ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2004-016

December 15, 2005

NORTHERN LAKES COLLEGE

Review Number 2869

Office URL: **http://www.oipc.ab.ca**

Summary: The Applicant made an access request to Northern Lakes College (the "Public Body") for contents of any files that related to the Applicant. The Public Body released numerous records but refused to disclose portions of 32 pages on the basis that the information contained in the records was either non-responsive or fell under section 17 (third party personal information) of the Act. The Applicant also complained that the Public Body had not satisfied its duty to respond openly, accurately and completely, as required by section 10(1) of the Act.

The Adjudicator found that all of the records, with the exception of record C-7-B, were either non-responsive or fell under section 17 of the Act. The Adjudicator ordered the Public Body to release record C-7-B, with some information severed. The Adjudicator found that the Public Body properly met its duty to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 6(2), 10(1),17, 17(1), 17(2), 17(4), 17(4)(g)(i), 17(4)(g)(ii), 17(5), 17(5)(e), 17(5)(f), 71(1), and 72.

Authorities Cited: AB: Orders 96-010, 96-019, 97-020.

I. BACKGROUND

[para 1] The Applicant is a former employee of Northern Lakes College (the "Public Body"). The Applicant applied to the Public Body under the *Freedom of*

Information and Protection of Privacy Act (the "Act") for access to "the contents of any files you may have on me". The Applicant further specified that she was looking for information about her supplied by Northern Lakes College personnel, Northern Lakes College students, members of the local community, and a personnel company which had office space with the Public Body and interacted with the Public Body on a regular basis.

[para 2] After discussions with the Applicant, the Public Body narrowed the scope of the request and provided a fee estimate. The fee estimate resulted in a request for review to this office by the Applicant. The review of the fee estimate did not proceed because the Public Body revised the fee estimate, which was subsequently accepted by the Applicant.

[para 3] The Public Body's response to the Applicant identified 39 records responsive to the request. The Public Body severed many of the records on the basis that disclosure would be an unreasonable invasion of a third party's personal privacy under section 17 of the Act.

[para 4] The Applicant requested a review of the Public Body's decision to sever information and questioned whether all of the records had properly been disclosed. The Commissioner authorized mediation and, through the mediation process, the Public Body disclosed further portions of the records to the Applicant. Consequently, for the purposes of this inquiry, only 32 records remain at issue.

[para 5] The Public Body provided a written submission in this inquiry, a copy of which was sent to the Applicant. The Public Body also submitted unsevered copies of the records *in camera* to this Office.

[para 6] The Applicant provided an initial submission and requested that I accept it *in camera*. I agreed to the Applicant's request largely on the basis that she had sent a large amount of personal information which had little relevance to the issues in the inquiry. The Applicant then provided a rebuttal submission, *in camera*. At one point in the proceedings, the Applicant raised concerns that she had not been entitled to see the rebuttal submissions of the Public Body. No rebuttal submission was received from the Public Body because the Applicant's *in camera* submissions were never circulated to the Public Body. The Public Body had nothing to rebut.

II. RECORDS AT ISSUE

[para 7] There are 32 records at issue consisting of excerpts of day planners, handwritten notes, and emails internal to the Public Body.

III. ISSUES

[para 8] The issues in this Inquiry are:

A. Is/are the information/records responsive to the Applicant's access request?

B. If the information/records are responsive, does section 17 of the Act (personal information) apply to the information/records?

C. Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?

IV. DISCUSSION OF THE ISSUES

[para 9] Before addressing the three specific issues, it is necessary to comment on the submissions of the Applicant. The submissions consist of over 450 pages, most of which are handwritten, raising a number of concerns and issues which include, but are not limited to, the following:

- A challenge to the manner and fact of the termination of her employment;
- The appropriateness of confidential surveys by students to evaluate instructors' work performance;
- A critique of the mediation process and of the Information and Privacy Commissioner's Office and how it has handled the Applicant's request for review;
- A discussion of the School Act Regulations, Ministerial Orders, and standards of the teaching profession;
- Allegations of a hidden agenda of the Public Body in relation to a grand social science experiment addressing poverty within the political context.

[para 10] The Applicant's submissions raised many issues which are clearly outside of my jurisdiction in conducting this inquiry. Therefore these issues will not be addressed. Wherever possible, I have tried to extract her position on the issues in this inquiry from her lengthy submissions.

A. Is/are the information/records responsive to the Applicant's access request?

[para 11] The meaning of responsiveness has previously been addressed in Order 97-020. The Commissioner held that responsiveness "must mean anything that is reasonably related to an Applicant's request for access" (paragraph 33). In other words, what information or records are relevant to the specific request? Further, as explained in Order 97-020, if a record or a portion of a record is non-responsive, it does not have to be disclosed to the Applicant and no justification need be articulated for that exclusion, other than a notation about non-responsiveness.

[para 12] In order to assess whether a record or information is responsive, it is necessary to examine an applicant's specific request and then determine whether the record, or portion of the record, is relevant to that request.

[para 13] Once the Public Body has determined what records are responsive, it has to decide what, if any, exceptions under the Act apply to the responsive information and records. In this case those exceptions relate to section 17 of the Act and will be discussed below under that issue. At this juncture I must only determine whether the information and records are responsive to the Applicant's access request.

[para 14] As previously indicated, the Applicant's access request was initially for "any files you may have on me". The Public Body wrote to the Applicant confirming a discussion it had with her wherein it said "we agree that the request would now focus on comments on your personal behavior and/or performance during work. You also requested any personal information after May 31, 2003".

