

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2008-009**

April 17, 2009

**ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS**

Case File Number P0550

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

**Summary:** A chiropractor who had withdrawn from practice complained under the *Personal Information Protection Act* that the Alberta College and Association of Chiropractors had disclosed his home telephone number and address to persons who had requested his contact information in order to obtain patient files. The Adjudicator found that this had happened on two occasions, contrary to the College's own policies.

**Statutes Cited:** **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1(a), 1(i)(v), 1(k), 4(3)(d), 7(1), 8, 20, 52.

**I. BACKGROUND**

[para 1] The Complainant, a chiropractor who had withdrawn from practice, complained that his personal information – his home telephone number and home address – had been disclosed by the Alberta College and Association of Chiropractors (formerly the College of Chiropractors of Alberta) (the “College” or the “Organization”) in contravention of the *Personal Information Protection Act*. He said that certain individuals who had contacted the College to try to obtain contact information for him had been given this personal information by the College.

## II. RECORDS AT ISSUE

[para 2] As this case involves a complaint, there are no records in issue.

## III. ISSUES

[para 3] The issue as stated in the Notice of Inquiry is:

**Did the Organization disclose the Complainant's personal information, and if so, did it do so in compliance with or in contravention of the Act?**

The Notice suggested that answers to the following questions would help to determine the issue:

1. Did the Organization disclose the Complainant's personal information as described?
2. If the Organization disclosed such information, was it "business contact information" as defined in section 1(a) of the Act? (Section 4(3)(d) of the Act provides the Act does not apply to disclosure of "business contact information".)
3. If the Organization disclosed the Complainant's personal information that was not "business contact information", did it do so in contravention of, or in compliance with, section 7(1) of the Act? (Section 7(1) prohibits disclosure unless either the Complainant has consented in accordance with section 8, or the Organization has authority under section 20 to disclose without consent.)

## IV. DISCUSSION OF ISSUES

*Is the Complainant's home address and telephone number his personal information?*

[para 4] Section 1(k) defines "personal information" as "information about an identifiable individual". A person's home telephone number and home address is their "personal information" within the terms of the Act.

[para 5] If a person is conducting a business from their home, a home address and telephone number can at the same time be business contact information. "Business contact information" is defined in section 1(a) of the Act as including an individual's business telephone number and business address. Section 4(3)(d) of the Act provides that the Act does not apply to collection, use and disclosure of "business contact information" if it is collected, used or disclosed for the purposes of contacting an individual in their capacity as an official of the organization and for no other purpose. A collection, use or disclosure of a home address or telephone number that is also the contact information for a business, if it is done solely for the aforementioned purpose, could be excluded from

the scope of the Act even though the home address and telephone number are also personal information.

[para 6] An individual acting in a commercial capacity is an “organization” within the terms of section 1(i)(v), and the Complainant’s chiropractic practice was a commercial activity. Thus when the Complainant was in practice, he was an “organization”, and may still be so for the purpose of his dealings with records of former patients. Possibly (though it is not clear) the records of former patients were stored at the chiropractor’s home when he ceased to practice, and possibly they remain there. In any event, his home seems to be the only place at which he can be contacted about these files. Therefore, for the limited purpose of his obligations relative to the records of former patients, his home may be his place of business, and his home address and telephone number may be his “business contact information” at which he can be contacted as an official of his organization, within the terms of section 4(3)(d).

[para 7] Thus I considered whether disclosure by the College of the Complainant’s home address and telephone number for the purpose that he could be contacted about former patients’ files (assuming this had happened) would be excluded from the scope of the Act by reference to section 4(3)(d).

[para 8] A question arises as to whether section 4(3)(d) is applicable to an organization’s disclosure of a person’s “business contact information” *to someone else* who intends to use it for the purpose of contacting the person in their business capacity (as distinct from a disclosure done in the course of the organization’s contacting the person *itself*). On one hand, the provision speaks of disclosure of business contact information for the limited purpose “of contacting” an individual in their business capacity. This grammatical structure possibly suggests that for the disclosure to fall within the terms of section 4(3)(d), the “contacting” must be being done by the organization that is in possession of the information, itself, rather than by someone else to whom it discloses the information. On the other hand, if the provision contemplates only such disclosure as would be done in the course of the organization itself contacting that person, it is not clear to whom disclosure “for the purposes of contacting” would be required. This latter point supports the idea that the provision covers a disclosure to someone else for the purpose that they contact the person whose business contact information it is.

