

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-38**

March 29, 2017

**MOUNT ROYAL UNIVERSITY**

Case File Number F7403

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

**Summary:** The Complainant complains that Mount Royal University (the Public Body) disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act) when it provided a copy of a Behavioural Contract between herself and the Public Body which set out certain expectations to various employees of the Public Body.

The Adjudicator found that it was appropriate for the Public Body to disclose the Behavioural Contract to employees of the Public Body so that the terms of the Behavioural Contract could be adhered to but that it disclosed the contract to department chairs in contravention of the Act.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 41, and 72.

**I. BACKGROUND**

[para 1] The Complainant is a student at Mount Royal University (the Public Body). She has several medical conditions that require accommodations so that she can successfully attend and complete courses provided by the Public Body. Specifically, she requires extra attention from her professors and dialogical discussion with them so that she can understand the course materials and write exams.

[para 2] On May 30, 2013, the Complainant was provided with a copy of a Behavioural Contract to be signed by the Complainant which set out expectations and limitations on how the Complainant could use the Public Body's resources. It also stated that the Complainant suffered from specific health issues. The Behavioural Contract was separated into several sections, each directed at a particular sector of the institution; however, the entire Behavioural Contract was provided to a counselor employed by the Public Body, the Office of Student Conduct, the Chair of the English Department, and the Chair of the Sociology Department. The Public Body also acknowledged that a copy of the Behavioural Contract was provided to the Vice President, Student Affairs and Campus Life (VP SACL).

[para 3] On August 8, 2013, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office). Mediation was authorized but did not resolve the Complainant's issue and so on January 12, 2015, she requested an inquiry. I received submissions from both parties. During the course of the inquiry, I also received an *in camera* submission from the Complainant which I rejected. She asked the Court of Queen's Bench to judicially review my interim decision regarding this submission (and an extension request that I did not grant). I held this inquiry in abeyance pending the outcome of the judicial review. Although the judicial review is ongoing, but the parties have both asked that I conclude this order in any event.

## II. INFORMATION AT ISSUE

[para 4] The information at issue in this inquiry is the Complainant's personal information that was contained in the Behavioural Contract.

## III. ISSUE

[para 5] The Notice of Inquiry dated September 3, 2015 states the issue in this inquiry as follows:

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

## IV. DISCUSSION OF ISSUE

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

[para 6] 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 7] The Behavioural Contract contains the Complainant's name and information about her health and health care history. Therefore, when the Behavioural Contract was sent to other employees of the Public Body, the Complainant's personal information was disclosed.

[para 8] The Public Body does not dispute that the Behavioural Contract contained the Complainant's personal information. It claims that it was permitted to disclose this information pursuant to section 40 of the Act. The relevant parts of section 40 of the Act state:

*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,*

*(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,*

*...*

*(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,*

[para 9] The Complainant states that she did not consent to the disclosure of her personal information. In its initial submissions, the Public Body seems to concede this point, stating instead that it relies on sections 40(1)(c) and 40(1)(h) of the Act as authority to disclose the Complainant's personal information as it did.

*a. Section 40(1)(c):*

[para 10] Section 40(1)(c) of the Act allows a public body to disclose an individual's personal information without consent as long as the disclosure is for the same or a consistent purpose as that for which the information was collected. What constitutes a consistent purpose is set out in section 41 of the Act which states:

*41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*

*(a) has a reasonable and direct connection to that purpose, and*

*(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 11] In its initial submission, the Public Body states that the FOIP Notification Statement provided to students includes information that states that the purpose of the collection of information from them is that it be used for the administration of academic support services, such as the Office of Student Conduct and Student Counseling, and the administration of non-academic support services, such as the Office of Student Conduct. This appears to be a general statement made about the collection of student information, generally. The Public Body did not state the specific purpose for the collection from the Complainant of the information that was disclosed in the Behavioural Contract. This information includes a medical diagnosis.

[para 12] From the information I have been provided in this inquiry, I find that the purpose of the collection of the information at issue was to attempt to provide accommodations for the Complainant given her medical issues. Therefore, in order to have a consistent purpose, the reason for the disclosure of the information at issue must be reasonably and directly connected to accommodating the Complainant. The reason for the disclosure was provided in several statements throughout the Public Body's initial submissions as follows:

It is the view of the Public body that the disclosure of the Complainant's personal information to the employees identified below was in accordance with section 40(1)(h) as the disclosure was necessary for the performance of their duties in order to ensure that the objectives of the Behavioural Contract with the Complainant were met.

...

The Public Body argues that the VP SACL disclosed the personal information to the specific Public Body employees because it was necessary for the performance of the

duties of the employees involved. Notably, each employee received the personal information for different purposes based on their roles...

...

