ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2025-03

January 31, 2025

METIS SETTLEMENTS APPEAL TRIBUNAL

Case File Number 003378

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that the Metis Settlements Appeal Tribunal (the Public Body) collected, used and disclosed the Complainant's personal information in contravention of the Act.

The Complainant was a party to a proceeding before the Public Body. The Complainant alleged that the Public Body collected, used and disclosed their personal information in the course of that proceeding, without authority to do so. The Complainant also alleged that the Public Body failed to fulfill its obligations under the Act to have adequate safeguards to protect personal information.

Subsequent to the investigation conducted by this Office, the Complainant requested an inquiry.

The Adjudicator found that the Public Body had authority to collect, use, and disclose the Complainant's personal information as it did. The Adjudicator also found that the Public Body did not fail in its obligation to ensure it had reasonable safeguards to protect personal information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 39, 38, 40, 41, and 72, *Metis Settlements Act*, R.S.A. 2000, c. M-14, ss. 83, 84, 187.1, 190, 195, 196, 202.

Authorities Cited: AB: Orders F2008-029, F2009-041, F2010-012, F2013-14, F2014-19, F2017-83, F2018-59, F2019-15, F2023-45

Cases Cited: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), [2006] 1 SCR 140, *Ibister v. Metis Settlements Appeals Tribunal*, 2025 ABCA 164, *John Measor v General Faculties Council Student Academic Appeals Committee*, 2018 ABQB 662 (CanLII), *Minister of National Revenue v. Coopers and Lybrand*, 1978 CanLII 13 (SCC), [1979] 1 SCR 495, *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560

I. BACKGROUND

[para 1] The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) that the Metis Settlements Appeal Tribunal (the Public Body) collected, used, and disclosed their personal information in contravention of the Act.

[para 2] The Complainant was a party to a proceeding before the Public Body. The Complainant alleges that the Public Body collected, used, and disclosed their personal information in the course of that proceeding, without authority to do so.

[para 3] A Notice of Inquiry for this inquiry was issued on September 7, 2022. Prior to submissions being made by either party, the file was place in abeyance on October 25, 2022 at the Complainant's request. The Complainant had asked that this file be placed in abeyance as they were involved in an appeal process with the Public Body. The Complainant was concerned that they could not fully participate in both proceedings at the same time. Since that time, the Complainant requested that this file continue to be held in abeyance for the same reasons (requests dated June 26, 2023, January 22, 2024).

[para 4] By letter dated January 30, 2024, I agreed to continue to hold the file in abeyance until May 10, 2024. In that letter, I advised the Complainant to start planning how they can prepare for the inquiry to begin, as it would not be held in abeyance indefinitely.

[para 5] On May 14, 2024, I issued an Amended Notice of Inquiry, with a new schedule for the parties' submissions. The Complainant's initial submission was due June 11, 2024. On June 10, 2024, the Complainant requested an extension to that deadline; on June 11, 2024, the Complainant asked that the file again be placed in abeyance.

[para 6] From these latter requests it became clear that the Complainant's appeal with the Public Body has not yet commenced; therefore, the concern about participating in two active proceedings at the same time did not materialize. The Complainant's most recent abeyance request was again premised on the concern that the Complainant might be required to participate in two proceedings at once, as the Public Body recently denied the Complainant's request to put their appeal with the Public Body on hold. However, there was no indication that the Public Body's appeal process was active at that time. Therefore, I had no reason to expect that by continuing with this inquiry, the Complainant will be participating in two active proceedings at

the same time, and by letter dated June 13, 2024, I denied the Complainant's request to again place this file in abeyance.

[para 7] The Complainant had also requested an extension to provide their initial submission, due to medical issues that affected their ability to participate. In my June 13 letter, I said:

> The Complainant has already submitted a substantial amount of information regarding their complaint, which was attached to the Notice of Inquiry and Amended Notice of Inquiry and therefore already provided to the Public Body. This information sets out the nature of the Complainant's complaint with sufficient detail that the Public Body is able to understand the case against it, in order to respond. Therefore, given the difficulties the Complainant is experiencing at this time, I am dispensing with the requirement that the Complainant provide an initial submission to this inquiry. I am amending the submission schedule set out in the Amended Notice of Inquiry to require the Public Body to provide the first submission, to which the Complainant can respond in their rebuttal submission.

[para 8] The Public Body provided an initial submission on August 20, 2024. The Complainant requested another extension to provide their rebuttal submission, which was granted. The Complainant's rebuttal submission was received on November 29, 2024. The Public Body elected not to provide a rebuttal submission.

II. ISSUES

[para 9] The Amended Notice of Inquiry dated May 14, 2024, states the issues in this inquiry as follows:

1. Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?

2. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

   The Complainant framed [their] concerns in terms of the Public Body's collection and disclosure of the information. However, the distribution of the information could also be regarded as a use, in the sense that the body was informing the recipients about the matter. 'Use' has accordingly been added as an issue.

   If the Public Body is relying on section 39(1)(a), the parties should also make submissions as to whether the requirements of section 41 are met.

3. Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

   If the Public Body is relying on section 40(1)(c), the parties should also make submissions as to whether the requirements of section 41 are met.

4. Did the Public Body make reasonable security arrangements [to protect the Complainant's personal information] against such risks as unauthorized access, collection, use, or disclosure, as required by section 38 of the FOIP Act?

III. DISCUSSION OF ISSUES

Preliminary – matters not within scope of the inquiry

[para 10] The Complainant has argued that the Public Body collected, used and disclosed personal information of other individuals in the course of the hearing process. Section 65(3) of the FOIP Act permits an individual to make a complaint to this office that their own personal information was collected, used, or disclosed in contravention of the Act. This inquiry is limited to the collection, use, and disclosure of the Complainant's personal information. That said, information about familial relationships can also be the Complainant's personal information. Therefore, I will consider the Complainant's arguments about personal information of family members to the extent that this information is also the Complainant's personal information.

