

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2025-15

April 25, 2025

PUBLIC SAFETY AND EMERGENCY SERVICES

Case File Number 015372

Office URL: www.oipc.ab.ca

Summary: An individual (the Complainant) made a complaint under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) alleging that Justice and Solicitor General (now Public Safety and Emergency Services) (the Public Body) contravened the FOIP Act when it shared his dietary restrictions with Compass Group Canada (CGC), the operator of the canteen where the Complainant was incarcerated, which used it to manage or supervise his canteen purchases.

The Complainant further alleged that the Public Body contravened the FOIP Act when it emailed two documents: a letter disclosing that he had made a human rights complaint against the Public Body, and a completed Alberta Health Services (AHS) form containing personal information about the Complainant (collectively, the Documents), to an employee with Correctional Service Canada (CSC), who then provided these documents to his Parole Officer.

The Adjudicator found that the use of the Complainant's dietary restrictions to manage or supervise his canteen purchases contravened section 39 of the FOIP Act. The Adjudicator ordered the Public Body to stop using, and to instruct CGC to stop using, the Complainant's dietary restrictions for the purpose of managing or supervising the Complainant's canteen purchases.

The Adjudicator found that the disclosure of the Complainant's personal information in the Documents to the CSC employee contravened section 40 of the FOIP Act. The Adjudicator ordered the Public Body to cease disclosing the Complainant's personal information contained in the Documents in contravention of section 40 of the FOIP Act.

The Adjudicator found that by emailing the Documents containing the Complainant's personal information to the CSC employee, who was not authorized to access and read the Documents, the Public Body failed to make reasonable security arrangements against such risks as unauthorized disclosure of personal information as required by section 38 of the FOIP Act. The Adjudicator ordered the Public Body to make reasonable security arrangements to protect against such risks as unauthorized disclosure of the Complainant's personal information when sending him correspondence containing his personal information in the future.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 17, 38, 39, 40, 41, 65, 72; *Alberta Human Rights Act*, RSA 2000, c. A-25.5.

Bylaws Cited: AB: Alberta Human Rights Commission Bylaw, s. 13.

Orders Cited: AB: F2009-19 & F2009-20, F2015-41, F2015-42.

I. BACKGROUND

[para 1] An individual (the Complainant) made a complaint against Justice and Solicitor General (now Public Safety and Emergency Services) (the Public Body) to this office under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act).

[para 2] The Complainant is incarcerated. He complained that the Public Body used or disclosed his personal information in contravention of the FOIP Act as follows:¹

The Alberta Human Rights (AHR) complaint respondent, Justice and Solicitor General of Alberta (JSGA), shared confidential information with Canada Corrections about me. They shared health information with the canteen operators in Calgary Remand Centre as well, which is an independent 3rd party.

On June 19, 2019, after I had submitted an AHR complaint regarding my religion to Alberta Corrections, the Deputy Minister of Alberta Corrections Adult Operations emailed my Parole Officer in Bowden Institute the exact details of the complaint as well as a health release form (see attached). This discloses my medical information as well as religious and other personal information to a 3rd party.

This is a violation of my right to Privacy as I did not consent for this information to be shared with Canada Corrections.

In 2018 while I was in custody of Alberta Corrections they obtained my medical diet information, which I believe is protected information, and shared it with the canteen operators, as evidence here by this form (attached).

[para 3] The Commissioner assigned a senior information and privacy manager to mediate and attempt to settle the complaint. Following this, the Complainant requested an inquiry.

¹ Letter dated March 16, 2020, from the Complainant to the OIPC.

[para 4] The Commissioner agreed to hold an inquiry and delegated her authority to conduct the inquiry to me.

II. ISSUES

[para 5] The Notice of Inquiry, dated November 1, 2024, states the issues for this inquiry as follows:

1. Did the Public Body comply with section 38 of the FOIP Act (Protection of personal information) when it disclosed the details of the Complainant's Human Rights Complaint as well as his health release form to his Parole Officer with Canada Corrections?
2. Was the Public Body authorized to disclose the details of the Complainant's Human Rights Complaint as well as his health release form to his Parole Officer with Canada Corrections, without his consent, under sections 40(1), 40(4) and, if disclosed pursuant to section 40(1)(c), did the disclosure comply with section 41?
3. Was the Public Body authorized to disclose the Complainant's medical dietary information to the operators of the canteen, without his consent, under sections 40(1), 40(4) and, if disclosed pursuant to section 40(1)(c), did the disclosure comply with section 41?

III. DISCUSSION OF ISSUES

Preliminary Matters

Scope of Inquiry

[para 6] In his submission, the Complainant raised issues that are outside the scope of this inquiry and/or outside the scope of my jurisdiction.

[para 7] For example, the Complainant asserted that the Public Body violated section 17(1) of the FOIP Act. Section 17(1), which is found in Part 1 of the FOIP Act dealing with obtaining access to information, only applies where a public body has received a request for access to information from an applicant and determines that the responsive records contain personal information about a third party, the disclosure of which would be an unreasonable invasion of the third party's personal privacy. Section 17(1) states that in such a case, the head of the public body must refuse to disclose the third party's personal information to the applicant.

[para 8] No one made an access request to the Public Body for the Complainant's personal information in this case and section 17(1) has no application in this inquiry. This inquiry is about the Complainant's *complaint*, that the Public Body used and/or disclosed his personal

information in contravention of the FOIP Act. The sections which are applicable to complaints are found in Part 2 of the FOIP Act, which deals with the protection of privacy.²

[para 9] The Complainant further argued that the disclosure of his dietary restrictions to the canteen operator violated his Charter rights.

[para 10] Previous Orders of this Office have confirmed that the Commissioner does not have the jurisdiction to determine constitutional questions or issues.