The Public Body argues that it was necessary to the VP SACL to issue the Behavioural Contract to the student as he had the proper management authority to provide authoritative notice to the Complainant in order to address the behavior in question and to identify a potential incident of non-academic misconduct.

...

The Public Body argues that the VP SACL also disclosed the Behavioural Contract, and the personal information at issue, to the applicable employees in order to set behavioural parameters regarding future communications, or interactions, between the Complainant and the Public Body particularly to prevent the access services from being over-burdened by the Complainant. These services include, the teaching services (Department Chairs), Office of Student Conduct, and Counselling Services. Additionally, we argue that it was necessary for the employees to whom the personal information was disclosed to know of the SACL's reasons for the recommendation and how those employees that are responsible for providing the services should respond to the Complainant in the event the Complainant exhibits the specific behaviour identified as personal information in the Contract; where such behavior may have been perceived as to need immediate emergency intervention by the employees providing the services. In our view, managing the behavior being exhibited by the Complainant would be difficult to accomplish if employees have no knowledge of what the behavior is that needs to be addressed.

...

Based on above, the Public Body argues that the Behavioural Contract issued to the Complainant was for the purpose of providing both academic support services and non-academic support services for the Complainant. Notably, in our view it was necessary and a logical extension of original use, for the VP SACL to disclose that the Complainant might experience [certain identified behaviours] to the employees who were responsible for providing the services at various levels. These employees had a working relationship with the Complainant, where the employees may have needed to respond appropriately if the Complainant reacted in a way that required emergency services.

(Public Body's initial submission at pages 3-4, 6, 10)

[para 13] Based on the above, together with the content of the Behavioural Contract, I believe that the reason for the disclosure of the Complainant's personal information was to place limits on the extent to which the Public Body would or could accommodate the Complainant. The Behavioural Contract sets out expectations to which the Complainant was expected to adhere, failing which she could face disciplinary consequences. It is true (as argued by the Public Body) that employees with a working relationship with the Complainant may be called on to assist the Complainant should she exhibit certain behaviours. The contract does give guidance to those providing counselling services about how she is able to utilize those services in an emergency situation. However, in my view, this is the same purpose as I have noted above. That is, the purpose is to limit the extent to which the Public Body would accommodate the Complainant, which included putting a limit on the Public Body's resources the Complainant could use.

[para 14] While the purpose for the collection had a connection to the purpose of disclosure, they are not consistent, in that the collection was to provide a service, and the

disclosure sought to limit the Complainant's use of the service and had a disciplinary purpose. Therefore, I cannot find a reasonable or direct connection between the purpose for the collection and the purpose for the disclosure.

*b. Section 40(1)(h):*

[para 15] Section 40(1)(h) of the Act permits a public body to disclose an individual's personal information to an employee when that information is necessary for the performance of the employees' duties.

[para 16] The Public Body states that the Behavioural Contract was disclosed to its employees because it was necessary for these employees to have the information in the Behavioural Contract for the performance of their duties.

[para 17] The Public Body states that the Vice-President, Student Affairs and Campus Life, was provided with a copy of the Behavioural Contract because his area includes Wellness Services (Student Counseling) and the Human Rights Advisor. A specific Counselor was provided a copy of the Behavioural Contract because he was the counselor tasked with managing the Complainant. The Office of Student Conduct was also sent a copy of the Behavioural Contract as were the Department Chairs of the departments in which, according to her transcript, the Complainant was attending classes. The Public Body states that these employees were sent the Behaviour Contract:

...in order to set behavioural parameters regarding future communications, or interactions, between the Complainant and the Public Body particularly to prevent the access services from being over-burdened by the Complainant...  
Additionally...it was necessary for the employees to whom the personal information was disclosed to know of the [Public Body's] reasons for the recommendation and how those employees that are responsible for providing the services should respond to the Complainant in the event the Complainant exhibits the specific behaviour identified as personal information in the Contract; where such behaviour may have been perceived as to need immediate emergency intervention by the employees providing the services.

(Public Body's initial submissions at page 6)

[para 18] The Behavioural Contract has several subsections wherein the Complainant is advised of the particular expectations (or parameters) she is to maintain when dealing with teaching faculty, Administrators, the Counselling Department and other Departments.

[para 19] I think it is obvious why the Office of Student Conduct would be given a copy of the Behavioural Contract. In a covering letter, the Complainant was told that if she did not abide by the contract there would be possible disciplinary consequences. Presumably, that Department would be involved in disciplining the Complainant's conduct and so it was necessary for this department to have a complete copy of the contract it was responsible for enforcing.

