

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2023-07/F2023-36

August 24, 2023

**CREDIT COUNSELLING SERVICES OF ALBERTA LTD.
O/A MONEY MENTORS**

AND

THE DEBTORS' ASSISTANCE BOARD

Case File Numbers 010063 & 023731

Office URL: www.oipc.ab.ca

Summary: The Complainant alleged that Money Mentors (the Organization) collected her personal information contrary to the *Personal Information and Protection Act* (PIPA). The Complainant alleged that the Organization obtained information about a past bankruptcy from someone other than herself.

The Adjudicator concluded that the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), rather than PIPA, applied to the personal information in this case. The Organization is the delegate of the Debtors' Assistance Board (the Board), a public body; the Organization's powers were delegated to it pursuant to the *Debtors' Assistance Act*. As a public body, the Board's authority to collect information is subject to the limitations on information collection imposed by the FOIP Act. Delegating those powers to the Organization does not remove the limitations on collection of personal information put in place by the FOIP Act.

The Adjudicator considered whether the Board or Service Alberta and Red Tape Reduction (SARTR) may be responsible for the Organization's compliance with the

FOIP Act. In the event that either of them were, they should be added as a respondent to the complaint, and have the opportunity to comment on the issues raised in the complaint.

The Adjudicator found that the Board was responsible for the Organization's compliance. The Board could not slip the bonds of the FOIP Act by delegating its powers. The Adjudicator found that SARTR was not responsible for the Organization's compliance with the FOIP Act.

The Adjudicator added the Board as a respondent to the complaint.

Statutes Cited: AB: *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3; *Canadian War Measures Act*, 1914 (5 Geo. 5, c. 2, Dom.); *Debtors' Assistance Act*, R.S.A. 2000, c. D-6 ss. 2, 4, 4(a), 4(c), 4(h), 7(1)(e), 8(1), 12; *Designation and Transfer of Responsibility Regulation*, Alberta Regulation 11/2023 *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(p), 10, 30(1), 33, 39, 40, 72, 84(1)(e), 85(1); *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008, Schedule 1; *Government Organization Act*, RSA 2000, c G-10 s. 16; *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1(1)(i)(i), 4(3)(e), 52, 56(2), 56(3); *Societies Act*, R.S.A. 2000, c. S-14

Authorities Cited: AB: Order F2002-029

Cases Cited: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61; *Huth v. Clarke* (1890) 25 Q.B.D. 39; *Ouellet v. B.M.*, 2010 ABCA 240; *Reference re Agricultural Products Marketing Act*, R.S.C. 1970, c. A-7 et al., [1978] 2 S.C.R. 1198; *Reference Re: Regulations in Relation to Chemicals*, [1943] SCR 1

I. BACKGROUND

[para 1] Money Mentors (the Organization) is a not-for-profit organization providing credit counselling services to Albertans.

[para 2] On February 1, 2018, the Complainant attended a meeting at the Organization with one of its counsellors (the Counsellor). The purpose of the meeting was to determine if the Organization's services could assist the Complainant. A support worker (the Support Worker) from Alberta Health Services accompanied the Complainant.

[para 3] During the meeting, the fact that the Complainant had gone through bankruptcy arose. The Complainant is certain the Counsellor mentioned the bankruptcy without being informed of it by her and that, therefore, the Organization must have collected that information prior to the meeting. Having closely guarded any knowledge of her bankruptcy, the Complainant was shocked when it was mentioned. The Organization is certain that the Complainant volunteered the information that she had a bankruptcy, and that it had no knowledge of it prior to being informed of it by the Complainant.

[para 4] The Complainant met with the Organization a second and final time on February 20, 2021. At this point however, the matter of bankruptcy was already known to the Organization.

[para 5] With the assistance of the Support Worker, in June, 2018, the Complainant made a written complaint about the Counsellor to the Organization. The main thrust of the complaint was that the Organization must have conducted a background check on the Complainant, and learned of her bankruptcy by doing so. The Organization's Debt Programs Manager advised the Complainant that the Counsellor stated that the Complainant mentioned the bankruptcy first.

[para 6] Subsequently, the Complainant made a complaint to this Office alleging that the Organization collected her personal information in contravention of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (PIPA). Investigation and mediation were authorized to try to resolve the matter but did not do so. The matter proceeded to Inquiry.

