

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Concerns Regarding the Protection of Employee
Personal Information**

January 10, 2003

Alberta Research Council Inc.

Investigation #2212

I. BACKGROUND TO THIS INVESTIGATION REPORT

The Complaint

[para 1] During June 2001, an Alberta Research Council Inc. (“ARCI”) employee or employees (referred to here collectively as the “Complainant”, shortened simply to “C”) wrote to the Information and Privacy Commissioner requesting that the Commissioner investigate a matter of urgent concern to C.

[para 2] C claimed that, at that moment, ARCI was requiring “all employees to provide curriculum vitae information by week’s end to post on its internal website to be reviewed by all employees”. C felt that this procedure violated C’s own privacy as well as the privacy of fellow employees.

[para 3] C was reacting to a management directive communicated to staff through the chain of supervision. That directive would come to be encapsulated in the following instruction, drafted at a later point to clarify the intentions of ARCI management:

Every staff member at ARC is asked to provide a summary CV (Curriculum Vitae) to be stored on-line and accessible to other staff. As part of your annual performance review, you are required to update your CV.

[para 4] C was told by C’s business unit administrator that C’s submission was due at the end of the week, and that failures to comply with the directive were being noted. [Note: C’s complaint was launched before the above draft instruction was readied for release to staff. Upon learning of this case from the Office of the Information and Privacy Commissioner, ARCI management relaxed its mandatory directive pending outcome of the investigation. As a result, the detailed instructions intended to describe the CV inventory project were shared with the Investigator but held in abeyance pending conclusion of the investigation. The Investigator has relied upon the contents of those draft detailed

instructions as a complete descriptor of the CV inventory project for purposes of this investigation.]

Whistle-Blowing or Personal Privacy Issue

[para 5] C had asked explicitly and emphatically that C's identity not be revealed to ARCI. On first reading, it was not clear whether this complaint was primarily an employee whistle-blowing action (where C's concern centred on how the public body was treating the privacy rights of third parties) or a personal complaint of breach-of-privacy (where C's own privacy was the matter at stake).

[para 6] A subsequent representation on behalf of C, received within hours of the first complaint letter, confirmed that the primary thrust of the complaint was the purported unreasonable invasion of C's own privacy. The Investigator took the complaint to be about C's own privacy.

Jurisdiction and Nature of Investigation

[para 7] ARCI is a public body shown on Schedule 1 of the Regulation under the *Freedom of Information and Protection of Privacy Act* (the "Act"). As a public body, ARCI is obligated to observe Part 2 ("Protection of Privacy") of the Act, and is subject to independent review by the Commissioner for its conduct and practices.

[para 8] C had been asked to provide personal information to a management system at ARCI. However, at the time of the complaint, C was among the estimated 139 employees who had yet to comply with the ARCI directive, and was not among the 461 employees who had already deposited their information in the system.

[para 9] Having yet to supply personal information to the public body, C was not, at the time of the complaint, in a position to request that the Commissioner investigate that C's "personal information has been collected, used or disclosed by a public body in contravention of Part 2" [*i.e.*, investigate under section 53(2)(e), the usual provision for breach-of-privacy complaints]. However, the Commissioner is able, under section 53(1)(a), to "conduct investigations to ensure compliance with any provision of this Act." Where the Commissioner decides to approach an investigation under section 53(1)(a), the Commissioner is said to be investigating "on the Commissioner's own motion." This report then is for an investigation undertaken on the Commissioner's own motion.

II. FINDINGS FROM THE INVESTIGATION

The Public Body and its Operating Programs

[para 10] ARCI is distinctive within Alberta's provincial public bodies in that it operates on a self-sufficiency principle in the highly-competitive scientific research sector. ARCI must generate its own paying business traffic to stay alive. It is not limited as to where, how and to whom it offers its research services. ARCI can say without exaggeration that it competes in a worldwide marketplace.

[para 11] ARCI's Management Group does argue credibly that the product ARCI markets is its potential to execute valuable research on behalf of paying clients. That potential derives from a combination of assets and attributes, notably staff expertise and staff availability. So the product is expressed tangibly as proposals featuring teams of researchers arrayed to convince the prospective paying customer that there is adequate coverage of the necessary science and possibly some special competitive edges arising from the complementarity of diverse individuals' backgrounds. ARCI management must also develop and maintain key skill sets within its business units in readiness for whatever opportunities the marketplace presents.

[para 12] ARCI management explains that the marketing of these packages is not an ancillary or hobby activity for their corporation; rather, the marketing effort is a core operating program of this public body. Put more directly by its CEO in conversation with the Investigator, "selling the skills and experience of our people is the guts of our business." The research services program that ARCI operates has been functioning for many years, and certainly predates the 1995 implementation of the Act. The inclusion and depiction of staff credentials in proposals and reports is historically a normal component of that program.

