

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2024-01**

January 11, 2024

**ALBERTA HUMAN RIGHTS COMMISSION**

Case File Number 000940

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

**Summary:** The Complainant made a complaint against the International Brotherhood of Electrical Workers Local Union 424 (the Union) to the Alberta Human Rights Commission (the Public Body) under the *Alberta Human Rights Act*. The Union was represented in the human rights complaint by a law firm (the Law Firm).

The Complainant provided the Public Body with a medical report containing her personal information, and copied the Public Body on three emails she sent to her lawyer (collectively, the Records). The Public Body included the Records in a four volume set of documents it provided to the Complainant and the Law Firm.

Subsequently, the Complainant complained to this Office that the Public Body contravened the *Freedom of Information and Protection of Privacy Act* (the Act) when it “released” the four volume set of documents containing the Records with her personal information, to the Chief of the Commission and Tribunals (the AHR Chief Commissioner).

The Complainant also complained that the Public Body contravened the Act when it disclosed the four volume set of documents containing the Records with her personal information, to the Law Firm for the Union.

The Adjudicator determined that the Complainant's complaint with respect to the use or disclosure of her personal information to the AHR Chief did not make sense under the Act and could not be sustained.

The Adjudicator found that the Public Body did not contravene the Act when it disclosed the Complainant's personal information in the Records to the Law Firm for the Union.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 39, 40, 41, and 72; *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5, ss. 16, 21, 22, 23, 26 and 27 (as it was in force in November 2014).

**Statutes Cited: CANADA :** *Canadian Charter of Rights and Freedoms*, s. 2, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

**Orders Cited: AB:** Orders F2013-14, F2015-41, and F2018-79.

**Cases Cited: AB:** *Phoa v. Ley*, 2020 ABCA 195.

**Cases Cited: CANADA:** *Canada v. Solosky*, [1980] 1 S.C.R. 821.

## **I. BACKGROUND**

[para 1] An individual (the Complainant) made a complaint against the International Brotherhood of Electrical Workers Local Union 424 (the Union) to the Alberta Human Rights Commission (the Public Body or the AHRC) under the *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5 (the AHR Act).

[para 2] The Complainant complained that the Union had discriminated against her on the basis of a medical disability.<sup>1</sup> The Union was represented in the human rights complaint by a law firm (the Law Firm).

[para 3] Subsequently, the Complainant submitted a complaint to this Office under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). The Complainant complained that the Public Body disclosed her personal information in contravention of the Act.

[para 4] Specifically, the Complainant complained that:<sup>2</sup>

On October 1 2013 I sent a report over to the Alberta Human Rights Commission which contained confidential medical diagnosis information, this was a report from [the Complainant's doctor, Dr. [D]] who was doing further diagnosing of my [medical condition] and [medical condition].

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<sup>1</sup> The AHR Act prohibits discrimination against an individual on the basis of a physical disability or a mental disability. It is not necessary for me to specify which of these the Complainant asserted applied in her AHR complaint. Instead, I have used the term "medical disability", which is a sufficient description to support my conclusions in this Order.

<sup>2</sup> Complainant's Request for Review/Complaint dated April 6, 2015.

In the email when this was sent over to the Alberta Human Rights Commission they were under strict orders not to release the report to anyone. See Item “A”.

It was clearly stated in the email and I quote “This report is to be kept in strict confidence and is not to be given or shared with anyone without my prior written consent.”

“Please keep all copies of this document stored safely both electronically and when printed.”

The Alberta Human Rights Commission was also sent some other private conversations marked as “Without prejudice” which were private conversations between myself and my lawyer at the time (MD) they were marked as without prejudice clearly and were never intended in being used as part of the proceedings. See Item “B”, Item “C” and Item “D”. This was for their information only in this matter.

About November 2014 the Alberta Human Rights Commission released a 4 volume set of documents that were going to be used to both myself and [the Law Firm]. This same four volume set has also been released with all of the above information to the Chief of the Commission and Tribunals as well.

Within that four volume set was the report from Dr. [D] which should not have been released along with all the emails sent to them marked as “Without prejudice” containing privileged conversations between myself and my lawyer [MD].

None of this information should be been released the Alberta Human Rights Commission has violated my right to privacy here. There was an expectation of privacy here on the part of the Alberta Human Rights Commission which they violated.

Also by the Alberta Human Rights Commission releasing these documents without my permission violates my charter of Rights and Freedom Section 7, 8, and 11(d)

...

The report which was released from Dr. [D] was a psychiatric report containing diagnosis, condition, treatment and evaluation information. I also clearly asked that the report not be released as well.

In the report from Dr. [D] it contained identifiable information about me it contained my full name, date of birth, my sex, my family doctor’s name, my psychiatrist’s name, medical history, my childhood history, testing scores done from a previous psychiatric testing along with new scores of testing done by Dr. [D] which would be considered diagnosis along with the names of all the testing which he did. Along with my Diagnosis of [medical condition] and [medical condition].

[para 5] With her Request for Review/Complaint, the Complainant provided a copy of the email she sent to the Public Body on October 1, 2013. She did not provide a copy of

Dr. [D]'s medical report that was attached to the email. The email indicates that the Complainant copied the email to an individual [KS]. The Complainant cites her human rights complaint file in the email.

[para 6] Additionally, the Complainant advised that Dr. [D]'s report contained the following restriction:

“FOR PROFESSIONAL USE ONLY – PLEASE DO NOT RELEASE REPORT  
WITHOUT AUTHOR’S CONSENT”

[para 7] The Complainant also provided copies of the following emails which she sent to her lawyer (MD), on which she stated “Without Prejudice” at the top (collectively, the Emails):

1. Email dated July 23, 2013 with the subject matter “Response from BJ (the Union’s Lawyer)” from the Complainant to MD; copied to the Public Body and other individuals, including the Union’s lawyer (Email #1);
2. Email dated August 13, 2013 with the subject matter “Case”, from the Complainant to MD; copied to the Public Body, this Office (referencing a different file number), and other individuals (Email #2); and
3. Email dated August 13, 2013 with the subject matter “RE: Case [[Name] – Client FID309806]”, from the Complainant to MD; copied to the Public Body and other individuals (Email #3).

[para 8] The Complainant advised that Dr. [D]'s report and the Emails were included in the four volume set of documents the Public Body “released” to the AHR Chief Commissioner and the Law Firm. The Complainant stated “[n]one of this information should have been released [and] the Alberta Human Rights Commission has violated my right to privacy here”.