[para 9] I do not need to decide this question in this case. This is because on the particular facts of this case, I do not believe it would be proper to treat disclosure of the Complainant’s home address and telephone number by the College to other persons as a disclosure of his “business contact information”. At the time the Complainant ceased to practice, the College had put in place a system by which members withdrawing from practice could deal with communications relative to files of former patients. Under this system, a chiropractor was given an option to provide contact information for a business where the files were stored. However, if he or she did not do this, and provided only personal contact information, there was, as the evidence reviewed below will further show, an understanding that this information would not be disclosed to callers seeking to

contact them. Rather, the arrangement was that information about the requests would be forwarded to the withdrawing member's home address.

[para 10] It appears from the evidence that the Complainant did not provide contact information for a business to the College, but provided only his home telephone number and address. The evidence showed that this choice eventually gave rise to some frustration on the part of College officials, because it necessitated more involvement by the College in requests for files of former patients than would otherwise be necessary. However, at the time the Complainant filed his request for a change of status, the procedure described above was what both the Complainant and the College understood was to happen.<sup>1</sup> In my view, it would not be proper to treat the information the Complainant provided to the College as though it were his "business contact information", thus placing it outside the Act's restrictions on disclosure of information as long as it was used to contact him in his business capacity, when the understanding was that it would be treated as his personal information and not disclosed. I note that the College itself has not suggested in its submissions that the information should be treated as "business contact information". Thus in my view, in this case, the Complainant's home address and telephone number in the hands of the College should be treated as his personal information only, and not as his "business contact information" within the terms of section 4(3)(d), and the section does not apply so as to exclude disclosure of this information from the scope of the Act.

*Did the College disclose the Complainant's personal information?*

[para 11] In support of his assertion that the College disclosed his personal information, the Complainant indicated that he had been contacted by persons who stated that they had been given his home address and telephone number by the College. As well, he submitted tape recordings of telephone conversations that he had had with two persons, for the purpose of demonstrating that this had happened.

[para 12] In one of the phone conversations, the Complainant is conversing with another person (who appears to be a former patient). The Complainant asks how she found him, and the person replies that she called the College, and that the College gave her the Complainant's telephone number. She states that she provided this number to her new chiropractor, so that the new chiropractor could call the Complainant to ask for her patient records. The Complainant also mentions that he had received a card from the other person, and asks how she obtained his address (the card was received at his home address). She replies that she got the address directly from the College.<sup>2</sup> The

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<sup>1</sup> As will be discussed further in the review of the evidence, the Registrar of the College provided some information to the Complainant at one point that was contrary to this understanding, but this was a mistake on the Registrar's part, and the Registrar rectified this mistake soon after.

<sup>2</sup> The Complainant also provided correspondence between himself and the portfolio officer assigned in this case, which gives a slightly different version of this conversation. However, I have not relied on this correspondence. It is the practice of this office not to accept documents or other evidence created during the investigation/mediation stage, as indicated under the "Content of Submissions" part of the Notice of Inquiry that was sent to the parties.

Complainant also submitted the envelope in which the card was received as part of his submission.

[para 13] In the second telephone conversation, the Complainant is returning a phone call from another chiropractor who had left him a voice mail message. The voice message indicates the other chiropractor is trying to obtain patient x-rays he believes the Complainant may have. When the Complainant returns the call, he asks the other chiropractor if he obtained his telephone number from the College, stating “I guess you found me through your association, uh?”. The other chiropractor replies “I hunted you down” and then he continues “just curious about some x-rays, I had a patient looking for some x-rays, and I thought, well, I’ll give you a call . . . .” Some time later in the conversation the Complainant again states “I guess you got my number through the association, uh?”, and on this occasion the other chiropractor replies. “Yeah, uh, what I’m trying to do is, um, she’s got a litigation claim on-going, so she’s been hounding me to find ‘em . . . .” The other chiropractor also indicates that he was asked by the patient involved to provide the Complainant’s telephone number to a third person, but that he had declined to do this and had chosen to call the Complainant himself instead.

[para 14] Another part of the tape recording submitted by the Complainant in this inquiry records a lengthy conversation he had with the Registrar of the College. In this conversation, the Complainant asserts that his personal information has been wrongfully disclosed, and provides some information as to the persons or organizations to whom he believes it was disclosed. Throughout the conversation, the Registrar, though not indicating any personal knowledge of whether such a disclosure actually happened, makes various statements as to whether it was possible that it could have happened given the College’s policies and the state of the law. The Registrar indicates that personal contact information is not or should not be given out to inappropriate persons, but he suggests that if the persons making the request for a member’s contact information have an appropriate reason to access a patient file, whatever contact information the College has in its possession may be provided to the requestor. The Registrar also repeatedly makes the point that the Complainant should provide contact information that he has no objection to having disclosed, as the College does not act as an intermediary in information requests relative to inactive chiropractors other than to provide contact information to the requestor.