[para 11] For example, in Order F2015-41, former Commissioner Clayton stated at paragraphs 11 and 12:

[para 11] Section 11 of Alberta's *Administrative Procedures and Jurisdiction Act* states:

11 Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so.

[para 12] The regulation referred to in this provision does not confer jurisdiction to determine questions of constitutional law on the Information and Privacy Commissioner of Alberta. Therefore, I do not have jurisdiction to determine if the Complainant's Charter rights have been violated or any other Charter related questions which the Applicant raises. For this reason, I will not comment on the Complainant's arguments relating to the Charter.

[para 12] In addition, the Complainant argued that the disclosure of his dietary restrictions amounted to discrimination. This is outside the scope of my authority under the FOIP Act to determine.

[para 13] The inquiry is limited to the issues set out under the heading "II. ISSUES" above.

[para 14] I have decided to reverse the order of the issues and address the third issue first, then the second issue, then the first issue.

- 1. Was the Public Body authorized to disclose the Complainant's medical dietary information to the operators of the canteen, without his consent, under sections 40(1), 40(4) and, if disclosed pursuant to section 40(1)(c), did the disclosure comply with section 41?**

[para 15] The Complainant complained that the Public Body contravened the FOIP Act when it shared his dietary restrictions with Compass Group Canada (CGC), which operated the canteen at the facility at which he was incarcerated. The Complainant stated:³

² Section 65(3) states "A person who believes the person's own personal information has been collected, used or disclosed in contravention of Part 2 may ask the Commissioner to review the matter". This is the section pursuant to which the Complainant's complaint was accepted by this office.

³ Complainant's Letter dated September 13, 2021.

. . . Canteen items purchased by inmates may not be consumed by them, yet may be consumed by others as each [inmate] may share their canteen with others. It is unreasonable to share this private information with canteen operators as it is a violation of FOIPPA.

[para 16] As evidence of the sharing of his dietary restrictions by the Public Body with CGC, the Complainant provided a copy of an Alberta Government Expenditure Authorization Inmate Trust Account form (the Expenditure Form).

[para 17] The Expenditure Form was dated August 9, 2018, and contained the Complainant's name, ORCA number, and account balance in the appropriate fields. The box for "Canteen" was checked off. Written at the top of the form were the words "Diet: [list of food items the Complainant could not consume]" (the dietary restrictions).

[para 18] In its submission, the Public Body provided the following information about its relationship with CGC, which operates the canteen:

CGC is contracted by Correctional Services Division to deliver food services to the inmate population in the Public Body's correctional centres. They are a separate entity from the Public Body but would fall within the definition of "employee" of the public body. The company is the vendor for both the meal services and canteen operations. The Public Body provides the vendor with inmates' dietary information to enable them to deliver meal services within the facilities.

[para 19] The Public Body made the following submissions regarding its authority to use and share the Complainant's dietary restrictions with CGC under the FOIP Act (my emphasis):

The Public Body was authorized to disclose the Complainant's medical dietary information to Compass Group Canada (CGC), the food services vendor, without his consent under [section] 40(1)(aa) of the FOIP Act. This provision permits the disclosure of personal information for the purpose of supervising an individual in a correctional institution and states:

Disclosure of personal information

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

(aa) for the purpose of supervising an individual under the control or supervision of a correctional authority,

One aspect of supervision includes responsibility for ensuring the health and safety of individuals under the control of a correctional centre. This includes ensuring offenders' medical dietary requirements are adhered to in the provision of meals. The aspect of supervision also extends to respecting offender religious meal accommodation requests.

Health care staff within the centre provide instruction on inmate's medical dietary restrictions to corrections staff. This information is then entered on inmates' Offender Records and Correctional Administration (ORCA) file. Religious diet accommodations are also entered into ORCA by centre Chaplains to honor offenders' religious dietary accommodations.

Corrections staff then provide CGC a daily meal count report and dietary information from ORCA prior to meal service. This ensures meal accommodations are followed. CGC is contracted to deliver inmate meal food services and canteen services. Staff can be assigned to work in either location.

...

By sharing the specific food items the Complainant is not to consume with CGC, the Public Body disclosed personal information only to the extent necessary to enable vendor staff to ensure he is not served food items which he should not be consuming.

Further, the Public Body disclosed the Complainant's dietary information pursuant to section 40(1)(c) of the Act, which permits a Public Body to disclose personal information as follows:

Disclosure of personal information

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.

The Complainant's dietary information was collected for the purpose of providing him with meals which accommodate his medical and religious needs. It was then disclosed to the food services vendor to ensure his accommodations were complied with. In this way, the disclosure of his personal information also complied with section 41 of the Act, as it is consistent with the purpose for which it was collected. The disclosure of dietary information has a reasonable and direct connection to the provision of food services and is necessary for operating successful food services within the centres. Section 41 of the Act states the following:

Consistent purposes

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 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.

...

CGC is the food services vendor and is a contractor of Correctional Services Division. It is the same vendor for both meal services and canteen and staff can be assigned to work in either area. While the Complainant's diet information constitutes personal information, the Public Body was authorized under the FOIP Act to disclose this information to the vendor for the provision of meals which comply with the Complainant's dietary requirements. The Public Body wishes to note that, while not at issue in this Inquiry, it may be more appropriate to characterise this as a "use" by the Public Body as the CGC would likely fall within the scope of "employee" as noted above.

The Public Body cannot confirm the purpose for the dietary entry on the Complainant's expenditure authorization canteen form, nor can it confirm whether CGC staff wrote this.

...

As stated above, the Public Body was authorized and disclosed dietary information to CGC for the purpose of providing meal services within the centre. While canteen services are an extension of the same entity, the Public Body cannot confirm if or why the vendor would have indicated the Complainant's dietary requirements at the top of the expenditure form.