II. ISSUES

[para 7] Initially, the parties were sent a Notice of Inquiry listing the issues in this matter that arise under PIPA. However, in the course of the Inquiry, I discovered circumstances which indicate that the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) might apply in this case. Consequently, I invited the parties to provide submissions on which legislation applied and added the following as an Issue:

A. Are the Respondent's dealings with the Complainant governed by the *Personal Information Protection Act* or the *Freedom of Information and Protection of Privacy Act*?

[para 8] For the reasons set out below, I have determined that the FOIP Act applies in this case. As a result, a new Notice of Inquiry was sent to the parties identifying the issues that arise under the FOIP Act.

[para 9] I note that in the Notice of Inquiry the words "Public Body" appears in the place of the word "Respondent." I have substituted the word "Respondent" here in order to reflect that while the FOIP Act applies in this case, the Organization is not a public body.

[para 10] During the course of the Inquiry, the possibility arose that either the Debtors' Assistance Board (the Board) and/or Service Alberta and Red Tape Reduction (previously Service Alberta, also previously Government Services, referred to here as SARTR) may be responsible for Money Mentors' compliance with the Act in this case. Accordingly, I will also address the following issue in the present stage of this Inquiry:

F. Are the Debtors' Assistance Board and/or Service Alberta (Now Service Alberta and Red Tape Reduction) responsible for Money Mentors' compliance with the Act?

III. DISCUSSION OF ISSUES

Preliminary matter – Affected third parties

[para 11] As discussed in detail below, the possibility has arisen that the Board and/or SARTR might be responsible for the Organization's compliance with the FOIP Act. Given that possibility, both were identified as affected third parties and invited to make submissions in this inquiry to address that issue. Both declined to participate.

[para 12] The Complainant and Money Mentors were given the opportunity to comment on whether the Board or SARTR were responsible but neither provided any comments.

Preliminary matter – scope of order

[para 13] I consider that in the event I conclude that either of the Board or SARTR is responsible for the Organization's compliance with the FOIP Act, they would be added as a party and given the opportunity to make full submissions on the issues in this Inquiry. Accordingly, I decided to make this determination before addressing all of the issues in this Inquiry and the present stage of the Inquiry addresses issues A and F only. Once any judicial review of my decisions on Issues A and F have concluded, or the time for any party to seek a review has passed, I will resume the Inquiry to address the remaining issues, including the manner in which the Organization came to know about the Complainant's bankruptcy, and whether it complied with the Act when it did. I reserve jurisdiction to consider the remaining issues, and new issues that may arise once this Inquiry is resumed.

A. Are the Respondent's dealings with the Complainant governed by the *Personal Information Protection Act* or the *Freedom of Information and Protection of Privacy Act*?

[para 14] As a corporate entity, the Organization is an "organization" as defined in section 1(1)(i)(i) of PIPA. It is not a public body under the FOIP Act.

[para 15] Initially, the Organization argued that it is also a non-profit organization under Part 6 of PIPA, and that PIPA does not apply to it in this case, pursuant to sections 56(2) and 56(3) of PIPA.

[para 16] However, in the early stages of reviewing submissions regarding the Organization's non-profit status, I discovered the following points through my own research:

- The Organization was formerly known as Credit Counselling Services of Alberta Ltd. (CCSA). A CORES (Corporate Registry) search reveals that CCSA is 1/3 owned by Her Majesty The Queen in The Right of The Province of Alberta.
- Information from the Organization’s website, moneymentors.ca, indicates that it is the exclusive operator of the Orderly Payment of Debts program enacted in part X of the federal *Bankruptcy and Insolvency Act* “on behalf of the Government of Alberta.”¹
- It appears that SARTR may appoint members of the Respondent via Ministerial Order. <https://www.alberta.ca/public-agency-appointees.cfm>

[para 17] The above raised the issue of whether the Organization might be part of the Government of Alberta, or sufficiently intertwined such that it may be a “public body” under section 1(p) of the FOIP Act; whether it is an “employee” of a public body under section 1(e) of the FOIP Act; and whether PIPA might not apply to the information in this case by reason of section 4(3)(e) of PIPA. That section provides the following:

4(3) This Act does not apply to the following:

...

