

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-09

March 31, 2021

INDIGENOUS RELATIONS

Case File Number 008785

Office URL: www.oipc.ab.ca

Summary: An individual (the Complainant) complained that his employer, Indigenous Relations (the Public Body), disclosed his personal information on two occasions contrary to the *Freedom of Information and Protection of Privacy Act* (the Act).

First, the Complainant complained that a senior employee (Employee A) sent an email to other employees with the Public Body which contained his personal information, in contravention of the Act. Second, the Complainant complained that another senior employee (Employee B) disclosed his personal information in a staff meeting Employee B held with the Complainant's co-workers, in contravention of the Act.

The Adjudicator found that the email sent by Employee A contained personal information about the Complainant under the Act, and that the Public Body disclosed this information to other employees in contravention of sections 40(1) and 40(4) of the Act.

The Adjudicator found that there was insufficient evidence to find that Employee B made a particular statement, as alleged by the Complainant, in the staff meeting. The Adjudicator found that other information Employee B disclosed in the staff meeting was personal information about the Complainant and that the Public Body disclosed this information in contravention of sections 40(1) and 40(4) of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 40(1) and (4), 72.

Regulations Cited: AB: *Freedom of Information and Protection of Privacy Regulation*, AR 186/2008, s. 7.

Authorities Cited: AB: Order F2016-62.

I. BACKGROUND

[para 1] An individual (the Complainant) complained that his personal information was disclosed by his employer, Indigenous Relations (the Public Body), contrary to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) in two instances.

[para 2] First, the Complainant complained that his personal information was disclosed in an email sent by a senior employee (Employee A) to a group of employees, and copied to other employees, with the Public Body. The Complainant was provided with a copy of the email by a co-worker, and included it with his complaint.

[para 3] In the email, Employee A informed the employees that on the previous day, Employee A had suspended the Complainant with pay due to a number of concerns that had been brought to Employee A's attention. Employee A advised that, as a result, an internal investigation had been launched. Employee A asked the employees not to discuss or share any information of the Public Body with the Complainant until the conclusion of the investigation. The last sentence of the email identified two other employees and stated what their roles with the Public Body were or would be.

[para 4] The Complainant complained that the information contained in the email was his personal information and that disclosing this information to the other employees was a breach of his privacy.

[para 5] Second, the Complainant alleged that on the same day that Employee A sent the email, the Complainant's manager (Employee B) held a staff meeting with the Complainant's co-workers in which Employee B said "I can't give you details, but [Complainant] has been suspended and what he did is really, really bad."¹

[para 6] The Complainant complained that the information disclosed by Employee B in the staff meeting was his personal information and that disclosing this information to the other employees was a breach of his privacy.

[para 7] The Commissioner appointed a Senior Information and Privacy Manager to investigate and attempt to settle the matter; however, the matter was not resolved and the Complainant requested an inquiry.

[para 8] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

¹ Complainant's Request for Review/Complaint.

II. ISSUES

The Notice of Inquiry set out the issues for this inquiry as follows:

1. **Did the Public Body disclose recorded personal information about the Complainant that was in its custody or under its control?**
2. **If the answer to Issue No. 1 is “yes”, did the Public Body disclose the Complainant’s personal information in compliance with sections 40(1) and 40(4) of the FOIP Act?**

III. DISCUSSION OF ISSUES

1. **Did the Public Body disclose recorded personal information about the Complainant that was in its custody or under its control?**

Is the information the Complainant’s personal information?

[para 9] The definition of “personal information” is set out in section 1(n) of the Act as follows:

1 *In this Act,*

...

- (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 10] As stated in section 1(n) of the Act, the Act only applies to personal information that is *recorded* information about an individual.

The Email Disclosure

[para 11] In its initial submission, the Public Body stated that with regard to the email sent by Employee A, the Public Body “confirms that it disclosed recorded personal information about the Complainant that was in its custody or under its control”.²

[para 12] In Order F2016-62, the adjudicator considered a complaint by an individual that her employer, a public body, had disclosed her personal information in two instances in contravention of the Act. At paragraph 4, the adjudicator described the second instance as follows:

[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. (emphasis added)

[para 13] At paragraph 8 the adjudicator concluded that the information was personal information about the complainant under the Act:

[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. (emphasis added)

[para 14] The email sent by Employee A to the other employees named the Complainant and included information about the Complainant being suspended with pay, that an investigation had been launched, and that staff were not to discuss the business of the Public Body with the Complainant until the conclusion of the investigation. I find that this is recorded personal information about the Complainant under section 1(n)(i) and (vii) of the Act. I do not find that the last sentence of the email which named two other employees and identified what their roles were or would be, to be personal information about the Complainant.