...

The Public Body does not currently supervise inmate canteen purchases and cannot confirm why or by whom the Complainant's diet information would have been written on the canteen expenditure form.

In terms of meal accommodations for new offenders, the correctional centre is obligated to provide this as soon as reasonably possible following admission.

Analysis

[para 20] "Employee" is defined in section 1(e) of the FOIP Act as follows:

1 In this Act,

...

(e) "employee" in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;"

[para 21] I agree with the Public Body's submission that CGC acts as an employee of the Public Body in providing meal services and canteen services to inmates.

[para 22] I also agree with the Public Body that the sharing of the Complainant's dietary restrictions with CGC is properly characterized as a "use" under the FOIP Act.

[para 23] Section 39(1) of the FOIP Act sets out the circumstances in which a public body may use personal information. It states:

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, or*

(c) *for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

[para 24] Section 39(4) of the FOIP Act adds the following restriction on how a public body may use personal information:

39(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 25] As set out above, the Public Body submitted that:

The Complainant's dietary information was collected for the purpose of providing him with meals which accommodate his medical and religious needs. It was then disclosed to the food services vendor to ensure his accommodations were complied with.

[para 26] I find that the use by the Public Body and CGC of the Complainant's dietary restrictions for the purpose of providing the Complainant with meals that met his dietary restrictions was permitted under section 39(1)(a) of the FOIP Act. As I have found this use was permitted by section 39(1)(a), it is not necessary for me to determine whether it was also permitted under section 39(1)(c).

[para 27] With respect to the use of the Complainant's dietary restrictions to manage or supervise his canteen purchases, the Public Body did not argue that the use (or disclosure) of the Complainant's dietary restrictions to manage or supervise his canteen purchases was permitted under the FOIP Act.

[para 28] The Public Body submitted that it does not supervise inmate canteen purchases. It did not collect the Complainant's dietary restrictions for this purpose and advised that it could not confirm who wrote the Complainant's dietary restrictions at the top of the Expenditure Form, or if or why CGC would have indicated the Complainant's dietary restrictions at the top of the Expenditure Form.

[para 29] The Expenditure Form provided by the Complainant, which includes handwritten notes about the Complainant's dietary restrictions, shows that his dietary restrictions were used by CGC in providing canteen services to the Complainant. While the Public Body may not have intended this information to be used by CGC for this purpose, the Expenditure Form is evidence that suggests on the balance of probabilities that it was used for this purpose.

[para 30] The Public Body is responsible for ensuring that the Complainant's personal information, in this case his dietary restrictions, is not used by the Public Body's employees, in this case CGC, for a purpose that is not consistent with the purpose for which it was collected.

[para 31] I find that the use of the Complainant's dietary restrictions to manage or supervise his canteen purchases was not permitted under section 39(1)(a) of the FOIP Act.

[para 32] While the Public Body did not argue that either section 39(1)(a) or section 39(1)(c) permitted it to use the Complainant's dietary restrictions to manage or supervise his canteen

purchases, I also considered whether it was permitted to do so under section 39(1)(c), which permits a public body to use personal information for a purpose for which that information may be disclosed to that public body under sections 40, 42 or 43.

[para 33] Given the Public Body's submission that it does not manage or supervise inmates' canteen purchases, I find that sections 40, 42 or 43 do not apply in this case and therefore using the Complainant's dietary restrictions to manage or supervise his canteen purchases was not permitted by section 39(1)(c).

[para 34] As I have found that the use of the Complainant's dietary information to manage or supervise his canteen purchases was not permitted by section 39(1), I am unable to find that the Public Body complied with section 39(4).

[para 35] In the event I am incorrect in characterizing the sharing of the Complainant's dietary restrictions with CGC as a "use", I also find that neither section 40(1)(c) nor section 40(1)(aa) applied to permit the disclosure of the Complainant's dietary restrictions by the Public Body to CGC for the purpose of supervising or managing the Complainant's canteen purchases.

[para 36] Accordingly, I will order the Public Body to stop using, and instruct its employee CGC to stop using, the Complainant's dietary restrictions to manage or supervise his canteen purchases.

2. Was the Public Body authorized to disclose the details of the Complainant's Human Rights Complaint as well as his health release form to his Parole Officer with Canada Corrections, without his consent, under sections 40(1), 40(4) and, if disclosed pursuant to section 40(1)(c), did the disclosure comply with section 41?

[para 37] The Complainant complained that the Public Body emailed a letter and an Alberta Health Services (AHS) consent form containing his personal information to his Parole Officer with Correctional Service Canada (CSC), in contravention of the FOIP Act.

[para 38] The Complainant provided a copy of the letter and the AHS consent form (the Documents) with his Request for Review/Complaint Form.

[para 39] The letter from the Public Body was dated June 14, 2019 and addressed to the Complainant at the Bowden Institution (the Letter). In it, the Public Body referenced the Complainant's complaint to the Alberta Human Rights Commission (the AHRC Complaint) about the Public Body.

[para 40] In the Letter, the Public Body stated ". . . we received your Alberta Human Rights Commission Complaint and we are requested to provide a detailed written response to the Complaint including all documentation we feel would help clarify the situation". The Public Body went on to reference the Complainant's food request for healthcare reasons and the religious diet RFI forms he submitted. It stated that "In addition to the religious diet RFI forms you submitted, we need to determine if you submitted medical diet accommodation requests to AHS". The Public Body said:

We are therefore requesting:

“Any AHS review, response, decision, or other records involving [the Complainant]’s request(s) to be provided medical diet accommodations for healthcare reasons during his Calgary Remand Centre and Medicine Hat Remand Centre January 25, 2018 to May 16, 2019 incarceration period[”.]

