

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-19

June 8, 2026

MOUNT ROYAL UNIVERSITY

Case File Number 025549

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) that Mount Royal University (the Public Body) contravened the FOIP Act when information about the end of the Complainant's employment was shared in two emails. One email was sent by a dean to department chairs. The email was then forwarded by the chair of a department to other members of that department. The email stated:

I am writing to inform you that [the Complainant's status has changed]. We are working to ensure that [the Complainant's] students this semester and next are supported.

After these emails were sent, the Complainant's change in status was discussed by faculty, students, and private citizens on Twitter (now X). One of the recipients of the Chair's email confirmed the change in the Complainant's status and that the Dean had sent an email to that effect to staff.

The Commissioner agreed to conduct an inquiry. In the course of the inquiry, the Public Body argued that the Commissioner should terminate the inquiry as a result of delay in completing the inquiry.

The Adjudicator found that the Public Body had used the Complainant's personal information in compliance with Part 2 of the FOIP Act. The Adjudicator found that the Public Body itself had not disclosed the Complainant's personal information.

The Adjudicator found that the Complainant's personal information had been disclosed on Twitter by an employee in circumstances contrary to the Public Body's Privacy Policy. The source of the information that was disclosed was the Dean and the Chair's emails. As the disclosure was unauthorized within the terms of section 38 of the FOIP Act, the Adjudicator recommended that the Public Body consider assisting its representatives to comply with the FOIP Act in the future.

The Adjudicator found that the Commissioner had not lost jurisdiction because of any delay in conducting the inquiry.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.1, 38, 39, 40, 41, 72, 73, 74, 75; *Post-Secondary Learning Act*, S.A. 2003, c P-19.5, s. 21

Authorities Cited: AB: Orders P2008-025, F2006-031; F2009-048; F2013-06

Cases Cited: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 (CanLII), [2011] 3 SCR 654; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307; *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817; *Summerside v. Maritime Electric et al.*, 2015 PECA 1 (CanLII); *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190

I. BACKGROUND

[para 1] The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) that Mount Royal University (the Public Body) contravened the FOIP Act when information about the ending of the Complainant's employment was shared in two emails. One email was sent by a dean to department chairs. The email was then forwarded by the chair of a department to other members of that department. The email stated:

I am writing to inform you that [the Complainant] is no longer a faculty member at Mount Royal University. We are working to ensure that [the Complainant's] students this semester and next are supported.

[para 2] After these emails were sent, the Complainant's employment status was discussed on Twitter. Some commenters indicated that they had received information regarding the Complainant's employment status from sources within the Public Body. One of the recipients of the Chair's email responded to questions from the media regarding the Complainant's employment status on Twitter and confirmed that the Complainant's employment status had changed and that the Dean had sent an email to that effect to staff.

[para 3] The Complainant stated:

Mount Royal University improperly disclosed personal employment history information held by the public body when [...] the Dean of Arts, [...] [emailed] every Chair of every department at Mount Royal University that the [Complainant] was [Complainant's employment status had changed]. The public body knew, or ought reasonably to have known, that this personal employment history information would be immediately broadcast on Twitter by employees of the public body (see Appendix A). The public body effectively facilitated the public disclosure of personal employment history to Twitter as the information spread to the public within hours of

the email sent by [the Dean]. Mount Royal University ought to have known that the public body has a duty to protect private information under Part 2 of the Act.

[para 4] The foregoing complaint is one that the Public Body failed to make adequate security arrangements in relation to personal information in its custody or control.

[para 5] The Commissioner agreed to conduct an inquiry into the complaint and delegated the authority to conduct it to me.

[para 6] A notice of inquiry was issued that confined the issues for inquiry to the following:

1. Is the information at issue in the Complaint, the Complainant's personal information as defined in the Act?
2. Did the Public Body disclose the Complainant's personal information in compliance with or in contravention of Part 2 of the Act? In particular, was the disclosure authorized under sections 40(1) and 40(4) of the Act?

[para 7] After I reviewed the complaint, I determined that the issues for inquiry set out in the original notice of inquiry did not reflect the entirety of the complaint made by the Complainant. I determined that the following issues should be added to the inquiry:

1. Did the Public Body use the Complainant's personal information in compliance with Part 2 of the FOIP Act?
2. Did the Public Body make reasonable security arrangements to protect the Complainant's personal information against such risks as unauthorized disclosure as required by section 38 of the FOIP Act?

[para 8] I informed the Complainant and the Public Body of my decision and invited them to make submissions regarding the restated issues.

[para 9] The Public Body then asserted that the Commissioner had lost jurisdiction to conduct the inquiry because of the time it had taken to proceed to inquiry. The Public Body pointed to section 69(6) of the FOIP Act as authority for its application. I have added this issue to the inquiry.

II. ISSUES FOR INQUIRY

ISSUE A: Did the Public Body use the Complainant's personal information in compliance with Part 2 of the FOIP Act?

ISSUE B: Did the Public Body disclose the Complainant's personal information in compliance with Part 2 of the FOIP Act?

ISSUE C: Did the Public Body make reasonable security arrangements to protect the Complainant's personal information against such risks as unauthorized disclosure as required by section 38 of the FOIP Act?

III. DISCUSSION OF ISSUES

ISSUE A: Did the Public Body use the Complainant's personal information in compliance with Part 2 of the FOIP Act?

[para 10] Section 39 of the FOIP Act restricts a public body's ability to use personal information in its custody or control. 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.

[...]

(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 11] The email sent by the Dean states:

I am writing to inform you that [the Complainant] is no longer a faculty member at Mount Royal University.

We are making plans to ensure [the Complainant's] students this semester and next are supported.

[para 12] The Dean explained the purpose in writing and sending the email in a letter for the inquiry:

Members of the [Faculty] also needed to be made aware of the fact [the Complainant's employment status had changed] at the University to ensure that any other unanticipated non-instructional research and service work could be addressed. It would have been impractical to catalogue and send out targeted notices to every individual who might need to become aware of [the Complainant] no longer supporting this work. I determined that by notifying my [Faculty], there would have been sufficient awareness such that issues could have been addressed promptly. This would also allow these employees to take appropriate steps to ensure that [the Complainant] was removed from any relevant committees and employee only lists and systems.