[para 11] The Complainant also argues that the Public Body did not fulfill its obligations to notify these other individuals as required by sections 30 and 31 of the Act.

[para 12] Sections 30 and 31 of the Act set out a public body's obligation to notify third parties of an access request that affects their information. This case does not relate to an access request and therefore these provisions are not relevant.

Preliminary discussion – Role of this office in overseeing quasi-judicial bodies

[para 13] Past Orders of this office have relied on the Supreme Court of Canada decision in *Minister of National Revenue v. Coopers and Lybrand*, 1978 CanLII 13 (SCC), [1979] 1 SCR 495, in which the Court set out four primary factors to determine whether a body is acting in a quasi-judicial capacity:

> 1. Is there anything in the language in which the function is conferred of in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
>
> 2. Does the decision or order directly or indirectly affect the rights and obligations of persons?
>
> 3. Is the adversary process involved?
>
> 4. Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

See Orders F2010-012, F2023-45.

[para 14] For the reasons that follow, it is clear that the Public Body is acting in a quasi-judicial capacity when it considers appeals filed under the *Metis Settlements Act* (MSA), including the appeal that led to the circumstances in this case. The Complainant's complaint is

that the Public Body did not comply with the FOIP Act in carrying out its duties under the MSA relating to how it deals with appeals made to it.

[para 15] The Public Body explains that it is a tribunal established under section 180 of the MSA. The proceeding involving the Complainant relates to the Complainant's membership in a settlement. The MSA sets out the process for a person to apply for membership to a settlement; the relevant settlement council determines whether to approve the application within the parameters set out in the MSA. If the settlement council approves the application for membership, another member of the settlement can appeal that approval to the Public Body under the MSA. In this case, the Complainant sought membership to a settlement; the relevant settlement council (the Council) approved the Complainant's application. Subsequently, a settlement member applied to the Public Body to appeal the Council's decision to grant the Complainant membership.

[para 16] The Public Body set down a date for the appeal, and provided the Complainant and other parties with a draft Officer's Report and draft Table of Contents for the documents to be included in the final hearing package. The Complainant raised a concern with the Public Body regarding the documents to be included in the final hearing package. Specifically, the Complainant objected to including the Complainant's membership application form, which is the form the Complainant provided to the Council for membership; the Complainant's Indian Registry Status Check; and two letters from the Council to the Complainant. These letters both related to the Council's decision regarding the Complainant's membership.

[para 17] The Complainant provided a blank membership form from the Council, which indicates that the information on that form includes name, date of birth, contact information, as well as the same information for family members. The form also requests additional information such as whether and when an applicant has lived in a settlement.

[para 18] The MSA includes a 45-day time limit for filing appeals relating to membership decisions. Before the appeal was heard, the Complainant had argued to the Public Body that the settlement member who applied to appeal the Complainant's membership approval did not do so in the 45-day time limit. Therefore, the Public Body did not have authority to hear the appeal. The Complainant had argued to the Public Body that before hearing the appeal into the Complainant's membership approval (the substantive appeal), the Public Body was required to conduct a proceeding to determine whether the settlement member is permitted to make the appeal, given the 45-day time limit in the MSA (the preliminary matter). The Complainant had argued to the Public Body that the Complainant's membership application and approval are not relevant to whether the settlement member met the 45-day time limit and therefore this information should not be disclosed for a proceeding into the preliminary matter.

[para 19] Before separately considering the Public Body's authority to collect, use, and disclose the Complainant's personal information as it did, I will address the standard to be applied in considering the Public Body's actions.

[para 20] The MSA provisions relevant to the proceeding are as follows:

83(2) If a settlement council approves an application for membership in a settlement, any member of the settlement may appeal in writing to the Appeal Tribunal within 45 days after the application was approved.

(3) No settlement member may make an appeal under subsection (2) without the permission of the Appeal Tribunal.

…

84(1) On receipt of an appeal under section 83, the Appeal Tribunal must hold a hearing after giving everyone it considers affected by the appeal reasonable notice of the date, time and place of the hearing.

(2) The Appeal Tribunal must make its decision in accordance with Part 7.

…

187.1 The Appeal Tribunal shall exercise its powers and carry out its duties with a view to preserving and enhancing Metis culture and identity and furthering the attainment of self-governance by Metis settlements under the laws of Alberta.

…

190(1) The Appeal Tribunal may, in respect of any matter before it,

…

(k) confirm the settlement council's decision, with our without changes;

(l) reverse the settlement council's decision;

…

195 The Appeal Tribunal may make rules of procedure for the conduct of its business.

196 The Appeal Tribunal

(a) is not bound by the rules of evidence applicable to judicial proceedings, and
(b) may accept any oral, written or other evidence that it considers proper, whether admissible in a court of law or not.

…

202 When a matter before the Appeal Tribunal is, by this Act or any other enactment or by any rule of decision of the Tribunal, required to be done within a specified time and if the circumstances of the case in its opinion so require, the Tribunal may, with or without notice, extend the time so specified or waive the requirement whether or not the time has expired.

…

[para 21] The Public Body is acting in a quasi-judicial capacity in receiving and deciding appeals under the MSA. The question at issue here is whether it had authority under the FOIP

Act to collect, use, and disclose the Complainant's personal information as it did, in exercising its authority under the MSA.

[para 22] In Order F2013-14, the Director of Adjudication addressed a similar situation. In that inquiry, several individuals complained that the Energy Resources Conservation Board (ERCB) used and disclosed their personal information in contravention of the FOIP Act by including their personal information in a written decision.