We are seeking your cooperation in acquiring the aforementioned information and please endorse the attached AHS *Consent to Disclose Health Information* form which is required to be completed and submitted in accordance with the *Alberta Health Information Act*.

[para 41] The AHS form the Public Body emailed to CSC was titled “Consent to Disclose Health Information” under the *Health Information Act* (the AHS Form).

[para 42] The Public Body had filled out the AHS Form with the Complainant’s name and birthdate in the “Section A: Patient/Client Name” field of the form. It also completed the field titled “Section B: What health information do you want disclosed”, with details about the Complainant’s health information that it wanted from Alberta Health Services. The Public Body listed itself in the field titled “Section C: What individual/organization is the patient’s/client’s health being disclosed to?”. In the field titled “Section D: What is the purpose for disclosure?”, the Public Body stated “To assist JSG’s response to [Complainant]’s Alberta Human Rights Complaint against JSG (see attached letter)”. In the field titled “Date consent is effective”, the Public Body inserted “2019/June/14”. In the field titled “Expiry Date”, the Public Body inserted “Until AHS provides info to AJSG”. The Public Body inserted the Complainant’s name in the field titled “Name of person giving consent”. In the field titled “Phone” it inserted “N/A”. In the field titled “Email” it inserted “Bowden Institution”. At the bottom of the form, the Public Body wrote “Bowden Institution Officer” and “Date”.

[para 43] The Public Body provided the following information about the Public Body, CSC, and the Complainant’s Parole Officer:

Alberta Corrections (Correctional Services) is a provincial correctional system that houses remanded and sentenced individuals of less than two years in custody. Canada Corrections is actually Correctional Service of Canada (CSC) and manages individuals sentenced to terms of incarceration over 2 years. CSC is a federal correctional system and the Complainant’s Parole Officer is a CSC federal employee.

[para 44] The Public Body provided the following information about the disclosure of the Complainant’s personal information:

It has been determined that on June 17, 2019, Justice disclosed via email the fact the Complainant submitted a human rights complaint against Calgary Remand Centre (CRC) and Medicine Hat Remand Centre (MHRC) regarding his food. In the same email, the Public Body also disclosed an Alberta Health Services (AHS) Consent to Disclose Health Information form and a June 14, 2019 letter addressed to the Complainant, signed by the Assistant Director of Security Intelligence, Correctional Services Division. The fact a complaint was made against the above-mentioned correctional centres was stated in the body

of the email while the AHS consent form and letter were provided as attachments within the email.

The personal information disclosed includes the fact the Complainant submitted an AHRC complaint against Justice regarding his food, the Complainant's requested dietary accommodations while incarcerated within Alberta Correctional Services and his incarceration period at CRC and MHRC, both provincial correctional centres.

The information was disclosed to a Security Intelligence Officer (SIO) at Bowden Institution, a federal correctional facility, who then provided it to the Complainant's assigned Parole Officer to facilitate the signing of the consent form.

[para 45] I note that in addition to the personal information about the Complainant referenced above, the Public Body also disclosed the Complainant's birthdate, which is his personal information pursuant to section 1(n) of the FOIP Act, in the "Date of Birth" field on the AHS Form it sent by email to the Security Intelligence Officer (SIO) at Bowden Institution.

[para 46] Based on the Public Body's submission, I understand that the Public Body did not directly email the Documents to the Complainant's Parole Officer; rather, it emailed the Documents to the SIO at Bowden Institution, who then decided to pass them on to the Complainant's Parole Officer.

[para 47] The Public Body is responsible for the disclosure of the Complainant's personal information to the SIO with CSC; however, it did not have control over who the SIO then disclosed that information to and is not responsible for the SIO's decision to disclose the Documents containing the Complainant's personal information to the Complainant's Parole Officer with CSC.

[para 48] A review of the disclosure of the Complainant's personal information from the SIO to the Complainant's Parole Officer is outside the jurisdiction of this office and would be a matter for the Office of the Privacy Commissioner of Canada.

[para 49] As I stated above, the Public Body is responsible for the disclosure of the Complainant's personal information to the CSC SIO, not to his Parole Officer. Accordingly, the proper issue for this inquiry is whether the Public Body was authorized under the FOIP Act to disclose the Complainant's personal information to the CSC SIO.

[para 50] In its submission, the Public Body relied on section 40(1)(e) as its authority for disclosing the Complainant's personal information in the Documents to the CSC SIO. It stated:

The Public Body was authorized to disclose the fact the Complainant submitted a Human Rights Complaint against two of its correctional institutions, as well as his AHS Consent form to CSC staff without his consent. The authorization to disclose this information is gained under section 40(1)(e) of the Act which speaks to disclosure of personal information and states the following:

Disclosure of personal information

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

(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,

[para 51] The Public Body submitted that as the respondent to the Complainant's AHRC Complaint, it was obligated pursuant to section 13 of the AHRC Bylaw to formally respond to the allegations made against it. It stated:

... In attempt to provide a complete response to the AHRC, the Public Body determined it required specific information held by AHS concerning the Complainant. To obtain this information, a health information disclosure form was required to be signed by the Complainant. In this matter, personal information was disclosed for the purpose of complying with the Alberta Human Rights Act.

[para 52] Sections 13.0 - 13.4 of the AHRC Bylaw, cited by the Public Body and passed pursuant to section 17(1) of the *Alberta Human Rights Act*, state:

13.0 Responding to a complaint

13.1 A respondent must file a complete response to a complaint no later than 30 days after receiving a copy of the complaint.

13.2 A complete response must include:

- a) the full legal name and contact information of the respondent;
- b) the name, business address and telephone number of the contact person for a corporation or other entity;
- c) a detailed response to the allegations contained in the complaint, including a statement of whether the respondent agrees or disagrees with each allegation;
- d) an outline of any additional facts or allegations on which the respondent relies, including, where the respondent disagrees with allegations set out in the complaint and the respondent's version of the relevant facts; and
- e) the authorized signature for the respondent.

