

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Complaints
about the Unauthorized Disclosure of Personal Information**

July 19, 2001

University of Alberta

Investigations #1917, #1920, & #1921

BACKGROUND TO THIS INVESTIGATION REPORT

These three complaint cases relate to a common set of disclosures allegedly made by the University of Alberta (“UofA”) to a company contracting to provide automated information systems to the University. The complaints came from former University employees who claimed that their personal information had been disclosed in breach of the Freedom of Information and Protection of Privacy Act.

COMPLAINT AND INVESTIGATION EVENTS

June 7, 2000: A lawyer representing three individuals, all former employees of the U. of A., sends individually-identified breach-of-privacy complaints to the Information and Privacy Commissioner (the “Commissioner”). The complaint letter asked that the employees’ former bargaining unit, the Non-Academic Staff Association (“NASA”) be given “standing” in the issue. It further passed along a request from NASA that the three named individuals be treated as representatives of a class of individuals similarly affected by recent actions of the University:

“The concern of the Applicants and NASA is as follows:

- 1. The Applicants are employed under terms and conditions derived from the collective agreement between the University and NASA. A review of that agreement will not reveal the precise remuneration paid to any individual employee. At most, a skilled reader will be able to determine a range of compensation within which particular employees will be compensated.*
- 2. The University has announced its intention to contract out the AIS functions to a company called Payment Systems Corporation (“PSC”) and a company called Turnkey Management Consultant Systems.*

3. *Through dealings with PSC the Applicants have become aware that the University or someone acting on its behalf has provided PSC with detailed information concerning the precise terms and conditions under which they are currently employed.*
4. *As a result, the Applicants have been greatly prejudiced in terms of their ability to negotiate potential terms and conditions of employment with PSC.*
5. *The Applicants believe that the conduct of the University contravenes Part 2, Division 2 of the Act. In particular, reference is made to sections 37 and 38 of the Act.*
6. *PSC is not yet in a position where it has custody of the information that is contained in the AIS (which includes the kind of detailed compensation information that has been disclosed). Even if it were, the use of that information (which would remain in the custody and control of the institution for purposes of the Act) by PSC for the purposes of dealing with its own employees or prospective employees would, if submitted, contravene the Act.*

The Applicants and NASA request a Review of the University's actions because they believe that their rights under the Act have not been respected by the University. Further, this has had a tangible adverse effect on the ability of the Applicants and all members of the class of individuals they represent to negotiate with PSC as a potential employer. This is, in our submission, precisely the kind of mischief that the privacy-related provisions of the Act were enacted to prevent.

The Applicants and NASA seek a finding that the Act has been contravened, and appropriate directions to the University in respect of the contravention."

June 7, 2000: UofA advises IPC that its FOIP Coordinator is preparing a report for the Vice-President (Academic) & Provost.

June 13, 2000: The Commissioner sets up complaint files #1917, #1920 and #1921, one each for the three individual complainants respectively. The Commissioner sends notification letters to the UofA and acknowledgement letters to the Complainants, indicating that the undersigned Portfolio Officer from his staff would investigate the matter and report back to him.

June 20, 2000: Investigator meets with UofA FOIP Coordinator.

June 21, 2000: Investigator writes to the Complainants' lawyer indicating NASA cannot be treated as a complainant in this investigation and that it will be treated as outside the investigation unless brought in as a source or witness.

June 23, 2000: UofA lawyer sends to the Investigator his summary of the internal report done by the UofA.:

“Decisions with respect to whether PSC would make offers of employment to AIS staff were to be a matter between PSC and the affected employees; the University did not have any direct role in these employment issues. However, the University was anxious to reduce to the extent possible the negative effect on AIS staff of the decision to contract-out the services. The University hoped that any AIS employees hired by PSC would receive at least the same level of salary from PSC which the employees received at the University. As the result of a request from PSC, an employee of the University provided PSC with salary information for certain AIS employees. The information was provided because the University employee wanted PSC to be aware of the salary levels so that PSC could make a comparable or better offer to the AIS employees.

Section 38(1)(v) of the Freedom of Information and Protection of Privacy Act provides that a public body may disclose personal information for the purpose of managing or administering personnel of the public body. The disclosure of the salary information was for the purpose of managing or administering the transition under which the AIS employees would be displaced and either return to their home departments or in some cases receive offers of employment by PSC. The University had no control over whether offers of employment would be made by PSC or over the content of any such offers. However, the information was provided as part of the University’s efforts to manage or administer the personnel of AIS during this difficult transition period. As a result, the University denies that it has breached the Act.”

[Note: At the June 20, 2000 meeting the UofA FOIP Coordinator had explained that the disclosing official to be referenced by the lawyer in the June 23 summary was the Senior Advisor, Job Evaluation & Compensation, a relatively new employee at Human Resource Services. That manager reported to the then-vacant Director, Employee Relations and Employment Services position, which in turn reported to the Associate Vice-President, Human Resource Services, a then-occupied position that has since been removed from the organization chart.]

July 5, 2000: Investigator replies to letters of June 22 and 30 from the UofA’s lawyer, indicating the protocol being adopted for interviewing UofA staff and acknowledging vacation schedules.

