

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2017-39

April 5, 2017

PEACE RIVER SCHOOL DIVISION NO. 10

Case File Number 000152

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act), the Complainant complained that the Public Body relied on inaccurate or incomplete personal information when deciding not to hire her for a position, because it determined that the Complainant's references were not supportive of hiring her for the position she had applied for.

The Adjudicator found that the information the Public Body relied on was accurate and complete.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act* R.S.A. 2000 c. F-25 ss.1, 35, and 72.

Authorities Cited: AB: Orders 98-002, F2006-018, F2009-041, F2013-14, F2013-29, F2013-50, and F2016-019.

I. BACKGROUND

[para 1] The Complainant applied for a position as an elementary school teacher with the Peace River School Division No. 10 (the Public Body). The Complainant had worked for the Public Body in various positions in the years immediately prior to applying for the elementary school position. However, she had started her teaching career in another province, teaching high school. At the interview, she was asked for references from

positions that she had held in the other province. Following the interview, she provided the Public Body with the contact information of persons from the other province who could provide references.

[para 2] Two of those individuals were contacted by the Public Body. Both gave positive reviews of the Complainant's work performance. Both noted that they had not worked long with the Complainant and that it had been a number of years since they worked with the Complainant. According to the notes of the reference checks provided by the Complainant, when asked if there was a reason they would not hire her, both of these individuals explained that in their province, high school-trained teachers could not work as elementary school teachers unless they took additional training.

[para 3] According to the Public Body, it considered the positive comments made by the Complainant's references and the qualified responses (for example that they only worked with her in a high school setting and that in that province, she could not be hired as an elementary school teacher without additional training). However, the Public Body also considered the fact that these individuals had not worked with the Complainant in a long time and for very short periods, and that their comments were general in nature. Taking all of these factors into consideration, the Public Body determined that the references these people had provided did not provide information that supported the hiring of the Complainant for the position she had applied for.

[para 4] The Complainant then made a complaint regarding what she felt was discrimination and harassment to a sub-committee of the Public Body. The Complainant states that this sub-committee dismissed her complaint stating that her references were not supportive (the sub-committee decision). She also alleges that this sub-committee used "bogus documents that do not exist".

[para 5] On January 20, 2015, this Office received a complaint from the Complainant that the Public Body used falsified information to deny her equal opportunity to gain employment. Mediation was authorized but did not resolve the issues between the parties. On April 18, 2016, this Office received a Request for Inquiry from the Complainant. I received submissions from both parties.

II. ISSUE

[para 6] The Notice of Inquiry dated September 28, 2016 states the issue in this inquiry as follows:

Did the Public Body make every reasonable effort to ensure the Complainant's personal information, that was used to make a decision directly affecting her, was accurate and complete, as required by section 35(a) of the Act?

[para 7] The Complainant also has a related file wherein she requests a correction of information in the Public Body's file. However, that issue will be dealt with in Order F2017-40.

[para 8] The Complainant raised several issues that were outside the scope of my jurisdiction, such as alleged slander and human rights violations, and the Public Body not acting in accordance with the *School Act* or its policies regarding staffing and harassment and discrimination. The Public Body's adherence to its own policies is not an issue that is within my jurisdiction to review. Neither are any alleged human rights violations. Further, the Complainant repeatedly states that she wants various people and the Public Body prosecuted under section 92 of the Act. My Order will focus solely on the issue noted above.

[para 9] Additionally, the Complainant states that a judicial review of another Order relating to these parties was wrongly decided by a Justice of the Court of Queen's Bench. She opted not to appeal the decision but attached her reasons for appeal to her submissions. I will not be commenting on the Court's finding in the judicial review. This is not the proper process within which to air grievances about a Court's decision.

[para 10] Finally, the Complainant disagrees with the Letter of Findings sent by the Senior Information and Privacy Manager at the conclusion of the mediation, and alleges misconduct on the part of this employee. This inquiry is *de novo* which means that it is not a review of the investigation, mediation or findings of the Senior Information and Privacy Manager. It is a new process. Although I was provided a copy of the Letter of Finding by the Public Body, I have not reviewed it and it will not form the basis of any of my conclusions in this Order.

III. DISCUSSION OF ISSUE

Did the Public Body make every reasonable effort to ensure the Complainant's personal information, that was used to make a decision directly affecting her, was accurate and complete, as required by section 35(a) of the Act?

[para 11] Section 35(a) of the Act states:

35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

(a) make every reasonable effort to ensure that the information is accurate and complete...

[para 12] In order for section 35(a) of the Act to apply, the Complainant's personal information must have been used to make a decision that directly affected her.

[para 13] The Complainant cites two instances where she believes the Public Body made decisions that directly affected her but did not make every reasonable effort to ensure that the information was accurate and complete. The first is in relation to

reference checks (which I will deal with in detail below). These reference checks were used in the decision not to hire her.