I understand that in the course of [the] termination, [the Complainant] had returned to [the] office and phoned the police. In doing so, other individuals who happened to be in the department at the time became aware of [the change in employment status]. Further, the circumstances surrounding [the change in status] related to numerous investigations engaging [the Complainant] and other academic staff members. I anticipated that informing my leadership

team [...] of only the relevant information – namely that {the Complainant’s status had changed at the University} – would support them in setting a tone for communications in the [Faculty] with respect to [the change in status].

Members of the Faculty [...] were most likely to receive inquiries about these events from employees and students. Providing them the basic information that [the Complainant’s employment status had changed] allowed them to respond to such inquiries providing only this relevant information to members and students of their departments. In the absence of such a communication, this would have only fostered further inquiry and speculation from members of the university community about [the Complainant’s] status as other employees became aware of the reassignment of courses and other steps being taken to effect [the Complainant’s] [change of status] as an employee of the university.

I did consider and attempted to limit the personal information contained in my email. I intentionally used the phrasing “no longer a faculty member” to leave it ambiguous as to the mechanism for [the] departure. This was also an effort in modeling the approach I expected of my team (addressing the operational impacts while limiting the information shared).

[para 13] The chair of a department forwarded the email to members of her department. The Dean recalls her purpose in forwarding the email as follows:

I noted that the Dean’s email had already been sent to full-time faculty members [of the department for which I am currently the Chair and was Chair at the time of the email]. I further forwarded this information to the Department’s contract faculty members and the administrator within the Department.

The forwarding of this email is consistent with my usual practice of informing my department when faculty and staff are no longer in their role(s). Not sharing this information could have an operational impact, because I would expect to field inquiries from colleagues who become aware of a colleague’s departure when the colleague is no longer available for department or committee meetings, or their classes are being reassigned, etc. Relatedly, members of the Department may field similar inquiries from students or other employees about a colleague’s absence, and I believe that it is important for them to be able to convey basic information about the Department in which they work, such as whether one of the members of our department is no longer at the University. This is particularly important in the event that issues may arise from the individual no longer carrying out their duties (such as students who would be impacted by the departure of their course instructor). I am also mindful of the personal impact on current employees when a colleague leaves the University. Current employees may have personal connections with their former colleague (and vice versa), and may become surprised to learn about their colleague’s departure when they fail to show up for meetings and classes. Moreover, I also want to avoid situations in which employees may mistakenly reach out to their former colleague, or be contacted by the former colleague, without knowing that their former colleague is no longer employed at the University.

An additional consideration relating to the email on December 20, 2021 was that I was instructed by the Dean to find another instructor who could grade [the Complainant’s] Fall semester final exams, so that I could tabulate the final grades for [the] courses. I also needed to reassign [the] approaching Winter semester courses. Both of these activities necessitated urgent action, and I needed to contact full-time and contract faculty in the department to make these arrangements in a very short timeframe, especially considering that, just days away from Christmas, faculty members were headed into the holiday break. Practically, any faculty member who might be contracted to grade [the Complainant’s] final exams, or be reassigned to [the] Winter courses,

would need to be notified immediately that [the Complainant] was no longer with the University and that support was needed to cover [the] Fall grading and Winter courses.

[para 14] The Dean stated that the purpose of sending the email was to inform department heads and administrative staff. It was necessary to inform employees of the change to ensure that the Complainant was removed from committees and did not receive communications meant for employees or faculty members only. The Dean indicated that the email was intended to set the tone for communications with students and to address speculation from members of the university community regarding the Complainant's absence. The chair also wanted to ensure that colleagues were aware that the Complainant was no longer employed by the University and would not share internal information with the Complainant as a colleague.

[para 15] The department chair states that the purpose of copying the email to department staff was, in part, to ensure that the Complainant's responsibilities could be completed by another faculty member. The chair also indicated that the purpose in forwarding the email was to provide guidance as to how to respond to student inquiries regarding the Complainant's departure.

[para 16] The evidence of both the Dean and the chair is that the emails were created and sent for the purpose of managing employees.

[para 17] Both the Dean and the chair used the Complainant's personal information to create their emails. They then sent the emails to faculty members and staff. The personal information used was the Complainant's name in conjunction with the statement that the Complainant was "no longer a faculty member".

[para 18] The personal information of the Complainant used in the emails is the fact that the Complainant's employment at the Public Body had ended and by implication, the Complainant no longer had the rights and privileges of the Complainant's former position. Under section 1(n)(vii) of the FOIP Act, such information is "personal information".

[para 19] As the Complainant did not consent to the use of personal information for the purpose of writing and sharing the emails internally, the question becomes whether the Public Body used the Complainant's personal information for purposes that were consistent with the Public Body's purpose in collecting the Complainant's personal information.

[para 20] In its initial submissions for the inquiry, the Public Body stated:

At any rate, the Complainant was terminated [...] in the middle of the Final Examination period for the Fall semester, right before the Holiday Closure and the start of the new upcoming Winter semester. Notably, the Complainant was terminated immediately after their students wrote their exams; therefore, the Complainant was not able to grade the exams prior to termination.

Overall, it is the Public Body's submission that the Dean had to understandably take steps to quickly ensure that the academic activities that the terminated employee (the Complainant) had been responsible for were going to be covered both in the current Fall semester and also the upcoming Winter semester, which would start right away after the Holiday closure. It is the Public Body's position that the Dean had to disclose limited personal information to deal with the

situation surrounding the Complainant's termination and ensure that there was appropriate staffing coverage.

In short, it is the Public Body's view that it is reasonable that the various academic roles that the Complainant had been responsible for had to somehow be covered by the remaining Faculty Members in their current roles. Further, it is also unlikely only one other Faculty Member would be aware of every single academic activity that the Complainant would be involved with, whether it was a committee, a research funding grant, who was grading the exams and who would be teaching the Complainant's courses for the upcoming semester. Overall, one of the purposes for sending the Emails was to ensure that Employees were informed of the Complainant's departure as operationally necessary and that additional support may be required, on their part, to cover any gap left upon the Complainant's departure.