July 5, 2000: Investigator writes to UofA FOIP Coordinator requesting relevant records from specified individuals.

July 14, 2000: UofA FOIP Coordinator arranges reading of records for July 19, 2000, to be reviewed by Investigator and his Research Assistant.

July 19, 2000: Investigator begins reading records, largely e-mail correspondence, held by UofA administrators.

August 1, 2000 to January 26, 2001: Investigator interviews UofA and PSC staff:

- August 1, 2000
- August 2, 2000
- October 20, 2000
- November 27, 2000 (x2)
- November 28, 2000
- December 7, 2000
- December 14, 2000 (x3)
- January 26, 2001

At no time in these interviews did anyone interviewed admit to making the disclosure, or to ordering the disclosure be made. None of the contemporary records examined make explicit reference to the disclosure.

This report analyzes the matters observed in the investigation and treats them as evidence in its findings. It should be emphasized that none of the statement information from interviewed persons was taken under oath. Some interviews were witnessed by UofA officials, some were not. Comments ascribed to individuals in this report were noted at the time of the respective interview.

The Investigator appreciates being supplied by the UofA with comprehensive notes, e-mail readouts, Outlook calendars, meetings minutes and other documentary resources. The completeness of most record sets made it possible to reconstruct accurately the involvement of other officials who kept no records of these events. Documents deleted in one quarter often appeared in several other places. Documentation of management activity in this affair has proven useful to overcoming unfounded suspicions.

In assessing the comments received and appreciating the weight they are to be given, I have followed the spirit of inquiry modeled in Commissioner's Orders, particularly Order 99-019 which delved into another breach-of-privacy case where no admission was forthcoming.

CHRONOLOGY RELATING TO THE DISCLOSURE INCIDENT(S)

March 2000: UofA AIS management developed power-point presentation entitled "AIS: Administrative Information System Past Present & Future"

- Described AIS as following the ASRP which concluded December 1999. AIS began January 2000 as "ongoing production and development services" function for the mission critical OASIS, EPIC and PISCES systems.
- University looking for "stable, predictable costs"; concerned about "continual 'raiding' from organizations better able to meet salary expectations of PeopleSoft trained...resources."
- Presentation recognized that University community had become disenchanted with these services.

March 17, 2000: Request For Proposal issued for five-year renewable contract for application management services, including upgrade and development services. The RFP specified the required “Relationship Principals” to include:

- Openness, honesty and fairness in all communications and dealings
- A spirit of true co-operation on the understanding that each party wins and loses together

April 10, 2000: RFP closing date

April 20, 2000 (circa): RFP recommendation of award determined

April 28, 2000 (12:07hrs): E-mail from PSC HR Director to UofA Director, Employee Programs, asking for more information on 9 named employees.

Late April 2000: PSC provides an employee information session, laying out its salary ranges, job types and benefits.

May 4, 2000: Senior Advisor, Job Evaluation & Compensation replies by fax to the April 28th PSC e-mail.

May 4, 2000: RFP award goes for ratification to BofG Finance & Property Committee

May 5, 2000: RFP award goes to Board of Governors for final approval

May 2000: AIS employees apply to PSC for positions and are put through one or two interviews each, resulting in offers with a one-week acceptance window, to commence employment July 1st presuming a June 30th resignation from the UofA.

June 5, 2000: NASA representative calls UofA FOIP Coordinator about a crisis in AIS resulting from “members” getting exact matching dollar offers from PSC. The FOIP Coordinator agrees to investigate.

June 7, 2000: NASA grieves to UofA Human Resource Services, claiming in Point 3 that the disclosure of employees’ confidential information to private contractors (the Payment Systems Corporation/Turnkey alliance) compromised the economic rights of 48 cited employees:

“.....employees have been adversely affected in terms of their ability to negotiate contracts of employment with PSC and Turnkey.”

June 8, 2000: UofA FOIP Coordinator meets with Vice-President (Academic) & Provost to confirm investigation mandate, copying NASA with correspondence.

June 11 & 16, 2000: Edmonton Journal runs stories on the alleged breach.

July 7, 2000: NASA files a group grievance with employer the UofA, signed by 45 of the 48 affected employees.

BACKGROUND TO THE DIVESTITURE OF AUTOMATED INFORMATION SYSTEMS

The unhappy history of information systems redevelopment at the University of Alberta has been laid out for the University community to read in a Special Report edition of the University newspaper *FOLIO* dated March 13, 2001. That seven-year string of misfortune is not the subject of this report. However, it is hard to make sense of the events of Spring 2000 without knowing that fixing this problem had become the overriding pre-occupation of the Board of Governors and the University's top management echelon.

Decisions taken in March 2000 by senior administrators led to the outsourcing of the production and development functions for administrative systems to a private-sector joint venture comprising PSC Payment Systems Corporation ("PSC") and Turnkey Management Consultant Systems ("Turnkey") effective July 1, 2000, for a five-year renewable contract, with an annual budget set at \$10.2 million. For many of the employees of AIS, this divestiture meant a change of employer while continuing to work at the same function, sometimes in the very same place.

