

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2017-51

May 31, 2017

#### ALBERTA HEALTH SERVICES

Part 2 of the Inquiry in  
Case File Numbers F6724, F6725, F6726, F6727 and F6728

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

**Summary:** The Adjudicator made decisions about information included in a number of records that had been reserved for the final part of the inquiry. She held that the names of third parties A, B and D should be redacted wherever they appear in the records at issue. With respect to the associated information, she held that how much of it is to be disclosed depends on whether or not reimbursement or refund of the claimed expenses has been demonstrated. Where it has, the information to be disclosed consists only of the name of the person claiming the expense, and the date and amount of the expenditure. Where it has not, further details of the expenditure are to be disclosed (with the exception of the associated names of third parties A, B and D).

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 72.

**Orders Cited: AB:** Orders F2009-037, F2015-10, F2016-03.

#### I. BACKGROUND

[para 1] This inquiry arises from requests to Alberta Health Services (“the Public Body” or “AHS”) 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 Calgary 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 5 below), and an order was issued on April 20, 2015 (Order F2015-10). A few items remained outstanding, which were dealt with in a second order, issued on January 29, 2016 (Order F2016-03).

[para 5] In the course of initially reviewing the records at issue, I had 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. However, it became clear during the course of the parts of the inquiry which culminated in the first two orders that many of the individuals who were named were acting in their representative capacities, and as information relative to them was not their personal information (or on a different analysis, disclosing it would not unreasonably invade their privacy), that this information could be disclosed.

[para 6] This order deals the disclosure of the information of three remaining third parties whose names appear in the records, whose personal information has not yet been dealt with. These persons participated in this inquiry as undisclosed affected parties. I will refer to them in this order, in accordance with the references to them at earlier stages of this inquiry, as third parties A, B, and D.

[para 7] I received submissions from one of the requestors, as well as from one of the third parties (who also represented the other two). I did not receive a submission from the Third Party (the person who claimed the expenses) for this final part of the inquiry.

## **II. INFORMATION AT ISSUE**

[para 8] The information that remains at issue is the personal information of third parties A, B and D (their names, and the way expenditures, whether planned or actual, were associated with them). It is found in the following records: 79, 104, 109, 113, 115, 124, 127, 128, 237, 240, 242, 243, 1093, 1094, 1125, 1176, 1179, 1192, 1199, 1205, 1218, 1220, 1225, 1226, 1227, 1228, 1230, 1231, 1233, 1234, 1237, and 1240.

### **III. ISSUES**

[para 9] The issue is whether the Public Body properly refused to apply section 17(1) to the information just listed.

### **IV. DISCUSSION OF ISSUES**

[para 10] Third parties A, B and D argue that in all cases in which their personal information is associated with expense claims made by the Third Party, either the expenses were reimbursed, or the Public Body's funds were not expended to begin with in the sense that trips that were scheduled and booked flights associated with them were not taken, or their name was mistakenly included in a record.

[para 11] In Order F2015-10, which resulted from an earlier part of this inquiry, I reached the following conclusions (at paras 55 to 58):

However, for records that are responsive in the sense that they record an expense claimed by, or through the office of, the Third Party, but which were reimbursed by the Third Party or by someone else, I do believe that some parts of such claims should be withheld, but for different reasons than those put forward by the Third Party. These records do not ultimately represent the expenditure of public funds, (other than the minor administrative costs of processing them and reimbursing them). For parts of such records, the need to permit scrutiny of the expenditure of public funds by public officials applies with less weight. I do not believe the more minor costs just mentioned justify the disclosure of what is, beyond this minor 'public expenditure' aspect, a purely personal expense and thus personal information.

However, the foregoing comments about reimbursed expenses apply only to reimbursements that happened with sufficient proximity to the expense to show that this was intended from the outset, as opposed to, for example, after an access request has been made. That said, for such reimbursed expenses, I believe full disclosure would involve an unreasonable invasion of personal privacy.

The same reasoning applies to records that show a trip was to be taken and expensed, where ultimately it was not taken and therefore was not paid for.

This reasoning is in accord with an earlier decision of the former Commissioner, Order F2009-037. In that case the Commissioner concluded that for transactions on a government-issued credit card that were subsequently reimbursed, only the third party's name, the dates on which he used the credit card for personal purposes, and the dollar amounts of such personal purchases, had to be disclosed. The former Commissioner ordered the public body not to disclose the names and locations of the vendors from which the personal purchases were made and the other transaction identifiers in respect of such purchases.

[para 12] With respect to information which the third parties say related to reimbursed claims, in some instances, they are able to point to information in the records that shows the expenses were reimbursed, whereas in other instances, they are unable to do so, but assert that the expenses "would have been reimbursed".