Inclusion Issues: Staff Coverage and Content

[para 13] The inclusion of all ARCI staff in the CV inventory system was a considered decision by the Management Group. They believed that some employees in less obvious roles might have experiences and relationships and skills that ARCI business units could use to advantage. For example, an administrator might possess language skills that would assist a scientific team in serving an overseas customer.

[para 14] The Management Group was aware of similar, even more extensive, staff inventory applications being deployed within organizations in Alberta that compete with and cooperate with ARCI. Unlike some of those competitors' applications, the ARCI template consciously avoided calling for information relating to "lifestyle" features. The CV inventory theme was restricted to professional employment skills, not matters pertaining to the domestic or away-from-work life of the employees. Placing the CV information on a computer-based, wide-access system was seen as an innovation in step with the norms of the research world, a natural use of basic technology to support effective knowledge management.

[para 15] ARCI determines the format and content of its research proposals, and has usual management prerogatives in configuring its business units to support product delivery.

ARCI is not bound to following precise models and protocols found elsewhere in the research sector. It seems reasonable to accept that ARCI can choose to include a detailed account of the qualifications of dedicated staff resources in its proposals. In addition to the customary listing of high-profile principal investigators, it can choose to add in the backgrounds of staff resources being dedicated to the proposal from the technical support and administrative support realms.

[para 16] Arguably there comes a point at which some employees are serving the general corporate work of ARCI and should not be profiled in proposals. Workers in areas like shipping, mail, reception, maintenance, senior management, accounting, personnel administration and executive support might be too tied to their fixed posts to participate in such entrepreneurial activity. Implicit in the C's request to the Commissioner was a petition for personal relief from the terms of the ARCI directive. However, gauging the appropriateness of universal versus selective inclusion in a staff employment skills inventory program is a decision for ARCI's Management Group as the employer, and not a question for independent review under the FOIP Act. It is conceivable that ARCI would want to involve its general services employees in occasional project work, and so include their profiles in a CV inventory system used in making up marketing packages and in formulating prospective teams.

"Yellow Pages System" in Detail

[para 17] ARCI's Management Group made a deliberate decision to do away with the frustrations being experienced in pulling together information for proposals (invariably a weekend or after-hours activity where staff are not easily available for consultation). It decided to set up a common template to hold qualifications information that would, by design, be available, centrally and remotely, to a wide variety of ARCI staff. It is this on-line CV information application that came to be coined the "Yellow Pages system."

[para 18] The not-yet-published "On Line CV Information & Consent" preamble page contains an opening purpose statement consistent with the April 2001 announcements:

Purpose

Most ARC staff have skills and experience that is not necessarily known to other staff members, especially project managers and BU managers who might need those skills when bidding on a project or contract. The on-line file of CVs allows them to find the skills they need. Then they can contact the person and/or the person's BU manager, with information about the project and with a request to have the person participate. This enhances ARC's ability to utilize skills across business units. A secondary use occurs when a manager who is travelling needs to put together a project proposal quickly. In this case, they are able to print the CVs they need to attach to the proposal.

The preamble goes on to describe the restrictions on access:

Access

All ARC staff have read-only access to the CVs through the Intranet and the online staff directory. Staff are expected to treat these CVs as personal information which should not be disclosed without proper authorization. There is no public access to the files.

Next the preamble addresses concerns over security and data integrity:

Protection

The CVs are stored in Adobe's .pdf format on a network share subject to the same safeguards as all corporate data. Only designated BU administrators can store the CVs on the share - this means that no one else can change or replace your CV. In addition, only authorized users, usually project managers or BU managers, can print the CVs.

The preamble cites employee obligations to keep information current:

Currency

As part of the annual performance review process, staff are required to provide a current CV to their BU. You will make any necessary changes to your CV, then your BU administrator will create the .pdf file and replace the online version. You may also update your CV at any time during the year.

And finally, the template preamble concludes with a claim to legitimate authority for the information collection, coupled with a consent statement that is really more an acknowledgement of consciousness than any permission granting instrument.

Authority

This information is collected under Alberta's Freedom of Information and Protection of Privacy Act (FOIP). By signing this form, you are consenting to ARC's use of this information for the purposes and under the conditions set out above. If you have any questions about the collection or use of information, contact ... (etc).

[para 19] The template itself is very simple in design. It appears to the Investigator that it is set up to capture highlights of background, discouraging users from filing encyclopedic CVs. In submitting information, the employee simply enters his/her name and then proceeds to enter or import text of the employee's own choosing into the sections of the template:

Qualifications:

This document is not to exceed 2 pages. Please be succinct. Do not change the layout, typeface (font) or headings of this document. Click here. Type or paste your qualifications.

Career History:

Click here. Type or paste your career history. Where did you work? When? What did you do there?

Education & Training:

Click here. Type or paste your education and training. List schools attended, dates, and degrees/diplomas/certificates received.