This was not a successorship of employment. The bargaining agent for the University employees (NASA) made no application for recognition of successorship rights relating to its collective agreement. The outsource application manager (PSC/Turnkey) did not purchase the UofA's operations and thereby acquire the UofA's employment obligations. Many of the AIS employees themselves were hired as project temporary staff, interspersed with permanent UofA employees, some of this latter group being loaned from home departments to the AIS project for indeterminate durations.

The topic of the UofA's obligations to each category of employee during this divestiture exercise was a heated point of contention between the UofA administration and the bargaining agent NASA between March and July 2000. That contention was elevated to the Board of Governors, where assurances expressed by the Board were taken as guarantees by the union and as marching orders by the administration.

A HELPFUL ADMISSION, TO A POINT

The explanation offered on June 23, 2000, by the UofA's Legal Counsel, indicating that the disclosure had been made (in a spirit of support for the general placement agenda) by the then new Senior Advisor, Job Evaluation & Compensation, did not hold up to logical scrutiny. The Senior Advisor, Job Evaluation & Compensation had in fact replied to questions referred to him on behalf of the Director, Employee Programs, who was on vacation at the time (Friday April 28, 2000, 12:07hrs) the questions arrived from PSC. Those questions dealt with incomplete data on spreadsheets that were already by that point in PSC's possession. Logically then, the response to PSC by the Senior Advisor, Job Evaluation & Compensation was not the disclosure incident which led PSC to have possession of the data.

THE QUESTION “*WHEN?*”

We can know from the Legal Counsel’s report about the supplementary disclosure that PSC already had the vast majority of the data prior to Noon April 28th. As the isolating of questionable data bits must have required some hours review at PSC, it is reasonable to estimate that PSC had the information as early as the morning of April 27th, possibly earlier still. The initial admission by the University does help to establish one bookend in the question of when did the disclosure happen: before April 28th.

The records disclosed, described below, were generated within the Employee Relations unit of HR at the UofA. The spreadsheets contain data that was sent to that unit on April 11 from the Development Manager at AIS, supplementing earlier data that had been prepared by AIS for the Associate Vice-President, Human Resource Services around March 20, 2000. The disclosure cannot have occurred before April 12th and had occurred by April 27th, leaving a window of 9 working days.

The records received by PSC were draft-dated April 11th by the Employee Relations unit. Later iterations of some of those records were draft-dated April 25th, April 27th, and May 2nd. Keeping staff inventory lists updated during an outsourcing project is a high and conscious priority, involving collective input and coordination. Assuming then that whoever sent the records to PSC had access to updated copies and would not have sent outdated copies to PSC, we must conclude that the disclosure happened prior to the Easter long weekend, before April 21st. Otherwise, PSC would have had a newer version to work from.

Considering the determination to award the contract to PSC was scheduled to be made around April 20th, we should conclude the disclosure was made that day, unless the determination was reached earlier than planned or the disclosure was made even before the contract proposal assessment was concluded. So the disclosure was made, to a reasonable application of probability, on April 20, 2000.

THE QUESTION “*WHAT?*”

The admission also shows us the tangible medium used to make the disclosure. That medium was a set of spreadsheets on 8½” X 14” paper in landscape format. The spreadsheet for “Project Temporaries”, showing 14 typed lines of data for 14 employees (with considerable handwritten marginal comments, mostly other names) contained fields for:

- name
- employee type
- start date
- employment duration
- notice required
- cost of notice
- functional title
- salary grade and step, and

- end date.

Personal information about the Complainants on Cases #1920 and #1921 was on that sheet.

The spreadsheet page for “Seconded Positions – Redundant” showed 22 employee lines of data, referencing:

- name
- employee type
- seniority date
- duration of employment
- notice required
- cost of notice
- job title
- grade/step
- rate of pay
- backfill, and
- lay-off options.

The third spreadsheet page, entitled “Seconded – Backfill” (holding personal information about the Complainant in Case #1917) contained 11 employee lines of data, including:

- name
- employee type
- seniority unit
- project start date
- duration of employment to April 2000
- notice required
- cost of notice
- job title
- grade/step
- rate of pay
- backfill, and
- layoff options.

The fourth spreadsheet, entitled “Project Temporaries” holds data lines for just 2 employees, including:

- name
- employee type
- seniority unit
- project start date
- duration of employment to April 2000
- notice required
- cost of notice
- job title

- grade/step
- rate of pay
- backfill, and
- layoff options.

All told, there are data lines on $(14+22+11+2 =)$ 49 employees. The information is clearly identifiable to named individuals, and relates to employment history and precise income. It is indisputably personal information of third parties within the definitions of the *Freedom of Information and Protection of Privacy Act*. There is no indication of those individuals having signed off on the information or having consented to its disclosure.

The spreadsheets are word-processed documents (as contrasted to a patterned report from a database). Some fields are not completed in typed entry, but rather have been penned in with handwritten numbers, letters or words. The penmanship styles vary, indicating multiple contributors or editors. Some entries by pen show a quantitative value for an entry made in type (e.g., salary grade/period is supplemented by a handwritten per annum dollar amount). Similarly, monthly salaries have been penned over with their yearly equivalents. Despite the editing done, some entries remain blank, indicating the column does not apply to the individual employee or that the data for that entry was not available.