[para 23] The individuals had made applications to the ERCB for reviews of oil and gas facility licenses, on the basis that the emissions from the relevant companies would affect their health.

[para 24] At the relevant time, the ERCB was authorized under the *Energy Resources Conservation Act* to hear such applications and make decisions and orders with respect to those applications. The Director of Adjudication noted that the ERCB's authority under the ERCA did not "obviate the duty to comply with the restrictions on dealings with personal information under the FOIP Act" (at para. 40). The Director explained the role of this office in the context of adjudicative bodies collecting, using, and disclosing personal information in the course of their duties (at paras. 36-38, 42-43):

> 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 of 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?
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> 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.[1]
>
> 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 treats as relevant, 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).
>
> …
>
> 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 its 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 the FOIP Act to a quasi-judicial body's dealings with personal information in the course of exercising it quasi-judicial functions should be done only in situations in which the possibility of impropriety in those dealings has clearly been raised. Even then it should be done with great care and deference to the expertise of the quasi-judicial body.
>
> 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 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 somehow strayed in its use of personal information in the manner described above. In my view, it is clear it had not.

[para 25] I agree with the Director's analysis and conclusion with respect to the role of this office in overseeing other quasi-judicial decision-makers. Given the role of the Public Body under the MSA, this analysis applies in this case as well.

[para 26] In considering whether the Public Body had authority to collect, use, and disclose the Complainant's personal information as it did, I will be applying the standard set out by the Director of Adjudication, above: whether the Public Body handled the Complainant's 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.

[para 27] Before moving on, I will address the Complainant's argument that the Public Body lacked authority to collect, use, or disclose the Complainant's personal information with respect to the substantive matter of the appeal – that is, the appeal of the Council's decision to grant the Complainant membership – for the reason that the appeal was not made in time.

Preliminary matter – Did the Public Body clearly lack jurisdiction to hear the appeal?

Parties' arguments

[para 28] In its submission, the Public Body states that in response to the settlement member's appeal, the Complainant argued to the Public Body that the appeal was made after the 45 days set out in section 83(2) of the MSA, and therefore the Public Body should reject the settlement member's appeal.

[para 29] The Public Body states that it determined that it must hold a hearing under section 84 of the MSA, and that it would decide in this hearing whether the 45-day time limit was met. The appeal was heard on June 27, 2016. The Public Body provided a copy of its decision with its submission. In that decision, the Public Body determined that the settlement member did not meet the time limit for making the appeal, and the appeal was dismissed.

[para 30] The Complainant argues that the time limit set out in section 83(2) of the MSA was discussed in *Ibister v. Metis Settlements Appeals Tribunal*, 2025 ABCA 164 (*Ibister*). In that decision, the Court of Appeal made clear that section 202 of the MSA permits the Public Body to extend the time periods relating to matters before the Public Body but does not permit the Public Body to extend time periods in relation to matters not already before it. The Court of Appeal found that the 45-day time limit for appealing a membership decision is not a time period that the Public Body can extend under section 202.

[para 31] The Complainant argues that section 84 of the MSA does not require the Public Body to hear the settlement member's appeal because the appeal was not made within the statutory time limit. The Complainant argues that the requirement in section 84 of the MSA for the Public Body to hear an appeal applies only after the Public Body has granted permission to the settlement member to file the appeal under section 83(3). The Complainant argues that section 83(3) requires the Public Body to first investigate and determine whether the appeal should be permitted under section 83(3) before hearing the substantive appeal.

[para 32] The Public Body provided a copy of its decision regarding the settlement member's appeal of the Council's decision to grant the Complainant membership. In this decision, the Public Body did not grant the settlement member permission to appeal the Council's decision because the settlement member did not file within the statutory time limit.

[para 33] The Complainant argues that the Public Body has jurisdiction to hear the substantive appeal *only if* it first grants permission for a settlement member to make the appeal. Because the Public Body did not grant permission, the Public Body did not have jurisdiction to hear the substantive appeal and therefore the subject matter of the appeal was not properly 'before' the Public Body. As a result, the Public Body did not have authority under the FOIP Act to collect, use, or disclose the Complainant's personal information related to the appeal. In their initial complaint to this office, the Complainant states:

> MSAT, as public body under FOIP would only have the authority to collect and disclose the personal Information that is necessary to operate and perform their functions within the Jurisdiction and timeframe legislatively granted and available to them. MSAT has been Improperly utilizing section 202 of the MSA to grant extensions of applications tor appeal, and of which clarification and interpretation of Section 202, as well as Section 83 and Section 84 of the MSA In lsbister v Metis Settlements Appeal Tribunal, 2015 ABCA 164. However, regardless of these facts, MSAT has still been operating outside their authority and Jurisdiction.

[para 34] The Complainant argues that the Public Body's authority to create its own procedure under section 195 of the MSA does not override its obligations under the FOIP Act or otherwise grant it jurisdiction it does not have to hear the settlement member's appeal. The Complainant states:

> The Tribunal's time-management should not take precedence over the protection of personal information. The process and procedures should consider and account for unnecessary disclosure such as this, and the process and procedures should be established to ensure that preliminary hearings, especially pertaining to the fundamental components such as jurisdiction that would and does limit or negate the authority and/or jurisdiction and any further or additional action by the quasi-judicial body. As such would prohibit the unreasonable and unnecessary disclosure and distribution of personal information.

[para 35] In response, the Public Body argues:

> 50. Section 195 of the MSA gives MSAT the authority to make rules of procedure for the conduct of its business. Section 196 states that MSAT is not bound by the rules of evidence applicable to judicial proceedings. These sections are clear signals by the Legislature that MSAT has jurisdiction to decide its own procedure.