² Public Body's initial submission at paras. 16 and 25.

The Staff Meeting Disclosure

[para 15] On the same day that Employee A sent the email, Employee B held a staff meeting with the Complainant's co-workers. The Complainant submitted that he had been told by an individual, who said they were present at the staff meeting, that Employee B said in the staff meeting "I can't give you details, but [Complainant] has been suspended and what he did is really, really bad."³

[para 16] At paragraph 17 of its initial submission, the Public Body stated:

17. The Public Body contacted [Employee B] to respond to the complaint that he disclosed information in a staff meeting about the Complainant being suspended. [Employee B] was provided with the details of the complaint involving him and was asked to provide comments about whether he made the statement identified and reasons if he did.

[para 17] The Public Body submitted that Employee B confirmed that he called a staff meeting on the day in question. The Public Body submitted that the Complainant worked for Employee B and that Employee B felt it was necessary to speak with the staff, as they had witnessed the Complainant walk out of the office the prior day. The Public Body stated "[Employee B] indicated ". . . staff were very concerned and hearsay and conjecture were beginning to run through the office. The meeting was a necessity to calm the situation."⁴

[para 18] The Public Body stated that it was important to note that several staff with the Public Body received an email from the Complainant the prior evening. The Public Body stated that in the email, the Complainant advised his colleagues that "I have been suspended while an investigation is pending into two complaints made against me . . ." The Public Body submitted that "This e-mail to staff also contributed to the questions and concerns being discussed in the office amongst the staff."⁵ (emphasis in submission)

[para 19] At paragraphs 20 and 21 of its initial submission, the Public Body stated (emphasis in submission):

20. The staff were told by [Employee B] that the Complainant had been put on a leave of absence pending an internal investigation, but no further details were divulged. Although staff pressed [Employee B] for more specific details and reasons, no other information was provided by [Employee B].
21. [Employee B] indicated in his comments that at no point did he say that the Complainant had done something that was "really really bad" nor did he use the word "suspended".

[para 20] At paragraphs 22 and 26 of its initial submission, the Public Body stated:

³ Complainant's Request for Review/Complaint, Request for Inquiry and rebuttal submission.

⁴ Public Body's initial submission at para. 18.

⁵ *Ibid.*, at para. 19.

22. With regard to the statement by [Employee B] in a staff meeting on [date], the Public Body denies it disclosed recorded personal information about the Complainant that was in its custody or under its control.

...

26. With regard to the statement by [Employee B] in a staff meeting on [date], the Public Body denies it:
(i) disclosed recorded personal information about the Complainant that was in its custody or under its control.

[para 21] I leave aside for the moment the allegation that Employee B said “what he (the Complainant) did is really, really bad.” Given that the Public Body conceded that the disclosure by Employee A in the email that the Complainant had been suspended and an internal investigation had been launched, was recorded personal information about the Complainant that was in its custody or under its control, it is not clear how it takes the position that the disclosure by Employee B that the Complainant had been suspended or put on a leave of absence pending an internal investigation, was not a disclosure of recorded personal information about the Complainant that was in its custody or under its control.

[para 22] It may be that the Public Body was only referring to the alleged statement by Employee B that “what he (the Complainant) did is really, really bad” when it denied that it disclosed recorded personal information about the Complainant that was in its custody or under its control. However, the Complainant also alleged that Employee B had disclosed that the Complainant had been suspended, and the Public Body has stated that Employee B told the staff that the Complainant “had been put on a leave of absence pending an internal investigation.”⁶

[para 23] The Complainant argued that I should find that Employee B specifically said in the staff meeting that the Complainant had been suspended.

[para 24] The situation is not unlike that which was before the adjudicator in Order F2016-62 where the complainant submitted that the public body had disclosed that she was suspended and the public body stated that it disclosed that the complainant was on leave.