[para 14] The second instance was a decision by a sub-committee of the Public Body that dismissed a complaint the Complainant had made about harassment of which she feels she was a victim. The sub-committee decision referred to the Complainant's references as not being supportive (again, I will deal with this below). It also referenced reports by various employees of the Public Body who were asked about issues raised by the Complainant. If I understand the Complainant's submissions correctly, these verbal reports are what she refers to as "bogus documents that do not exist". It seems that regarding the sub-committee decision, the Complainant believes the following information was relied on by the sub-committee, and was inaccurate or incomplete:

1. That her references were not supportive;
2. That the reports were not accurate and cannot be relied upon because they were not done in writing;
3. That the Public Body did not contact the principal at a school she taught at to confirm that that principal agreed to send an email stating that she was guilty of treating the Complainant unfairly;
4. That a proper investigation process was not followed, including that more evidence was not asked for by the sub-committee.

[para 15] Regarding the reports, the Complainant has the burden to prove that her personal information was not accurate or complete just as she would if she were making a correction request (Order F2013-29 at para 8). She has not met her burden to prove that the reports were not accurate or complete. The fact that they were not in writing is not determinative of whether they were accurate or complete. In any event, as I will discuss in greater detail below, even if the Complainant met her burden, I believe the proceeding of the sub-committee was a quasi-judicial one, and I do not believe that section 35(a) of the Act is meant to revisit the decision-making process of a quasi-judicial proceeding, (see Order F2013-14 at para 79).

[para 16] Regarding the sub-committee not contacting the principal of a school at which the Complainant had taught, and its not following a proper investigative process, as I will explain in greater detail below, section 35(a) of the Act is not meant to dictate what information a public body should use in making its decision; it only requires that the information used for a decision be accurate and complete (Order 98-002 at para 73). I do not have the jurisdiction to tell the Public Body how to investigate or what evidence it should have gathered in making its decision.

[para 17] As a result of the above, with the exception of the accuracy and completeness of the Complainant's references, which I will deal with below, I find that that the Complainant's complaints regarding the sub-committee decision are not properly the subject of review under section 35(a) of the Act. Therefore, for the remainder of this Order, I will deal only with the accuracy and completeness of the Complainant's references.

[para 18] The Public Body concedes, and I agree, that the information in the reference checks was personal information as that term is defined in section 1(n) of the Act because it is someone's opinion about the Complainant. It contains information about the Complainant's work history, which is also her personal information.

[para 19] In addition, the Public Body states, and I agree, that the Complainant's personal information was used to make a decision that directly affected her – the decision not to hire her for the elementary school position. Therefore, the Public Body agrees that it had the responsibility to ensure that the personal information of the Complainant was accurate and complete.

[para 20] The Complainant states that the Public Body failed to meet its responsibility to ensure that the information was accurate and complete because an employee of the Public Body determined that the references were not supportive of hiring her even though the references were supportive. She says that determination was not correct, and led to her not being hired. Specifically, using an analogy, the Complainant argues:

Likewise, If his/her two references that were contacted, were overwhelmingly supportive of him/her as an Adjudicator were inaccurately reported as being unsupportive, and then this false information was distributed to higher authorities and wrongful decisions were made based on this inaccurate information to remove him/her as an Adjudicator, the Complainant would reasonably assume that this Adjudicator would want access to the correct facts and these decisions reviewed. [emphasis in original removed]

(Complainant's rebuttal submission at page 2)

[para 21] The Public Body argues that it made every reasonable effort to ensure that the Complainant's personal information was accurate and complete. It noted that "every reasonable effort" has been interpreted by this Office to mean:

Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable; the use of "every" indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information.

(Order F2006-018 at para 111)

[para 22] The Public Body states that the efforts it made to ensure the information was accurate and complete was to telephone two individuals whose names had been provided for giving references, ask each questions requesting clarification as necessary, and give each the opportunity to provide additional comments. Notes were taken at the time of the telephone conversations. The Public Body argues that getting an individual's opinion directly from the individual and allowing the individual the ability to add to or clarify his or her response meets the threshold of making every reasonable effort.

[para 23] I agree with the Public Body that it made every reasonable effort to ensure that the opinions of the Complainant's references were accurate and complete. From my understanding of the Complainant's submissions, she does not take issue with the factual content of the notes taken by the Public Body employee doing the reference checks. I believe that the Complainant's issues are twofold. First she disagrees with the characterization the Public Body gave to the references as being "unsupportive" of hiring her for the elementary school position. Second, she mentions that other references ought to have been checked.