Analysis

[para 36] I understand that the Public Body decided to conduct one hearing which would first consider the preliminary matter of the timeliness of the settlement member's appeal, and then consider the substantive appeal, if necessary. The Complainant argues that the Public Body first has to determine whether it has jurisdiction to hear the substantive matter. Otherwise, the Public Body may be initiating a proceeding on a substantive matter without statutory authority to do so.

[para 37] The Complainant is suggesting that the Public Body is required to determine all preliminary issues in a separate hearing or process, if those preliminary issues could eliminate the need to hold a hearing on the substantive issue.

[para 38] If the Complainant's position were correct, this would affect not only the Public Body, but presumably all other tribunals acting under statutory authority.

[para 39] In *Isbister v Metis Settlements Appeal Tribunal*, 2015 ABCA 164 (*Isbister*), a case raised by the Complainant, the Alberta Court of Appeal considered a decision by the Public Body regarding an appeal of a Metis Settlement Council's decision to grant a membership application under the MSA. Clearly the facts of *Isbister* are similar to those here. In its decision regarding the appeal, the Public Body considered whether it had jurisdiction to hear the appeal even though it was filed after the 45-day time limit, and also the substantive issue regarding the membership, in one hearing.

[para 40] The Public Body's decision in that matter was appealed to the Court of Appeal, pursuant to section 204 of the MSA. The Court of Appeal considered several issues, including

the Public Body's decision that it could extend the 45-day time limit in the MSA to file an appeal to the Public Body, as well as the Public Body's decision on the substantive appeal.

[para 41] In its decision, the Court noted that the Public Body's determination that it had authority to extend the 45-day time limit to file an appeal under the MSA was not a truly jurisdictional question. It said:

> [20] While the substance of Isbister's arguments are not entirely clear, she appears to be arguing in places (and the Settlement clearly argues) that the Tribunal, in respect of the first ground of appeal, was required to determine explicitly whether its statutory grant of power gives it the authority to consider extending an appeal period. Neither Isbister nor the Settlement, however, dispute the Tribunal's authority to enter into that inquiry. The question raised is rather whether the Tribunal ought to have applied section 202 as it did to extend the appeal period. While it is true that, if the answer to that question is in the negative, then the Tribunal would have lacked authority to do what it did, it does not follow that the question is truly jurisdictional, since this would in effect turn every question on judicial review or statutory appeal into a jurisdictional question. Such a wide understanding of what is meant by a jurisdictional question was repudiated, at least implicitly, in *Dunsmuir* at para 59; *Canadian Union of Public Employees, Local 963 v New Brunswick Liquor Corp*, 1979 CanLII 23 (SCC), [1979] 2 SCR 227. Indeed, administrative delegates' decisions regarding whether their home statutes authorize extensions of time in relation to the discharge of their functions have been found *not* to raise truly jurisdictional questions, and have been reviewed for reasonableness: *ATA* at para 33; *MacNeil v British Columbia (Superintendent of Motor Vehicles)*, 2012 BCCA 360 at paras 32-33), 353 DLR (4th) 705; and *Canada Post Corporation v Canadian Union of Postal Workers*, 2011 FCA 24, 330 DLR (4th) 729, leave to appeal refused, [2011] SCCA 127 (QL).

[para 42] Aside from whether a preliminary matter about the 45-day time limit is 'truly' jurisdictional, it is clear that tribunals have the authority to determine their own processes.

[para 43] In *Cedarvale Tree Services Ltd. and Labourers' International Union of North America, Local 183* (1971), 22 D.L.R. (3d) 40, the Ontario Court of Appeal rejected an argument that the Ontario Labour Relations Board was required to adjourn the substantive matter before it, when its jurisdiction to hear that matter was questioned. The Ontario Court of Appeal said:

> It is clear to me that under the Labour Relations Act the Board is master of its own house not only as to all questions of fact and law falling within the ambit of the jurisdiction conferred upon it by the Act, but with respect to all questions of procedure when acting within that jurisdiction. In my view, the only rule which should be stated by the Court (if it be a rule at all) is that the Board should, when its jurisdiction is questioned, adopt such procedure as appears to it to be just and convenient in the particular circumstances of the case before it.

[para 44] This case was cited with approval by the Supreme Court of Canada in *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560.

[para 45] In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), [2006] 1 SCR 140, the Supreme Court of Canada addressed the manner with which tribunals obtain their jurisdiction. It said (at para. 38):

> 38 But more specifically in the area of administrative law, tribunals and boards obtain their jurisdiction over matters from two sources: (1) express grants of jurisdiction under various statutes (explicit powers); and (2) the common law, by application of the doctrine of jurisdiction by necessary implication (implicit powers) (see also D. M. Brown, Energy Regulation in Ontario (loose-leaf ed.), at p. 2-15).