[para 21] The Public Body views the communications by the Dean and the chair as “disclosures” by the Public Body to its employees. As the intended recipients of the emails were not “third parties” but employees of the Public Body, I view the creation of the emails, the decisions as to what personal information to include in the emails, and the sending of the emails to particular representatives of the Public Body for their use as representatives, as “uses” of the Complainant’s personal information by the Public Body rather than disclosures of information.

[para 22] Cited above, section 41 of the FOIP Act explains when a use of information is consistent with a public body’s purpose in collecting or compiling the information. The Public Body collected or compiled the Complainant’s personal information for the purpose of managing the employment relationship. “Managing” the employment relationship includes such activities as managing the end of the relationship. I find that the Dean’s (and the chair’s) use of personal information to inform representatives of the Public Body that the Complainant was no longer a faculty member is for purposes with a reasonable and direct connection to the Public Body’s purpose in collecting or compiling the Complainant’s personal information as the use was for the purpose of managing the end of the relationship.

[para 23] Section 41 also requires that the use of personal information be necessary for performing statutory duties of a public body for the use to fall within its terms.

[para 24] A dean of a university, such as the Dean who sent the email at issue, has the role of supervising and directing academic work and instructional staff.

21(1) The board of a university shall appoint a dean for each faculty of the university.

(2) A dean of a faculty

[...]

(b) has general supervision over and direction of the academic work and instructional staff of the faculty and of the officers and employees employed in connection with that work, and

(c) has the other powers, duties and functions that are assigned to the dean by the president.

(3) The president may appoint a member of the instructional staff of a faculty who shall act as dean in the event of the absence or inability to act of the dean of the faculty or during any vacancy in the office of a dean.

(4) A dean may delegate any of the dean's powers, duties and functions as the dean considers appropriate and may prescribe conditions governing the exercise or performance of any delegated power, duty or function, including the power of subdelegation.

[para 25] The foregoing provisions make it clear that a dean has the role of supervising academic work and instructional staff. A dean may also delegate some of those functions to a chair.

[para 26] I find that the Dean and the chair's use of the Complainant's personal information for the purpose of providing information to staff members falls within the scope of section 21 of the *Post-Secondary Learning Act* (PSLA). I agree with the Public Body that it was necessary to inform the Complainant's former colleagues and coworkers regarding the change in the Complainant's status as an employee to ensure that they did not continue to communicate information to the Complainant intended only for the Public Body's employees.

[para 27] The Public Body objected to my considering the Dean and the chair's use of personal information to write the emails at issue. In its view, the only issue is disclosure. While I agree with the Public Body that disclosure of personal information is an issue for inquiry, particularly given the evidence the Public Body subsequently provided regarding the purpose of creating and sending the emails, the Public Body has not considered how the emails came into being. Both the Dean and the chair incorporated or "used" the Complainant's personal information to draft the emails.

[para 28] In Order F2009-048, the Adjudicator considered the meaning of "use" and "disclosure". In finding that a public body had used personal information prior to disclosing it, she said:

Thus, in the present case, the Public Body reviewed the Complainant's file and determined that the Complainant's personal information could be useful to the Public Body in the Board proceeding. I find that the Public Body used the Complainant's personal information, not simply because the Public Body was reviewing the information for its own purposes, but because the Public Body determined that the information would be useful and *applied or employed* the Complainant's personal information for a particular purpose (i.e. supporting its case before the Board).

[para 29] The Adjudicator in the excerpt above determined that a public body is using personal information when it reviews the information to determine whether it is suitable for its own purposes and then applies or employs it for those purposes. In the case before me, both the Dean and the chair decided to use the Complainant's personal information to create emails. They both determined that the fact that the Complainant was no longer a faculty member would serve the purpose of informing staff members, as well as students, of the change. Accordingly, the Complainant's personal information was used to create the emails at issue and

to inform staff members and third parties of the change. The use of personal information for the purpose of informing staff members of the change is one authorized by sections 39 and 41.

[para 30] To conclude, I find that the use of the Complainant's personal information by the Public Body's representatives to inform the Public Body's representatives of the change in the Complainant's status as a faculty member was authorized by part 2 of the FOIP Act.

ISSUE B: Did the Public Body disclose the Complainant's personal information in compliance with Part 2 of the FOIP Act?

[para 31] Section 40 of the FOIP Act prohibits public bodies from disclosing personal information except in the circumstances it sets out. It states, in part:

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

[...]

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

[...]

(x) for the purpose of managing or administering personnel of the Government of Alberta or the public body [...]

[...]

(bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

(i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and

(ii) does not reveal other personal information about the individual or personal information about another individual [...]

[...]

[...]

(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 32] The Complainant complains that the Dean of a faculty of the Public Body wrote an email to the chairs of departments announcing that the Complainant was no longer a faculty

member of the Public Body. This email was subsequently forwarded by the chair of the Complainant's former department to members of that department. The Complainant is concerned that the emails disclosed the Complainant's employment history without consent. The Complainant also argues that the disclosures were not made for the purpose of managing employees. The Complainant states:

Mount Royal University improperly disclosed personal employment history information held by the public body when [...] [the Dean] [...] email[ed] every Chair of every department at Mount Royal University that [the Complainant] was no longer an employee of the public body. The public body knew, or ought reasonably to have known, that this personal employment history information would be immediately broadcast on Twitter by employees of the public body (see Appendix A). The public body effectively facilitated the public disclosure of personal employment history to Twitter as the information spread to the public within hours of the email sent by [the Dean]. Mount Royal University ought to have known that the public body has a duty to protect private information under Part 2 of the Act.

[para 33] The Complainant's position is that the Public Body shared the Complainant's personal information with employees without adequate safeguards to prevent the information from being disclosed on Twitter. That is a complaint that a public body has failed to safeguard personal information against the risk of unauthorized disclosure under section 38. In the request for inquiry, the Complainant acknowledges that some sharing of personal information was appropriate so that employees could perform their duties; however, the Complainant argues that the sharing of personal information requires safeguards.