[para 24] Dealing with the first of what I believe are the Complainant's arguments, how the Public Body chose to interpret the information it received from the references was just that, an interpretation. The Complainant may disagree with how the Public Body interpreted the Complainant's personal information provided to the Public Body, but that does not mean that the personal information that was provided was inaccurate or incomplete.

[para 25] Section 35(a) of the Act makes public bodies responsible to ensure that the information on which a decision is based is accurate and complete. It does not make public bodies responsible to make an accurate and complete (or correct) decision nor does it give me the jurisdiction to review the actual decision made by a public body. As the Adjudicator in Order F2009-041 stated:

To comply with section 35(a), a public body must ensure that the personal information with which it makes decisions is complete and accurate. When deciding whether a public body has complied with section 35(a), I must consider the personal information available to a decision maker, rather than the decision itself. My role is not to evaluate the decision making process of a public body, but to consider only whether the information it uses to make decisions is accurate and complete.

(Order F2009-041 at para 104)

[para 26] The Complainant interprets the information provided by the references as being overwhelmingly positive. The Public Body acknowledges that the references said positive things about the Complainant, but given other factors (such as the length of time she worked with them, the time that has elapsed since she worked with them, and the fact that they worked with her in a high school setting) the Public Body assessed the information provided to the Public Body and decided that these references did not support the Complainant being hired for the elementary school position. I am satisfied that the information in the reference check notes is an accurate and complete representation of what those individuals said their opinions of the Complainant were. The interpretation of this information forms a part of the decision of the Public Body based on the information before it, and this decision is not one which I have the authority to review under section 35(a) of the Act.

[para 27] As for the second argument the Complainant seems to put forward regarding the completeness of the information, she indicates that she provided the name of another reference which the Public Body did not contact, and which would have provided a more

relevant and recent picture of her capabilities. According to the Complainant's own evidence, the Public Body did attempt to contact the third reference but was unsuccessful.

[para 28] Section 35(a) of the Act places an obligation on the Public Body to "make every reasonable effort" to ensure that the personal information it has is complete. Although the Complainant feels the Public Body ought to have put in more of an effort to contact that reference, I do not believe that contacting that reference or any others was required to make sure that the information from the two individuals it did contact was accurate and complete.

[para 29] In any event, I do not believe that section 35(a) of the Act goes so far as to place a burden on public bodies to investigate and research other sources of information to ensure that its decision is correct. Section 35(a) is about the accuracy and completeness of the information that the Public Body had before it when making its decision, not about the decision itself, nor what information the Public Body should have used when making its decision (Order 98-002 at para 73). As stated in other orders issued by this Office, section 35(a) of the Act ensures fair information practices and emphasizes the importance of data quality (Order F2006-019 at para 88). Therefore, the purpose of section 35(a) of the Act is to ensure that the factual data before a public body when making its decision is accurate and complete such as a birthdate or a social insurance number or, in this case, what information individuals contacted for reference checks provided about the Complainant (see Order F2013-50 at para 161). I do not believe that it extends to examining if the Public Body took enough information into account. As the Director of Adjudication stated in regard to section 35(a) of the Act in relation to tribunals:

It is up to the quasi-judicial decision maker to decide what evidence to accept or require, and what findings of fact to make. If it were appropriate for parties in disagreement with these decisions to try to engage section 35(a) and the related authority of the Commissioner, as the Complainants have tried to do in this case, the Commissioner would be in a position to - indeed would have the responsibility to - inquire into every allegation by a Complainant that a tribunal had taken into account inadequate or unreliable evidence or made incorrect findings of facts. Clearly, a party to a proceeding that has such concerns is to take them to the courts on judicial review rather than to the Commissioner.

Given these considerations, in my view, despite its broad wording, section 35(a) is to be engaged primarily in relation to information that does not depend, for the determination of its accuracy, on a quasi-judicial process. Rather, resort may be had to it where a public body is to make a decision on the basis of information the accuracy of which is readily ascertainable by reference to concrete data. As the Adjudicator noted in Order F2006-019, section 35 is intended to promote fair information practices and data quality in relation to personal information.

(Order F2013-14 at paras 78-79)

[para 30] I believe that this analysis is relevant in this inquiry even though the hiring process is not a quasi-judicial process, because the Complainant is trying to argue that the

Public Body made a determination based on inadequate evidence. In my opinion, this is not the situation to which section 35(a) was meant to apply.

[para 31] Based on the analysis above, I find that the Public Body made every reasonable effort to ensure the Complainant's personal information provided by the individuals who gave references was accurate and complete. Therefore, I find that the Public Body met its duty under section 35(a) of the Act.

IV. ORDER

[para 32] I make this Order under section 72 of the Act.

[para 33] I find that the Public Body met its duty under section 35(a) of the Act to ensure that the Complainant's personal information was accurate and complete.

Keri H. Ridley
Adjudicator