[para 46] In determining the Board's authority in that case, the Supreme Court said:

> 50 Consequently, a grant of authority to exercise a discretion as found in s. 15(3) of the AEUBA and s. 37 of the PUBA does not confer unlimited discretion to the Board. As submitted by ATCO, the Board's discretion is to be exercised within the confines of the statutory regime and principles generally applicable to regulatory matters, for which the legislature is assumed to have had regard in passing that legislation (see Sullivan, at pp. 154-55). In the same vein, it is useful to refer to the following passage from Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission), 1989 CanLII 67 (SCC), [1989] 1 S.C.R. 1722, at p. 1756:
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> > The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.
>
> 51 The mandate of this Court is to determine and apply the intention of the legislature (Bell ExpressVu, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see R. v. McIntosh, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686, at para. 26; Bristol-Myers Squibb Co., at para. 174). That being said, this rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see Brown, at p. 2-16.2; Bell Canada, at p. 1756). Canadian courts have in the past applied the doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:
>
> > When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.
>
> Re Dow Chemical Canada Inc. and Union Gas Ltd. (1982), 1982 CanLII 3238 (ON SCDC), 141 D.L.R. (3d) 641 (Ont. H.C.), at pp. 658-59, aff'd (1983), 1983 CanLII 1879 (ON CA), 42 O.R. (2d) 731 (C.A.) (see also Interprovincial Pipe Line Ltd. v. National Energy Board, 1977 CanLII 3163 (FCA), [1978] 1 F.C. 601 (C.A.); Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission, 1982 CanLII 5204 (FCA), [1983] 1 F.C. 182 (C.A.), aff'd 1985 CanLII 63 (SCC), [1985] 1 S.C.R. 174).

[para 47] This case was more recently applied by the Alberta Court of Queen's Bench (as it then was) in *John Measor v General Faculties Council Student Academic Appeals Committee*, 2018 ABQB 662 (CanLII):

> [12] Generally, enabling legislation explicitly defines the powers of statutorily created decision-makers and institutions such as universities. However, some powers arise by necessary implication from the wording of the act, its structure, and its purpose: Bell Canada v Canada (Canadian Radio-Television & Telecommunications Commission), 1989 CanLII 67 (SCC), [1989] 1 SCR 1722 at 1756. Thus, the powers of a university include not only those expressly granted by the Post-Secondary Learning Act, but all powers necessarily implied for the achievement of the university's statutory mandate: ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board), 2005 SCC 4 at para 51. When applying this doctrine, courts must be careful to neither unduly broaden the powers of administrative bodies, nor to sterilize those powers through an overly restrictive interpretation: Bell Canada at 1756; ATCO Gas at para 50.

[para 48] Applying the case law above, I do not agree with the Complainant's conclusion that the Public Body lacks authority under the MSA to conduct a hearing into a settlement member's appeal, without first and separately deciding whether that appeal was made within the 45-day time limit. Such an interpretation of the Public Body's authority under the MSA is overly restrictive and undermines the Public Body's authority to determine its own procedures. This is not consistent with the guidance from the courts, set out above.

[para 49] The Complainant may be making a slightly different argument: the Complainant's argument may be that while tribunals have the authority to hear preliminary matters along with substantive matters in one hearing, the FOIP Act places restrictions on this practice if the substantive matter requires the collection, use and/or disclosure of personal information beyond what the preliminary matter requires.

[para 50] Following the analysis in Order F2013-14 cited above, the FOIP Act does not interfere with the manner in which a quasi-judicial body arranges the hearings it is authorized to conduct. In other words, I do not agree that the FOIP Act requires the Public Body to hold separate proceedings for each issue in a matter before it, for the reason that a finding on one issue may eliminate the need to hear another issue that involves more or different personal information. Nothing before me persuades me to find that the FOIP Act was intended to impose such a multi-tiered process on quasi-judicial bodies subject to the Act.

[para 51] Lastly, the Complainant might be arguing that in this particular case, it was clear and obvious that the settlement member was out of time to make an appeal to the Public Body. Therefore, the Public Body ought to have known there was no need to hear the substantive issue. The Complainant cites the Court of Appeal's conclusion in *Isbister*, discussed above, that the Public Body does not have authority under the MSA to extend the 45-day time limit for a settlement member to file an appeal.

[para 52] It is possible that there may be circumstances in which a settlement member files an appeal so clearly outside the 45-day time limit that the Public Body's decision not to accept the appeal would be a foregone conclusion. Those are not the facts in this case. In the Public Body's decision regarding the settlement member's appeal, it is clear that the settlement member had raised an issue about when the 45-day time limit ought to start. It is clear from the Public Body's decision that the settlement member raised an issue regarding the proper interpretation of the 45-day time limit in the MSA, that the Public Body had to consider.

[para 53] I conclude that the FOIP Act does not generally preclude the Public Body from hearing the settlement member's appeal in the manner it did. I will next consider whether the Public Body was authorized to collect, use, and disclose the Complainant's personal information in conducting that hearing.

1. Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?

[para 54] Section 33 of the FOIP Act places strict limits on personal information a public body can collect. It states:

> *33 No personal information may be collected by or for a public body unless*
>
> *(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*
>
> *(b) that information is collected for the purposes of law enforcement, or*
>
> *(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 55] Personal information is defined in section 1(n) of the Act as follows:

> *1(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;*

Arguments of the parties

[para 56] The Public Body states that sections 74-78 of the MSA provide various requirements for membership on a Metis settlement. It states:

> For example, an applicant must be able to prove Metis identity, meet certain residency requirements, and must not be "An Indian registered under the Indian Act (Canada) or a person who is registered as an Inuk for the purposes of a land claims settlement". In determining appeals of membership decisions, it is essential that MSAT have access to the personal information necessary to determine the appeal.

[para 57] The Public Body states that it collected the Complainant's personal information in relation to their membership in the Metis settlement, and that this collection was necessary for the Public Body to hear and decide the appeal.

[para 58] In their request for inquiry, the Complainant argues:

> In fact, one could also state that MSAT further breached the scope of their duties by collecting the personal information from the East Prairie Metis Settlement office pertaining to the Substantive Matter prior to determining and establishing jurisdiction and/or authority, as more information was collected that exceeded the necessity to determine the jurisdiction and/or authority upon receipt of the Application to Appeal by a member of the [Metis Settlement].