[para 9] The Commissioner assigned a Senior Information and Privacy Manager to investigate and settle the matter. At the conclusion of this process, the Complainant was not satisfied and requested an inquiry.

[para 10] The Commissioner agreed to conduct an inquiry. Subsequently, the Commissioner delegated her authority to conduct the inquiry to me.

[para 11] In her Request for Inquiry, the Complainant asserted that the Public Body should not have included Dr. D's report or the three Emails marked “without prejudice” in the four volume set of documents it “released” to the AHR Chief Commissioner.

[para 12] The Complainant complained that by including Dr. [D]'s report and the Emails and in the four volumes of documents, the Public Body “released” the Complainant's personal information to the AHR Chief Commissioner and to the Law Firm in contravention of the Act.

[para 13] Dr. [D]'s report, Email #1, Email #2 and Email #3 are collectively referred to herein as the "Records".

## **II. ISSUES**

[para 14] The Notice for Inquiry dated June 12, 2023, states the issues for this inquiry as follows:

1. Do the Records contain personal information about the Complainant as defined in section 1(n) of the Act?
2. If the answer to issue number 1 is yes, did the Public Body have the authority to disclose the particular record or records that contained the Complainant's personal information to the Law Firm under section 40(1), and did the disclosure comply with section 40(4) of the Act?
3. If the answer to issue number 1 is yes, was the provision of the record or records that contained the personal information of the Complainant, to the Chief of the Commission and Tribunals a "use" or a "disclosure" of the record or records?
4. If the provision of the record or records that contained the personal information of the Complainant to the Chief of the Commission and Tribunals was a "use", did the Public Body have the authority to use the record or records in this manner under section 39 of the Act, and did the use comply with section 41 of the Act?
5. If the provision of the record or records containing the personal information of the Complainant to the Chief of the Commission and Tribunals was a "disclosure", did the Public Body have the authority to disclose the record or records to the Chief of the Commission and Tribunals under section 40(1), and did the disclosure comply with section 40(4) of the Act?

## **III. DISCUSSION OF ISSUES**

### *Preliminary Matter – Scope of Inquiry, Arguments and Evidence*

[para 15] In her Request for Review/Complaint and Request for Inquiry, the Complainant raised issues that are outside the scope of this inquiry and/or outside the scope of my jurisdiction.

[para 16] For example, the Complainant asserted that she "cannot get a fair hearing because the information has been passed [along] to the defense lawyers ([Law Firm]) [along] with Chief of the Commission and Tribunals as well which prejudices any appeal

I may have”.<sup>3</sup> In addition, the Complainant complained that the decision of the Director of the Public Body was prejudiced as a result of the Director receiving the Complainant’s personal information in the Records. I have no authority to address these issues.

[para 17] The Complainant also asserted that the Public Body violated her rights under the *Canadian Charter of Rights and Freedoms*.<sup>4</sup> In Order F2015-41, former Commissioner Clayton stated at paragraph 12 that this Office does not have jurisdiction to determine questions of constitutional law. Accordingly, I will not consider further this issue.

[para 18] The Complainant also argued in her Request for Inquiry that the Public Body failed to comply with sections 17, 18 and 27 of the Act.<sup>5</sup> These sections appear in Part 1 of the Act. They apply to requests for access to information and set out circumstances in which a public body may, or must, refuse access to information. No access request was made in this case. Sections 17, 18 and 27 have no application and will not be considered in this inquiry.

[para 19] The only issues which will be considered in this inquiry are the issues set out below.

[para 20] Additionally, in her Request for Inquiry, the Complainant stated “[w]hen this appeal is to be heard all information which I have already submitted in this matter is to be used at the appeal”.<sup>6</sup>

[para 21] The Notice of Inquiry that was issued to the parties states, in part (emphasis in the Notice):

## **II. DOCUMENTS**

If the parties have evidence in the form of documents that relate to the issues in this case that are not attached to this Notice, they should include them with their initial exchangeable submission, in accordance with Inquiry: Preparing Submissions (attached). As the inquiry is *de novo*, meaning it is a new process and not a review of the mediation/investigation process, correspondence/documentation that a party previously submitted [previously] to this Office, which is not attached to this Notice, will not be considered in this inquiry unless the party resubmits the correspondence/documentation, by the deadlines identified below.

[para 22] The Complainant did not provide any submission in this inquiry. Accordingly, the only arguments and evidence I have in this inquiry from the Complainant are the arguments and evidence in the Complainant’s Request for Review/Complaint and attachments, and her Request for Inquiry, and attachments, as attached to the Notice of Inquiry.

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<sup>3</sup> Complainant’s Request for Review/Complaint dated April 6, 2015.

<sup>4</sup> Ibid.

<sup>5</sup> Complainant’s Request for Inquiry dated June 9, 2016.

<sup>6</sup> Ibid.

**1. Do the Records contain personal information about the Complainant as defined in section 1(n) of the Act?**

[para 23] Section 1(n) of the Act defines “personal information” 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 24] The Complainant takes the position that the Records contain her personal information.

[para 25] In its initial submission, the Public Body stated, in part:<sup>7</sup>

- 6. The Commission does not dispute that it collected the 4 volume set of records and shared them with the parties to the human rights complaint, namely [Complainant] and IBEW Local 424.
- 7. The Commission does not dispute that [that] the complainant’s doctor’s note and three emails (Email #1, Email #2 and Email #3, referred to in the OIPC Notice of

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<sup>7</sup> Public Body’s initial submission dated July 14, 2023.

Inquiry as “the Records”) were in the 4 volume set of records, shared with the parties.

8. The Commission does not dispute that the Records held personal information as defined in the FOIP Act.

[para 26] I find the Records contain personal information about the Complainant under sections 1(n)(i), (iii), (vi) and (ix) of the Act.