13.3 Where the Director returns an incomplete response to the respondent, requesting additional information, the respondent may resubmit the response no later than 30 days after the request was made.

13.4 Where the respondent does not file a response, or does not amend its incomplete response within the time period allowed, the complaint may proceed and be decided based only on the information provided by the complainant, and without further input from the respondent.

[para 53] The Public Body further stated:

Beyond duty, the Public Body also has a right to respond to the AHRC. If it fails to provide a response, the complaint may proceed and be decided solely on information provided by the Complainant, as stated above in section 13.4 of the bylaws.

Analysis

[para 54] As I will explain below, I find that section 40(1)(e) of the FOIP Act and Section 13 of the AHRC Bylaw did not permit or require the Public Body to disclose the Complainant's personal information to the CSC SIO.

[para 55] Section 40(1)(e) of the FOIP Act permits disclosure of personal information to a third party "only 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".

[para 56] This means that if an enactment *requires* a public body to disclose an individual's personal information to a third party *in order to comply with the enactment*, it is permitted to disclose the personal information under section 40(1)(e) of the FOIP Act.

[para 57] Section 13 of the AHRC Bylaw, the enactment upon which the Public Body relies, does not say that a respondent must disclose a complainant's personal information to a third party in order to comply with the *Alberta Human Rights Act*, or the Bylaw. It simply directs the respondent to provide a response to the complaint and sets out what is to be included in the response.

[para 58] In Order F2015-42, the adjudicator rejected the public body's argument that various sections of the *Child, Youth, and Family Enhancement Act*, R.S.A. 2000, c. C-12 and the Residential Facilities Licensing Regulation, A.R. 161/2004 required it to disclose the complainant's personal information, and therefore section 40(1)(e) of the FOIP Act permitted the disclosure. At paragraphs 75 – 76, the adjudicator stated (my emphasis):

[para 75] The Public Body did not explain why it takes the position that the statutory provisions it cited authorize its disclosure of the Complainant's personal information it obtained from the JOIN database to the Human Resources Division. None of these provisions refer to, or can be interpreted as encompassing, obtaining information about allegations contained in the JOIN database and providing them to the Human Resources Division.

[para 76] I am unable to interpret any of these provisions as authorizing an employee of the Public Body to disclose personal information obtained from the JOIN database to the Human Resources Division. With the exception of section 18 of the Residential Facilities Licensing Regulation, these provisions refer to general duties, but do not describe the personal information that may be disclosed or the circumstances in which personal information must be disclosed, to meet these duties.

[para 59] Similarly, in Order F2009-19 & F2009-20, at paragraph 52 the adjudicator stated (my emphasis):

[para 52] As the Public Body also argues that its disclosure at the meeting of February 28, 2008 was done in accordance with bylaws, I will also consider whether section 40(1)(e) applies to this disclosure. Section 40(1)(e) establishes that a public body may disclose personal information for the purpose of complying with an enactment of Alberta. Under section 1(3) of the Freedom of Information and Protection of Privacy Regulation, an

enactment of Alberta includes a “regulation”. Under section 1(c) of the Interpretation Act, a “regulation” includes a “bylaw”. Therefore, if a public body discloses personal information in order to comply with a bylaw, section 40(1)(e) arguably allows the disclosure. However, Bylaw 12800 does not require the Public Body to disclose information to neighbours. As noted above, that responsibility lies on an applicant . . .

[para 60] I understand the foregoing Orders to say that in order for section 40(1)(e) of the FOIP Act to apply, the enactment upon which a public body is relying on to disclose personal information must provide express or implicit authority to disclose personal information in the circumstances. It is not enough to point to general provisions or language in an enactment that do not address personal information, as authority to disclose personal information.

[para 61] The fact that the Public Body wished to obtain information about the Complainant from Alberta Health Services in order to include the information in its response to his AHRC Complaint does not mean that it was required or even permitted by section 13 of the AHRC Bylaw to disclose the Complainant’s personal information to the CSC SIO.

[para 62] The Public Body did not send the Documents to the CSC SIO for the purpose of complying with section 13 of the AHRC Bylaw. There is no evidence before me that the CSC SIO needed to know the Complainant’s personal information in the Documents in order for the Public Body to comply with section 13 of the AHRC Bylaw.

[para 63] Based on the Public Body’s submission, I understand that it sent the Documents to the CSC SIO solely for the purpose of having the CSC SIO facilitate delivery of the Documents to the Complainant; however, in choosing to email the Documents to the CSC SIO, the Public Body disclosed the Complainant’s personal information to the CSC SIO. The Public Body did not provide any evidence that the CSC SIO was authorized to receive or know the Complainant’s personal information in the Documents.

[para 64] Section 13 of the AHRC Bylaw requires a respondent to provide a response to the complaint; it does not require a respondent to disclose personal information about the complainant to anyone else.

[para 65] The Public Body’s right to respond to the AHRC Complaint did not permit it to disclose the Complainant’s personal information to the CSC SIO in contravention of the FOIP Act.

[para 66] I find that section 13 of the AHRC Bylaw did not require or even permit the Public Body to disclose the Complainant’s personal information to the CSC SIO in order to comply with the *Alberta Human Rights Act* or section 13 of the AHRC Bylaw.

[para 67] Accordingly, the Public Body cannot rely on section 40(1)(e) as authority to disclose the Complainant’s personal information under section 40(1)(e) to the CSC SIO.

[para 68] Consequently, I will order the Public Body to cease disclosing the Complainant’s personal information contained in the Documents in contravention of section 40 of the FOIP Act.