[para 59] In their submission, the Complainant argues that information in the membership application and membership file, including information about family members, was not necessary for the appeal. As stated above, while this inquiry relates only to the Complainant's personal information, information about their relationship to family members is information about the Complainant as well as those family members. Therefore, it is also the Complainant's personal information.

Analysis

[para 60] The information collected by the Public Body that the Complainant objected to is the personal information required with the membership application, as well as their personal information in the Council's correspondence regarding its decision.

[para 61] The parties are in agreement that the Public Body collected the Complainant's personal information; from the submissions before me, I agree that information related to the Complainant's application to the Metis settlement is their personal information.

[para 62] The primary reason the Complainant objects to the collection of their personal information is that it relates to the substantive appeal, and not to the preliminary matter of the 45-day time limit.

[para 63] The Complainant also specifically argues that information about family members, which is personal information of those individuals as well as the Complainant, is not necessary to determine membership under the MSA.

[para 64] With respect to this latter argument, the initial decision about membership was decided by the Council. With their submission, the Complainant provided a copy of a blank membership form for the relevant Metis Settlement; the information requested in that form appears to be consistent with the requirements set out in the MSA. In any event, the information collected by the Council to make its initial decision is not at issue here as it is not an action undertaken by the Public Body.

[para 65] With respect to the Complainant's arguments more generally, I have already determined that the FOIP Act does not preclude the Public Body from hearing the substantive appeal at the same time as the preliminary matter. I have also already set out the standard I am applying: whether the Public Body handled the Complainant's personal information in a manner clearly outside the scope of what is reasonable.

[para 66] Other than information about the Complainant's family members, the Complainant does not argue that the information collected by the Public Body is unrelated or irrelevant to the substantive appeal.

[para 67] As the Council's decision to grant the Complainant membership was the substantive issue appealed to the Public Body, the information upon which the Council made its decision is clearly relevant to that appeal.

[para 68] Further, while I understand the Complainant's perspective that the membership application information is not relevant to whether the settlement member filed an appeal within the 45-day time limit, such a sharp distinction cannot be made so easily.

[para 69] A settlement member can appeal an approved membership application. Therefore, there must be an approved application to appeal. Further, the timing of the approval is clearly relevant. In determining whether to permit an appeal, the Public Body would presumably require documentation to ensure that the appeal relates to a matter over which the Public Body has authority, and is properly made, aside from the 45-day time limit.

[para 70] Past Orders of this office have found that parties to a legal proceeding must be given leeway in determining what information to provide to a decision-maker for the proceeding. Order F2018-59 dealt with a situation in which the complainant and a public body were parties to a proceeding before a quasi-judicial body. The complainant filed a complaint to this office that the public body disclosed information to the quasi-judicial body that was not relevant to the proceeding. In that case, the public body had argued that the information was logically connected to the matter before the body; in accepting this argument I said (at para. 30-34):

> …The Public Body argued that the information provided to it by the GSA and later included in the Public Body's application to the RTDRS all had "enough of a line of connection so as to not raise any flags with Residential Services" (at para. 28). It further argued (at paras. 31-32):

> Parties make their best efforts to determine which records may be relevant to the adjudicator, but ultimately it is the role of the adjudicator to determine which records are relevant and necessary.
>
> Furthermore, if evidence submitted in good faith was deemed not relevant by the hearing adjudicator and a party to the hearing could then use that assessment to make a privacy complaint, it would create a chilling effect on the quasi-judicial process, potentially limiting legal rights. If there is some line of connection to the issues at hand, then parties must be allowed a reasonable margin of error in attempting to determine what will and will not ultimately be considered relevant and necessary by an adjudicator.

> The documents at issue relate to the Complainant's full-time student status, which was the basis for an earlier termination notice. The Public Body's later application to the RTDRS to terminate the Complainant's lease was also based on his full-time student status (amongst other grounds). I agree that the documents, attached to the Public Body's application to the RTDRS, have a logical connection to the matter at issue in the hearing.
>
> Whether the Public Body's disclosure of all of those documents was necessary for the purposes of section 40(4) cannot be an assessment made with hindsight knowledge of what the RTDRS considered to be relevant to its decision. I agree with the Public Body that parties must have 'some reasonable margin of error' when deciding what material to submit to a decision-maker in a quasi-judicial proceeding. Public bodies must be permitted to make their best case; what is ultimately considered to be relevant to the proceeding is a determination for the decision-maker.
>
> I do not mean to suggest that being a party to a court or quasi-judicial proceeding will give public bodies carte blanche with respect to disclosing personal information. In a situation where some or all of the personal information disclosed for a proceeding does not have a logical connection to the matters at hand, section 40(4) may not be met.
>
> In this case, there is a logical connection between the documents submitted by the Public Body and the matter before the RTDRS, such that it was reasonable for the Public Body to believe they may be relevant to the decision. Therefore, it is my view that the Public Body disclosed the Complainant's personal information in good faith. I find that the disclosure was not beyond what was necessary for the purpose of section 40(4). To find otherwise could unreasonably fetter a public body's ability to make its case in court or quasi-judicial proceedings.

[para 71] Although the above analysis relates to the disclosure of personal information by a public body to a decision-maker, the analysis is applicable to these circumstances. It is also consistent with the standard set out in Order F2013-14, regarding the standard to apply in reviewing the collection, use, and disclosure of personal information by a body acting in its quasi-judicial capacity. In reviewing the Public Body's authority to collect the Complainant's personal information as it did, I am not deciding whether all of the personal information is directly relevant to the matter before the Public Body. The Public Body cannot be expected to prejudge what information will ultimately be relevant or used by the Public Body before beginning the proceeding. In my view, the Public Body's collection of the Complainant's personal information is authorized if there is a logical connection between the proceeding and the information.