Skill Sets:

Click here. Type or paste any relevant skills that are not apparent in above fields.

Professional Associations:

Click here. Type or paste names of any professional associations you belong to.

[para 20] The Yellow Pages system preamble page and the accompanying template provide clear information and allow considerable room for the individual employee to present qualifications in a manner of the employee's choosing. While these documents present a project consistent with the matter originally being complained about in this case, it may be that C and other employees would have considered the matter in a different light with the availability of this extra background information at the time their personal data was being gathered (*i.e.*, back in mid-June 2001).

III. DISCUSSION AND ANALYSIS

Authority to Collect Personal Information

[para 21] ARCI's Yellow Pages system is not expressly provided for in statute, and has nothing to do with law enforcement. So ARCI is left to find its information collection authority in the "operating program" justification within section 33(c) of the Act:

33 No personal information may be collected by or for a public body unless

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

[para 22] The Yellow Pages system does not signal a new program, or even the extension of an existing program into new personal information dimensions. If that were the case, then a privacy impact assessment would have been required, and express enactments regarding new authorities would have been expected.

[para 23] That the new system is an innovation to improve an existing program is evident from how it was conceived and introduced. On April 23, 2001, ARCI's Management Group "approved a project that will make it easier for everyone in ARC to find other staff members who have special skills or areas of expertise and to assemble proposals containing standard CVs." That message led off an e-mail memo titled "Yellow Pages to be implemented", sent to all business unit managers on April 24th. The memo was generally forwarded by business unit managers to their BU staff members, so that by April 30th staff were generally aware of the change to how an already-existing function would be performed.

[para 24] Part 2 of the Act does not contain a detailed rendering of protected areas of personal information. We can deduce some areas of special concern from the restrictions placed on disclosure by public bodies in section 40. In particular, section 40(1)(b) suggests that the third-party privacy protection criteria in Part 1 of the Act ("Freedom of Information") are indicative of what data must be accorded privacy protection. In looking ahead of Part 1 at definitions, we see in section 1(n) a comprehensive list of what constitutes "personal information", including "information about the individual's educational, financial, employment or criminal history...." Within Part 1 itself, at section 17, we read that employees of public bodies, when positioned as the object of an information access request, are not accorded privacy protection insofar as their "classification, salary range, discretionary benefits or employment responsibilities" are concerned [section 17(2)(e)]. But they do have, along with all other individuals, a third-party right to privacy protection where "personal information relates to employment or educational history [section 17(4)(d)] and where "personal information indicates the (employee's)... associations" [section 17(4)(h)].

[para 25] The question of whether section 17(4) is intended to shield personal information of an employee from his/her employer when the employer is collecting is critical here. If the personal information were held in a public body that was not the employer, such as a counselling branch of a government department, then the employer requesting it from the counselling branch would be in the position of an applicant seeking third-party personal information, and presumably would be precluded from receiving the information unless the free and informed consent of the employee were obtained. But the applicant/third party scenario is not at play in the ARCI case. ARCI is the public body directly gathering the information, not an applicant collecting information from some other public body by way of an access request.

[para 26] Section 17 is only relevant here in that ARCI must safeguard its employees' third-party rights to privacy protection in the event of an access request being made under the Act about those employees. But ARCI is not itself precluded from collecting employee personal information by the delimitations of personal information found in section 17.

[para 27] In the final analysis, ARCI's ability to collect information hangs on the relativity and necessity tests in section 33(c), cited above. So long as the Yellow Pages system is confined to employment skills and qualifications, ARCI can easily show a direct relationship to its operating program. Presuming that the operating program is being evaluated by how well opportunities are being maximized, the test for necessity of these Yellow Pages measures can also be met in the case of every employee if in fact every employee is being considered for the task assignments that derive from application of the Yellow Pages program. If an employee were in a category that was shunned by users of the system, then the necessity justification breaks down. There is no evidence of such a category in this case. Similarly, the necessity case would break down if the system were to allow employees ineligible for consideration to nevertheless volunteer their information just for the sake of feeling included. Section 33(c) does not position a public body to accept and collect volunteered personal information in the absence of the relativity and necessity tests.

[para 28] The Investigator finds that ARCI's authority to collect personal information falls within section 33(c). And, since the personal information is collected directly from the individual the information is about, ARCI's collection of personal information falls within section 34(1):

34(1) A public body must collect personal information directly from the individual the information is about unless....

ARCI meets the statutory standard for authority to collect and for the manner of collection.

Authority to Use Personal Information

[para 29] ARCI uses the personal information for marketing to its prospective clients, which is the purpose for which the information was collected, as provided by section 39(1)(a):

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, ...

