

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-004

March 18, 1999

ALBERTA TREASURY BRANCHES

Review Number 1453

I. BACKGROUND

[para 1.] On July 8, 1998, my Office received a complaint from the Applicant that Alberta Treasury Branches (the “Public Body”) had breached the Applicant’s privacy, contrary to Part 2 of the *Freedom of Information and Protection of Privacy Act* (the “Act”).

[para 2.] The Applicant complained that certain employees of the Public Body accessed the Applicant’s personal information (the Applicant’s personal account contained in the Public Body’s computer database), when the Applicant’s personal information was not relevant to the issues at hand. The “issues at hand” concerned the Applicant’s inquiry about a dependent adult’s account with the Public Body. The Applicant is the co-trustee of the dependent adult’s account.

[para 3.] I assigned a Portfolio Officer to investigate the matter, as provided by section 51(2)(e) of the Act, which provides:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

[para 4.] At the conclusion of the investigation, the Portfolio Officer produced a report, which was provided to the parties. The report concluded that the record containing the Applicant's personal information was excluded from the application of the Act by section 4(1)(m), because the record was in the custody or control of the Public Body and did not relate to a non-arm's length transaction.

[para 5.] The Applicant was not satisfied with the conclusion reached by the report. On October 22, 1998, the Applicant requested a review under section 62(3) of the Act. Section 62(3) reads:

62(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 may ask the Commissioner to review that matter.

[para 6.] The matter was set down for a written inquiry. I received the Applicant's initial submission on December 4, 1998, and the Public Body's initial submission on January 5, 1999. After exchanging those submissions, I provided the parties with an opportunity to reply. I received a reply submission from the Public Body only, on January 19, 1999.

II. RECORD AT ISSUE

[para 7.] As this is a request for review under section 62(3) of the Act, there is no record directly at issue, in contrast to a request for access.

III. ISSUES

[para 8.] There are two issues in this inquiry:

A. Does the Act apply to the Applicant's personal information accessed by the Public Body?

B. If the Act applies to the Applicant's personal information accessed by the Public Body, did the Public Body access the Applicant's personal information in violation of Part 2 of the Act?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Does the Act apply to the Applicant's personal information accessed by the Public Body?

[para 9.] Section 4(1)(m) and section 4(3) are relevant to this discussion. Those sections read:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(m) a record in the custody or control of a treasury branch other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party.

...

(3) For the purposes of subsection (1)(m) and (n), a non-arm's length transaction is any transaction that has been approved

(a) by the Executive Council or any of its committees,

(b) by the Treasury Board or any of its committees, or

(c) by a member of the Executive Council.

[para 10.] Under section 4(1)(m), three criteria must be met if the record is to be excluded from the application of the Act:

- (i) There must be a "record",
- (ii) The record must be in the custody or control of a treasury branch, and
- (iii) The record must not relate to a non-arm's length transaction between the Government of Alberta and another party.

[para 11.] In section 1(1)(q) of the Act, "record" is defined to mean "a record of information in any form and includes...any other information that is written, photographed, recorded or stored in any manner...". The

Applicant's personal information about the Applicant's account, which was stored in the Public Body's computer database; therefore, that personal information is a "record" for the purposes of section 4(1)(m).

[para 12.] As the Public Body is a treasury branch, and the record was stored in the Public Body's computer database, the record is in the custody or control of a treasury branch for the purposes of section 4(1)(m).

[para 13.] Furthermore, as the record is the Applicant's personal information concerning the Applicant's account, the record does not relate to a non-arm's length transaction between the Government of Alberta and another party, as defined in section 4(3).

[para 14.] Consequently, as all the criteria of section 4(1)(m) have been met, I find that the Act does not apply to the Applicant's personal information accessed by the Public Body.

ISSUE B: If the Act applies to the Applicant's personal information, did the Public Body access the Applicant's personal information in violation of Part 2 of the Act?

[para 15.] In effect, the Applicant's complaint was that the Public Body used the Applicant's personal information in violation of section 37 (use of personal information), which is contained in Part 2 of the Act.

[para 16.] I have held that the Act does not apply to the Applicant's personal information accessed (used) by the Public Body. Therefore, the Public Body cannot have accessed (used) the Applicant's personal information in violation of Part 2 of the Act.

V. ORDER

[para 17.] I find that the Act does not apply to the Applicant's personal information accessed by the Public Body. Therefore, the Public Body cannot have accessed (used) the Applicant's personal information in violation of Part 2 of the Act.

Robert C. Clark
Information and Privacy Commissioner