[para 34] The Public Body argues:

The Public Body generally agrees with the Complainant that Email 1 contains their personal information as the Complainant's Name under section 1(n)(i) is contained in the record. Additionally, the fact that they are no longer a faculty member with the University, as contained in the record, also qualifies as their Employment History under section 1(n)(vii) of the Act. In short, the Public Body agrees that Email 1 contains the Complainant's personal information.

As in regards to Email 2 sent by the Chair, [...] (at 6:44PM), the Public Body does not see any additional personal information belonging to the Complainant contained in that particular record. However, Email 2 does forward the Complainant's personal information already contained in Email 1; therefore, the Public Body also agrees that both Emails fall under the FOIP Act and any disclosure must adhere to the applicable allowances to disclose the personal information under section 40(1).

In short, the Public Body agrees with the Complainant that Email 1 and Email 2 at issue both contain their personal information and; therefore, fall under the provisions of the Act.

Authority to Disclose under Section 40(1)(h)

Although several legal authorities apply for the disclosure of the personal information at issue, the Public Body argues that section 40(1)(h) of the Act authorizes the disclosure of personal information, Name and Employment History, contained in the Email(s) submitted by the Complainant.

Further, in the Service Alberta - FOIP Guidelines and Practices, that resource also states the following in regards to the test for disclosure of personal information by public bodies in

accordance with section 40(1)(h) of the Act:

The test for disclosure is whether the information is necessary for the performance of duties. Disclosure is permissible only if access to the particular personal information is needed to do a job or deal with a particular situation. [Chapter 7, Page 275]

For the purpose of providing additional considerations, Order F2014-14 addressed a similar circumstance as this Complaint when a Manager of a Public Body emailed all staff in a particular program area concerning the departure of an employee. In that Order, the Manager disclosed that the individual had taken a job with a new employer (with the public-sector union) and that they would be away indefinitely.

In Order F2014-14, the Adjudicator stated (emphasis added):

I find that the Public Body was authorized under section 40(1)(h) to disclose some of the Complainant's information in the email. Specifically, this provision authorizes the disclosure of the fact that the Applicant would be leaving her position, and the indefinite term of her departure. [para 20]

Although the Complainant states that she had already informed the relevant individuals of her departure (for example, those who reported to her), it was reasonable for the Public Body to ensure that Public Body employees who interacted with the Complainant as part of their job duties were informed of her departure.

With respect to the Complainant's assertion that the phrase "away indefinitely" means that the Complainant had filed a grievance, I do not agree. It is possible that someone might speculate that the Complainant had filed a grievance; however, I do not think that the phrase "away indefinitely" can be equated with a statement that the Complainant had filed a grievance. I accept the Public Body's explanation that the manager included this phrase because of the possibility that the Complainant might return (i.e. because it is factually accurate). [para 22]

I turn to the information about the Complainant's new place of employment. I accept that the Public Body had a valid reason for notifying certain employees that the Complainant would be working for an organization that may have competing interests with the Public Body; however, the disclosure of that information may not be necessary for those employees to perform their job duties within the terms of 40(1)(h). In my view, the disclosure was a reminder to employees of a specific aspect of the more general duty of all public body employees to not disclose information (personal or otherwise) that might adversely affect their employer. In reminding them, the Public Body was exercising its management function. Therefore, I will consider whether the disclosure of this information was authorized under section 40(1)(x) (management and administration of personnel). [para 23]

[para 35] I found above that the Public Body's use of the Complainant's personal information for the purpose of informing staff members that the Complainant was no longer a faculty member was authorized by section 39(1)(a) of the FOIP Act. When the employees of a public body communicate personal information internally, that is a use of personal information. When a public body communicates personal information to third parties, the public body is disclosing personal information. The FOIP Act requires that the Public Body have authority under section 40(1) of the FOIP Act for the disclosure.

[para 36] The Public Body made arguments in relation to section 40; however, its arguments relate to the communications by the Dean and the chair to faculty members as opposed to a disclosure to third parties. I am unable to say that the Public Body disclosed any personal information to third parties itself. In this case, I am satisfied that the subject of the complaint is not one that the Public Body disclosed personal information without authority under Part 2; rather, it is one that the Public Body failed to take steps to mitigate the possibility that disclosure could result once the Dean and the chair shared information with faculty members. This concern is one that is properly addressed under section 38 of the FOIP Act.

ISSUE C: Did the Public Body make reasonable security arrangements to protect the Complainant's personal information against such risks as unauthorized disclosure as required by section 38 of the FOIP Act?

[para 37] As noted above, the Complainant submitted copies of exchanges on Twitter regarding the change to the Complainant's employment status to support the complaint.

[para 38] In the following exchange, a member of the media asked one of the email recipients questions regarding the Complainant's employment status:

Quick question. Is [the Complainant] still employed at MRU?

No.

Thanks. Can you provide any context as to [the Complainant's] departure?

There was an internal announcement from the Dean. [...]

[para 39] An employee of the Public Body confirmed that the Complainant was no longer employed by the Public Body and that the Dean had sent an email internally containing that information. The fact that the Complainant was no longer employed by the Public Body is the Complainant's personal information. The sources of the information are the Dean's and the chair's emails. I find that section 40(1)(bb.1) does not apply to this information. Moreover, I do not agree that this information could be accurately inferred solely from the absence of the Complainant's name on the directory. The personal information that was disclosed in this case was more than the information that could be obtained by consulting a directory and failing to find a name. If a search for personal information in a directory fails to provide business contact information, one might guess that the person's business contact information is not in the directory because they are not employed by the public body that published the directory. It might also be guessed that the directory is inaccurate, or that the person's contact information is unlisted for reasons of privacy or security or that the absence is simply a "glitch" or spelling mistake. Failing to find contact information in a directory may raise the possibility that a person's employment status has changed, but it is impossible to draw accurate inferences from the absence of information in a directory alone. It may be for this reason that members of the media sought confirmation from a representative of the Public Body as to the status of the Complainant's employment.

[para 40] The Public Body argues that the disclosure in this case was made by an employee of the Public Body who was authorized to make the disclosure. The Public Body states:

The second post is one where [...] responds to a media inquiry confirming that the complainant is no longer employed by the University. [The Professor] was an initial recipient of the Dean's email and so it is correct that one source of [the Professor] being aware of this information is the Dean's email.