[para 15] Subsequent to this conversation, there is voice message on the submitted tape, left by the Registrar, indicating that he was mistaken as to the College’s practice and stating that in no circumstances is personal contact information ever given out, and that therefore this could not have happened relative to the Complainant’s information.

[para 16] In its initial submissions, the College indicates that its policies are that personal contact information is not given out. It states, with reference to the position at the relevant time, that: “Staff are very clear about the need to protect personal information and know that this information is never disclosed without the written permission of the member of former member in question.” The College included in its

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submissions a document (labeled Exhibit 2), which it says was in effect at the relevant time, which says: “If only a personal address was provided [by the member seeking a change in status to inactive], the caller is to be advised that provincial privacy legislation does not allow the College to release personal information”, (and indicates further that letters to inactive members will be forwarded to the former member if there is forwarding information). The College acknowledges in its submission that the Registrar indicated otherwise to the Complainant, but states that this was because the Registrar was new in his position and not entirely familiar with the policies at the time, and that, as noted above, the Registrar took steps to correct the misinformation he had given.

[para 17] In its rebuttal submission, which was made after the College had had an opportunity to listen to the aforementioned tape recordings, the College seems to concede that there is evidence that the personal information was disclosed. It states that if this happened, it should not have happened, according to its own policies. It outlines the steps that it has taken to ensure that it will not happen in the future. This includes a process under which, before approving a change in status of a chiropractor who is ceasing to practice, it will in the future require information by which patient records can be accessed. It also ensures that staff members who have access to the member management data base are “fully conversant with the non-disclosure requirement relating to personal information”, and also ensures that new staff members are trained accordingly.

[para 18] I find, on the basis of the evidence, that the College disclosed the Complainant’s personal information – his home telephone number and address to the former patient, and his telephone number to the other chiropractor. With respect to the latter (the other chiropractor), I accept the submission of the College that there is some ambiguity in what this person said with regard to the source of the Complainant’s contact information. His first response to the question implicit in the Complainant’s statement “I guess you found me through your association, uh?” simply ignores or avoids the question. His second response to the same implicit query is affirmative in form, but its tone is such that could be taken as an acknowledgement that this is what the Complainant believes, rather than as concurrence with the Complainant’s suggestion as to the source of the information. However, as the Complainant made the specific suggestion to the other chiropractor that the College had provided the contact information, as the other chiropractor appeared to affirm and certainly did not deny that the College was the source of the information, and as no other possible source was raised, on a balance of probabilities I conclude that the information was provided to the other chiropractor by the College.

[para 19] In reaching my conclusion I draw nothing from the taped conversation with the Registrar, as this individual was making statements only about what he believed to be the policy and what he thought would be appropriate, or what could have happened. The Registrar does not appear to have been personally involved in giving out such information and had no actual knowledge with respect to the Complainant’s information disclosure. To the degree he misinformed the Complainant as to the policies, the Registrar rectified this a very short time after. I note the Complainant states in his submission that a member of the College staff indicated to him that the directives of the

Registrar in this regard would be followed. However, in view of the evidence that the Registrar took steps after his conversation with the Complainant to confirm what the College's practices were, and when he found that they were contrary to what he had told the Complainant, he communicated this information to the Complainant, I accept the College's submission that the information disclosure was contrary to its own policies, and I reject the idea that the disclosures were done pursuant to the Registrar's directive that they be done.

*Did the Complainant consent to disclosure of his personal information within the terms of section 8 of the Act?*

[para 20] I turn to whether the Complainant gave consent that his information be disclosed. In his submission, the Complainant refers to the information he says the College gave out as his "private contact information". I have reviewed the form which the Complainant filled out in order to change his status (which was provided in the submission of the College, labeled as Exhibit 5). This form, while it has a space for a forwarding address (which the Complainant filled in with what is apparently his home address), does not expressly discuss whether that information will or will not be provided to others (though "forwarding" may suggest that this is the only purpose for which information written in that space will be used. The space immediately below is headed "Access to Records (Please indicate where patient records will be stored)", and is followed by the following list of headings: Address; Telephone; Clinic Name; Contact Name. Though this part of the form does not say so expressly, this is possibly the place in which the member is to fill in the information which can be provided to others. The Complainant filled this part in as "TBA to forwarding address above for now". (The last six words have a line drawn around them, the significance of which is unclear.)