[para 25] In that case, as noted above, the adjudicator concluded at paragraph 8 that “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 26] At paragraph 16 of Order F2016-62, the adjudicator stated:

[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

⁶ *Ibid.*, at para. 20.

concerned as it is her personal information in either case. Therefore, I will not make a finding on this. (emphasis added)

[para 27] Likewise, in this case, although there is some disagreement about whether the information that was disclosed in the staff meeting, was about a suspension or a leave of absence, I do not believe that this is a material distinction insofar as section 40 of the Act is concerned as it is the Complainant's personal information in either case. Therefore, I will not make a finding on this.

[para 28] I find that the Complainant's name and information about his being suspended or put on a leave of absence pending an internal investigation is personal information about him pursuant to section 1(n)(i) and (vii) of the Act.

[para 29] I turn now to the Complainant's allegation that Employee B said in the staff meeting that "what he (the Complainant) did is really, really bad." As noted above, the definition of "personal information" only applies to *recorded* information about an identifiable individual.

[para 30] Before I can determine whether the alleged statement was recorded information about the Complainant, I must first determine whether there is a sufficient basis to find that Employee B made the statement.

[para 31] In this case, there is an allegation, based on hearsay, that Employee B said in the staff meeting that "what he (the Complainant) did is really, really bad". There is no evidence before me to corroborate this allegation. The Public Body has submitted that Employee B denied making this statement. In light of the conflicting evidence, I find that there is insufficient evidence upon which to conclude that Employee B made the alleged statement.

[para 32] As I have determined there is insufficient evidence upon which to conclude that Employee B made the alleged statement, it is not necessary for me to further consider whether the information conveyed in the statement was *recorded* information about the Complainant, to which the Act would apply.

[para 33] In light of the foregoing, the alleged statement will not be considered any further in this inquiry.

2. If the answer to Issue No. 1 is "yes", did the Public Body disclose the Complainant's personal information in compliance with sections 40(1) and 40(4) of the FOIP Act?

[para 34] I have determined that the Public Body disclosed recorded personal information about the Complainant in the email sent by Employee A. I have further determined that the disclosure by Employee B in the staff meeting that the Complainant had been suspended/put on a leave of absence pending an internal investigation, was a disclosure of recorded personal information about the Complainant by the Public Body.

[para 35] The next issue to be determined is whether these disclosures complied with sections 40(1) and 40(4) of the Act.

[para 36] Section 40(1) sets out the circumstances in which a public body is permitted to disclose personal information.

[para 37] Section 40(4) places the following limitations on the disclosure:

40(4) A public body may disclose personal information only to the extent necessary to enable a public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

The Email Disclosure

[para 38] With regard to the email from Employee A, the Public Body stated in its initial submission that:⁷

. . . the Public Body can confirm that the email sent out by [Employee A] was immediately identified as an inappropriate disclosure of personal information. It was recognized by the parties involved that this information, as well as the large number of people who received the e-mail, constituted a breach of privacy and an improper disclosure. The Public [B]ody took all reasonable steps to mitigate the privacy breach, by sending a follow up email (see Tab 3).

[para 39] At paragraph 23 of its initial submission, the Public Body stated:

23. With regard to the email sent by [Employee A] on [date], the Public Body confirms it did not disclose the Complainant's personal information in compliance with sections 40(1) and 40(4) of the FOIP Act.

[para 40] At paragraph 25 of its initial submission, the Public Body stated:

25. With regard to the email sent by [Employee A] on [date], the Public Body confirms it:
(i) disclosed recorded personal information about the Complainant that was in its custody or under its control; and
(ii) did not disclose the Complainant's personal information in compliance with sections 40(1) and 40(4) of the FOIP Act.

[para 41] As noted in paragraph 38 above, in its initial submission the Public Body stated that "The Public [B]ody took all reasonable steps to mitigate the privacy breach, by sending a follow up email."

[para 42] In its initial submission, the Public Body advised that it determined that it was not possible to pull the email back from delivery. It advised that it was decided that the corrective action that was necessary was for a follow up email to be sent by Employee A to the individuals who received the initial email.⁸

⁷ *Ibid.*, at para. 12.

⁸ *Ibid.*, at paras. 13 and 14.

[para 43] With its initial submission, the Public Body provided a copy of the follow up email Employee A sent a few days after the initial email, to the addressees of the initial email. In the follow up email, Employee A informed the addressees that sending the initial email was a mistake and that the situation referenced in the initial email was of a confidential matter and was currently being handled by management and Human Resources. Employee A requested that the addressees do not distribute the initial email further.