[para 27] The remaining issues as set out in the Notice of Inquiry are:

2. **If the answer to issue number 1 is yes, did the Public Body have the authority to disclose the particular record or records that contained the Complainant’s personal information to the Law Firm under section 40(1), and did the disclosure comply with section 40(4) of the Act?**
3. **If the answer to issue number 1 is yes, was the provision of the record or records that contained the personal information of the Complainant, to the Chief of the Commission and Tribunals a “use” or a “disclosure” of the record or records?**
4. **If the provision of the record or records that contained the personal information of the Complainant to the Chief of the Commission and Tribunals was a “use”, did the Public Body have the authority to use the record or records in this manner under section 39 of the Act, and did the use comply with section 41 of the Act?**
5. **If the provision of the record or records containing the personal information of the Complainant to the Chief of the Commission and Tribunals was a “disclosure”, did the Public Body have the authority to disclose the record or records to the Chief of the Commission and Tribunals under section 40(1), and did the disclosure comply with section 40(4) of the Act?**

[para 28] As mentioned above, the Complainant asserted that the Public Body should not have included the Records containing her personal information in the four volume set of documents it “released” to the AHR Chief Commissioner and the Law Firm.

[para 29] The Complainant complained that by including the Records in the four volume set of documents, the Public Body “released” the Complainant’s personal information to the AHR Chief Commissioner and the Law Firm, in contravention of the Act.

[para 30] I have decided to re-order these issues and address issues 3, 4 and 5 together, first.



*Did the Public Body use or disclose the Complainant's personal information when it "released" the four volumes of documents, which included the Records containing the Complainant's personal information, to the AHR Chief Commissioner, and did the use or disclosure of the Complainant's personal information to the AHR Chief Commissioner contravene the Act?*

[para 31] Section 39(1) sets out when a public body may use personal information. Section 39(4) places limitations on the use of personal information. These sections state:

*39(1) A public body may use personal information only*

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use,*
- (c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

*...*

*(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 32] Section 40(1) of the Act sets out when a public body may disclose personal information. The sections that may be relevant in this case are as follows:

*40(1) A public body may disclose personal information only*

- (a) in accordance with Part I,*

*...*

- (c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*

*...*

- (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada.*

- (f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure.*

*...*

[para 33] Section 40(4) places limitations on the disclosure of personal information. It states:

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

[para 34] Section 41 applies to sections 39(1)(a) and 40(1)(c) and sets out how to determine whether a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled. Section 41 states:

*41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure*

*(a) has a reasonable and direct connection to that purpose, and*

*(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 35] In its initial submission, the Public Body stated:<sup>8</sup>

9. The Commission does not dispute that the Chief Commissioner, who is the head of the Commission, had access to the Records. The Chief Commissioner is the appointed senior leader of the Commission, and is also a Tribunal Member who reviews appeals of decisions made by the Director. The records were sent to the public body by [Complainant] of which the Commissioner is the head.
10. Since the entire Commission and Tribunal is overseen by the Chief Commissioner, once [Complainant] sent the Records to the Commission, the Chief Commissioner and others working on the file would have used the records in furtherance of our mandate to administer the AHR Act. Therefore, the fact that the Chief Commissioner had access to the records is not a disclosure of information under the FOIP Act. When [Complainant] sent information to the public body, she was sending it to the Chief Commissioner as the head of the organization.
11. Even if it were to be found, which we dispute, that the Records were disclosed (under FOIP) to the Chief Commissioner, all of the arguments in this Brief that demonstrate the Commission's statutory duties to handle records would apply equally to the Chief Commissioner.

[para 36] The Public Body submitted that the AHR Chief Commissioner is the head of the Public Body as defined in section 1(p)(ii) of the Act, as an agency, board or commission.

[para 37] Section 1(p)(ii) of the Act states:

*1 In this Act,*

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<sup>8</sup> Public Body's initial submission dated July 14, 2023.

...

(p) “public body” means

...

(ii) *an agency, board, commission, corporation, office or other body in the regulations,*

[para 38] I have considered the Complainant’s allegations and the Public Body’s response.

[para 39] Given that the AHR Chief Commissioner is the head of the Public Body, and when a complainant submits a complaint to the AHRC, they are submitting it to the AHR Chief Commissioner as the head of the Public Body, the Complainant’s complaint that the Public Body “released” the four volume set of documents which included the Records containing her personal information, to the AHR Chief Commissioner, does not make sense under the Act.

[para 40] The head of the Public Body is the person that is responsible for making decisions whether the Public Body is permitted to use or disclose personal information under the Act. While the head may delegate their authority under the Act, even if the AHR Chief Commissioner was unaware of the Complainant’s AHR complaint, the AHR Chief Commissioner is still ultimately responsible for making decisions whether to use or disclose personal information under the Act.

[para 41] In light of this, the Complainant is complaining that the AHR Chief Commissioner contravened the Act by using or disclosing the Complainant’s personal information to themselves. That does not make sense. I find that this complaint cannot be sustained under the Act.

[para 42] To put this in a some-what similar way, since the Complainant was in essence submitting the information at issue to the AHR Chief Commissioner, she cannot complain that the Chief Commission was able to access the information.

[para 43] If I am incorrect in this finding, the fact that the AHR Chief Commissioner *would have* or *could have* accessed the Complainant’s personal information in the Records by virtue of their position with the Public Body, as submitted by the Public Body, is not sufficient for me to conclude that the Public Body used or disclosed the Complainant’s personal information to the AHR Chief Commissioner in contravention of the Act.

[para 44] I will now consider the second issue set out in the Notice of Inquiry.

*Did the Public Body contravene the Act when it disclosed the Records, containing the Complainant's personal information, in the four volume set of documents it provided to the Law Firm?*

[para 45] As previously mentioned, the Complainant made a human rights complaint against her Union. The Union was represented by the Law Firm in the human rights complaint. The Complainant complained that the Public Body contravened the Act by including the Records containing her personal information, in the four volumes of documents it provided to the Law Firm.

[para 46] In its initial submission, the Public Body confirmed that the Records were included in the four volume set of documents it provided to the Complainant and the Law Firm.<sup>9</sup>

[para 47] The Public Body submitted that section 40(1)(c) and/or section 40(1)(f) of the Act permitted the Public Body to disclose the Complainant's personal information in the Records to the Law Firm. These sections are reproduced earlier in this Order.

[para 48] The Public Body advised that the Commission and the Tribunal are empowered by the AHR Act and Bylaws.<sup>10</sup>

[para 49] In paragraph 17 of its initial submission, the Public Body stated:

17. Disclosure of the information, provided to support a complaint, is a necessary step in a process that is procedurally fair. This disclosure is an essential component to fulfilling the Commission's statutory duties of investigating, conciliating, screening, and adjudicating human rights complaints.