(e) personal information that is in the custody of an organization if the Freedom of Information and Protection of Privacy Act applies to that information;

[para 18] I invited the parties to make submissions on the issue of whether the FOIP Act or PIPA applies in this case. The Organization made a submission; the Complainant did not.

[para 19] The Organization states that the FOIP Act applies in this case in light of the circumstances under which the Organization was created and continues to operate, and in light of section 4(3)(e) of PIPA. For the reasons below, I also conclude that the FOIP Act applies. Ultimately, the conclusion I reach is the same as that of former Commissioner Work in Order F2002-029.

[para 20] In Order F2002-029, former Commissioner Work found that the FOIP Act governed collection of personal information carried out by the Alberta Motor Vehicle Industry Council (AMVIC) notwithstanding that it is a corporation incorporated under the *Societies Act*, R.S.A. 2000, c. S-14 which is an “organization” as defined in PIPA, but was not then a public body defined under the FOIP Act.² Commissioner Work’s rationale for that finding was stated at paras. 13 to 19:

¹ <https://moneymentors.ca/money-tips/best-alternatives-to-bankruptcy-in-alberta/>

² Since Order F2002-029 was decided, AMVIC has been designated as a public body pursuant to Schedule 1 to the *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008

The Public Body's position is that AMVIC's actions with respect to collection, use and disclosure are governed by the FOIP Act since:

- (a) Under the *Fair Trading Act* (the "FTA") and its regulations, the Director of Fair Trading (who is appointed by the Minister of the Public Body) has delegated certain powers to AMVIC;
- (b) AMVIC has agreed in a Delegation Agreement with the Minister to abide by the provisions of the FOIP Act; and
- (c) AMVIC has delegated its FOIP responsibilities back to the Minister.

The Public Body submits that AMVIC's collection of personal information by way of a criminal record check falls within the FOIP Act, as a delegated body of the Director of Fair Trading. I agree with the Public Body's conclusion, for the following reasons.

AMVIC exists because the Minister created AMVIC to perform the statutory functions that the Director of Fair Trading delegated to it under the FTA. AMVIC performs those statutory functions on the Minister's and the Public Body's behalf.

Furthermore, AMVIC does not operate as an independent body when performing those statutory ("government") functions because both the Director and the Minister retain control over AMVIC. Various provisions of section 136 of the FTA are examples of how the Director and the Minister retain control. The March 30, 1999 agreement entitled "Automotive Business Regulatory Services Delegation Agreement" (the "Agreement", at Tab 8 of the Public Body's written submission) between AMVIC and the Minister contains other examples of how the Minister retains control, including control over records in AMVIC's custody and access to those records.

Consequently, as AMVIC is not an independent body that the Legislature created by statute and to which the Legislature granted irrevocable powers, the Minister is not relieved of ministerial responsibility and accountability for AMVIC under the FOIP Act. The Minister, as head of the Public Body, cannot delegate to AMVIC (a non-public body performing "government" functions) the Minister's responsibility and accountability as head under the FOIP Act, either directly by delegating FOIP responsibilities or by delegating responsibilities under legislation the Minister administers. To do so would gut the FOIP Act, which is something the Legislature did not intend when enacting the FOIP Act.

In *Ontario (Criminal Code Review Board) v. Doe* (1999), 1999 CanLII 3805 (ON CA), 47 O.R. (3d) 201 (C.A.), the Ontario Court of Appeal decided that the Criminal Code Review Board "...cannot avoid the access provisions of the Act [Ontario's *Freedom of Information and Protection of Privacy Act*] by entering into arrangements under which third parties hold custody of the Board's records that would otherwise be subject to the provisions of the Act."

I agree, and would extend that principle to other FOIP responsibilities, including the collection of personal information. The Minister has recognized that principle in the Agreement with AMVIC, which is designed to ensure that AMVIC complies with the FOIP responsibilities by which the Minister and the Public Body are bound.

[para 21] While circumstances in this case are not identical to those in Order F2002-029, they are substantially similar.