[The Professor's] response aligns with the University's other media inquiry responses and is an authorized disclosure sharing only the most basic information (i.e. confirming that the complainant was no longer employed). I would highlight that this confirmation only occurred after the complainant themselves posted with respect to [the] dismissal and therefore this information was in any event already public.

It was reasonable for [the Professor] to respond to a direct request from media to confirm this basic information. In fact, the absence of a response from [the Professor] would have likely generated greater media interest and public speculation as [the Professor] is a responsive media commentator in [the Professor's] role at the University. Of note, following [the] response, it wasn't until the new year that other media outlets began to make inquiries.

[para 41] The Public Body argues that it was appropriate for the employee to confirm that the Complainant's employment had ended as the Complainant had already confirmed this fact on Twitter. Accepting this to have been the case, for the sake of argument, section 40 of the FOIP Act does not contain authority for a public body to disclose personal information in its custody or control because the information is known to members of the public. Moreover, the Twitter exchange at issue makes no reference to posts made by the Complainant, but to the Dean's email.

[para 42] The Public Body has not established authority for the employee to disclose personal information to third parties on Twitter. While I accept that the Public Body had an authorized need to communicate information about the termination of the Complainant's personal information to faculty members and staff members, I am unable to find that the FOIP Act authorized the disclosure of the same information outside the Public Body to third parties by faculty members or employees.

[para 43] The Public Body provided its Privacy Policy, approved by its Board of Governors, for the inquiry. The Privacy Policy states the following regarding use and disclosure of personal information to third parties:

USE AND DISCLOSURE OF PERSONAL INFORMATION

3.1 Personal Information collected by the University may only be used or disclosed to the extent necessary to carry out the purpose for which it was collected. It may also be used or disclosed for other purposes prescribed under the Act.

3.2 Personal Information may be disclosed internally to other Employees on a need-to-know basis or if the information is necessary for the performance of their duties or functions.

3.3 The University may only disclose Personal Information to a third party where the individual has been notified that the Personal Information may be disclosed, has consented to the disclosure, or as otherwise prescribed under the Act.

[para 44] The Privacy Policy distinguishes between sharing personal information internally for the purpose of performing work duties and disclosing it to third parties. The privacy policy

requires prior notification to the subject of the personal information as well as the subject's consent to the disclosure. Alternatively, disclosure to third parties may be done without consent if a legislative provision authorizes it.

[para 45] The Public Body's privacy policy states the following regarding unauthorized disclosure:

4.1 The University, and its Employees, must protect Personal Information in its custody or control by making reasonable security mitigation strategies against such risks as, unauthorized access, collection, use, disclosure, and destruction.

4.2 The University has an Information Security policy that ensures Personal Information under the control or custody of the University is protected from unauthorized access, use and disclosure.

4.3 All Employees are expected to, in consultation with the Information Management & Privacy Advisor, protect Personal Information using appropriate privacy compliance measures in advance of engaging in any projects where Personal Information is involved.

4.4 All Records containing Personal Information must be retained and destroyed in accordance with the University's Information Management policy.

4.5 Any Records that contain identifiable Personal Information and that are ready for disposal must be securely destroyed and made unreadable such as, permanent deletion, destruction of medium or secure paper shredding. Guidelines for securely disposing of Personal Information can be retrieved from the FOIP Office.

4.6 If an Employee becomes aware of unauthorized access to or collection, use, disclosure, or disposal of Personal Information, they must inform the FOIP Office immediately in accordance with the Procedure for Managing a Privacy Breach.

4.7 Individuals who believe that the University has collected, used, or disclosed their own Personal Information in contravention of the Act may ask the Commissioner to review the matter.

[para 46] The Public Body's privacy policy is reasonable and states the Public Body's duties accurately. Despite this, the evidence before me supports finding that the Public Body's employee did not follow it in this case, given that the Complainant did not consent to disclosure to third parties and the disclosure was not authorized by a provision of the FOIP Act.

[para 47] In Order F2013-06, I distinguished between disclosures made by a public body under section 40 and unauthorized disclosures within the terms of section 38. I said at paragraph 24:

I note that in previous orders of this office, for example, Order F2006-033 and F2012-28, the actions of employees who accessed information from databases, and who were found to have done so without authority, were held to be the actions of the public body by whom they were employed. However, in those cases, the public body employer argued, at least initially, that the actions of the employees were in fact authorized – the public body did not itself treat the employees in question as 'renegade' employees who were deliberately ignoring the public body's own policies and rules, and acting without even ostensible authority. In the case before me, Service Alberta's policies clearly forbid the activities that gave rise to the complaint. Moreover, the motive of the employee who disclosed the Complainant's personal information was to assist a friend, rather than to perform a service on behalf of Service Alberta. In my view it is less appropriate in a case like the present to treat the actions of an employee as an action of the public body or employer, even though that person has access to the information by virtue of their employment. To put this another way, the fact that an employee acted contrary to a public

body's policies and therefore that the employee's actions are not best described as *actions* of the public body, does not mean that a public body has no responsibility if it is the case that its failure to take reasonable steps to prevent such actions contributes to what was done in a given case. In any event, the question of whether the measures that are put in place to ensure only appropriate use of personal information are adequate is essential, regardless whether or not the actions are properly attributable to the public body.

[para 48] As the disclosure on Twitter is contrary to the Public Body's Privacy Policy, I find it was an unauthorized disclosure under section 38 of the FOIP Act. In addition, I note that the emails did not reference the Privacy Policy or indicate to the recipients that the personal information in the email could only be disclosed to third parties in accordance with the Privacy Policy. As it appears that the disclosure could have been prevented had the Privacy Policy been followed, I must order the Public Body to review the disclosure and consider how it may prevent disclosures of this kind by employees in the future. In making this finding, I should not be taken as saying that a public body can never make public statements about the termination of an employee or faculty member. The purposes for terminating employment may sometimes necessitate public disclosure if those purposes are to be achieved. In such a case, section 40(1)(c) may authorize disclosing personal information. In this case, no arguments to this effect were made and I am unable to find that that was the purpose of the disclosure. As discussed above, I am unable to say that the Public Body itself disclosed personal information to third parties.