The e-mail from PSC to the Director, Employee Programs, dated April 28th was titled “RE: DUE DILIGENCE”. Its content indicated that acquiring detailed employee information was viewed, at least at PSC, as part of the due diligence preliminaries to concluding the contractual bond between the UofA and PSC/Turnkey. The e-mail from PSC asked for confirmation of precise salaries on 8 employees. It also asked for the service date (also called “vacation service date”) on one employee. It went on to ask whether there are any people on this list who have missed more than six days per year in the past two years, data being sought to establish sick leave patterns. And it asked about their vacation entitlements.

A handwritten notation on the PSC fax shows the word “No” next the sick-leave question, possibly indicating a null set or indicating a refusal to answer that particular question. The other questions were answered by overwriting the PSC e-mail with a pen and returning it to PSC under a standard covering memo fax.

The disclosure, then, comprises at least the four spreadsheet pages disclosed in April and the one-page overwritten returned fax, sent to PSC May 4, 2000. It is probable that updates to those seminal disclosures were provided to PSC throughout May and June, including special topic reports such as the overtime records mentioned below. Once PSC had the basic employee information, gaining responses to supplementary questions on a case-by-case basis from various UofA administrators was not difficult.

THE QUESTIONS “WHO?” AND “WHY?”

[Note: In this report I have chosen to use corporate position titles rather than incumbent names. Most of the positions mentioned in this report have experienced turnover in the year since the disclosure incident.]

The “who?” in this matter is a puzzler. This question is made more difficult by the extra combination of possibilities generated by the fact that some key players on the University end of this affair are former PSC management employees, or are close relatives of PSC employees. While it is not fair to suggest that people are less-guarded in their social or domestic interactions than in their official dealings, the presence of these relationships does open up a greater range of possible points of transfer for the information, as well as introducing the appearance of conflicted personal interests.

Disclosures require a donor and a recipient. Here the recipient is someone at PSC. That identity does not have to be explored except to the extent that getting a fix on the recipient helps us hone in on the donor. Finding the donor is vital to determining the nature of the disclosure. In this matter, after reading the e-mail tracks and notes of many administrators for the March to June 2000 quarter, I find it useful to regard five distinct columns of players who could have acted out the disclosure:

1. PSC Managers
2. NASA Representatives
3. UofA HR Managers (excluding Employee Relations)
4. UofA Employee Relations Unit
5. UofA AIS Line Managers

As no University employee has come forward in this widely known investigation, and as all interviewed employees have expressly denied providing the spreadsheets to PSC, the investigation turned to an examination of motive, means, and opportunity to develop a view of the disclosure based upon possibilities and probabilities.

1. The PSC Managers include owners, various project managers and the PSC HR section.

Motive: The Investigator noted that the PSC HR Director displayed a sophisticated quantitative orientation to her role, with evident sharp skills in compensation analysis. Though she estimated that the due diligence process to lock down the contract was overwhelmingly a question of settling system performance metrics, she cited a small role for HR in that process. In the practice of Human Resources, the scoping out of the incoming workforce in a divestiture/acquisition is sometimes called “conducting cultural due diligence.” In the same month as these events were happening in Edmonton, a major national conference was held in Toronto for HR practitioners on that precise topic. The brochure summary for that conference helps explain the role:

“The ‘people’ fallout is a key consideration, for HR practitioners, when advising Management on the potential opportunities and obstacles in a merger/divestiture

scenario. This needs to be both a fact-based, forensic view of the workforce's composition, supported by a professional sense of the real emotional impact that workplace cultural differences will have on the new organizational entity."

It was in the interests of the PSC HR Director to prove her value as a strategic business partner within PSC by addressing costs and risks, particularly around issues of compensation.

Means: The PSC Managers were not involved in drafting the spreadsheets. They would have had to have been given or sold the sheets in order to possess them.

Opportunity: Nowhere in this investigation did anyone suggest that the PSC Managers helped themselves to the information or ever applied pressure for its release to them. The PSC Managers do believe they asked the University to provide it, and that the University provided it willingly and readily.

Executive-level officials within the University's administration division indicated to the Investigator that (then and later) they saw nothing wrong with providing the employee information to PSC, and, though denying personal involvement, indicated they would have provided it if so asked. Remembering April 2000 as a "very highly emotionally charged time", the former Associate Vice-President, Human Resource Services states that, though she does not know how PSC got the information, on learning of the disclosure she "certainly gave the information exchange (her) blessing." Any subordinates would not have to guess very hard about how their bosses might feel about sharing the spreadsheets with PSC.

Conclusion: Given this openness to PSC regarding the employees' personal information, it is really not possible that the information came to PSC without being disclosed by someone at the University. PSC had motive to collect it but lacked any means or opportunity to make the disclosure to itself without the complicity of a University official.

2. The NASA Representatives were a few professional union agents with a very critical view of the decision to outsource a production environment.