[para 22] The Organization explained that, in the 1960s, the Government of Alberta opted into the Order Payments of Debt program (the OPDP) under part X of the federal *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the BIA). The program took effect in 1967 and was administered through Government Services (Now Service Alberta and Red Tape Reduction or “SARTR”). In 1997, the Organization was formed for the purpose of administering the OPDP, and Government Services delegated to it, “all powers, duties, and programs of the Debtors’ Assistance Board, including delivery of the Orderly Payment of Debts program...”

[para 23] SARTR (Previously Government Services; previously Service Alberta), as a ministry, is a public body under the FOIP Act. Under section 16 of the *Government Organization Act*, RSA 2000, c. G-10 and the *Designation and Transfer of Responsibility Regulation*, Alberta Regulation 11/2023 it is the ministry responsible for administering the *Debtors’ Assistance Act*, R.S.A. 2000, c. D-6 (the DAA). The Board is created and operates pursuant to the DAA.

[para 24] The most recent contract between SARTR and the Organization commenced in 2002 and was in effect at the time of the events in question in this Inquiry. The contract recognizes the delegation of power from the Board to the Organization and stipulates that the Organization shall provide to the public the credit counselling services that were engaged by the Complainant in this case. The contract refers to the Organization by its previous name, Credit Counseling Services of Alberta, or CCSA, for short.

[para 25] Article 9.12 of the contract states that the parties agree that certain sections of the FOIP Act will apply to the Organization and govern its practices, as set out in schedule C to the contract, which includes the following provisions:

1. Statute

The CCSA acknowledges that the Government of Alberta has passed the Freedom of Information and Protection of Privacy Act and that the particular provisions of Part 2 of that Act, relating to the protection of privacy, must be applied as set out in this agreement.

2. Personal Information

In this Agreement “personal information” has the same meaning as in s. 1(1)(n) of the Act, and means information about an individual in any form.

3. Collection

No personal information shall be collected by CCSA or its employees unless such collection is related to the provision of services to the public envisaged by this agreement, or where the collection is expressly authorized by the Minister in writing in advance of any collection taking place.

...

7. Use

CCSA shall not either directly or indirectly use personal information except for those purposes necessary for the performance of the services provided by CCSA under this agreement. Any other uses for any purpose must be expressly authorized by the Minister in advance of use. At the termination of the agreement, CCSA or its employees shall not use any information obtained, collected, or compiled as a result of this Agreement for any purpose.

8. Disclosure

CCSA shall not either directly or indirectly disclose personal information except for those purposes necessary for the performance of the services provided under this agreement. Any other disclosure for any purpose other than those set out herein must be expressly authorized by the Minister in advance of the disclosure. At the termination of the agreement the CCSA or its employees shall not disclose any personal information obtained, collected, or compiled as a result of this agreement for any purpose.

[para 26] Section 12 of the DAA states that Part 2 of the FOIP Act (which sets limitations on the authority of public bodies to collect, use, and disclose personal information) applies to the Board as though it were a public body:

12 Part 2 of the Freedom of Information and Protection of Privacy Act applies to the Board as if it were a public body.

[para 27] The Board is listed as a public body in schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008, and is a public body itself.

[para 28] Similar to AMVIC, the Organization exists in order to perform the functions of the Board, which are delegated to it under the DAA. Also similar to AMVIC, the Organization operates under an agreement which requires it to collect, use, and disclose personal information pursuant to the FOIP Act. Finally, while the contract between the Organization and SARTR does not provide SARTR or the Board with control over records held by the Organization as it operates on a day-to-day basis, section 7(1)(e) of the DAA reserves to the Board the ability to control the Organization through its bylaw making powers. Section 7(1)(e) of the DAA states,

7(1) The Board may make bylaws

...

(e) respecting the services and other things to be provided by or on behalf of the Board;.

[para 29] As a delegate of the powers of the Board, the Organization is providing services called for in the DAA on behalf of the Board. Thus, it can be regulated as the Board sees fit via the Board's bylaw powers. I note that the bylaw-making powers of the

Board are reserved to the Board itself, and cannot be delegated. Section 8(1) of the DAA prescribes this limit on the Board's ability to delegate:

8(1) The Board may delegate in writing to any person any or all of its powers, duties or responsibilities under this Act, except the power to make bylaws.