[para 13] With regard to some or all of the latter, the third parties say that a long time has elapsed since the claims arose, banking records are no longer available, and they have no means independent of the records kept by the Public Body by which to prove the assertions that the reimbursements were in fact made. One of the third parties offered to swear an affidavit to the effect that all such expenditures were reimbursed. However, it does not seem likely this person would have been directly involved with all such transactions sufficiently to attest to this. I agree with the requestor who provided a submission in this final part of the inquiry that in the circumstances I cannot take such an affidavit as determinative. It is the Third Party who filed the claims who would be responsible for, and would therefore have the closest knowledge of, repayments of the claims made he made for personal expenses.

[para 14] The Third Party did not make a submission for this part of the inquiry, either relative to any individual transactions, or relative to his general practices for such circumstances (although he did claim at an earlier stage of the inquiry that it was the Public Body's poor record keeping that made it impossible for him to demonstrate for some cases that he had reimbursed the claims).

[para 15] I have also noted that in correspondence with the Public Body that was copied to this office at an earlier phase of this inquiry (letter of June 25, 2015), the Third Party undertook to swear an affidavit "that to the best of [his] knowledge [he has] paid back all of the expenses that [he] had [his] office indicate on the Records of Expenses were to be repaid by [him]". However, there is no clear reference in the records before me to this "Record of Expenses" (though parts of it may be interspersed throughout the records), nor do I know whether any such affidavit was ever sworn. Further, since the extent of the Third Party's knowledge with respect to each individual expense claim is unknown, swearing an affidavit 'to the best of the Third Party's knowledge' that he repaid what he undertook in these statements to repay cannot be relied on as proof that every such item was repaid. As for the possibility of now swearing such an affidavit, it seems likely that too much time has elapsed for anyone to have a recollection about individual transactions based on memory alone. The Third Party also argues that the fact the Public Body further processed his claims supports that the repayments were made, but I am unaware of the Public Body's practices in this regard.

[para 16] Despite the foregoing discussion, there are clearly other possible explanations for there being no records that show reimbursement in particular cases, besides the explanation that no repayment was made. These include: that repayment was made but no record of it was provided to the Public Body; that a record of repayment was provided but the Public Body did not file or record it; that the Public Body has or had such a record but it was not managed in such a way that it could be located as part of the responsive records, or; that such a record was initially filed but was destroyed or not retained. Possibly as well, the Public Body might not have regarded reimbursements as expense *claims* and not included them in the responsive records.

[para 17] On the other hand, in many cases records were retained that show a reimbursement was made. This demonstrates that the Public Body had a practice of

recording and retaining such records, as seems only sensible and responsible. As well, it shows that some such transactions were included in the responsive records.

[para 18] In view of the foregoing, I have insufficient evidence on which to base a finding in the individual cases in which no documentation of a reimbursement can be found in the records, that a reimbursement was made.

[para 19] I have only the records to rely on. Accordingly, I will treat expense claims as reimbursed when there is documentation showing this, but not otherwise. This is not to say that I believe the Third Party claimed expenses for personal expenditures relating to the information still at issue that he did not reimburse; it is only to say that as the records do not show that he did, nor is there any direct sworn statement by him that he did, and thus I have insufficient basis on which to conclude that he did or to treat the related expense claims as though he did.

[para 20] In saying this I have noted that in an earlier order of this Office, F2009-037 (at para 48), when former Commissioner Work was unable to determine whether expenditures paid for with a government credit card had been reimbursed by the third party, he held that they were to be treated as though they had been (so that only the more limited set of information, as set out in para 58 of the case quoted in para 11 above, would be disclosed). I do not know what records Commissioner Work had before him nor on what basis he came to this conclusion, but given the information before me, as I have said above, in this case I have an insufficient basis for regarding or treating expenses for which reimbursement was not shown as though it had been shown.

[para 21] In my view, for expense claims for which reimbursement *is not demonstrated*, the rule limiting disclosures set out in Order F2009-037 – limiting what must be disclosed to “the third party's name [the third party being the person claiming the expense], the dates on which he used the credit card for personal purposes, and the dollar amounts of such personal purchases” – *does not apply*. Rather, in my view, these claims are to be treated for the purposes of an access request *in the same way as claims that were not reimbursed* would be treated.

[para 22] However, I do not believe that even for personal expenditures for which it could be shown that *no* reimbursement was made, there should be a general rule that every detail of the available information about the expenditure must necessarily be disclosed. In Order F2009-037, even though there were expenses that had not been reimbursed, the former Commissioner excluded information such as credit card numbers and expiry dates, bank card numbers, dates of birth, driver's license information and telephone numbers. I agree that details that could compromise personal finances, and personal contact information, should be removed. Even beyond that, however, I believe there must still also be a balancing under section 17 between personal privacy, and the need for public scrutiny. This may be particularly important where, as in the present case, the personal information of other third parties is involved.