Motive: The NASA Reps openly stated their opposition to the UofA's direction towards outsourcing AIS and the affected UofA non-academic staff. By their continuous presence and direct e-mail messages to various University managers, the NASA Reps applied great pressure on the administrators to assure job offers for all the affected employees.

The most strained contention surrounded the fate of the Project Temps, to whom the University initially felt no employer obligations in the way of consequential placement after project termination. The NASA Reps called the question before the Board of Governors, and secured from the Chair an expressed sentiment which they took to be a

sweeping commitment to keep “whole” the affected employees. The NASA Reps then visited this purported quote upon the administrators, placing those administrators under sudden, extreme heat to show at-least-equivalent job offers for all the staff.

NASA wanted to secure offers for all employees, but it was convinced that those employees could do significantly better in compensation than what they were receiving as University employees. There was no rationale for that conclusion other than the University’s own statements about the prices paid for PeopleSoft skills in the outside market. That assertion had featured in the UofA administration’s own presentations on its reasoning for divestiture.

The focus of the NASA Reps’ messages was heavily on achieving the ends, with no discussion of acceptable means to those ends. Given the heat they applied and the friction and confusion that their communications generated between AIS management and the Employee Relations area over the question of objectives and commitments, it might be reasonable for UofA officials to believe that NASA might condone some shortcutting to get the PSC/Turnkey job offers out.

Means: NASA did not have the updated versions of the spreadsheets that were disclosed to PSC. Those spreadsheets seem to have undergone several iterations (a living-document approach) from their point of development within the Employee Relations section at Human Resource Services. NASA had the very early versions of the spreadsheets, which were initially generated in response to grievance action launched in mid-March over the fairness of UofA management’s having commenced bargaining while concealing an unannounced plan to execute the AIS divestiture. There is no sign that the later versions of the spreadsheets, like those held by PSC, were ever in NASA hands.

Opportunity: The NASA Reps indicate that they never had any direct dealings with PSC, and PSC Managers indicate they never had any dealings with NASA.

Conclusion: It is really not possible that NASA was instrumental or even involved in the disclosure. NASA’s later investment in coaching sessions for employees on how to maximize their market leverage in interview situations underscores the point: NASA clearly was not anticipating a fixed-offer process where employees summarily would be offered their exact current salary.

3. The UofA HR Managers (excluding Employee Relations) includes a group reporting, on an ad hoc basis for the AIS outsourcing process, to the Director, Employee Programs. This interdisciplinary group was assembled to anticipate AIS “employee traffic”, in terms of personal stress and health issues and the general organization strains that come from outsourcing projects. The Director, Employee Programs was identified by executive management as the channeled source of information about the University’s programs for queries from PSC/Turnkey, who were themselves trying to assess equities on significantly different mixes of salary and benefits.

Motive: This group was highly motivated to prevent stressful situations and personal crises among AIS employees, some of whom had been at the University their entire careers. No doubt the UofA HR Managers appreciated the comfort of not having to put employees through rigorous hard-press interviews, where the money question could be especially stressful.

PSC states that the transition was carried out against the backdrop of an implicit agreement wherein the UofA would provide precise intelligence about its workforce to PSC, in return for PSC's agreeing to forego "hard-press" interviews with the affected staff. In that arrangement, PSC would share with the affected UofA employees more of its internal compensation structure than it would normally expose to prospective job applicants. The hope on both sides was that the employees would cross-over without becoming stressed over negotiating the topic of salary and benefits. Unstressed employees would mean less intervention work for the UofA HR Managers, a factor in their motivation to support the implicit agreement.

Means: The UofA HR Managers did have the means to transmit the information to PSC, as the spreadsheets were its very working papers in trying to inventory a disparate group of employees with inexact data attributes (e.g., the simple question of employee salary was compounded by the presence of various project premiums and customized service recognition modifiers). And we have seen that it was from this group that some supplementary information was eventually transmitted to PSC. But the internal communications of this group show that it was something of an afterthought, a reactor rather than an actor. (This is not meant as criticism: The events of April 2000 were moving very quickly, with concern about systems health and cost containment initially taking the spotlight from the human resources questions. Complicating matters was the occurrence of the Easter break and vacations in the third week of April, interrupting the development of management responses to the newly-announced contract. To have not had a reaction team assembled until late April is understandable in the circumstances.)

Opportunity: The records show this group to be present at an introductory meeting with PSC and others (see below) on April 25th. PSC recalls no direct interaction with this group until April 28th. An examination of that interaction shows there may have been one direct communication earlier, but that communication appears to have been on a particular data element rather than a global transfer of employee particulars. And that earlier correspondence may have been between PSC and some other part of the University establishment.

Conclusion: It remains possible, but less than probable, that the disclosure came from the UofA HR Managers.

4. The UofA Employee Relations Unit deals directly with the union NASA and gives advice to line management on collective agreement issues. It was here that the spreadsheets were first generated as an aid in responding to union concerns back in mid-March 2000.