[para 44] In his Request for Review/Complaint, the Complainant stated “I was not even notified that this breach to my privacy occurred by HR, I had to find out from a co-worker”. The Complainant takes the position that the Public Body should have notified him of the disclosure of his personal information in the email.⁹

[para 45] At present, there is no section in the Act which requires a public body to notify an individual when their personal information has been disclosed without authorization under the Act.

[para 46] In light of the Public Body’s admission that it disclosed recorded personal information about the Complainant in contravention of sections 40(1) and 40(4), I accept its position and find that the disclosure of the Complainant’s personal information in the email sent by Employee A contravened sections 40(1) and 40(4) of the Act, and I note the steps it did take to mitigate its actions.

The Staff Meeting Disclosure

[para 47] In this case, I have found that Employee B disclosed personal information about the Complainant to his co-workers in the staff meeting. The Public Body did not make any submissions that the disclosure of the Complainant’s personal information by Employee B in the staff meeting was permitted under any subsection of section 40(1), or that the disclosure complied with section 40(4). The Public Body said these sections were “not applicable” given its position that Employee B did not disclose any personal information about the Complainant in the staff meeting.¹⁰

[para 48] The Public Body did explain in its initial submission, though, that the reason Employee B told the employees in the staff meeting that the Complainant had been suspended/put on a leave of absence pending an internal investigation was because “. . . staff were very concerned and hearsay and conjecture were beginning to run through the office. The meeting was a necessity to calm the situation.”¹¹

[para 49] I will consider whether there is any subsection of section 40(1) which would have permitted the disclosure of the Complainant’s personal information given the reason for the disclosure provided by the Public Body.

⁹ Complainant’s Request for Review/Complaint and rebuttal submission.

¹⁰ Public Body’s initial submission at para. 24.

¹¹ *Ibid.*, at para. 18.

[para 50] The only subsections of section 40(1) which would appear to possibly permit the disclosure of the Complainant's personal information in the staff meeting are sections 40(1)(h) or 40(1)(x). These sections provide:

40(1) A public body may disclose 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,

[para 51] I have considered whether the disclosure of the Complainant's personal information to his co-workers by Employee B was permitted under section 40(1)(h) of the Act; however, given that I have no information about who was in the staff meeting, what their position with the Public Body was, and how disclosing to them the fact that the Complainant had been suspended/put on a leave of absence pending an internal investigation was "*necessary* for the performance of the duties" of each employee who was present at the staff meeting, I am not able to conclude that this section would apply.

[para 52] Even if I were I to find that section 40(1)(h) of the Act permitted the disclosure of personal information about the Complainant's absence from the office to his co-workers, section 40(4) restricts the disclosure to personal information that is reasonable to meet the purpose.

[para 53] Here, the Public Body did not just inform the Complainant's co-workers who possibly interacted with him as part of their job duties that he would be away from the office for a period of time; it told them that the Complainant had been suspended or put on a leave of absence pending an internal investigation. I find that the disclosure went beyond what was reasonable to meet the purpose under section 40(4).

[para 54] I have also considered whether the disclosure would have been permitted under section 40(1)(x) "for the purpose of managing or administering personnel of the Government of Alberta or the public body."

[para 55] Here, I do not see how disclosing to the Complainant's co-workers that the Complainant had been suspended/put on leave pending an internal investigation, was for the purpose of managing the Complainant himself.

[para 56] Alternatively, I considered whether, given the reason for the disclosure provided by the Public Body, the disclosure of the Complainant's personal information by Employee B to the Complainant's co-workers could be said to be for the purpose of managing or administering the Complainant's co-workers.