[para 23] In the present circumstances the personal information *additional to* the name of the person claiming the expense, the date, and the amount of the expense that is disclosed by the records is: what was purchased, and for whose use? (This is information about the actions of the Third Party, but it may also be, as it is in this case, personal information about the persons for whose use the expenditure was made.)

[para 24] With respect to what was purchased, much of the information appears in a context in which the nature of the expense (air travel) has already been disclosed by the Public Body. Even if this were not the case, however, for expenses that were not reimbursed or where reimbursement has not been demonstrated, I believe it is generally in the public interest for the public to be able to know what kind of thing was bought (the level of detail would depend on the circumstances). In this case, disclosing the nature of the expenditure is not, in my view, an unreasonable invasion of privacy of the Third Party.

[para 25] More importantly in this case, however, this part of the inquiry involves expenditures made or intended to be made for the use of third parties A, B and D, rather than for the use of the Third Party who made the claims. In this regard, I believe it is important to remember that the focus of the access request is the activities of the Third Party who claimed expenses, and possibly also of the way the Public Body treated them, but not the activities of the third parties for whom the funds were expended. Further, these people do not necessarily have any control over the Third Party's or the Public Body's actions in terms of making repayments and submitting records, or retaining these records. While I believe it is important from the standpoint of public scrutiny to know that certain kinds of expenditures were made for which reimbursement has not been demonstrated, I do not believe it matters in this case who the persons were who benefited – whether friends, acquaintances, family members or the like. Disclosure of the information would reveal information about them which, in my view, it is not important for the public to know.

[para 26] In saying this I have noted the submission of the requestor who participated in the present phase that “the names of people who benefit in any way from the expenditure of public money” should be available to the public. (The Public Body seems to share this view (at page 2 of its submission). If this broad statement is reasonable as a generalization, I imagine there are many exceptions, and I think the present circumstances of third parties A, B and D constitute such an exception. Who the third parties are may (or may not) be a matter of some public curiosity, but it sheds little light on the expense claim practices of the Third Party and the Public Body, which are revealed by the records regardless. Further, as the requestor seems to acknowledge in his submission, it is the Third Party, and not the other third parties whose personal information is presently at issue, that made the choices about how to deal with and document personal expenses he had paid for using the Public Body's systems.

[para 27] This is not to say there could not be circumstances in which the names of the individuals benefiting were important for the public to know; however, in my view, it is not important in the present case.

[para 28] Accordingly, I find that disclosure of the names of the third parties A, B and D as these names appear in all of the records (associated with other personal information about them) would be an unreasonable invasion of their privacy: the presumption under section 17(4)(g)(i) applies, and there is no significant countervailing need for public scrutiny. Therefore, I will order the Public Body to redact these names whenever they appear when it releases further information pursuant to this Order. (In their most recent submission the third parties have pointed to the following pages: 104, 109, 113, 115, 124, 127, 128, 237, 240, 242, 243, 1093, 1094, 1125, 1176, 1179, 1199, 1205, 1218, 1220, 1225, 1226, 1227, 1228, 1230, 1231, 1233, 1234, 1237, and 1240 as the relevant records, many of which contain their names. However, I note that pages 79 and 1192 also contain one of the names. Other pages were referenced by the third parties, usually to show the expenses were reimbursed or refunded, but they do not contain the third parties' names.

[para 29] I have reviewed the pages containing the names and associated personal information that was reserved for this final part of the inquiry, and the associated records referenced by the third parties as demonstrating refunds, reimbursements and errors.

[para 30] Based on this review, I am satisfied, for the records listed in the present paragraph, of one of the following things:

- that the charges listed were not processed through the Public Body's systems in the first place (information on pages 124, 127 and 128);
- that while a third party name is present no charge is disclosed (page 113);
- that the amounts were either refunded by the vendor because no trip was taken, or were reimbursed by the Third Party, or in one case, by another organization; this consists of:
  - (the entry on page 104 [there is also an entry on page 79, which shows the refund, and the entry should also be appropriately redacted on that page (as specified below)]);
  - the entries on pages 1192, 1199 and 1225;
  - the entry on page 1227;
  - the first entry on page 1228 (an entry also appears on page 1230, which shows the first amount on page 1228 as a credit, and this entry should also be treated as related to reimbursed expenses on that page (1230); the first entry on page 1233 also shows a refund for the first entry on 1228, and should be treated the same way);
  - the entry on page 1231;
  - the second entry on page 1237;
- the information shows a credit, refund or 'rebate' rather than a debit amount:
  - entries on pages 1205 and 1230;
  - first and final entries on 1233;
  - final entry on 1234;
  - first entry on 1237;
  - both entries on page 1240.