[para 30] In light of the above, the Organization appears to be, in my view, in a similar position to that of AMVIC. It is not an independent body to which the legislature has granted irrevocable powers. The circumstances and purposes for which it was created, and the fact that it wields power delegated to it by a public body and is contractually bound to apply Part 2 of the FOIP Act, indicate that when it performs the functions of the Board, or provides services on behalf of the Board, it is bound by the FOIP Act, just as the Board and SARTR are bound as public bodies. While not discussed in Order F2002-029, several principles of administrative law regarding the exercise of delegated power support this conclusion.

[para 31] In *Reference Re: Regulations in Relation to Chemicals*, [1943] SCR 1 (*Chemical Regulations Reference*)³, the Supreme Court of Canada considered whether the Governor General in Council could delegate legislative and administrative powers granted to him under the *Canadian War Measures Act*, 1914 (5 Geo. 5, c. 2, Dom.). Referring to delegates receiving the Governor General in Council's powers as "subordinate agencies" Duff, C.J. wrote,

It is perhaps advisable to observe also that subordinate agencies appointed by the Governor General in Council are not, by the War Measures Act, outside the settled rule that all statutory powers must be employed in good faith for the purposes for which they are given, although here again, as regards the present Reference, that rule has only a theoretical interest.

[para 32] The principle that statutory powers must be exercised in good faith is relevant in two ways in the present case. The first is that the Board must exercise its statutory power to delegate its powers, duties, and functions to the Organization in good faith. As it relates to the issue of the applicability of the FOIP Act in the present case, the principle would prevent delegation of the Board's functions in order to circumvent the applicability of Part 2 of the FOIP Act when those functions are carried out. Section 12 of the DAA states that Part 2 of the FOIP Act is meant to apply, even if the Board were not a public body itself. Further, since the Board is a public body, the entirety of the FOIP Act applies to it. Secondly, the principle of good faith exercise of statutory powers requires the Organization to exercise those powers it receives via delegation in good

³ While the decision in the *Chemical Regulations Reference* concerns delegation of power under the exceptional circumstances which lead to the passage of the *War Measures Act*, it has been held to apply to delegation of powers generally. In *Reference re Agricultural Products Marketing Act*, R.S.C. 1970, c. A-7 et al., [1978] 2 S.C.R. 1198 at p. 1226, Laskin, C.J., held,

The matter of delegation in depth is covered by the judgment of this Court in *Reference re Regulations (Chemicals)* under the War Measures Act, and I would not limit its rationale to emergency legislation.

faith. Since the powers it receives via delegation are statutory powers subject to the FOIP Act, it must exercise them as such. It cannot, though it is an organization under PIPA, excuse itself from observing the standards under the FOIP Act which clearly apply to the powers, duties, and functions of the Board.

[para 33] In *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, Cromwell, J wrote, at para. 93:

Dunsmuir was clear that at the heart of judicial review of administrative action is a balance between legality and legislative supremacy. On one hand, the principle of legality requires the courts to ensure that administrative tribunals and agencies exercise their delegated powers lawfully. This includes the requirement that "[a]dministrative bodies ... be correct in their determinations of true questions of jurisdiction or vires": *Dunsmuir*, at para. 59...

[underlining added]

[para 34] As well, Hudson, J. wrote in the *Chemical Regulations Reference*,

In the light of the necessity for delegation and what took place during the last war, and the decision of the courts in the case of *Fort Frances Pulp and Paper Co. v. Manitoba Free Press* [[1923] A.C. 695.], I think it must be held that the Governor in Council has the power to delegate to others the performance of such duties as has been done in the present case. Any such delegation would, of course, not confer on the delegate power to do anything in conflict with other provisions of the War Measures Act. One of such provisions has been called to our attention, namely clause 4 of Order in Council No. 4996, in regard to compensation. This conflicts with section 7 of the War Measures Act and, for that reason, is invalid.

[underlining added]

[para 35] I understand from the above passages that delegated powers cannot be exercised in such a way so as to conflict with the legislation that grants the powers to be delegated to the delegating body, or in a way that exceeds the limits of the delegated power. Since the DAA subjects the powers of the Board to the limitations on collection, use, and disclosure in Part 2 of the FOIP Act, it stands to reason that any collection, use, or disclosure of personal information that occurs as a result of the exercise of the powers delegated to the Organization by the Board must comply with Part 2 of the FOIP Act. Failing to comply with Part 2 of the FOIP Act would conflict with the DAA, and would amount to collection, use, or disclosure of personal information outside of the limits of the delegated power.