[para 50] The Public Body stated that the Commission has a process for investigating and screening complaints, which includes sharing documents with both parties so that they have the opportunity to make a full answer to the allegations.<sup>11</sup>

[para 51] At paragraphs 20 - 37 of its initial submission, the Public Body submitted that:

20. The collection, use, and disclosure of information for the purpose of investigating a complaint is also mentioned in the *Public Inquiries Act* where the Commission has powers to investigate a complaint and require any person to produce documents:

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<sup>9</sup> Public Body's initial submission dated July 14, 2023 at paragraphs 6 and 7.

<sup>10</sup> Public Body's initial submission dated July 14, 2023 at paragraph 16. The links the Public Body provided in its submission were to the current version of the AHR Act and Bylaws. I have reviewed and referenced the version of the AHR Act that was in force when the Public Body disclosed the Records to the Law Firm in November 2014.

<sup>11</sup> Public Body's initial submission dated July 14, 2023 at paragraph 19.

4 The commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquiry.

*Public Inquiries Act, RSA 2000, c. P-39*

21. As in any legal proceeding, these documents are disclosed to the other parties so that they may make full answer and defense of the complaint against them (this is usually called legal disclosure).<sup>12</sup>
22. The *Administrative Procedures and Jurisdiction Act* provides that an administrative body must provide each party with the relevant evidence in order for the respondent to have an adequate opportunity to make submissions in response to the allegations:

Evidence and representations

4 Before an authority, in the exercise of a statutory power, refuses the application of or makes a decision or order adversely affecting the rights of a party, the authority

- (a) shall give the party a reasonable opportunity of furnishing relevant evidence to the authority,
- (b) shall inform the party of the facts in its possession or the allegations made to it contrary to the interests of the party in sufficient detail
  - (i) to permit the party to understand the facts or allegations, and
  - (ii) to afford the party a reasonable opportunity to furnish relevant evidence to contradict or explain the facts or allegations, and
- (c) shall give the party an adequate opportunity of making representations by way of argument to the authority.

*Administrative Procedures and Jurisdiction Act, RSA 2000, c A-3*

23. The parties are informed that sharing information is part of the human rights complaint process (see next section).
24. The AHR Act provides the Commission with statutory powers so that the Director and her staff can investigate a complaint, including asking for the production of documents that are relevant to the complaint. For instance, s. 23 of the AHR Act allows human right officers to ask for and examine records:

23(1) For the purposes of an investigation under section 21, an investigator may do any or all of the following:

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<sup>12</sup> In the accompanying footnote for this submission, the Public Body stated “For instance s.9 says “9(2) Notwithstanding subsection (1), the rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to disclose any information on the ground that the disclosure would be injurious to the public interest does not apply in respect of an inquiry.””

- ...
  - (c) demand the production for examination of records and documents, including electronic records and documents, that are or may be relevant to the subject-matter of the investigation;

- 25. In addition, the Bylaws outline the information that the Commission will collect for the purpose of proving a human rights complaint under Bylaw 11.3:

11.3 A complaint is complete when it is legible and:

- a) provides the information requested in every applicable section of the Commission's complaint form;
- b) sets out all the facts that describe each allegation of discrimination, including how the complainant's rights have been violated under the Act;
- c) provides the name and contact information of each respondent; and
- d) is signed by the complainant.

and, in response, respondents must provide information as per Bylaw 13.2.

#### **IV. The Commission provides the parties with information about disclosure**

- 26. Where a complainant files a complaint, the information provided, such as the Human Rights Complaint Guide (available on our website) informs the parties that the process of investigating a complaint involves sharing information with all parties, including the respondent. The Complaint Guide states:<sup>13</sup>

**If we accept your complaint, the respondent will receive a copy of it**

If the Commission accepts your complaint, we send a copy to the people or organization you made the complaint against. We do not share your contact information. We ask the respondent to respond in writing and explain their point of view about the possible discrimination. We will give you a copy of their written response.

- 27. Prior to the Complaint Guide, we had information sheets posted online that outlined the process once a complaint was filed. It included statements that all information would be shared with both parties. The Investigation Information Sheet (Tab 1) states:

At investigation, the Commission advises the parties that it is collecting information related to the human rights complaint and shares the information with the complainant and the respondent (the parties) for their comments.

- 28. The information that is shared must include, not only information provided in the complaint form, but all information provided to the Commission to fulfill its mandate to investigate the complaint. This is confirmed in section 4 of the

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<sup>13</sup> In the footnote accompanying the Public Body's submission, it stated "[t]he complaint guide is new but includes the same information we have always provided to the parties.

*Administrative Procedures and Jurisdiction Act* where it says that we “shall inform the party of the facts in its possession.”

29. Once the complaint is filed, the information provided by the complainant is sent to the respondent. The respondent’s submissions and information are also shared with the complainant. All information that is disclosed to the Commission must be shared with the parties to the complaint.
30. Director [S] reiterated this process to [Complainant] in an October 24, 2014 letter (Tab 2):

I have asked Ms. [B], Northern Director, to forward me information on the above complaint file, for my review. Prior to sending me the information, Ms. [B] **will need to review the file and confirm that information from each of the parties has been shared with the other party.** This is part of our normal business process, to ensure administrative fairness to both parties. I have asked Ms. [B] to make her review and sharing of information a priority.

31. On November 5, 2014, the 4 volumes were shared with Counsel to IBEW 424 and to [Complainant]. The Records at issue formed part of the 4 volumes because they had been sent to the Commission who was investigating the complaint. The respondent, IBEW 424 has a legal and procedural right to review all of the information that has been provided to the Commission in order to provide a full argument in response to the allegations of a human rights abuse. Any information provided by IBEW 424 would, in turn, be shared with [Complainant].
32. The Commission discloses the information that is provided to us by the complainant and respondent, to each of the parties, but to no one else. For instance, a witness would not usually be provided access to the information at the Director’s stage of the process.

## **V. Conclusion**

33. The Tribunal has a statutory duty to investigate, conciliate, screen, and adjudicate human rights complaints as outlined in the AHR Act, the *Public Inquiries Act* and the *Administrative Procedures and Jurisdiction Act*.
34. The process is guided by the legislation, and principles of procedural fairness, which include disclosure of all the records that are provided to the Commission for the purpose of reviewing a human rights complaint. The Chief Commissioner is the head of the public body and has access to these records as a senior leader, and also as a Tribunal Member reviewing, on appeal, the Director’s decision.
35. The FOIP Act, under s. 3(c), specifically mandates that the FOIP Act provisions are not in place to limit information that is otherwise available by law to a party to a legal proceeding.
36. The Commission is an administrative body tasked with making legal findings in a quasi-judicial capacity. The process the Commission follows is guided by

legislation and the principals of fundamental justice in a legal proceeding: the right to know the case against you and be able to provide a full answer to the allegations.