[para 31] For the first two bullets in the list, I will order that all information associated with the third parties A, B or D to be redacted.

[para 32] For bullets three and four, I find the rule from Order F2009-037 for reimbursed expenses applies. That is, only the name of the Third Party who claimed the expense, the date, and the amount of the expense are to be disclosed. (With respect to the name of the Third Party who made the expense claims, this name often does not appear in close proximity to the expense claims made relative to third parties A, B and D, but it is knowable because it appears throughout the records. This fact satisfies the first of the three elements (“name”) that are to be disclosed for reimbursed or refunded claims.)

[para 33] As already noted, even though only these elements are to be disclosed, because the names appear in the context of records already disclosed, some information as to the nature of the expenditures and refunds will be discernable in any event. However, the further details may remain redacted.

[para 34] With respect to pages 109 and 115, the third parties’ submission asserts the claimed amounts “would have been refunded” but it does not point to any other record to substantiate this. I have noted, though, that AHS does not include these pages in its list of claims for which no refund was shown. I would therefore ask it to consider whether or not it is aware of records which do substantiate these amounts. If it is, it is to treat these records in the same way as those just discussed. Otherwise, it is to treat them in the same manner as records for which reimbursement is not demonstrated, (which is set out at para 36).

[para 35] The third parties argue that page 237 contains an itinerary but not money amounts, and suggests this may be because the trip was not taken. The travel items listed on page 237 are the same as those listed on pages 242 and 1094. The third parties argue regarding the latter that the “ticket was refunded as noted on page 1093”. One of the amounts refunded on page 1093 coincides with the last amount claimed on page 240, but page 1093, which is a duplicate of page 243, also contains another, more substantial refund. I am unable to discern the relationship among these various items in the records. I do note, however, that AHS does not appear to dispute that the expense claims on these pages were refunded. For this reason, I will accept that the amounts were refunded as the third parties assert. Accordingly, the Third Party’s name as the person claiming the expenses being already known, only the date of the expenditures and the amounts are to be disclosed for all of the entries on pages 237, 240 , 242, 243, 1093 and 1094.

[para 36] With respect to the remaining information that was reserved for the present part of the inquiry, there appears to be no documentation among the records that the claimed expense was reimbursed (though there are statements on some of them that they are “to be reimbursed”). AHS disputes that they were. This includes the following items:

- all entries on pages 1125, 1176, 1179, 1218, 1226;
- the last two entries on page 1228;
- the second and third entries on page 1233, and;



- the first and second entries on page 1234.

In accordance with the discussion above, I find these expenses must be treated in the same way as expenses that were not reimbursed. Therefore, I will order the information showing the details of what the claimed expense was for, other than the names of third parties A, B and D, or addresses if any appear, to be disclosed. (This is not to involve the disclosure of other personal information of the Third Party or sensitive information of the Public Body that the Public Body has consistently withheld throughout the records, such as credit card or ID numbers personal addresses, and the like.)

[para 37] Before concluding this discussion I note that the third parties object to the disclosure of information that was not requested. I am not sure what information this objection refers to. As the Public Body notes, while different requestors asked for different information, there was ultimately an agreement that each one wished to receive all the records responsive to any of them. If it refers to expenses that were not processed through the Public Body and were mistakenly included among the responsive records, such information is, as discussed above, all to be redacted. If it refers to expenses that were reimbursed by the Third Party or refunded by the vendor, as is clear from the foregoing and the earlier orders in this matter, refunded or reimbursed expense claims are responsive to a request “for expense claims” (though less information need be disclosed).

## **V. ORDER**

[para 38] I make this order under section 72 of the Act.

[para 39] I order the Public Body to make further disclosures in accordance with the instructions at paras 30 to 36 above, that is:

- withholding the names of third parties A, B and D and any personal addresses wherever they appear;
- withholding all information associated with these parties described in the first two bullets of para 30;
- disclosing the dates and amounts of expenditures only for expenses relating to third parties A, B and D that are listed in bullets three and four of para 30, and that are listed in para 35;
- determining whether there are records showing reimbursement for the expenses on pages 109 and 115, as discussed in para 34, and treating them accordingly, and;
- disclosing the details of the claimed expenses relating to third parties A, B and D, as well as the dates and amounts, that are listed in para 36.

(The Third Party’s name need not be disclosed under bullets three to five, as this name appears throughout the records and is generally understood to be the name of the person making all the expense claims.)

[para 40] 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