[para 36] As described below, the Organization was performing functions delegated to it by the Board during its interactions with the Complainant.

[para 37] The powers, duties, and functions of the Board, and hence those that are delegated to the Organization, are set out in section 4 of the DAA:

The Board has the following powers, duties and functions:

- (a) to advise and assist debtors in adjusting their debts and in working out satisfactory arrangements for the settlement of their debts with their creditors;*
- (b) to arrange meetings between debtors and their creditors in an endeavour to bring about amicable arrangements for the payment by the debtor of the debtor's indebtedness to the debtor's creditors;*
- (c) to advise and assist debtors in the preparation of any plan or scheme for settlement of their debts before any Canadian board or court set up for the settlement of debts;*
- (d) to aid debtors in obtaining postponements, adjustments or extensions of time for the payment of their debts in proper cases;*
- (e) to assist the parties to a proceeding in which support, maintenance or alimony is an issue in settling the amount of support, maintenance or alimony to be paid;*
- (f) to provide a court, on its request, with a report as to the finances of the parties to a proceeding in which support, maintenance or alimony is an issue;*
- (g) to act as an intermediary in negotiations between debtors and creditors in the adjustment and settlement of debts;*
- (h) generally to provide to all Albertans counselling and education relating to family and personal money management including debt, credit and budgeting.*

[para 38] The powers, duties, and functions in sections 4(a), (c), and (h) encompass the services provided to the Complainant by the Organization in this case. Though the Complainant did not ultimately enter into a formal debt repayment plan prepared by the Organization, the Organization met with the Complainant for the purposes of advising and assisting her with debt repayment.

[para 39] Lastly, I note that section 4(3)(e) of PIPA contemplates that an organization may have custody of personal information to which the FOIP Act applies. Section 4(3)(e) of PIPA states,

(3) This Act does not apply to the following:

...

(e) personal information that is in the custody of an organization if the Freedom of Information and Protection of Privacy Act applies to that information;

That appears to be the situation in this case. The Organization has information to which the FOIP Act applies.

F. Are the Debtors' Assistance Board and/or Service Alberta (Now Service Alberta and Red Tape Reduction) responsible for Money Mentors' compliance with the Act?

[para 40] It is unfortunate that neither of the parties, the Board, nor SARTR made submissions on this issue. Resolving this issue is a matter of procedural fairness. Any entity that may be responsible for compliance with the FOIP Act should have the opportunity to make submissions and argue its case. As such, even in the absence of submissions, I must address this issue.

[para 41] For the reasons below, I find that the Board, but not SARTR, is responsible for the Organization's compliance with the FOIP Act. I discuss each in turn.

The Debtors' Assistance Board

[para 42] As noted above, the Board is a public body itself. While the Board has delegated its powers, duties, and functions to the Organization, as a public body, it retains responsibility as a public body to comply with the FOIP Act, nonetheless. This point was made by former Commissioner Work in Order F2002-029, quoted above. For convenience, I reproduce the pertinent portion of paragraph 17 of that Order here:

...The Minister, as head of the Public Body, cannot delegate to AMVIC (a non-public body performing "government" functions) the Minister's responsibility and accountability as head under the FOIP Act, either directly by delegating FOIP responsibilities or by delegating responsibilities under legislation the Minister administers. To do so would gut the FOIP Act, which is something the Legislature did not intend when enacting the FOIP Act.

[para 43] It has also long been held that delegating authority does not deprive the delegating entity of the authority delegated. This point was made in *Huth v. Clarke* [(1890) 25 Q.B.D. 391 at 395]; Wills J. at page 395:

Delegation, as that word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself * * * It is never used, by legal writers, so far as I am aware, as implying that the delegating person parts with his powers so as to denude himself of his rights. If it is correct to use the word in the way in which it is used in the maxim as generally understood, the word "delegate" means little more than an agent.