[para 72] The Public Body's argument indicates that it is relying on section 33(c) as authority to collect the Complainant's personal information for the hearing. That provision authorizes the collection of personal information that relates directly to and was necessary for an activity or program of the Public Body. Past Orders of this Office have found that 'necessary' does not mean 'indispensable' (see Orders F2008-029, at para. 51; F2017-83, at para. 14; F2019-15, at para. 15).

[para 73] The personal information collected by the Public Body for the hearing was directly related to the Complainant's application for membership, and the appeal at issue related to the Council's approval of that membership. Whether all of the information in the hearing package was directly relevant to the preliminary matter regarding the 45-day time limit is not the standard to apply regarding section 33(c); rather, the standard is whether there was a logical connection to the information that was collected and the matter before the Public Body. I find that there was. Therefore, I agree that the Public Body's collection of the Complainant's personal information was authorized under section 33(c) of the Act.

2. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 39 of the Act?

[para 74] Use of the Complainant's personal information is governed by section 39 of the Act. The relevant portions of section 39 of the Act 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,*
> >
> > *...*
> >
> > *(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 75] Section 41 defines what constitutes a "consistent purpose" under section 39(1):

> *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 76] The Complainant objects to the use of their personal information for the reason that it relates to the substantive appeal, and not to the preliminary matter of the 45-day time limit.

[para 77] The Public Body states that, in accordance with the MSAT Rules of Procedure, it sent a letter to the Complainant and the settlement member with a draft hearing package. This Package included a table of contents of the documents that would be included in the final hearing package, which would be provided to the parties to the appeal.

[para 78] The Public Body states that the Complainant objected to the inclusion of certain documents in the final hearing package, including the Complainant's member application form, Indian Registry Status Check, and two letters from the relevant settlement to the Complainant. The Complainant informed the Public Body at that time that these documents contain the Complainant's personal information and that they should not be disclosed until the Public Body made a determination on the preliminary matter as to whether the settlement member's appeal had met the 45-day timeline.

[para 79] The Public Body states that it informed the Complainant in writing that "the parties would receive materials as provided for in the MSAT Rules of Procedure and that the Panel understands that this process complies with FOIP."

[para 80] The Public Body provided the final hearing package to the parties to the appeal on May 12, 2016; the package included the Complainant's membership application and the two letters from the relevant settlement to the Complainant.

[para 81] The Public Body states that it used the Complainant's personal information for the purpose of conducting the hearing into the settlement member's appeal. As above, I have already determined that the FOIP Act does not preclude the Public Body from hearing the substantive appeal at the same time as the preliminary matter. I have also already set out the standard I am applying: whether the Public Body handled the Complainant's personal information in a manner clearly outside the scope of what is reasonable.

[para 82] I have also already found that the information collected by the Public Body had a logical connection to the matter before the Public Body. Nothing before me indicates that the Public Body used the Complainant's personal information other than to conduct the appeal. Therefore, I find that the Public Body's use of the Complainant's personal information was authorized under section 39(1)(a).

[para 83] Section 39(4) of the Act requires a public body to use personal information only to the extent necessary for the stated purpose. As above, "necessary" does not mean indispensable. 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). I agree with this interpretation; it applies equally to section 39(4) and the use of personal information.

[para 84] I understand that the Public Body determined that the settlement member did not file their appeal within the 45-day time limit set out in the MSA, and therefore the Public Body did not need to consider the substantive appeal. As set out in past Orders discussed above, whether the Public Body's use of the Complainant's membership application information was necessary

within the terms of section 39(4) is not an assessment that can be made in hindsight. The Public Body must be afforded a margin of error in determining what will be relevant to the proceeding. In this case, the Complainant's membership application was logically connected to both the preliminary and substantive matters before the Public Body. Nothing before me indicates that the Public Body used the Complainant's personal information beyond what was necessary to conduct the hearing. Therefore, I find that the Public Body met its obligation under section 39(4).

3. Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under sections 40(1) and 40(4) of the Act?

[para 85] Section 40 of the Act sets out the circumstances in which public bodies are authorized to disclose personal information. The relevant provisions state:

> *40(1) A public body may disclose personal information only*
>
> *...*
>
> *(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
>
> *...*
>
> *(4) 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 86] The Complainant objects to the disclosure of their personal information for the reason that it relates to the substantive appeal, and not to the preliminary matter of the 45-day time limit.

[para 87] The Public Body states that it disclosed the Complainant's personal information to the parties in the proceeding, for the purpose of conducting the hearing into the settlement member's appeal. As above, I have already determined that the FOIP Act does not preclude the Public Body from hearing the substantive appeal at the same time as the preliminary matter. I have also already set out the standard I am applying: whether the Public Body handled the Complainant's personal information in a manner clearly outside the scope of what is reasonable.

[para 88] I have also already found that the information collected and used by the Public Body was logically connected to the matter before the Public Body. Nothing before me indicates that the Public Body disclosed the Complainant's personal information other than to conduct the appeal. Therefore, I find that the Public Body's disclosure of the Complainant's personal information was authorized under section 40(1)(c).

[para 89] Section 40(4) of the Act requires a public body to disclose personal information only to the extent necessary for the stated purpose. As above, "necessary" does not mean indispensable, and includes a means by which the Public Body may achieve its objectives that would be unavailable without the disclosure.

[para 90] Nothing before me indicates that the Public Body disclosed the Complainant's personal information beyond what was necessary to conduct the hearing. As above, I understand that the Public Body determined that the settlement member did not file their appeal within the 45-day time limit set out in the MSA, and therefore the Public Body did not need to consider the substantive appeal. For the same reason as above, the fact that the Public Body ultimately determined that it did not need to hear the substantive appeal does not mean that it fell afoul of section 40(4).