Motive: UofA Employee Relations was motivated to take precautionary measures to avoid any semblance of a successorship situation that would pass to PSC the expensive burdens of the collective agreement. A full transfer of staff from AIS to PSC without changes in terms and conditions of employment would have been a threat to that agenda. This unit was not driven to facilitate the kind of expediency supported by the disclosure. However, it did have a standing political interest in exchanging considerations and favours with NASA. That cooperative spirit with the union was not very evident during this stressed period, so it is doubtful that UofA ER would have supported the disclosure that was made.

Means: UofA ER certainly had the means to disclose the information in that its own analysts had generated the spreadsheets, initially in response to union challenges following a bargaining-table blow-up on March 17, 2000.

Opportunity: UofA ER's own very detailed notes show that it did not open direct communications with PSC until May 2nd, whereas the disclosure had happened ten days earlier. The Senior Advisor, Employee Relations had been present at an April 25th 10 a.m. meeting with the Associate Vice-President, ("AVP") Learning Systems, the AIS Director & Production Manager, the AIS Development Manager, PSC owners/managers including the PSC HR Director, and a Turnkey representative. Among the topics at that meeting was "staff mapping", a "behind-the-scenes" component of the "due diligence process" as a process to be conducted without staff involvement. The meeting notes indicate a general discussion without particulars or data being exchanged, but rather lines of communication being established and agreed upon.

The earliest direct tie-up between UofA ER and PSC appears, again from meeting notes of ER unit staff, to have been on May 2, 2000, followed May 3rd by e-mail communications with PSC over arranging a staff reception at the Faculty Club. After surveying her staff, the Senior Advisor, Employee Relations, stated to the Investigator that her staff had provided to PSC in early May a detailed salary schedule showing recent changes to grade/period premiums, but containing no identifiable employee information.

Conclusion: This management column was not motivated to make the disclosure, indeed shows signs that it is adverse to that form of risk-taking, and ultimately did not have the opportunity to do so since it had not entered the stream of UofA-PSC interaction until late in the action. It remains possible but seems highly improbable that this unit was involved in the disclosure to PSC.

5. The UofA AIS Managers include a column that encompasses the Development Manager, who reports to the Director and Production Manager who effectively if not directly reports to the Associate Vice-President, Learning Systems & Chief Librarian, who in turn reports to the Vice-President, Finance & Administration. This group carried the outsourcing proposal through the RFP process, and this group was being held accountable by a troubled Board of Governors for finding a fix to the "PeopleSoft Saga".

The managers in this group worked with UofA Employee Relations to develop the information that was placed on the spreadsheets. They also had the difficult task of maintaining a program across the turbulence of a corporate divestiture, turning current employees into outsourced employees of a contracted application manager, all the while maintaining production and carrying on development work.

Motive: This group was highly motivated to execute the due diligence work quickly and to maintain operations with a sizeable employee cross-over to the outsourcer. That motivation was driven intrinsically, as the same management group would be accountable for holding the outsourcer to performance against the contract metrics. That motivation was also extrinsically driven, as the pressures from the Board of Governors through the Vice-President made it clear that there should be no personnel casualties in the exercise. The expressions of the Board showed that the time to tolerate details and explanations was over, and that quick and absolute results were expected by the Governors.

The Vice-President, Finance and Administration, and the AVP Learning Systems were expecting to make a presentation on HR strategies and the due diligence process to the Finance and Property Committee of the Board of Governors on the afternoon of May 4, 2000. Their objective was to gain a motion from that Committee ratifying the contract award conditional on completion of the due diligence process. Certainty of the outcome regarding PSC/Turnkey offers to all staff was a matter to be covered in front of that critical audience, which includes union representation. Positive results were reported at the minuted meeting, and the motion was passed.

Means: The UofA AIS Managers did not author the spreadsheets, which are clearly not issued from a professional automated environment. But AIS management was familiar with the spreadsheets and conversant with the data evolving on them.

Opportunity: AIS management linked at various levels to the management at PSC. From the tentative awarding of the contract at mid-April to the information exchanges attending the due diligence process in late April, this management group met continuously amongst themselves and regularly with PSC counterparts, both on campus and at PSC 's downtown offices.

There are signs that the lines of communication between the PSC HR Director and the AIS Managers were open around April 21, 2000 for the purposes of sharing workforce information. The AIS Development Manager received a question from PSC around then regarding aggregated hours worked by staff. On April 28th, the same day as the e-mail from PSC to the Director, Employee Programs citing the spreadsheet data, the Development Manager also received a PSC request, this one for employee specific overtime hours over the January-March 2000 quarter.

The managers in this column disavow any knowledge of how the disclosure was made. The Vice-President, Finance and Administration, position was vacated early in the investigation, but the Investigator was able to interview the three other members of this column. The information gained about management roles within the column would

effectively eliminate the Development Manager from an independent direct contact role with PSC. The project delegation posture shown by the Vice-President, and the obvious executive veto mantle seen to be worn by the AVP Learning Systems in these matters, makes it unlikely that the Vice-President himself was involved in so direct or detailed an interaction as the transfer of spreadsheets.

Conclusion: The UofA AIS Managers had the strongest motive to make the disclosure, had full control of the means to do so, and were the only group with full opportunity. It is probable that the disclosure was made by this management column.