[para 44] The same principle has been annunciated by the Alberta Court of Appeal in *Ouellet v. B.M.*, 2010 ABCA 240 at para. 33.

[para 45] As power is retained upon delegation, it rationally follows that responsibility to see that the power is exercised properly and within limits prescribed by legislation is also retained by a delegating body. That is to say that the Board cannot slip the bonds of the FOIP Act by handing its powers, duties, and functions to the Organization. Indeed, neither the delegation powers under the DAA, nor those under the FOIP Act contemplate delegation of responsibility for complying with the FOIP Act. The delegation power in section 8 of the DAA only allows delegation of the powers, duties, and functions under

the DAA, not those of the FOIP Act. The delegation powers under the FOIP Act are set out in section 85(1):

85(1) The head of a public body may delegate to any person any duty, power or function of the head under this Act, except the power to delegate under this section.

[para 46] As worded, section 85(1) of the FOIP Act only permits delegation of the powers, duties, and functions of the *head* of a public body, not of the public body itself. The powers, duties, and functions of the head of a public body are interspersed throughout the FOIP Act, and include such things as the duty to properly respond to an access request under section 10, give notice to affected third parties under section 30(1), and form opinions about whether a guardian may exercise rights under the FOIP Act on behalf of a minor under section 84(1)(e). However, prohibitions and limitations on collecting, using, and disclosing personal information under sections 33, 39, and 40 bind public bodies themselves. Compliance with these provisions is not a matter of a duty that the FOIP Act places only on the head of a public body.

[para 47] Accordingly, I find that the Board is responsible for the Organization's compliance with the FOIP Act. The Board will be added as a respondent to this matter.

Service Alberta and Red Tape Reduction

[para 48] For the reasons that follow, I find that SARTR is not responsible for the Organization's compliance with the FOIP Act.

[para 49] As discussed above, the Board is responsible for the Organization's compliance with FOIP. While I would not rule out the possibility that there may be situations where more than one public body may be responsible for an organization's compliance with FOIP, I find that is not the case here.

[para 50] SARTR's relation to the Organization is far different from that of the Board. SARTR does not delegate powers to the Board, nor does it have the same bylaw making power enjoyed by the Board under section 7(1)(e) of the DAA, which permits it to control the Organization through by-law making powers. SARTR does not have the ability to control the Board.

[para 51] Section 2 of the DAA describes the Board's structure, powers, and relation to the Crown:

2(1) The Debtors' Assistance Board is hereby established as a corporation.

(2) In order to carry out its purposes, the Board has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

(3) The Board is not an agent of the Crown.

[para 52] Under the above, the Board has a very high degree of independence, both enjoying the rights, powers, and privileges of a natural person, as opposed to a corporate entity, and acting on its own rather than as an agent of the Crown. The Board thus operates autonomously from SARTR. Given that autonomy, I see no rationale for holding that SARTR could be responsible for the Organization's compliance with the FOIP Act when the Board, as an independently acting public body already has that responsibility, and SARTR is without the ability to control the actions of the Organization.

[para 53] In reaching the above conclusion, I have considered whether by virtue of its contract with the Organization, SARTR might be responsible for its compliance with the FOIP Act. As noted above, schedule C to the contract binds the Organization to apply Part 2 of the FOIP Act when collecting, using, and disclosing personal information.

[para 54] In my view, the contract does not create an obligation on SARTR to ensure that the Organization complies with the FOIP Act. While the contract obligates the Organization to apply Part 2 of the FOIP Act, it does not demand that SARTR oversee compliance thereof. While SARTR could presumably elect to seek to enforce compliance with Part 2 of the FOIP Act as an action in the contract, the contract does not place SARTR in the same position as the Board where it is responsible for compliance under the FOIP Act itself as a public body delegating powers which are subject to the FOIP Act.

IV. ORDER

[para 55] I make this Order under section 72 of the FOIP and section 52 of PIPA as applicable.

[para 56] I find that the FOIP Act applies to Money Mentors' dealings with the Complainant.

[para 57] I find that the Debtors' Assistance Board is responsible for Money Mentors' compliance with the FOIP Act.

[para 58] The Debtors' Assistance Board is added as a respondent to this Inquiry.

John Gabriele
Adjudicator
/kh