[para 49] In coming to this conclusion, I acknowledge that the Public Body argued that the employee was authorized to make the disclosure on Twitter. While I accept that the employee may have a public-facing role, in this case, the disclosure is contrary to the Public Body's Privacy Policy and I have not been told how the disclosure complied with this policy or the FOIP Act. As a result, I am unable to agree with the Public Body that the disclosure was authorized.

The Public Body's arguments regarding delay and section 69(6) of the FOIP Act

[para 50] The Public Body asks that I consider whether the Commissioner has lost jurisdiction to conduct the inquiry by operation of section 69(6). It asks that I follow orders P2008-025 and F2006-31 as it believes these orders support the conclusion that proceeding with the inquiry would result in prejudice to itself and the Complainant:

Though the Court rejected the notion that a strict approach should be taken to the timelines set out in section 69(6), it endorsed the approach taken by the OIPC in several of its orders (Order P2008-005 ("CPA") and Order F2006-31 ("EPS") – see para 61 of ATA). CPA and EPS are decisions of the OIPC considering whether the OIPC had lost jurisdiction over an inquiry. In CPA and EPS the OIPC used several factors to determine if it had lost jurisdiction, including: (1) the presence of concurring proceedings addressing the concerns, (2) the degree of seriousness of the breach and (3) the degree of prejudice to the parties, (4) the negative operational impact on the FOIP Act arising from a finding of lost jurisdiction and (5) would the finding of lost jurisdiction be contrary to the public interest (at paras 48-55 of CPA and paras 151-184 of EPS). ATA and the corresponding CPA and EPS decisions are instructive of the approach that should be taken here and these five factors are considered below.

[para 51] While the Public Body refers to prejudice to the Complainant if the inquiry continues, the Complainant has not argued that the Complainant will suffer prejudice if the Commissioner issues an order.

[para 52] Section 69 of the FOIP Act states:

69(1) Unless section 70 applies, if a matter is not settled under section 68, the Commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

(2) An inquiry under subsection (1) may be conducted in private.

(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

(4) The Commissioner may decide whether the representations are to be made orally or in writing.

(5) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

(6) An inquiry under this section must be completed within 90 days after receiving the request for the review unless the Commissioner

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period, and

(b) provides an anticipated date for the completion of the review.

[para 53] In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 (CanLII), [2011] 3 SCR 654 the Supreme Court of Canada found that the Commissioner's interpretation of a provision of the *Personal Information Protection Act* (PIPA) similar to section 69(6) of the FOIP Act was reasonable. The Commissioner interpreted these provisions as authorizing the Commissioner to extend the time for completing an inquiry, regardless of whether the extension was made within 90 days of receiving the request for review. In other words, the time for completing the inquiry could be extended outside the 90 period.

Referring to s. 2(b) *FOIPA*, the Commissioner affirmed that the purpose of *FOIPA* was "to provide a mechanism for controlling the collection, use and disclosure of personal information by public bodies", which *FOIPA* achieves "by giving [the Commissioner] the power to review the collection, use and disclosure of personal information" (para. 57). In his view, the specific purpose of s. 69(6) *FOIPA* was "to ensure that such reviews are conducted in a timely way, and also that parties are

kept aware of the timing of the process so they may participate and plan their affairs accordingly” (para. 57). The purpose of *FOIPA* is uncontroversial, as it is expressly articulated at s. 2(b). I consider the Commissioner’s view of the purpose of s. 69(6) *FOIPA* to be reasonable. It is similarly reasonable to determine that the purpose of s. 50(5) *PIPA* is to ensure timely completion of reviews and to keep the parties informed about the process.

According to the Commissioner, “[i]n most cases that advance to inquiry . . . at the time the 90-day period expires, the inquiry process has been fully engaged and is progressing with the participation of the parties. Because they are involved, the parties are fully aware that the process will continue beyond 90 days” (para. 58). For this reason, the Commissioner did “not believe that the goal of a timely resolution of issues, and of keeping the parties informed, would be advanced by requiring [him] to formally communicate to the parties within 90 days something they already know: that the matter will not be completed within 90 days” (para. 58).

The Commissioner then addressed the practical difficulty of satisfying the s. 69(6)(b) *FOIPA* requirement to provide an anticipated date of completion with the extension if the extension must necessarily be made within 90 days. He pointed out that s. 68 *FOIPA* empowers him to authorize a mediation upon receipt of a request for review. The mediation itself could take up some or all of the 90 days. If the mediation is unsuccessful or mediation is not authorized, the matter would move to inquiry. An inquiry must accord the parties procedural fairness, which can mean accommodating requests for adjournments, to adduce further evidence and to adjourn to review and make submissions on the new evidence. In short, the Commissioner explained that “the parties, as much as [he], have carriage of the matter” and that “[t]he time within which the matter will be completed is largely determined by their actions, schedules and the issues they raise” (para. 62). For this reason, it may not be feasible for the Commissioner to provide an anticipated date for completion within 90 days and the parties are well aware of how the matter is progressing in any event (paras. 59-62).

The Commissioner therefore concluded that neither the purpose of the [*FOIPA*] in general nor section 69(6) in particular is advanced by interpreting the provision as creating an absolute “deadline”, beyond which a proceeding that is underway cannot continue unless I have, before the 90 days expires, expressly stated that the matter will continue beyond 90 days, and projected a new final date for completion. [para. 63]

In my view, the Commissioner’s reasoning in support of his conclusion that extending the period for completion of an inquiry after the expiry of 90 days does not result in the automatic termination of the inquiry under s. 69(6) *FOIPA* satisfies the values of justification, transparency and intelligibility in administrative decision making. The decision is carefully reasoned, systematically addressing: (i) the text of the provision, (ii) the purposes of *FOIPA* in general and of s. 69(6), in particular, and (iii) the practical realities of conducting inquiries drawn from the Commissioner’s experience administering *FOIPA*. It was reasonable for the Commissioner’s delegated adjudicator, in *Order P2008-005*, to adopt this detailed reasoning and apply it to s. 50(5) *PIPA*. I therefore have no difficulty concluding that there exists a reasonable basis for the adjudicator’s implied decision in this case that extending the 90-day period after the expiry of that period did not terminate the process.

