure. I do not believe that this

distinction affects the outcome in this inquiry given that the Public Body is relying on section 39(1)(c) of the Act.

[para 26] The Public Body's explanation of the events to which the complaint relates is incomplete. The Public Body explains that there is a policy that requires the prior approval of an employee's manager before an article concerning them can be posted on the Intranet, and says that because this policy was not followed, the article had to be withdrawn. At the same time it may also be suggesting that the Complainant's status as being suspended or on leave also underlay the decision to withdraw the article. (The Public Body makes this statement in its initial submission at paragraph 3, but given the context of this statement, it may only have been referring to an allegation made by the Complainant.) In any event, the Public Body does not explain the relationship between the failure to obtain prior approval, the fact of the leave/suspension, and the decision to withdraw the article. (Possibly the implication is that approval would have been refused, but again, the Public Body does not say this.)

[para 27] For the purposes of this discussion, I will accept that the article was withdrawn because of the failure to comply with the policy of obtaining prior approval, and further, that the fact the Complainant was suspended or on leave was somehow integral to the decision to withdraw the article. On the basis of these assumptions, I would accept that there were some people in the Public Body who would need to be informed of the fact of the leave/suspension. However, even on the assumption that the person making the decision to withdraw the article would need the information about the leave/suspension in order to make it, the Public Body does not disclose which of the various officials it mentions was responsible for making this decision.

[para 28] I also accept that there would be certain individuals in the Public Body to whom the Complainant's leave would need to be communicated for purposes unrelated to the Intranet posting (the Public Body asserts this is the case for Executive Management and Human Resources). However, the Public Body has not identified which of the positions it discussed fall under the term "Executive Management", and I am left to speculate as to which of the persons named would need this information, and why.

[para 29] As to how the information was provided to the Senior Communications Adviser and the Educational Consultant, I understand and agree that the former needed to know that the article was to be withdrawn from the Intranet and replaced. However, the Public Body did not explain why that employee would need to know the reason for this, or if they did, why they needed to know anything more than that the approval process was not followed. (Again, one may at best only assume that the suspension/leave had something to do with the decision as to whether to withdraw the article). Further, the Public Body did not explain why an Educational Consultant, whose role in the proceedings appears to have been to find or create a replacement article, would need to know why the article was being removed, much less to know the particular information about the Complainant.

[para 30] One might speculate as to some possible reasons why the detailed information was conveyed. Possibly, the removal and replacement of the article was the subject of a discussion and decision-making involving these employees, for instance as to whether the article ought to be withdrawn given all the circumstances, or whether the replacement article could contain any

information relating to the Complainant. Possibly, if this decision meant that these employees, or some of them, would need to do extra work or work they had already done would not be used, a convincing explanation for the removal, including all the relevant details, might be called for so as to maintain positive employee relations. However, if these explanations or something like them were at play, the Public Body did not assert this or provide any evidence to support it, beyond saying it was necessary to “substantiate to” the Senior Communications Adviser the reason the Complainant could not be profiled, and asserting that the reason for needing a replacement feature “could be communicated” to the Educational Consultant. I am therefore not in a position to conclude that any such reasons existed.

[para 31] Alternatively, the Public Body argues that section 40(1)(x) of the Act applies. It states:

The Public Body also relies on section 40(1)(x) of the Act. In Order F2012-22 at paragraphs 19-21 (Attachment 3) the Adjudicator accepted a public body's submission that "managing or administering personnel" includes various functions of a public body, such as those relating to staffing, classification and compensation, occupational health and safety, training and development and payroll. Service Alberta's *FOIP Guidelines and Practices 2009*, page 286 (Attachment 4) states that management of personnel refers to "*aspects of the management of human resources of a public body that relate to the duties and responsibilities of employees* (IPC Investigation Report 2001-IR-006)". This includes staffing requirements, job classifications or compensation, recruitment and selection, salary, benefits, hours and conditions of work, leave management, performance review, training and development occupational health and safety, and separation and layoff. .. (at page 287) Administration of personnel comprises all aspects of a public body's internal management, other than management of personnel, necessary to support the delivery of programs and services. Administration includes business planning, financial, material, contracts, property, information and risk management..." The information disclosed about the Complainant's absence given the vetting process it is submitted would fall within this section. [Emphasis added].

(Public Body's initial submission at para 10)

[para 32] I do not believe profiling the Complainant in an article is something that relates to her duties and responsibilities such that disclosing this information would be for the purpose of managing or administering personnel. However, if I am incorrect in this, section 40(4) of the Act only allows disclosure to the extent necessary to enable the Public Body to carry out its purpose. As I understand the Public Body's argument, its purpose in disclosing this information to the employee in Communications and to the Educational Consultant was to have the article taken down from the site and to have a replacement article put in its place. As discussed above, no adequate explanation was given as to why either of these individuals needed to be told about the suspension/leave and therefore, I find that the Public Body disclosed more information than was reasonable to meet its purpose.

[para 33] On the basis of the foregoing, I find that the Public Body used and disclosed the Complainant's personal information in contravention of the Act when it shared the fact that the Complainant was either on leave or suspended with the employee in Communications and the Educational Consultant.

V. ORDER

[para 34] I make this Order under section 72 of the Act.

[para 35] I find that the Public Body used/disclosed the Complainant's personal information in contravention of the Act when the Complainant's Manager provided the invoice to another employee to deliver to the Complainant.

[para 36] I find that the Public Body used/disclosed the Complainant's personal information in contravention of the Act when the Director of Health Standards and Practice shared that the Complainant was on leave or suspended with an employee in Communications and an Educational Consultant.

[para 37] I order the Public Body to cease using/disclosing the Complainant's personal information in this way.

[para 38] I further order the Public Body to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Keri H. Ridley
Adjudicator