THE QUESTIONS “*HOW?*” AND “*WHERE?*”

The vagueness of the PSC HR Director’s recall of how she came to have the spreadsheets, contrasted to her vivid and categorical recollection of other matters, indicates that the spreadsheet information likely came to her through indirect channels. She could have received the records from PSC top management, or from PSC project managers, or from her own subordinate.

A check of support staff at UofA HR indicates no familiarity with any subordinate at the PSC HR section. If a personnel subordinate at PSC HR were the export point, then that disclosure would likely come from someone who knew PSC well enough to move the information to that point. If the export point was a PSC project manager, then it is likeliest that a function counterpart from the UofA would have disclosed the information. The very lack of audit trail on the disclosure suggest that it could have moved at a more elevated level (across the corporate rooftops) and then dropped down on the PSC HR Director’s head. All three of these scenarios point to the mid-section of the AIS column, where both the AIS Director and the AVP Learning Systems had considerable familiarity with PSC and its management/ownership personnel.

Though these events happened within the same Division responsible for administration of the FOIP program for the entire public body, the day-to-day operations of the UofA’s FOIP Office are kept quite independent of the other administrative arms within the Learning Services Division. Despite this degree of separation from the FOIP experts on campus, it is difficult to conceive that the managers implicated on balance of probabilities would not be aware of the requirements placed upon the University by the Act since its coming into force on September 1, 1999.

POSSIBILITIES OF CONSISTENT USE OR ALLOWABLE DISCLOSURE

Clearly this was a disclosure of elements of personal information about a large number of people. Clearly it was done without their knowledge or consent. Clearly there is reluctance on the part of whoever did it to take personal responsibility for doing it. The University early on offered a justification that the disclosure had been done for the purpose of managing or administering personnel of the public body. The disclosure did achieve some management ends: It may or may not have hastened by days the exit process of employees who had already been shown the

door. Perhaps it helped settle concerns over severance liabilities and notice provision expenses, but these are financial concerns. It helped to calm anxious deans and department heads who wanted some certainty on whether to reserve coming-year budgets for returning seconded staff with a right to a position in their respective home departments. (The July transition seemed to coincide with budget commitment tensions.) The disclosure no doubt contributed to a stable, predictable cost structure for the contractor, a stated goal of the entire outsourcing exercise from the University's viewpoint. And it met the Board of Governors commitment to a full placement of affected employees, to the extent that employees accepted the PSC offers (which some did not). Perhaps it also helped avoid upsets for those employees most uncomfortable with doing salary bargaining, thereby alleviating employee assistance referral caseload and maintaining less stressed employees in the outsourced roles.

Given these positive impacts on the bottom-lines of both sides to the contract, and given the FOIP Act's recognition of valid management requirements, I must in fairness explore whether the disclosure was allowed somehow under the law.

Consistent Use: As the UofA FOIP Coordinator pointed out to his colleagues early in this investigation, this disclosure cannot conceivably fit within the definition of consistent use of the information. The University would have to show that providing the data to PSC was a use consistent with the purpose for which the information was originally collected. For example, the best argument might be made for a matter so operational as overtime recordings. Here the UofA would have to show that tracking employee hours to pay overtime was consistent with providing identifiable employee overtime use to an outside company. Section 37, especially when read within the harness of Section 39, sets too high and narrow a bar for so low and broad an interpretation.

Allowable Disclosure: The UofA initially offered up a Senior Advisor in its HR division as the person who disclosed the information. That source would at least help frame this action in the context of a disclosure required for the management or administration of personnel. But that identification of source did not hold up to logic or corroboration.

It seems clear too from the tone and wording of the PSC HR Director's e-mail to the Director, Employee Programs on April 28th that the two of them had had a prior exchange or exchanges. The Director, Employee Programs recalls she only ever had one conversation with the PSC HR Director, and that it wasn't about salaries. We must conclude that that prior conversation must have been about vacation service dates, since the PSC HR Director prefaces one of her questions with the words "I know you provided me with service dates but...." So there was possibly at least one interaction between the Director, Employee Programs and the PSC HR Director prior to Noon April 28th. (I say possibly because the "you" invoked may have been a blanket collective pronoun to indicate the University of Alberta, and not the Director, Employee Programs specifically.)

No doubt there was continuous dialogue going on between PSC and the HR function at the UofA on personnel-related matters. It seems that by April 25th the PSC HR Director had been channeled to the Director, Employee Programs for all information as that position had been designated internally as the "pointman" on employee information issues for the divestiture,

heading a team of HR practitioners including the Senior Advisors for Job Evaluation & Compensation and for Employee Relations.

Section 38 enumerates the circumstances under which a public body can lawfully disclose personal information it holds about individuals. It lists 30 such circumstances, 29 of which do not require consent. This list of allowable circumstances indicates precise cases and conditions under which disclosures can be made. Section 38(1)(v) states that:

38(1) A public body may disclose personal information only

.....

(v) for the purpose of managing or administering personnel of the Government of Alberta or the public body,...