[para 21] In his submission, the Complainant does not make a direct statement that he did not give consent to the College to give out this information, but he does refer to correspondence between the portfolio officer and the College, which he characterizes as "CACA staff admit they never had informed consent to distribute my contact information". The Complainant also attaches the correspondence he characterizes in this way. However, I have not relied on these attachments. As already noted above at footnote 2, it is the practice of this office not to accept documents or other evidence created during the investigation/mediation stage. This is indicated under the "Content of Submissions" part of the Notice of Inquiry that was sent to the parties in this case.

[para 22] From my review of the form alone, I would be unable to say whether the Complainant initially gave consent to disclosure of his home address. I gave some consideration to whether the filled-in form should be interpreted on its face as providing consent. That is, the "Access to Records" portion could be taken as the space in which information is to be given that can be shared with persons trying to contact the member, and the Complainant's notation "to forwarding address above for now", which he wrote in the "Access to Records" space, could be interpreted as a written indicator that this was to be his shareable contact address until some other address "TBA" [which I assume means 'to be announced'] was provided.

[para 23] However, the College itself appears to be of the view that the Complainant did not consent to disclosure of his contact information. In his letter to the Complainant of April 26, 2006, provided to me by the College (labeled as Exhibit 13), the Registrar indicates that callers requesting contact information for former members are given only information indicating a practice facility, “unless a member has provided specific written instruction that personal/residence information is to be released.” As just noted, the Complainant’s notation “to forwarding address above for now” could conceivably be taken as the requisite “specific written instruction”, since it appears in the “Access to Records” box. However, a document the College provided in its submission (labeled as Exhibit 7), which is a faxed message from the College to a person who had requested the Complainant’s contact information, contains the following statements: “[The Complainant] did not provide the College with a forwarding address for direct access to health records. We do have a personal address which was provided when the member became inactive, however provincial privacy legislation does not allow us to release this personal information.”

[para 24] Thus the College has not interpreted the way the Complainant filled in the form as an indicator of consent to disclose his home address. Possibly the College’s understanding is based not on the structure of the form and the way it was filled out, but on some discussion about the consent issue between the Complainant and the College of which I am unaware, and possibly he provided his home address and telephone number at some other time. I note that the form does not contain his home telephone number, and also that the address he provided on the form has a different postal code from that in the address on the envelope he provided which was sent to him by his former patient<sup>3</sup>. As well, the College provided a copy of a document dated April 20, 2006 (labeled Exhibit 15) in which, in correspondence to the College, the Complainant states that he had provided the College with an unlisted telephone number and his home address, and that “The understanding was that this information was to remain private and the college was not to provide this information to the general public or to any corporations, etc.”. As the College does not dispute this, I accept that the Complainant did not consent to disclosure of his contact information.

*Was the disclosure authorized under section 20 of the Act (which authorizes disclosure without consent)?*

[para 25] The College did not point to any of the provisions of the Act under which it was authorized to disclose the Complainant’s personal contact information without his consent, and I am not aware of any. I therefore find that the two disclosures described at para 18 were in contravention of the Act.

[para 26] I note that the College has indicated in its submissions that it is fully aware of its obligations respecting the personal information of chiropractors who have ceased practice, and that in future it will provide to members of the public seeking contact

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<sup>3</sup> This is the address which I have found, on the basis of the Complainant’s taped phone conversation with the former patient, was given to her by the College.



information only such contact information of non-practicing chiropractors as the chiropractors have provided for this purpose. The absence of such non-personal contact information in a given case may make it difficult for former patients to access their files. However, the obligations of chiropractors who cease practicing to provide reasonable and sufficient notice to those parties affected by their withdrawal from practice is beyond my jurisdiction.

## **V. ORDER**

[para 27] I make this Order under section 52 of the Act.

[para 28] I find the College contravened the Act on two occasions, as described above at para 18, by disclosing the Complainant's personal information. I order the College to cease disclosing his personal information, except with consent or as otherwise authorized by the Act.

[para 29] I make no further orders and impose no terms or conditions. I am satisfied from its submissions that the College is fully aware of its privacy obligations, and has taken steps to ensure that it will not disclose the Complainant's personal information in future.

Christina Gauk, Ph.D.  
Director of Adjudication