[para 91] The Complainant also argues that the Public Body could have redacted information in the hearing package, such as identifiers or sensitive information.

[para 92] The Complainant has not specified what identifiers or sensitive information could have been redacted from the documents in the hearing package. If this information was relevant to the Complainant's settlement application, then it seems to follow that it is also relevant to an appeal of the Complainant's settlement approval. In other words, from the information before me, I am satisfied that the information disclosed by the Public Body was logically connected to both the preliminary and substantive matters before the Public Body, and that the Public Body did not disclose more information than was necessary to conduct that proceeding.

4. Did the Public Body make reasonable security arrangements [to protect the Complainant's personal information] against such risks as unauthorized access, collection, use, or disclosure, as required by section 38 of the FOIP Act?

[para 93] Section 38 of the Act states:

> *38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 94] In Order F2009-041, the adjudicator provided a useful overview of the burden of proof with respect to an alleged unauthorized disclosure of personal information under Part 2 of the FOIP Act (at paras. 25-29). She concluded that the complainant bears an initial evidential burden of establishing a basis for the complaint. I believe this conclusion applies equally with respect to a complaint of a failure to meet the duty under section 38. The authors of *The Law of Evidence* 2nd Edition describe the evidential burden as follows:

> The term "evidential burden" means that a party has the responsibility to insure that there is sufficient evidence of the existence or non-existence of a fact or of an issue on the record to pass the threshold test for that particular fact or issue.

[para 95] A public body's obligation under section 38 is explained in Order F2014-19 as follows (at paras. 26-27):

> Section 38 addresses whether a public body has made reasonable security arrangements to safeguard personal information; it does not directly address situations in which a breach is alleged but the safeguards were reasonable. In other words, it is possible for a public body to have made reasonable security arrangements and yet personal information can be accessed, used, disclosed

> or destroyed in an unauthorized manner. For example, a "rogue" employee who is appropriately authorized to access information may access the information for unauthorized purposes. This is essentially the situation alleged by the Complainant. In such a case, it is not clear that section 38 is contravened.
>
> That said, the fact of a breach may undermine what would otherwise appear to be reasonable security arrangements; therefore I will consider the Complainant's allegations regarding unauthorized alteration of her performance contract.

[para 96] The Complainant argues that the Public Body does not have adequate processes and procedures to protect personal information in its custody or control, as required by section 38 of the FOIP Act. The Complainant's arguments regarding this issue appear to be based on their belief that the Public Body did not have authority to disclose their personal information for the appeal.

[para 97] The Complainant also argues that the Public Body does not have rules in place about what parties to a proceeding can do with personal information obtained in the course of the proceeding. In their request for inquiry, the Complainant states:

> No process, rules and/or procedures in place to address, manage, protect, limit or contain personal information prior, during and after a scheduled hearing. As MSAT is a quasi-judicial body, the measure of access, securing and protection of personal information contained in documents and records MSAT discloses and distributes does not have the same security, rules, procedures and protection to the parties of the scheduled hearing. In a court, access to documents and records is limited and contained, with regulations and rules protecting the personal information, the disclosure and the distribution of such documents and records, which is not the case in MSAT matters.

[para 98] The Public Body states that its Rules of Procedure set out the procedures for dealing with personal information. The Public Body provided a copy of the Rules of Procedure in place at the time of the relevant hearing. These state, in part:

> To enable the Appeal Tribunal to conduct a thorough investigation, it is necessary to provide your name and the nature of your appeal(s) to various third parties. Personal information about an individual that is not related to the dispute before the Appeal Tribunal will not be distributed.
>
> If a question arises as to the relevancy of personal information, that question is to be determined by the Panel Chair. If the question of relevancy arises before a Panel is appointed, it is to be determined by the Appeal Tribunal Chair ("the Chair"), or his/her delegate.
>
> If you have any questions about the collection and distribution of personal information, please direct your inquiries to the Appeal Tribunal Secretary at 1-800-661-8864. Alternatively, you may contact the Office of the Information and Privacy Commissioner for Alberta by phoning 1-888-878-4044.

[para 99] With respect to the comparison made by the Complainant to court proceedings, the Public Body notes that courts are governed by the open court principle. The Public Body further states:

> Similarly, the starting presumption for MSAT is that hearings (and the records relied on in the course of hearings) are open to the public. This presumption holds unless the Tribunal directs otherwise. While [the Complainant] may not agree with the Tribunal's decision not to limit access to information in this case, disagreeing with the outcome of a decision does not mean that MSAT's process was lacking.

[para 100] I have found that the Public Body had authority under the FOIP Act to use and disclose the Complainant's personal information as it did, for the purpose of the hearing. It follows that the Public Body did not fail to safeguard the Complainant's personal information on the grounds that it was used or disclosed for the hearing.

[para 101] The Complainant has also argued that the Public Body lacks rules to protect or contain personal information during or after the hearing process. Section 38 of the FOIP Act does not require a quasi-judicial body to create rules to limit the use of personal information that is disclosed in the course of a hearing.

[para 102] Nothing in the Complainant's submission indicates they are concerned with the Public Body's safeguards more generally – in other words, that the Public Body lacks safeguards to protect personal information in its custody or control outside of this hearing process. As such, I will not address that issue.

[para 103] On the basis of the information before me, I have no reason to find that the Public Body has not met its obligations under section 38.

IV. ORDER

[para 104] I make this Order under section 72 of the Act.

[para 105] I find that the Public Body had authority to collect, use and disclose the Complainant's personal information as it did.

[para 106] I find that the Public Body did not fail to meet its obligations under section 38 of the Act.

_____

Amanda Swanek
Adjudicator