37. The information was correctly collected, and disclosed for the purpose of fulfilling the Commission's statutory mandate, after the complainant filed a human rights complaint under the AHR Act.

[para 52] In addition, the Public Body stated at paragraph 12 of its initial submission:

12. Regarding the OIPC Inquiry question as to whether we can hold information *in camera*, the answer is yes we are permitted to have witness testimony *in camera*. However, the respondent would be one of the parties that would always be permitted to be present or copied, even *in camera*, so that they can respond to the allegations in the complaint.

[para 53] I understand the Public Body's submission to mean that it does not accept information *in camera* from a complainant or a respondent.

[para 54] In Order F2013-14, the Director of Adjudication considered whether the Energy Resources Conservation Board (the ERCB), a quasi-judicial body, had used and disclosed the personal information of three complainants in contravention of the Act.

[para 55] As noted in the Summary of the Order:

[The Complainants] complained that when the Energy Resources Conservation Board issued a decision in relation to well licence review proceedings initiated by them (from which they had withdrawn), it referred to them by name, described their medical conditions, and recounted facts about various positions taken by them throughout the proceedings. The Complainants also complained that a 'Notice of Constitutional Question' the Complainants had provided for the hearing, which contained their personal medical information, had been made available to persons who were present in the hearing room.

[para 56] At paragraphs 36 – 38, the Director of Adjudication commented on the intersection between the Act and the information-handling responsibilities of quasi-judicial bodies. The Director of Adjudication stated:

[para 36] Before leaving the present section, I will take the opportunity raised by the facts of this case to comment on the scope of the jurisdiction of the Information and Privacy Commissioner (and the scope of my jurisdiction as her delegate), in relation to dealings with personal information by quasi-judicial bodies. Quasi-judicial decision makers very often deal with personal information in their quasi-judicial roles: pursuant to their statutory and common law powers, they gather evidence, share it with parties, use it to make decisions, and disclose it to other parties and to the public when they issue written reasons. What is the role of the Commissioner in this context?

[para 37] The FOIP Act does not exclude quasi-judicial decision makers from its scope. However it does permit them to collect use and disclose personal information



where such dealings with information are authorized or required by statute (sections 33(a), 39(1)(a) and 40(1)(f)). Sometimes a tribunal's statutory powers in relation to information will be well-defined – it will be clearly required by its statute to deal with personal information in various ways, and may both follow its own provisions and still comply with FOIP by reference to the FOIP provisions just cited. However, in other cases tribunal powers over information are merely permissive rather than mandatory, or are grounded in the common law, and the intersection between their powers and FOIP's restrictions are less clear. For example, there may be no statutory provision clearly directing a tribunal to gather relevant evidence, or to disclose evidence in the course of issuing or publishing written decisions. Generally, tribunals may still do these things as a function of their common law ability to do what is necessary and incidental for performing their decision-making duties, but in the absence of clear statutory requirements for particular dealings with information, FOIP's restrictions come more into play.<sup>14</sup>

[para 38] If that is so, it is important to ensure that the restrictions on dealings with personal information under the FOIP Act are not applied so as to interfere inappropriately with the statutory functions of the tribunal, in relation to what evidence it may gather, what evidence it uses in developing and issuing its decision, and to whom and to what degree (in terms of personally identifying information) the personal information it has relied on needs to be disseminated (though the last of these is arguably more than the others also within the province of the Commissioner).

[para 57] In addition, at paragraphs 42 and 43 the Director of Adjudication stated:

[para 42] Based on the foregoing, in my view, the FOIP Act does have some application to the ERCB in its dealing with personal information, even as a quasi-judicial maker. However, as noted above, in applying FOIP's restrictions to such dealings, it is very important to avoid encroaching on the Board's exercise of its quasi-judicial responsibilities. It is only when a quasi-judicial body can be said to be handling personal information in a manner clearly outside the scope of what is reasonable, for example by gathering or requiring, or disclosing personal information that is entirely extraneous to the proceedings – where, in other words, it ranges outside its own territory and brings itself into the territory covered by the FOIP Act, that a response from the Commissioner is required. To put this another way, any application of the standard of reasonableness for dealings with personal information imposed [by] the FOIP Act to a quasi-judicial body's dealings with the course of exercising [its] quasi-judicial functions should be done only in situations in which the possibility of impropriety in those dealings has been clearly raised. Even then it should be done with great care and deference to the expertise of the quasi-judicial body.

[para 43] Thus, the foregoing review of the manner in which the ERCB collected and used the personal information of the Complainants in this case was undertaken not to see whether I was in precise agreement with the manner in which it had dealt with personal information in reaching its decision, or if I agreed with the procedural

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<sup>14</sup> The Director of Adjudication provided the following footnote, as footnote number 1, in the Order: "The FOIP Act also provides, in section 3(c), that it is not to be taken to "limit the information otherwise available by law to a party to a legal proceeding".

and substantive decisions which it based on this personal information. Doing so could involve limiting the issues the ERCB may decide, or interfering with its decision making, despite the authority conferred upon it by the legislature to do these things. Rather, it was to see whether the ERCB had strayed in its use of personal information in the manner described above. In my view, it is clear it had not.

[para 58] The Director of Adjudication's comments above were about proceedings before a quasi-judicial body. In the case before me, it appears that the disclosure of the Records occurred in the Public Body's process prior to any referral to the AHR Tribunal, which is a quasi-judicial administrative tribunal.

[para 59] Nonetheless, I see no reason why the Director of Adjudication's comments would not apply to the Public Body's process prior to any referral of a complaint to the AHR Tribunal.

[para 60] I also find the comments of the adjudicator in Order F2018-79 at paragraph 30 to be relevant in this inquiry:

[para 30] Previous Orders have also stated that deference must be given to those in the Public Body making determinations about a claimant's eligibility for compensation (see Orders 2001-004, F2013-55). This deference extends to determining what information to disclose to an examining physician in order to obtain an opinion.

[para 61] In my view, taking into account the previous Orders of this Office mentioned above, deference should be given to those in the public body making decisions about how to use and/or disclose a complainant's personal information when making decisions regarding a complainant's complaint under the AHR Act, and it is only when a public body can be said to be handling personal information in a manner clearly outside the scope of what is reasonable, for example by gathering or requiring, or disclosing, personal information that is entirely extraneous to its proceedings, that a response from the Commissioner is required.