[para 69] In this case, had the Public Body mailed the Documents to the Complainant at Bowden Institution as contemplated by CSC Commissioner's directive 085 which I discuss below, and for some reason the Head of the Institution determined it was necessary to read the Documents, I would not have found that the Public Body disclosed the Complainant's personal information in contravention of the FOIP Act as it has no control over whether CSC ultimately reads correspondence sent by mail to an inmate at a CSC facility.

[para 70] As I have found that the disclosure was not authorized by section 40(1)(e) of the FOIP Act, I need not address whether the disclosure met the requirements of section 40(4) of the FOIP Act.

3. Did the Public Body comply with section 38 of the FOIP Act (Protection of personal information) when it disclosed the details of the Complainant's Human Rights Complaint as well as his health release form to his Parole Officer with Canada Corrections?

[para 71] Section 38 of the FOIP 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 72] As noted above, the Public Body disclosed the Complainant's personal information in the Documents it attached to an email and sent to the CSC SIO. It did not send the Complainant's personal information to his Parole Officer.

[para 73] Accordingly, the proper issue in this inquiry is whether the Public Body complied with section 38 of the FOIP Act when it disclosed the Complainant's personal information in the Documents it sent by email to the CSC SIO.

[para 74] In his Request for Inquiry, the Complainant argued that the Public Body could have called him about its request or sent the Documents to him by mail. He submitted that mail from the Public Body would be treated by CSC as privileged, in which case the envelope would have been searched for security purposes, but the contents would not have been read. He submitted that sending his personal information by email to CSC was a violation of his privacy rights.

[para 75] The Public Body made the following submission regarding its duty under section 38:

In disclosing the Complainant's personal information, the Public Body sent the correspondence via email from a Justice SIP to a Correctional Service Canada (CSC) SIO at Bowden Institution to provide to the Complainant. The email was sent from the Justice SIO's Government of Alberta email address directly to the CSC SIO's federal government email address. No other individuals were copied in the email communication. The CSC SIO then provided the document containing the Complainant's personal information to his Parole Officer to provide to the Complainant. The Public Body presumes the documents

were handled in this manner as CSC determined this task was most appropriate to be completed by the Parole Officer assigned to the Complainant.

The Public Body determined it required the Complainant's consent to obtain information as it was named as the respondent in the Complainant's AHRC complaint; however, it did not have an established Bowden Institution contact to liaise with the Complainant regarding the AHS Consent form. To facilitate this, a Justice SIO contacted Bowden Institution directly. Provincial correctional centres within Alberta each have an SIO whose job duties include sharing intelligence with other agencies, including CSC SIOs.

Sending the Complainant's information via email allowed the documents to be received by and provided to the Parole Officer via a single CSC employee, as opposed to an unknown number of individuals had they been physically mailed as an alternative.

Within Alberta Provincial correctional centres, Correctional staff have a responsibility to maintain safety and security within the institution. This includes vetting incoming mail addressed to detained individuals for banned or otherwise harmful materials prior to delivering them to the addressee. The process at CRC involved opening all inmate mail coming into the centre as part of a cursory security inspection.

While the Public Body cannot confirm internal mail handling processes for federal correctional institutions, it is presumed mail would still be examined in some fashion for safety, provided Bowden Institution is predominately a medium-security institution based on capacity. It is unknown whether the mail may be handled and potentially read by multiple staff.

Disclosing the Complainant's personal information by sending it to a federal entity's work-specific email was deemed a secure route of delivering the documents to the Complainant.

[para 76] In response to the Complainant's argument that had the Public Body mailed the Documents to him it would have protected his personal information from unauthorized disclosure, the Public Body stated (my emphasis):

. . . While the Public Body cannot confirm CSC processes or policies on the handling of correspondence arriving at federal institutions, information on the CSC communications webpage speaks to the inspection of mail. The webpage states with the exception of privileged mail, all incoming and outgoing mail is subject to search. Annex "A" of the Commissioner's directive 085: Correspondence and telephone communication defines the list of privileged correspondents as follows:

[The Public Body reproduced the list of authorized privileged correspondents in Annex "A", which includes: "15. Members of provincial legislatures"]

As per Annex "A", correspondence from the Public Body does not constitute privileged communications.

In relation to the reading of correspondence, the Commissioner's directive 085 states that letters to and from inmates normally shall not be read. In regard to all mail being subject to search, the Commissioner's directive 085 states:

5. The following measures shall be taken to verify the contents of envelopes:
 - a. letters sent to an inmate shall be opened and the contents of the envelope inspected by a staff member; and
 - b. letters from an inmate shall be handed over unsealed to a staff member who will inspect the contents of the envelope.

Per CSC's communications webpage, any contraband or unauthorized item found in written correspondence will be confiscated and action may be taken. On the same webpage, a list of things not permitted to send to an inmate includes the following items: anything written in code, stickers, stamps, envelopes, or writing paper and material which promotes hatred of any identifiable group. It is not clear to the Public Body if these items constitute unauthorized items subject to search, and if so, how CSC can maintain that correspondence to and from inmates normally remains unread once mail is opened, as identifying such material may necessitate a more thorough review of the correspondence itself.

On this basis, the Public Body is not confident mailing correspondence and marking it "privileged and confidential" would have prevented the recipient, CSC, from opening, reading, or having the authority to read, the Complainant's personal information. As such the Public Body's decision not to mark the correspondence "private and confidential" was made with regards to CSC's procedures.

In regard to the question of whether the Public Body complied with section 38 of the FOIP Act, this section requires that 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. It should be noted that reasonable does not imply perfect or require a public body to take specific security arrangements the Complainant may request.