[para 57] According to the Public Body’s initial submission, Employee B indicated that “. . . staff were very concerned and hearsay and conjecture were beginning to run through the office. The meeting was a necessity to calm the situation.” The Public Body further stated that the email sent by the Complainant to several staff the previous day “also contributed to the questions and concerns being discussed in the office amongst the staff.”¹² (emphasis in submission)

[para 58] In his rebuttal submission, the Complainant acknowledged that he had sent the email to his colleagues the day prior to the staff meeting, informing them that he had been suspended while an investigation was pending into two complaints made against him. He stated “I sent out that email to my colleagues because I knew they were frightened and scared for me”.¹³

[para 59] I do not interpret the Public Body’s comments as an argument that the disclosure by the Complainant that he had been suspended while an investigation was pending, in the email to his colleagues, amounted to consent by the Complainant under section 40(1)(d) of the Act for the Public Body to disclose this information in the staff meeting. In any event, section 7 of the *Freedom of Information and Protection of Privacy Regulation*, AR 186/2008 sets out the requirements for consent to disclosure under section 40(1)(d) and the Complainant’s email to his colleagues does not meet these requirements. Rather, I understand the Public Body’s argument to be that the Complainant’s email was a factor in determining to hold the staff meeting, the purpose of which was to address staff concerns and questions regarding the Complainant.

[para 60] In my view, the language in section 40(1)(x) which permits a public body to disclose personal information for the purpose of managing and administering personnel, does not extend to disclosing personal information about an employee, to other employees for the purpose of assuaging the concerns of those employees, or quelling office hearsay and conjecture.

[para 61] However, if I am incorrect in this, section 40(4) of the Act allows disclosures only to the extent necessary to enable the Public Body to carry out its purpose. I have no explanation from the Public Body as to why any of the employees in the staff meeting needed to be told specifically that the Complainant had been suspended or put on a leave of absence pending an internal investigation. There may have been some employees who, as part of managing these employees, would have needed to be informed of the fact that the Complainant had been suspended or put on a leave of absence pending an internal investigation; however, I have no information that any of the staff in the meeting would fall into this category.

[para 62] In my view, using the word “suspended” or the phrase “*put on a leave of absence*” suggests that the employee has potentially done something wrong. Even when it is couched with the language “pending an investigation” which indicates no finding has yet been made, the language leaves an impression which, even if later there is a finding that no wrong has been committed, can be difficult for an employee to overcome. It is not that a public body cannot use these words, as they may factually describe the actions a public body has taken; however, a public body should give careful consideration as to who should receive this information, and why, and whether the disclosure of such information is in accordance with the provisions of the Act.

¹² *Ibid.*, at paras. 18 and 19.

¹³ Complainant’s rebuttal submission.

[para 63] If the Public Body's purpose for disclosing the information was to address the Complainant's co-worker's concerns about him, and address office conjecture, as part of managing the Complainant's co-workers, it is not clear why the Public Body couldn't have simply informed the staff that the Complainant was either on a leave of absence (instead of "put" on a leave of absence), until further notice, or even just that he would be away from the office until further notice and that, for privacy reasons, no further details about his absence would be provided. Therefore, I find that the Public Body disclosed more information than was reasonable to meet its purpose.

[para 64] On the basis of the foregoing, I find that the Public Body disclosed the Complainant's personal information in contravention of sections 40(1) and 40(4) of the Act when Employee B shared the fact that the Complainant was either suspended or put on a leave of absence pending an internal investigation, with the Complainant's co-workers in the staff meeting.

[para 65] Given my finding that the disclosure by Employee A of the personal information about the Complainant in the email did not comply with sections 40(1) and 40(4) of the Act, and my finding that the disclosure of the Complainant's personal information by Employee B did not comply with sections 40(1) and 40(4) of the Act, I will order the Public Body to stop disclosing the Complainant's personal information in contravention of the Act.

[para 66] This Order should not be construed to mean that the Act never permits a public body to disclose that an employee has been suspended or placed on a leave of absence. Whether a disclosure of this information complies with the Act will depend on the circumstances of the disclosure and the submissions made by a public body as to its authorization under the Act to disclose the information.

IV. ORDER

[para 67] I make this Order under section 72 of the Act.

[para 68] I find that when Employee A sent the email, the Public Body disclosed recorded personal information about the Complainant in contravention of sections 40(1) and 40(4) of the Act.

[para 69] I find that when Employee B informed the Complainant's co-workers that he had been suspended or put on a leave of absence pending an internal investigation, the Public Body disclosed recorded personal information about the Complainant in contravention of sections 40(1) and 40(4) of the Act.

[para 70] I order the Public Body to stop disclosing the Complainant's personal information in contravention of the Act. This Order does not preclude the Public Body from disclosing personal information about the Complainant provided it does so in compliance with the Act.

[para 71] 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.

Carmen Mann
Adjudicator
/kh