#### *Analysis re: Disclosure of Dr. D's Medical Report*

[para 62] I note that in the Complainant's Request for Inquiry, the Complainant stated (my emphasis):<sup>15</sup>

Once again this information was supplied in confidence here to the Alberta Human Rights Commission for the review by the Northern Director after a telephone conversation with her. [Name of AHR Northern Director [B]] wanted to see the document after it came up in a telephone conversation with her in regards to this medical document. I sent it so that the Northern Director [B] could look at the document at her request.

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<sup>15</sup> Complainant's Request for Inquiry dated April 6, 2015.

[para 63] The Complainant's comments establish that the Complainant was asked by the AHRC Northern Director to provide a copy of Dr. D's medical report. The Complainant does not say that she informed the AHRC Northern Director during the telephone call that she would only send the medical report if it was kept confidential, or that the AHRC Northern Director agreed to keep the medical report confidential.

[para 64] Unlike the case before the Director of Adjudication in Order F2013-14, there is nothing before me to suggest that the Public Body agreed to keep Dr. D's report confidential.

[para 65] It appears that the Complainant thought that she could unilaterally impose confidentiality requirements on a document she had been requested to provide by the AHRC Northern Director.

[para 66] As I understand the Public Body's submission, with the exception of a complainant's contact information, any information that a complainant provides in their initial complaint, and any information the Public Body requests a complainant (or a respondent) to provide thereafter, is shared with the other party to the complaint.<sup>16</sup>

[para 67] As I understand the Public Body's submission, parties cannot unilaterally impose confidentiality requirements on the Public Body or ask the Public Body to keep information it requested a party provide to it, secret from the other party.

[para 68] I agree with this submission. There is nothing in the Act that requires a public body to acquiesce to a demand or request that it keep an individual's personal information confidential where the disclosure of the personal information is permitted under the Act.

[para 69] There may be circumstances in which a party asks a decision maker to keep personal information confidential that is contained in relevant documents, but is not necessary for the other side to know in order to effectively respond. In such a case the decision maker might choose to accede to such a request. If the decision maker determined the disclosure of the personal information was necessary, and rejected the party's request and disclosed the information to the other side, I would consider and make an order only where the personal information was clearly unrelated to the matter before the decision maker, and therefore unnecessary for the other side to know in order to effectively respond. As discussed further below, because there is a connection between the information at issue and the matter the AHRC was addressing, this is not such a case.

[para 70] The Complainant provided Dr. [D]'s medical report to the AHRC Northern Director at her request. There is no evidence before me that the Complainant verbally requested and received assurance from the AHRC Northern Director to keep the medical report confidential. If she had, the AHRC Northern Director would have had an

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<sup>16</sup> It is not clear whether the Public Body also discloses any information that is provided unsolicited to the Public Body from a complainant or respondent to the other party.

opportunity to reiterate the Public Body's process for handling information and that it does not accept information it has requested a party provide to it, in confidence.

[para 71] Section 16(1)(a) of the version of the AHR Act that was in force in November 2014, when the Public Body provided the Records containing the Complainant's personal information to the Law Firm, stated:<sup>17</sup>

16(1) It is the function of the Commission

- (a) To forward the principle that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation,

...

[para 72] The powers of the AHRC to address complaints were set out under the "Enforcement" heading of the AHR Act that was in force in November 2014.

[para 73] The Director's powers were set out in section 21(1) and 22 of the AHR Act and included attempting to effect a settlement by means of a conciliator or through the appointment of a person to investigate the complaint, dismissing a complaint, discontinuing a complaint, refusing to accept a complaint in certain circumstances, and reporting to the Chief of the Commission and Tribunals that the parties are unable to settle the complaint.

[para 74] An investigator's powers were set out in section 23 of the AHR Act. For the purpose of an investigation under section 21, an investigator's powers included entering any place at any reasonable time to examine it (subject to section 23(2), make inquiries orally or in writing of any person who has or may have information relevant to the subject matter of the investigation, and demanding the production for examination of records and documents, including electronic records and documents, that are or may be relevant to the subject matter of the investigation.

[para 75] Sections 26 and 27 of the AHR Act addressed what the Chief of the Commission and Tribunals shall do and included reviewing the record of the director's decision and deciding whether the complaint should have been dismissed or whether the proposed settlement was fair and reasonable, as the case may be, as well as when the Chief of the Commission and Tribunals shall appoint a human rights tribunal to deal with a complaint.

[para 76] The powers of a human rights tribunal were set out in section 32 of the AHR Act. They included dismissing a complaint if it found that a complaint was without merit, and, if it found that a complaint had merit in whole or in part, ordering the person

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<sup>17</sup> The current version of the AHR Act includes gender identity and gender expression in section 16(1)(a).

against whom the finding was made to cease the contravention complained of, to refrain in the future from committing the same or any similar contravention, to make available to the person dealt with contrary to the AHR Act the rights, opportunities or privileges that person was denied contrary to the AHR Act, and to compensate the person dealt with contrary to the AHR Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of the AHR Act.

[para 77] Based on the Public Body's submission and evidence, and the function and powers of the AHRC as set out in the AHR Act, I find that the Public Body disclosed Dr. [D]'s medical report containing the Complainant's personal information to the Law Firm for the purpose of enabling the Union (the Law Firm's client) to know and respond to the allegations made against it by the Complainant, and ultimately, for the Public Body to determine whether the Union discriminated against the Complainant, or failed to meet its duty to accommodate the Complainant, in contravention of the AHR Act.<sup>18</sup>

[para 78] I find that section 40(1)(c) applies in this case and permitted the Public Body to disclose the Complainant's personal information in Dr. [D]'s medical report to the Law Firm.

[para 79] In reaching this conclusion, I considered the requirements of section 41 of the Act. I find that the disclosure of the Complainant's personal information contained in Dr. [D]'s medical report to the Law Firm had a reasonable and direct connection to the purpose for which the Public Body collected the personal information as required by section 41(a).

[para 80] The purpose for collecting the Complainant's personal information in Dr. [D]'s medical report was to assist the Public Body in determining whether the Union discriminated against the Complainant on the basis of a medical disability, or failed to meet its duty to accommodate the Complainant. The disclosure of the medical report to the Law Firm was to enable the Law Firm to know and respond to these allegations.