[para 77] In his reply, the Complainant submitted the following, in part (my emphasis):⁴

Within the Correctional Service of Canada (CSC), the mail that comes from outside the prison whether or not it is protected mail, is never read unless authorized by the institutional head [Correctional Service of Canada (CSC) Commissioner's Directives 85 at s. 5(1), (b)]. The Minister of Justice under Commissioners Directive (CD's) 85 is a privileged correspondence [CSC Directives 85 at s. 15 (Members of provincial legislatures) of Annex A]. Mail from the Alberta Justice and Solicitor General as it then was, Alberta Justice today (ABJSG/JSG) is privileged as they fall under the portfolio of the Minister of Justice, and generally this mail is not even opened. Even if it WAS opened it generally would not be read without written authorization from the Warden, which would have notified me of the need to read my mail and upon which I would not submit this complaint as I would have known that my mail was being read as the Warden would have to notify me in writing, also I would not have to have filed this complaint as the information would not have been shared with my Parole Officer.

⁴ Complainant's reply submission dated January 19, 2025. The Complainant also suggested the Public Body could have faxed the Documents to him at the Bowden Institution; however, as the Directive does not contemplate correspondence being faxed to inmates, I have not considered this as a means of transmission permitted by the Directive.

The Correctional Service of Canada (CSC) Security Intelligence Department (SID/SIO) was not entitled to this information and the JSG had no right to share this information under the Act ...

The public body did not need "... an established Bowden Institution contact to liaise with . . . [JSG submission Page 4, para [2]] As mentioned in my submission as well as their own submission, it was proper for the JSG to contact me directly as they are dealing with me directly. The sharing of intelligence regarding the fact that I submitted a complaint against JSG in regards to my Human Rights complaint is against the Act and the specific reason for the complaint, which the JSG makes clear it has violated by the sharing of my information with separate and distinct bodies for which the purpose of the information was NOT gathered or intended for [JSG submission, Page 4, para [2]].

As specified above, there is no "unknown number of individuals" who would physically have access to my mail as CSC must have the Institutional Head's specific authorization to read my mail and on top of this, the JSG is a privileged correspondent, the mail would not have been opened as it comes from JSG under the portfolio of the Minister of Justice [JSG submission Page 4, para [3-4]. In essence the JSG is an arm of the Minister of Justice.

It is fully known, as described in CD85, s. 5(1)(b) the exact procedure for incoming mail and the fact that the JSG is a privileged correspondent, and any privacy coordinators from any government departments are also privileged communications [JSG submission Page 4, para [5]] ...

Reasonable protection under s. 38 would clearly require the JSG to contact the CSC and determine what would be the most appropriate method to share the information, or at the very least send the information by mail marked private and confidential, seeing as the Commissioners Directives clearly state that mail is not read, no matter the case of privileged correspondence or not. The JSG did NOT [reasonably] protect my information ...

Analysis

[para 78] The policy and procedure for corresponding with inmates in federal institutions is set out in CSC Commissioner's directive 085 titled "Correspondence and telephone communication" (the Directive). Section 1 sets out the policy objective of the Directive as follows:⁵

1. To encourage inmates to maintain and develop family and community ties through written correspondence and telephone communication, consistent with the principle of protection of the public, staff members and offenders.

[para 79] Sections 8 – 10 of the Directive state:

Reading of correspondence

8. Normally, letters to and from inmates shall not be read. However, pursuant to subsection 94(1) of the Corrections and Conditional Release Regulations, the

⁵ <https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissioners-directives/085.html>

Institutional Head or designate may, in writing, authorize a staff member to read correspondence when he or she believes on reasonable grounds, that:

- a. the correspondence between the inmate and the member of the public contains or will contain evidence of an action that would jeopardize the security of the penitentiary or the safety of an individual; and
 - b. interception of the inmate's correspondence with the member of the public is the least restrictive alternative available in the circumstances.
9. When letters are intercepted and read, this reading and the reasons for it shall be recorded. The inmate shall be promptly advised, in writing, thereof and given the opportunity to make representations, except in situations where the information would adversely affect an on-going investigation. In this case the inmate would be advised of the reasons and given an opportunity to make representations once the investigation is completed.
10. When letters are read, the Institutional Head or designate shall authorize the following measures to be taken, as applicable:
- a. letters considered unfit for delivery shall normally be returned to the sender;
 - b. the original letter or a copy may be retained by the institution, depending on the circumstances;
 - c. any retention shall be duly recorded and the reason for it stated. When prevented from communicating with a person, the inmate shall be promptly informed, in writing, of the reasons, and shall be given the opportunity to make representations. The sender shall be notified and advised of the reason, unless the purpose of the retention would be thwarted.

[para 80] Sections 11 and 12 of the Directive state:

Privileged correspondence

11. Correspondence between an inmate, or the person or group representing him or her and a person listed in Annex "A" is privileged and shall be forwarded unopened to the addressee.
12. The Institutional Head or designate may authorize the correspondence to be opened and read in accordance with the considerations of paragraphs 9 and 10 if he or she is satisfied that there are reasonable and probable grounds to believe that the communication will not be or is not properly the subject of a privilege, and if conditions as outlined in subparagraphs 8 a. and b. exist. The person intercepting the privileged correspondence should treat the information contained therein as confidential.

[para 81] I note that marking correspondence "privileged and confidential" would have no impact on how the correspondence was handled pursuant to the Directive.

[para 82] The Public Body argued that it wasn't a "privileged correspondent" under Annex A and accordingly, if had sent the Documents by mail, the envelope would have been subject to inspection pursuant to section 5 of the Directive.

[para 83] The Public Body argued that it couldn't be sure that the Documents would not have been read by an employee or multiple employees with CSC conducting the search of the envelope. As a result, it decided it was better to email the Documents to a specific CSC employee.