[para 20] Given that the goals set out in the Counselling portion of the Behavioural Contract include developing strategies on how to deal with her medical conditions within the context of being a student of the Public Body, I think it was necessary for the Counsellor assigned to manage the Complainant to understand the limitations being placed on the Complainant's contact with her professors and other Departments within the Public Body. Therefore, I believe that providing the entire Behavioural Contract to the Counsellor and the Vice President responsible for Wellness Services was necessary so that they could know what was expected of them and permit them to assist the Complainant given the resources available to her within the Public Body.

[para 21] I think it is equally necessary for the Department Chairs to be provided with the portion of the Behavioural Contract that set out the parameters applicable to their specific area. I believe it was also necessary for them to know the limits placed on the Complainant's access to other resources in the Public Body, so that they could understand how best to deal with the Complainant should she come to them with an issue. What is less clear is why it was necessary to provide the entire Behavioural Contract (and in particular the portion which detailed the Complainant's medical diagnosis) to the Department Chairs. However, I will deal with that below when I discuss section 40(4) of the Act.

[para 22] On the basis of the foregoing, I find that the disclosure of the Complainant's personal information in the Behavioural Contract to the Vice President, Student Affairs and Campus Life, the named Counsellor, the Office of Student Conduct and the Chairs of the English and Sociology Departments met the requirements of section 40(1)(h) of the Act.

[para 23] In order for the Public Body to have disclosed the Complainant's personal information in accordance with section 40 of the Act, the Public Body must also meet the test set out in section 40(4) of the Act. Section 40(4) of the Act requires a public body to limit disclosure of an individual's personal information only to what is necessary to carry out the purpose of the disclosure in a reasonable manner. 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 24] I find that with regard to everyone but the Department Chairs, this test is met. It was necessary and reasonable to provide the entire Behavioural Contract to these employees for the reasons set out above.

[para 25] However, with regard to the Department Chairs, I do not find that this test was met with regard to the Complainant's specific medical diagnosis. The Complainant takes most issue with disclosure of the following portion of the Behavioural Contract being disclosed because it discloses her medical diagnosis:

It is expected that you will utilize external resources (e.g., spouse, family or friends) to assist you in accessing a hospital or urgent care facility if emergency interventions for your [specific diagnosis] are required.

[para 26] The Public Body argues that the Department Chairs needed to know the Complainant's diagnosis and the restrictions placed on her access to resources within the Public Body. In its initial submission, the Public Body stated:

Additionally, the Behavioural Contract also outlines how employees providing the services should respond to the Complainant in the event [the Complainant] exhibits symptoms that may be perceived by employees as to have needed immediate emergency intervention, where such an emergency would likely occur in the Departments providing educational services to the Complainant.

(Public Body's initial submission at page 8)

[para 27] If a medical emergency situation involving a student occurred, presumably an ambulance would be called or the Complainant's emergency contact would be contacted or Student Counselling would be contacted. If this were the case, I fail to see why the Department Chair would need to know the Complainant's medical diagnosis. In the event that Student Counselling were contacted, it would be necessary for Student Counselling to know which medical issues it could deal with and which ones the Complainant would have to contact her family and friends to assist with. Student Counselling would be able to assess if the Complainant was using resources in a way that was consistent with the Behavioural Contract. However, it would not be necessary for the Department Chair to know this, nor would it be reasonable in an emergency situation to expect the Department Chair (or any professors he would have disclosed this information to) to assess what the cause of the emergency is in order to determine if an ambulance, her emergency contact, or counselling services should be called.

[para 28] The Behavioural Contract, which is divided up into sections directed at particular departments, does not seem to contemplate that a department will take direction as to how to respond to a situation from the instructions/parameters given to another sector. At most, the Behavioural Contract gives all sectors guidance as to who is responsible for dealing with various kinds of concerns/issues of the Complainant. So, while the Behavioural Contract might help a Chair to decide how to respond to a concern outside their area of responsibility (by referring her to counselling) there would be no reason to know how Counselling is to deal with it. The same point possibly applies to the 'Student Conduct' sector, though the Complainant does not seem to take issue with the content of this section of the contract being disclosed to other departments. Therefore, I find that the Public Body disclosed the Complainant's medical diagnosis to the Chairs of the English and Sociology Departments in contravention of the Act.

## **V. ORDER**

[para 29] I make this Order under section 72 of the Act.



[para 30] I find that the Public Body' disclosure of the Complainant's medical diagnosis to the Vice President, Student Affairs and Campus Life, the named Counsellor, and the Office of the Student Conduct was authorized by the Act.

[para 31] I find that the Public Body disclosed the Complainant's medical diagnosis to the Chairs of the English and Sociology Departments in contravention of the Act. I order the Public Body to cease disclosing the Complainant's medical diagnosis to Department Chairs.

[para 32] I order the Public Body to notify me and the Complainant, in writing, within 50 days of being given a copy of this Order that it has complied with the Order.

---

Keri H. Ridley  
Adjudicator