[para 81] I find the disclosure was necessary for performing the statutory duties of the Public Body under the AHR Act. Accordingly, the requirements of section 41(b) for section 40(1)(c) to apply were also met.

[para 82] The Complainant also asserted that before including Dr. [D]'s medical report in the Records in the four volume set of documents it provided to the Law Firm, the Public Body was required to obtain the consent of Dr. [D].

[para 83] I have found that the disclosure complied with section 40(1)(c), which does not require the Public Body to obtain consent before disclosing personal information. Accordingly, the Public Body did not require the Complainant's consent, or Dr. [D]'s consent, in order to disclose the medical report to the Law Firm.

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<sup>18</sup> Section 11 of the AHR Act in force in November 2014 stated "A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances".

[para 84] Section 40(4) provides that a public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 85] In Order F2018-79, the adjudicator made the following comments regarding section 40(4) at paragraphs 19 and 20:

[para 19] Section 40(4) limits a public body's disclosure to what is necessary to meet the purpose of the disclosure. The meaning of "necessary" in this provision has been interpreted in past Orders of this Office; it does not mean 'indispensable'.

[para 20] In Order F2008-029 the adjudicator determined that a disclosure was necessary insofar as it permitted the public body "a means by which they may achieve their objectives . . . that would be unavailable without [the disclosure]" (at para. 51).

[para 86] The Complainant takes the position that the Public Body should not have disclosed any part of Dr. [D]'s medical report to the Law Firm.

[para 87] The Complainant did not provide a copy of Dr. [D]'s medical report for this inquiry. In her Request for Inquiry, she stated "I will not release copies of the medical report any further because that would then spread this information further which I do NOT want and would cause further violations of my privacy".<sup>19</sup>

[para 88] The Public Body has stated that for the purpose of procedural fairness and in order for the respondent to have an adequate opportunity to make submissions in response to the allegations, it discloses all the records to the respondent that are provided by the complainant to the Public Body for the purpose of reviewing a human rights complaint.

[para 89] In determining whether the Public Body complied with section 40(4), I have taken into account the Director of Adjudication's comment in Order F2013-14 that "any application of the standard of reasonableness for dealings with personal information imposed [by] the FOIP Act to a quasi-judicial body's dealings with the course of exercising [its] quasi-judicial functions should be done only in situations in which the possibility of impropriety in those dealings has been clearly raised. Even then it should be done with great care and deference to the expertise of the quasi-judicial body".

[para 90] In this case the Complainant complained that the Public Body discriminated against her on the basis of a medical disability. Given what the Complainant submitted about the content of Dr. [D]'s medical report, I find that the disclosure of Dr. [D]'s medical report was related to the complaint before the Public Body. I find that the Public Body disclosed the Complainant's personal information in Dr. [D]'s medical report only

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<sup>19</sup> Complainant's Request for Inquiry dated June 9, 2016.

to the extent necessary to enable the Public Body to carry out the purpose described in section 40(1)(c) in a reasonable manner, in accordance with section 40(4).

[para 91] Although I have found that section 40(1)(c) permitted the Public Body to disclose the medical report to the Law Firm without the consent of the Complainant or Dr. [D], I note that this complaint might have been avoided if the AHR Northern Director had responded to the confidentiality stipulations the Complainant set out in her October 1, 2013 email to which the medical report was attached, and informed the Complainant that this was not possible.<sup>20</sup>

[para 92] In order to avoid similar misunderstandings in the future, it would be beneficial from a privacy standpoint for the Public Body to include a clear statement somewhere in its materials which informs parties that not only is the complaint itself is shared (except for the complainant's contact information), but all other personal information it receives from the complainant is also shared with the respondent and vice-versa.

[para 93] The Public Body might also consider explicitly addressing somewhere in its materials that a party cannot restrict the Public Body's ability to disclose personal information that it is otherwise authorized to disclose, by unilaterally imposing confidentiality requirements.

[para 94] These are recommendations only and the Public Body may choose to implement them, with any appropriate modifications, or not.

[para 95] As I have concluded that section 40(1)(c) applied and permitted the Public Body to disclose the Complainant's personal information in Dr. [D]'s report to the Law Firm, it is not necessary for me to consider whether section 40(1)(f) also applies.

#### *Analysis re: Disclosure of the Emails*

[para 96] With respect to the Emails, in her Request for Inquiry the Complainant asserted that these were subject to settlement privilege and should not have been disclosed to the Law Firm. She stated, in part:<sup>21</sup>

The documents are privileged and never should have been used in this matter and put in the 4 volume set.

Nor do the documents have to be sent only between me and my lawyer either for it to be marked as "not prejudice"

A copy of the 3 emails which were disclosed to the IBEW's lawyers [through] this 4 volume set can be seen as Item "E", Item "F" and Item "G".

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<sup>20</sup> If the AHR Northern Director did this, neither party has informed me of this.

<sup>21</sup> Complainant's Request for Inquiry dated June 9, 2016.

...

The purpose of this letter was [to] try and settle the dispute between myself and my union as to the Independent Medical Exam (“IME”)[.] The communication did involve my lawyer and was clearly marked as “Without prejudice” and again was NEVER intended to be made part of the public file and was for [the AHR Northern Director [B]] ONLY! Again [the AHR Northern Director [B]] would call me from time to time and we would discuss the case and this matter as to why the lawyer left the case came up in that conversation and she wanted to see the conversation between us in the emails. Once again this was NEVER intended to [be] part of the public file and was for [the AHR Northern Director [B]] only and was never to be made part of the public record. This was sent at her request to see this information and was NOT to be part of the public record EVER! We were trying to reach an agreement on the IME and [AHR Northern Director [B]] had not seen this yet and wanted to see these emails.

There was absolutely no consent by me to have this being revealed in this case and was done so without my permission. A settlement was trying to be reached in regards to this matter and in regards to the IME and therefore this information is protected information as it was part of the negotiation process.

[para 97] In *Phoa v. Ley*, 2020 ABCA 195 (*Phoa*), the Alberta Court of Appeal made the following comments about the application of settlement privilege:

[11] Settlement privilege prevents communications being admissible where: (1) there is a litigious dispute in existence or within contemplation; (2) the communication is made with the express or implied intention that it would not be disclosed to the court in the event negotiations fail; and (3) the purpose of the communication is an attempt to effect a settlement: *Calgary (City) v Costello*, 1997 ABCA 281 at para 60.