[para 30] Skills inventories to match available employees to available assignments are a longstanding practice in the technology sector, and have had long histories with some other governments in Canada. The combination of professional profile contents and the widespread access to that data marks a work culture committed to proactive, collective knowledge management. The Yellow Pages approach provides a strong model for achieving this emerging management ethic while respecting fair information practices in areas like purpose specificity, informational self-determination and notification about use. **The Investigator finds that ARCI's use of the Yellow Pages system meets the usage conditions in section 39(1)(a).**

Authority to Disclose Personal Information

[para 31] ARCI exports its compilations of personal information to outside parties as part of its marketing efforts. In this activity ARCI is distinctive but not unique. Some other public bodies (*e.g.*, some Crown corporations and the research arms of some academic institutions) incorporate the qualifications of staff into their product descriptions. The earlier examination of whether the balanced practices found in the Yellow Pages system are authorized by the “operating program” justification of section 33(c) placed heavy weight on the dictates of the research marketplace, where ARCI cannot assume that its status as a reputable institution alone will secure the interest and commitment of paying customers who always have alternate prospective sources of supply. ARCI’s staff credentials are the real commodity being marketed, and ARCI must disclose those credentials in order to make the sale of its services. [While it is fashionable to speak of program clients as “customers”, a public body should always analyze carefully what commodity it is marketing to its clients and whether it is truly necessary to export personal information about staff to its customers in order to carry out its programs.]

[para 32] Absent other justification in section 40(1) for disclosing information, the public body would normally move through section 40(1)(b) to invoke the third-party privacy tests under section 17. That resort is not necessary here, as ARCI has the provision in section 40(1)(c) to support its disclosure actions:

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

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

[para 33] At this point we can see the value of the Yellow Pages consent provision. The employee who signs it is acknowledging a stated use, which can wind up in a disclosure. That acknowledgement effectively binds the public body to disclosing the information for only that purpose, as authorized by section 40(1)(c). Those purposeful disclosures are made with the employee’s knowledge as the Management Group does propose to follow internal protocols to alert employees to activity when use of their own information turns from speculative consideration to possible inclusion in a formulated proposal.

[para 34] ARCI’s Management Group has empowered a broad group of users to access the system and formulate proposals and teams. While the dispersal of employee qualifications data beyond the boundaries of a traditional human resources management office is no doubt uncomfortable for some employees, there is in that development a sense of distributed responsibility for advising on effective staff deployment, a legitimate approach to maximizing productivity in a complex research environment. Given the open nature of the system and the corporate expectation that a wide range of employees will use the system to enhance their own knowledge of available ARCI staff expertise, the Investigator cannot see ARCI implementing staff-user security procedures of the sort normally instituted to support section 38’s requirements for “*reasonable security arrangements against such risks as*

unauthorized access, collection, use, disclosure or destruction.” The precautions being taken by ARCI to restrict users who can “write” to the system, together with perimeter protections for the ARCI’s intranet application, constitute a reasonable approach to complying with section 38.

[para 35] The Investigator finds that the Management Group has controlled disclosures of personal information from the Yellow Pages system, limiting them to work performed by authorized persons only for the purpose for which the information was collected, thereby respecting the restrictions on disclosure in sections 38 and 40.

IV. SUMMARY AND RECOMMENDATIONS

Compliance with the Act

[para 36] The Yellow Pages system and the information collection, use and disclosure practices associated with it, comply with the requirements of the Act. Further, some program features found in this system serve as a good model for employing fair information practices in a knowledge management and research environment. Nevertheless, the ARCI Management Group might want to consider some suggestions to address concerns expressed by the Complainants who brought this matter to the Commissioner.

Suggestions for ARCI’s Consideration

[para 37] An organization considering the Yellow Pages system model must determine objectively what universe of employees will be included in the system. In the case of the ARCI, there appear to be some employees who do not see their background or their availability as resources for reasonable inclusion in the Yellow Pages system.

Suggestion #1: That ARCI consider a book-out provision in its Yellow Pages system for employees in fixed post positions or in situations making participation in the system impracticable.

[para 38] The analysis of authorities in this report rests on the current descriptions provided by ARCI for its Yellow Pages system. The natural concern for privacy invasion from profile-oriented personal information banks is that their founding purposes might later be bent to accommodate other uses. Openly expressed commitments to staff are a key component in gaining trust and support for special purpose systems:

Suggestion #2: That ARCI undertake to conduct privacy impact assessments in any cases where the Yellow Pages system is being considered as a repository for non-qualifications oriented information (*e.g.*, demographics, health, performance, attendance, lifestyle, security status, etc.) or where the system is being considered as a support for ARCI administrative functions affecting employees (*e.g.*, substantive

appointment to positions, access to training, employee discipline, workforce reduction, *etc.*).

[para 39] The Investigator appreciates the openness and interest shown by the ARCI Management Group and staff in this matter.

Respectfully submitted this 10th day of January, 2003.

John Ennis
Investigator