

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2003-003

October 21, 2003

Alberta Energy and Utilities Board

Review Number 2429

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant complained that the Alberta Energy and Utilities Board (“Public Body” or “AEUB”) disclosed his personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (“the Act”). The Applicant asked the AEUB to conduct a “formal inquiry” about a fish hatchery’s designation as a public facility. The AEUB sent a copy of a letter that mentioned the Applicant’s name to Shell Canada Inc., who held the licence for a nearby sour gas well. The Commissioner found that the AEUB did not disclose personal information in contravention of Part 2 of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 40(1)(f) and 72; *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, s. 26(2); AEUB Rules of Practice, AR 101/2001; *Administrative Procedures Act*, R.S.A. 2000, c. A-3, s. 3.

I. BACKGROUND

[para 1.] The Applicant made a complaint that the Alberta Energy and Utilities Board (“AEUB” or “Public Body”) disclosed his personal information to Shell Canada Inc. (“Shell”) in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (“the Act”).

[para 2.] I authorized an investigation under the Act. The Applicant was not satisfied with the outcome of the investigation and requested an inquiry. The matter was set down for a written inquiry. The Applicant and the Public Body each provided

written initial submissions and rebuttal submissions that were exchanged between the parties.

II. ISSUE

[para 3.] The issue before this inquiry is:

Did the Public Body disclose the Applicant's personal information in contravention of Part 2 of the Act?

III. DISCUSSION OF THE ISSUE

[para 4.] The Public Body received correspondence from the Applicant that asked the AEUB to conduct a "formal inquiry" regarding the designation of a fish hatchery as a public facility. On January 3, 2001, the AEUB sent a letter ("AEUB letter") that said it was conducting a "designation review" and requested information about the fish hatchery and its continued designation as a public facility.

[para 5.] The AEUB letter was sent to an employee of the Fisheries and Wildlife Management Division of Alberta Environment. A copy of the AEUB letter was sent to a representative of Shell, as Shell held the licence for a nearby sour gas well.

[para 6.] The Applicant says the disclosure of his name to Shell in the AEUB letter was a disclosure of personal information that was in breach of the Act. The Public Body says the Applicant's name was disclosed under the authority of section 26(2)(a) of the *Energy Resources Conservation Act* and section 3 of the *Administrative Procedures Act* in accordance with section 40(1)(f) of Part 2 of the Act.

A. General

[para 7.] Section 40(1) of the Act provides discretionary authority for the disclosure of personal information. When a discretionary provision applies, a public body has the authority to disclose personal information but must properly exercise its discretion.

[para 8.] Section 40(1)(f) of Part 2 of the Act says:

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

.....

(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure.

B. Application of Part 2 of the Act (section 40(1)(f))

[para 9.] The sole disclosure at issue in this inquiry is the disclosure of the Applicant's name to Shell. There is no dispute that the Applicant's name is personal information under the Act or that the Public Body disclosed the Applicant's name to Shell.

[para10.] The Public Body says it conducted the review pursuant to the Applicant's request and the Applicant ought to have known this personal information would be disclosed in order to conduct the review. The Applicant says he wanted the review conducted but he did not want this personal information disclosed in the process.

[para 11.] In its submission the Public Body said it interpreted the Applicant's request for a "formal inquiry" as a request for review. Conversely, the Applicant says the Public Body was not conducting a review at the time the AEUB letter was sent. I note that the AEUB letter requests information to "assist us with this designation review". I accept the position of the Public Body that it was conducting a review when the AEUB letter was sent.

[para 12.] In its submission, the Public Body says that its governing legislation is the *Energy Resources Conservation Act*. The Public Body says that a request for review triggers review procedures that include the obligation to give notice to a party that could be adversely affected by its decision.

[para 13.] Section 26(2)(a) of the *Energy Resources Conservation Act* says:

26(2) Notwithstanding subsection (1), if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person, the Board shall give the person

(a) notice of the application.

[para 14.] The Public Body says that Shell could be adversely affected by its decision and therefore the *Energy Resources Conservation Act* required it to give Shell notice of the review as well as the name of the Applicant. The Public Body says the Applicant's name was disclosed pursuant to section 26(2)(a) of the *Energy Resources Conservation Act* and therefore the disclosure was made in accordance with section 40(1)(f) of Part 2 of the Act.

[para 15.] The Public Body said the AEUB Rules of Practice ("Rules") explicitly required disclosure of the Applicant's name to all parties. In his rebuttal submission the Applicant pointed out that these Rules did not come into force until August 1, 2001. In rebuttal, the Public Body conceded that these Rules did not apply at the time the AEUB letter was sent.

[para 16.] However, the Public Body said these Rules merely codify the procedural obligations that already existed under section 26(2) of the *Energy Resources Conservation*

Act. The Public Body said it was also bound by the consistent notice requirements that exist in section 3 of the *Administrative Procedures Act*.

[para 17.] Section 3 of the *Administrative Procedures Act* says:

3 When

(a) an application is made to an authority, or

(b) an authority on its own initiative proposes

to exercise a statutory power, the authority shall give to all parties adequate notice of the application that it has before it or of the power that it intends to exercise.

[para 18.] The Applicant says that my office has previously canvassed a similar disclosure of personal information by the AEUB and found that disclosure to be in breach of the Act in Investigation Report 98-IR-016. However, in that Report there was a miscommunication regarding the particular medical information that was to be kept confidential. As the facts are so different from the situation before me, I do not find that Report helpful in deciding this case.

[para 19.] After carefully considering the submissions and the evidence before me, I find that the Public Body disclosed the personal information pursuant to an enactment under section 40(1)(f) of the Act. I also find that the Public Body properly exercised its discretion in making the disclosure. Consequently, I find the Public Body did not contravene Part 2 of the Act.

[para 20.] I note that the AEUB Rules of Practice are now in force. These Rules provide clarification of the process for the AEUB to follow when conducting reviews. I note that as a result of this situation, the Public Body is taking steps to improve its internal information management and communication practices. For example, the Public Body is incorporating a statement into its initial correspondence with review applicants to advise that the review is proceeding and requires the disclosure of the applicant's personal information to the parties.

IV. ORDER

[para 21.] As I have found that the Public Body did not contravene the Act, there is no order to be made. Pursuant to section 72, I find that the Public Body did not disclose personal information in contravention of Part 2 of the Act.

Frank Work, Q. C.
Information and Privacy Commissioner