D. The Mandatory/Directory Distinction Does Not Arise in This Case

The parties, the trial judge and the Court of Appeal all approached the timelines issue as though it engaged the distinction between mandatory and directory legislative provisions. R. W. Macaulay and J. L. H. Sprague succinctly explain the mandatory/directory distinction as follows: Where a provision is imperative it must be complied with. The consequence of failing to comply with an imperative provision will vary depending on whether the imperative direction is mandatory or directory. Failing to comply with a mandatory direction will render any subsequent

proceedings void while failing to comply with [a] directory command will not result in such invalidation (although the person to whom the command was directed will not be relieved from the duty of complying with it

(*Practice and Procedure Before Administrative Tribunals* (loose-leaf), vol. 3, pp. 22-126 to 22-126.1)

This Court has previously expressed doubt as to the usefulness of the mandatory/directory distinction. In *British Columbia (Attorney General) v. Canada (Attorney General)*, 1994 CanLII 81 (SCC), [1994] 2 S.C.R. 41, Iacobucci J. affirmed that [t]he “mandatory” and “directory” labels themselves offer no magical assistance as one defines the nature of a statutory direction. Rather, the inquiry itself is blatantly result-oriented. . . . Thus, the manipulation of mandate and direction is, for the most part, the manipulation of an end and not a means. In this sense, to quote again from *Reference re Manitoba Language Rights*, [1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721], the principle is “vague and expedient” (p. 742). This means that the court which decides what is mandatory, and what is directory, brings no special tools to bear upon the decision. The decision is informed by the usual process of statutory interpretation. [p. 123]

In any event, the mandatory/directory distinction does not arise in this case. This distinction is concerned with the consequences of *failing to comply* with a legislative direction. Here, we are not dealing with the consequences of the Commissioner’s failure to comply with s. 50(5) *PIPA*. Instead, we are concerned with interpreting the statute to determine when s. 50(5) *PIPA* requires the Commissioner to extend the period for completion of an inquiry. The issue was not “what is the consequence of non-compliance with the provision?”, but “did the adjudicator comply with the provision?”.

Therefore, I do not agree with Marshall J. that the finding in *Kellogg Brown and Root Canada* that the requirements of s. 50(5) *PIPA* are mandatory is “entirely applicable here” (para. 12). Rather, I would adopt the adjudicator’s analysis in *Order P2008-005* in which she explains that *Kellogg Brown and Root Canada* has no application to a case such as this one where the Commissioner provides an extension after 90 days. The decision in that case was premised on the fact that *no time extension was ever issued* (at para. 27, citing para. 14 of *Kellogg Brown and Root Canada*). For that reason, the consequences of non-compliance with s. 50(5) *PIPA* arose in *Kellogg Brown and Root Canada*, but they do not arise here. As the matter is not before this Court, it is not necessary to comment on the conclusion in *Kellogg Brown and Root Canada* that s. 50(5) *PIPA* imposes a mandatory direction.

[para 54] The Supreme Court of Canada settled the issue of whether the Commissioner’s interpretation of section 69(6) of the FOIP Act was reasonable in the foregoing case. The Court found that the Commissioner had extended the time for completing the inquiry as required by the legislation.

[para 55] Other than to refer to the factors set out in Order F2006-031, the Public Body has not explained why it believes the Complainant should lose the right to an independent inquiry granted to individuals by the FOIP Act. While it points to section 69(6) of the FOIP Act, which requires the Commissioner to complete an inquiry within 90 days of receiving a request unless the Commissioner extends the time for completing the inquiry, it does not point to statutory authority for the Commissioner to terminate the inquiry at the request of a public body.

[para 56] The completion date for this inquiry has been extended and it is presently June 10, 2026.

Delay

[para 57] The Public Body's request for the termination of the inquiry is based less on section 69(6) and based more on concerns regarding the impact to itself resulting from delay. In *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307 ("*Blencoe*") the Supreme Court of Canada discussed the circumstances in which a respondent may seek to have administrative proceedings stayed because of delay. At paragraph 122, the Court held:

The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. As previously mentioned, the determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community's sense of fairness would be offended by the delay.

[para 58] The Court determined that the nature of the case, and the purpose and nature of the proceedings and whether the respondent contributed to the delay, should be considered. At paragraph 155, the Court held:

Unreasonable delay is not limited to situations that bring the human rights system into disrepute either by prejudicing the fairness of a hearing or by otherwise rising above a threshold of shocking abuse. Otherwise, there would not be any remedy for an individual suffering from unreasonable delay unless this same individual were unlucky enough to have suffered sufficiently to meet an additional, external test of disrepute resulting to the human rights system. Such a limitation may arise from a fear that the main remedy available would be the blunt instrument of the stay of proceedings. However, as we will see below, a remedy other than a stay may be appropriate in other cases where ongoing delay is abusive. It is true that some of the cases that have most developed the doctrine of abusive delay involved lengthier periods of time that, in conjunction with other factors, warranted stays of proceedings (see, e.g., the cases cited by Bastarache J. at paras. 117-18). They were cases that passed the highest threshold of abusiveness. Because of this, they did not discuss a lower threshold of unreasonable delay that might warrant some kind of judicial action and different, less radical, remedies than a stay in the administrative proceedings.

[para 59] In the foregoing excerpt, the Supreme Court of Canada referenced the remedies available for delay as those to which an individual would be entitled. The Court did not suggest that a public body as defined under the FOIP Act could be entitled to a remedy for delay, if such a remedy would effectively strip the rights of an individual to the adjudication of the citizen's rights. In *Blencoe*, the Court was considering the rights of two individuals: the complainant and the respondent.

[para 60] The Public Body has requested that I resile my jurisdiction because of the time that has elapsed from the time the Complainant submitted the complaint to date. The Complainant submitted the complaint on January 30, 2022. The Complainant subsequently met all timing requirements imposed by this office on complainants seeking an inquiry.

[para 61] The Public Body also objects to my decision to add to the issues for inquiry. My decision was made with notice to the Public Body and provided the opportunity to make representations. The Public Body made representations and submitted evidence.

[para 62] I also note that the Public Body sought and received an extension in the course of providing its submissions.