[para 84] The Public Body argued that “[s]ending the Complainant’s information via email allowed the documents to be received by and provided to the Parole Officer via a single CSC employee, as opposed to an unknown number of individuals had they been physically mailed as an alternative”.

[para 85] The Public Body did not specifically refer to sections 8, 9, 10, 11 or 12 of the Directive; however, it did acknowledge in its submission that the Directive “states that letters to and from inmates normally shall not be read”.

[para 86] I find the Public Body’s explanation for its decision to email the Documents to the CSC SIO unpersuasive.

[para 87] Sections 8 – 12 of Directive 085 are very clear as to when incoming mail will be read and the steps that will be taken to inform an inmate that their incoming mail is going to be read.

[para 88] The Documents were sent by an employee with the Public Body. I find that the disclosure was made by the Minister of Justice and Solicitor General, who was the Head of Justice and Solicitor General and a member of the Alberta legislature at the time of the disclosure, and therefore a privileged correspondent under Annex A of the Directive.

[para 89] Had the Public Body mailed the Documents, the correspondence would have been forwarded unopened to the Complainant in accordance with section 11 of the Directive, or possibly read if the requirements of section 12 of the Directive were met, which would have resulted in the process under sections 9 and 10 of the Directive being followed.

[para 90] The Public Body would have no control over whether the Documents were read in such a case and could not be found to have failed to make reasonable security measures to protect the Complainant’s personal information in these circumstances.

[para 91] The Complainant advised in his submission that he would not have filed this complaint if the Public Body had mailed the Documents as contemplated by the Directive, since CSC would have followed the Directive in dealing with the correspondence and informed him if it was going to read the Documents as required by the Directive.

[para 92] Even if the Public Body is not a “privileged correspondent” under Annex A of the Directive, had the Public Body mailed the Documents to the Complainant, Section 8 of the Directive provides that the correspondence would only have been read if the Institutional Head or designate believed on reasonable ground that the correspondence from the Public Body contained or would contain evidence of an action that would jeopardize the security of the penitentiary or the safety of an individual and interception of the correspondence was the least restrictive alternative available in the circumstances.

[para 93] I find it highly unlikely that correspondence to the Complainant *from Justice and Solicitor General*, would have triggered such a belief.

[para 94] Furthermore, while it rejected sending the Documents to the Complainant by mail because they could possibly be read by an “unknown number of individuals”, in choosing email as the method of delivery, the Public Body chose a method of delivery which *guaranteed* that the Documents would be read by *at least* one CSC employee, and the Public Body likewise could not have known *how many other* CSC employees would also read the Documents.

[para 95] The Public Body did not point me to anything which contemplates or permits correspondence to be sent by email to an individual incarcerated with CSC either directly or indirectly.

[para 96] The absence of such a provision in the Directive suggests that CSC does not contemplate or permit correspondence to be sent by email to an incarcerated individual either directly, or to a CSC employee to pass on to an incarcerated individual.

[para 97] The Public Body also did not establish that the CSC SIO was authorized by the Institutional Head or designate to receive and read the Documents it sent to the CSC SIO.

[para 98] The Public Body is correct that section 38 requires a public body to make reasonable, and not perfect security arrangements to protect against risks of unauthorized access, collection, use, disclosure or destruction of personal information.

[para 99] In this case, however, the Public Body did not implement any security measures to protect the Complainant’s personal information. It decided to disclose the Complainant’s personal information in the Documents to the CSC SIO. In deciding to send the Complainant’s personal information by email to the CSC SIO, the Public Body entirely by-passed the CSC procedure for corresponding with an inmate set out in the Directive, which sets out the mechanism for balancing an inmate’s right to privacy and the protection of the public, staff members and offenders.

[para 100] I note that the Public Body also argued that another factor in deciding to send the Documents to the CSC SIO via email in order to have them delivered to the Complainant was the 30-day deadline to respond to the Complainant’s AHRC Complaint set out in section 13 of the AHRC Bylaw. The Public Body stated:

To comply with the *Alberta Human Rights Act* and provide a complete response, the Public Body determined it needed information which required the consent of the Complainant to obtain. Had the correspondence been mailed, even by courier, the communication would have been delayed.

[para 101] A tight timeline to respond to an AHRC complaint does not excuse the Public Body from complying with section 38 of the FOIP Act. Moreover, I note that the AHRC’s website states:⁶

⁶ <https://albertahumanrights.ab.ca/complaints/the-complaint-process/>

A respondent may request more time to respond to a complaint than the 30-day response time. The Commission may agree to a respondent's request.

[para 102] Based on the evidence before me, I find that the Public Body failed to make reasonable security arrangements to safeguard the Complainant's personal information from the risk of unauthorized disclosure when it sent the Documents containing the Complainant's personal information by email to the CSC SIO.

[para 103] In light of my conclusion, I will order the Public Body to make reasonable security arrangements to protect against such risks as unauthorized disclosure of the Complainant's personal information when sending him correspondence containing his personal information in the future.

[para 104] The Public Body should consider my findings herein when determining how to send correspondence to any inmate at CSC which contains personal information about the inmate.

IV. ORDER

[para 105] I make this Order under section 72 of the Act.

[para 106] I order the Public Body to stop using, and to instruct CGC to stop using, the Complainant's dietary restrictions for the purpose of managing or supervising the Complainant's canteen purchases.

[para 107] I order the Public Body to cease disclosing the Complainant's personal information contained in the Documents in contravention of section 40 of the FOIP Act.

[para 108] I order the Public Body to make reasonable security arrangements to protect against such risks as unauthorized disclosure of the Complainant's personal information when sending him correspondence containing his personal information in the future.

[para 109] I further order the Public Body to notify me and the Complainant in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Carmen Mann
Adjudicator
/kh