There is no suggestion in any records leading up the disclosure incident that the disclosure was seen as a lawful act fitting within the ambit of this section. There is a comment from within senior HR ranks on June 28, 2000, in preparing for the either the arrival of the University's own internal investigation or the coming of the Commissioner's Investigator, that the University can hang its FOIP defence on this subsection, described as "the line about trying to help."

The AIS employees had the common mission of preparing the hand-off of their production and development operations to an outsource application manager. Committing their own next career move to the success of that mission was not part of their duties to their current employer. So the disclosure of their personal information to the outsource application manager had no link to their duties and responsibilities, and so can have no link to the management of those duties and responsibilities.

If the disclosure cannot be linked to "managing...personnel", can it still be supported for the purposes of "administering personnel"? Here the grounds are more definable, as the personnel administration function has developed into some well-understood functional components. The disclosure did not relate to staffing, as there were no vacancies at the University to be filled. The disclosure did not relate to classification & compensation, as no positions were being established in the public body. The disclosure did not relate to a program of occupational health or safety, and the disclosure did not relate to training & development, as no training venture was being launched. The disclosure could be claimed to have a tenuous link to budget and payroll planning, but those functions, as evidenced by a recent re-organization at the University, are functions of finance, not personnel administration.

If s38(1)(v) were to allow employers to disclose personal information about employees whenever the employer wanted to move the employees to making personal decisions, or to jar them into making those decisions more quickly, then all manner of personal information disclosure could be legitimized where it could be shown that the disclosure had produced the desired effect on behaviours. The result would be a denuding of privacy rights for employees of public bodies. But that simply cannot be under the current FOIP Act, for the Act sets out limited grounds on which public body employees have reduced privacy protections. In this case, the UofA could have disclosed the "classification, salary range, discretionary benefits or employment

responsibilities” of each employee as a matter of public record [s38 (1)(a.1) + s16(2)(e)] without crossing any presumption in the Act. Or it could have released every bit of data that it did release to PSC if the University had gotten the employees to identify the information and consent -- in writing, in advance, positively and without duress -- to the disclosure being made to PSC [s38(1)(c)].

Section 38(1)(v) of the FOIP Act was drafted to allow disclosures to meet the purposes of managing personnel within the public body, not personnel across a transition and into another body. That spirit of containment was reinforced in 1999 with an amendment to that very section, restricting the ability of a public body to disclose information even to another public body without consent from the employees involved.

As a final consideration on that applicability of s.38(1)(v), it would be reasonable to expect some record of consultation and second-thought in a decision to make a proper disclosure for legitimate reasons. Here there is no trace of such deliberation, indicating that a lone actor, or an administrator who leaves no tracks, made the disclosure.

In the final analysis, the disclosure seems to have been made to address the personnel management purposes of the outsourcer and the financial purposes of the University of Alberta, but not the purpose of managing or administering personnel of the University.

FINDINGS

On or about April 20, 2000, management officials of the University of Alberta, most probably those in the senior and executive management roles responsible for the AIS branch, disclosed to officers of a private company, detailed data relating to the employment histories, incomes and job rights of approximately four dozen University employees.

These disclosures were made purposefully, without consent and in violation of Part 2 of the Freedom of Information and Protection of Privacy Act.

In the absence of admissions on the part of those involved in the disclosures, these findings are arrived at through an assessment of available evidence and a weighing of probabilities.

RECOMMENDATIONS

The Investigator recommends to the head of the University of Alberta that:

1. The University advise each affected (ex)employee of the disclosure that it made, along with an enumeration of what exact data was disclosed about that employee, with respective column headers showing. (Given that the disclosure was made to an outside corporation, it is not anticipated that the University will invoke any of the discretionary exceptions from Part 1 of the Act in its presentation of the information. The mandatory exceptions for personal and corporate information of third parties should be respected, but no information supplied to a

third party through the disclosure is subject to the exception for information supplied by the third party to the University, even where data from the source documents were copied back to the University by the third party.)

2. The University include a copy of this report with its correspondence to each affected employee.
3. The University formulate positive consent procedures to support information disclosures in any future divestiture or outsource processes, thereby respecting the privacy rights of its employees.
4. The University develop an internal process for full and open declaration of personal and prior employment relationships between the ownership/ management/ staff of an outsource contractor and the University management staff assigned to be instrumental in the outsource process, particularly where access to employee personal information will be required.
5. The University provide explicit guidance to its management and administration staff to the effect that visible support for the statutory rights of University employees, insofar at least as information access and protection of privacy are concerned, will be a factor in evaluations and in discipline.

The Investigator recommends to the Complainants that they each accept this Investigation Report as the conclusion of their complaint to the Commissioner.

John Ennis
Portfolio Officer (Investigator)
Office of the Information and Privacy Commissioner

POSTSCRIPT: The Recommendations were previewed in draft form by the parties. In a letter to the Office of the Information and Privacy Commissioner dated July 18, 2001, the University of Alberta indicates that it would agree to Recommendations # 1, #2, #3 and #5. The University indicates that it does not consider the step in Recommendation # 4 to be necessary since the University already has conflict-of-interest policies in place.