[para 63] I have conducted this inquiry as a delegate of an officer of the Legislature. The purpose of this review is to determine whether the Public Body's treatment of the Complainant's personal information meets the requirements of the FOIP Act and to ensure that the Complainant's personal information is protected from unauthorized disclosure. Resiling the Commissioner's jurisdiction would leave the Complainant, an individual, without a remedy. Doing so would undermine the purposes of the FOIP Act, discussed above. I am unable to identify any authority in the FOIP Act for the Public Body to obtain this remedy. The purpose of the FOIP Act is both to create rights of access and protection for an individual's personal information in the custody or control of a public body. Neither purpose is served by cancelling the inquiry.

[para 64] In *Blencoe, supra*, the Court held that mandamus is one potential remedy for a respondent whose case may be harmed by inordinate delay. While a public entity such as the Public Body may not be entitled to the remedy of mandamus unless the Legislature clearly establishes its entitlement to this remedy in statute (see *Re Provincial Board of Health for Ontario and City of Toronto*, 1920 CanLII 425 (ON CA)) it would seem that the Public Body would not want mandamus as it would prefer the inquiry to end without an order.

[para 65] The Public Body is concerned that continuation of the inquiry is potentially unfair. In *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 the Supreme Court of Canada said the following regarding the duty of fairness:

Both parties agree that a duty of procedural fairness applies to H & C decisions. The fact that a decision is administrative and affects "the rights, privileges or interests of an individual" is sufficient to trigger the application of the duty of fairness: *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643, at p. 653. [my emphasis] Clearly, the determination of whether an applicant will be exempted from the requirements of the Act falls within this category, and it has been long recognized that the duty of fairness applies to H & C decisions: *Sobrie v. Canada (Minister of Employment and Immigration)* (1987), 3 Imm.L.R. (2d) 81 (F.C.T.D.), at p. 88; *Said v. Canada (Minister of Employment and Immigration)* (1992), 1992CanLII 14729 (FC), 6 Admin. L.R. (2d) 23 (F.C.T.D.); *Shah v. Minister of Employment and Immigration*(1994), 170 N.R. 238 (F.C.A.).

[para 66] It is unclear to me that the Public Body, whose administrative actions as a public body are under review in this inquiry is entitled to procedural fairness, based on the foregoing.

[para 67] In *Summerside v. Maritime Electric et al.*, 2015 PECA 1 (CanLII) the Prince Edward Island Court of Appeal reviewed decisions on procedural fairness and provided a helpful summary:

Procedural fairness is a common law concept. A breach of procedural fairness is an error of law. Consideration of procedural fairness does not require an assessment of the appropriate standard of review.

As a general statement, in the exercise of public powers administrative decision makers should act fairly in coming to decisions that affect the interests of individuals. (Dunsmuir, at para.98) [my emphasis]. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation (Moreau-Bérubé v. New Brunswick (Judicial Council), 2002 SCC 11, at para.74). In the context of Summerside's application for a permit, fairness requires that a party who will be affected by a decision have an opportunity to make representations. To do that, the party must first be informed of the case to be met; otherwise the right to be heard cannot be effectively exercised. A tribunal decision should not turn on a matter on which a party made no representations because the party was not aware that matter was in issue (Blake, Sara: Administrative Law in Canada - Fifth Edition, (LexisNexis 2011), pp.36-37)

[para 68] In *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, to which the foregoing excerpt refers, the Supreme Court of Canada said the following regarding procedural fairness at paragraph 79:

Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. [my emphasis] Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many times, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (*Knight*, at p. 682; *Baker*, at para. 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11, at paras. 74-75).

[para 69] While it is uncertain from the cases I have reviewed that public bodies whose administrative actions in relation to an individual's personal information are under review by the Commissioner have common law rights to procedural fairness as an individual would, section 69(3) of the FOIP Act, reproduced above, establishes how procedural fairness will apply in an inquiry. The head of the Public Body is entitled under section 69(3) to make representations regarding the issues for inquiry. The Public Body has been informed of the issues for inquiry and been given the opportunity to make arguments in relation to the issues as required by section 69(3).

[para 70] The Public Body has not established a lack of compliance with section 69(3) of the FOIP Act in the inquiry. The Public Body has provided evidence and arguments in relation to the issues for inquiry. Had it established a lack of compliance with section 69(3), the solution would be to ensure that it had notice of the issues and to provide it with further opportunity to make submissions regarding the issues, and to ensure that the order takes any inability to give evidence into consideration, not cancel the inquiry.

[para 71] The time for completing the inquiry was extended and the Public Body has been in communication with this office. The Public Body was aware at all times that the inquiry was proceeding. The Complainant has not contributed to the delay in completing the inquiry in any way, although the Public Body requested and received a time extension in the course of the inquiry. The Public Body provided evidence and submissions in relation to the issues for inquiry. If it were the case that I could grant the remedy the Public Body is seeking, these factors would

argue against doing so. Taking away the Complainant's right to an independent review by an officer of the Legislature would be contrary to the public interests recognized by the FOIP Act and it is unclear from the provisions of this statute that I have such authority. The Public Body has not demonstrated any procedural unfairness preventing it from making its case, while the Complainant has not contributed to the delay in any way.

[para 72] As a final point, I note that the Public Body is concerned that the delay will result in unfairness to itself. As a public body, the Public Body's mandate is to pursue the public interest¹. A public body does not have private interests in the personal information in its custody or control. The Public Body has not provided an argument to support finding that the public interest would benefit from my resiling jurisdiction.

[para 73] For all these reasons, I have decided that I will not terminate the inquiry and I will issue the order.

ORDER

[para 74] I make this Order under section 72 of the FOIP Act.

[para 75] I order the Public Body to take steps to ensure that the Complainant's personal information is not the subject of an unauthorized disclosure in the future.

[para 76] The Public Body may comply with my order by considering whether to draw employees' attention to its Privacy Policy when it shares personal information with them and to consider providing them with the name of a person or program area if they have questions as to the personal information that may be disclosed to third parties.

Teresa Cunningham
Adjudicator

¹ Adam Dodek, Solicitor-Client Privilege (Markham; LexisNexis 2014) p. 425