[12] The rationale underlying settlement privilege was explained in *Bellatrix Exploration Ltd v Penn West Petroleum Ltd*, 2013 ABCA 10 at para 21”

Settlement privilege is premised on the public policy goal of encouraging the settlement of disputes without the need to resort to litigation. It allows parties to freely discuss and offer terms of settlement in an attempt to reach a compromise. Because an admission of liability is often implicit as part of settlement negotiations, the rule ensures that communications made in the course of settlement negotiations are generally not admitted into evidence. Otherwise parties would rarely, if ever, enter into settlement negotiations to resolve their legal disputes.

...

[14] In *Bellatrix*, while some documents were found to be subject to settlement privilege, other documents did not qualify as they were “simply statements of position and provide no hint of compromise, a critical hallmark to any settlement discussion” (para 35).



[para 98] Simply writing “Without Prejudice” on a communication does not cloak it in settlement privilege. The content of the communication must meet the three part test confirmed by the Alberta Court of Appeal in *Phoa* before settlement privilege will apply.

[para 99] The Complainant did not explain how settlement privilege would apply in the context of a human rights complaint. Nor did the Complainant explain how each of the three requirements for settlement privilege applied to each of the emails to prevent the Public Body from disclosing them to the Law Firm in the four volumes of documents.

[para 100] All three emails were sent by the Complainant to her lawyer (MD) and copied to the Public Body in addition to other entities and individuals. None of them contain terms upon which the Complainant would settle her human rights complaint against the Union and in at least one case (the July 23, 2013 email), the Complainant herself copied the Union’s lawyer on the email.

[para 101] I find that settlement privilege does not apply to the Emails.

[para 102] In her Request for Review/Complaint, the Complainant stated that the Emails contained “private conversations between myself and my lawyer at the time” and “[w]ithin that four volume set was the report from Dr. [D] which should not have been released along with all the emails sent to them marked as “Without prejudice” containing privileged conversations between myself and my lawyer [MD]”.

[para 103] I have considered whether the Complainant is asserting that the Emails are subject to solicitor-client privilege.

[para 104] In *Canada v. Solosky*, [1980] 1 S.C.R. 821 (*Solosky*), the Supreme Court of Canada set out the following test to establish whether communications are subject to solicitor-client privilege:

... privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege – (i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[para 105] Even if I were to find that the Emails met the first two criteria of the *Solosky* test, because the Complainant copied the Emails to the Public Body as well as other individuals, the third criteria of the *Solosky* test – that the communication was intended to be confidential – was not met. Accordingly, I find that solicitor-client privilege does not apply to the Emails.

[para 106] Based on the Public Body’s submission and evidence, and the function and powers of the AHRC as set out in the AHR Act, I find that the Public Body disclosed the Emails containing the Complainant’s personal information to the Law Firm for the purpose of enabling the Union (the Law Firm’s client) to know and respond to the allegations made against it by the Complainant, and ultimately, for the Public Body to

determine whether the Union discriminated against the Complainant, or failed to meet its duty to accommodate the Complainant, in contravention of the AHR Act.

[para 107] I find that section 40(1)(c) applies in this case and permitted the Public Body to disclose the Complainant's personal information in the Emails to the Law Firm.

[para 108] Section 40(4) provides that a public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 109] As noted above, with respect to sections 39(1)(a) and 40(1)(c), section 41 sets out the criteria for determining whether a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled.

[para 110] The Complainant takes the position that it was not necessary for the Public Body to disclose the Emails to the Law Firm, and that the disclosure did not have a reasonable and direct connection to the purpose for which the Public Body collected her personal information in the Emails.

[para 111] In the Complainant's July 23, 2013 email to her lawyer (MD), the Complainant discussed the Union's obligation to accommodate her disability to the point of undue hardship. The Complainant copied the July 23, 2013 email to the Public Body and the Law Firm and cited her complaint file with the Public Body. I find the Public Body complied with section 40(4) when it disclosed this email to the Law Firm.

[para 112] I further find that the requirements under section 41 for concluding that the disclosure of the Complainant's personal information in the July 23, 2013 email was consistent with the purpose for which the personal information was collected by the Public Body, were met.

[para 113] In the Complainant's email to her lawyer (MD) dated August 13, 2013 with the subject line "RE: Case", the Complainant discussed her fitness for work and objection to providing the Union with further medical information. The Complainant copied the Public Body and three other individuals on the email.

[para 114] In the Complainant's email to her lawyer (MD) dated August 13, 2013 with the subject line "Case", the Complainant discussed her fitness to work and expressed her objection to providing the Union with a report by Dr. [C]. The Complainant copied this email to the Public Body, this Office, and two individuals, and cited her complaint file with the Public Body as well as a different complaint file with this Office.

[para 115] I find that the Complainant's personal information in the two August 13, 2013 emails was disclosed only to the extent necessary to enable the Public Body to carry out its mandate with respect to the determination of whether the Union had contravened the AHR Act. I find that the Public Body complied with section 40(4) when it included these emails in the four volume set of records it disclosed to the Law Firm.

[para 116] I further find that the requirements under section 41 for concluding that the disclosure of the Complainant's personal information in the two August 13, 2013 emails was consistent with the purpose for which the personal information was collected by the Public Body, were met.

[para 117] As I have determined that the disclosure of the Complainant's personal information in the Emails by the Public Body to the Law Firm was permitted under section 40(1)(c), it is not necessary for me to consider whether section 40(1)(f) also applied.

[para 118] While the Public Body also argued that section 3 of the Act applied in this case, section 3 was not identified in the issues for this inquiry.

[para 119] As I have found that the Public Body was permitted under section 40(1)(c) to disclose the Complainant's personal information in the Records to the Law Firm, I do not need to consider the application of section 3 to this complaint.

#### **IV. ORDER**

[para 120] I make this Order under section 72 of the Act.

[para 121] I find that the Complainant's complaint regarding the use or disclosure by the Public Body of her personal information in the Records to the AHR Chief Commissioner does not make sense under the Act and cannot be sustained.

[para 122] I find that the Public Body disclosed the Complainant's personal information in the Records to the Law Firm in accordance with section 40(1)(c) of the Act. I find that the requirements set out in section 41 in order to conclude that section 40(1)(c) applied, were met.

[para 123] I find that the Public Body complied with section 40(4) when it disclosed the Records containing the Complainant's personal information to the Law Firm.

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Carmen Mann  
Adjudicator  
/kh