[para 15] When the Public Body first disclosed the records to the Applicant, it applied section 17 to large portions of the records. In its submissions, the Public Body explained that during the mediation process, it became clear that many of the records, or portions of records, which were withheld under section 17, were simply non-responsive. This is particularly true of the pages of the Day Plan which cover many different persons and activities that have nothing to do with the Applicant**.** I have reviewed each of the records and find that the severed portions of the following records are non-responsive:

> C-1 (except the last line), C-2, C-3, C-4, C-5, C-6, C-8, C-9, C-10 (except last line), C-11, C-12 (except first 8 lines and last 5 lines), C-13, C-14, C-15, and P-10.

[para 16] Consequently, I find that the Public Body is not required to provide that information to the Applicant.

B. Does section 17 of the Act (personal information) apply to the information/records?

[para 17] I am left with the following severed records to consider under section 17 of the Act:

> C-1 (last line), C-7-A , C-7-B, C-10 (last line), C-12 (first 8 lines and last 5 lines), P-35, P-44, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-14, S-15, S-17, S-18-A, S-18-B, and S-20

[para 18] Section 17 of the Act is a mandatory exception from the general rule of disclosure. It provides that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 19] Section 17(2) of the Act sets out circumstances where disclosure of third party personal information is not an invasion of a third party's personal privacy.

The Applicant did not offer any evidence that disclosure would not be an invasion of the third parties' personal privacy. In addition, there was nothing on the face of the records that would allow me to conclude that the presumptions contained in section 17(2) apply to any of the third party personal information contained in the records.

[para 20] Section 17(4) sets out a number of circumstances where the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy, including the following:

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> > *(d) the personal information relates to employment or educational history,*
> >
> > *(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*
> >
> > *(g) the personal information consists of the third party's name when*
> >
> > *(i) it appears with other personal information about the third party, or*
> >
> > *(ii) the disclosure of the name itself would reveal personal information about the third party,*

[para 21] I have reviewed all of the records listed in paragraph 17 above and find that the severed portions contain personal information of third parties. The severed portions of the records listed below contain third party personal information, which consists of a third party's name when it appears with other personal information about the third party. Therefore, disclosure of this information is presumed to be an unreasonable invasion of the third parties' privacy under section 17(4)(g)(i):

> C-7-B, C-10, C-12, P-35, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-14, S-15, S-17, S-18-A, S-18-B, and S-20

[para 22] The only remaining records to be considered under section 17 are records C-1 and C-7-A. They both contain third party personal information which consists of the names of third parties where disclosure of the names themselves would reveal personal information about the third parties. Therefore disclosure of this information is presumed to be an unreasonable invasion of the third parties' privacy under section 17(4)(g)(ii).

[para 23] Nevertheless, under section 17(5) of the Act, the Public Body must consider a number of factors to determine whether there would be an unreasonable invasion of a third party's personal privacy. In this case, the Public Body argued that it specifically considered the following subsections of section 17(5) of the Act:

> *(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> > *(e) the third party will be exposed unfairly to financial or other harm,*
> >
> > *(f) the personal information has been supplied in confidence,*

[para 24] The Public Body argued that it has concerns that the Applicant would make unwanted contact with the Third Parties, given the Applicant's stated concerns about the operation of the Public Body and the Applicant's termination of employment. It is evident from the Applicant's own submissions that this is a likely consequence of releasing the personal information to the Applicant. The Public Body also argued that the information was supplied in confidence. It is evident on the face of the records that this is the case. Both of these considerations weigh against disclosure of third party personal information.

[para 25] Many of the records also contain the personal information of the Applicant in the portions which were severed by the Public Body (C-7-B, C12, P-35, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-14, S-15, S-17, S-18-A, S-18-B, and S-20). Therefore, if possible, the Public Body must sever the records in a fashion to allow the Applicant access to her own personal information. Section 6(2) of the Act states:

> *6(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.*

[para 26] The Public Body argued that the Applicant's personal information was too intertwined with that of the third parties in several of the records (S-10, S-11, S14, S15, S17, and S-20), making further severing impossible. It also argued that, in other records (P35, S-5, S-6, S-7, S-8, S-9, S-8-A, and S-18-B) the disclosure of any further information would tend to identify the third parties whose personal information also appears in the records.

[para 27] The Commissioner has found in several previous orders (Order 96-010 and 96-019, among others) that when the personal information of the applicant is so intertwined with that of the third parties, severing may not be possible. Another circumstance which may prevent the severing of a record is when, after severing, the severed record would not make any sense.

[para 28] I have examined the records that contain the Applicant's personal information and agree that further severing is not possible. The Applicant's personal information is either so intertwined with that of the third parties that severing is not possible or the end result would be meaningless. However, this finding does not apply to record C-7-B.

[para 29] Record C-7-B consists of a hand-written list of six items. The Public Body correctly identified that the information contained in items #2, #3 and #5 is the personal information of the Applicant. The Public Body argued that the information was supplied in confidence by students and that release would be an unreasonable invasion of the third parties' personal privacy. However, there is very little third party personal information in this record.

[para 30] I have reviewed record C-7-B and find that only item #6 contains the personal information of an identifiable third party. As previously stated, this information meets the presumption contained in section 17(4)(g)(i) of the Act. Items #1 and #4 do not contain personal information of any identifiable individual. There is no evidence from the Public Body or on the face of the record itself that would lead me to conclude that release of items #1-5 to the Applicant would invade anyone's privacy. Therefore, I intend to order the Public Body to disclose Record C-7-B to the Applicant, severing only item #6.

[para 31] I am satisfied, with the exception of items #1-5 of record C-7-B, that the Public Body has established that disclosure of the severed portions of the records would be an unreasonable invasion of the third parties' privacy. It therefore falls to the Applicant to offer evidence that release of the personal information in question would not be an unreasonable invasion of privacy.

[para 32] The Applicant's arguments centered on her perceived right to have the information to prove one of her many complaints about the way in which the Public Body operates. There was nothing in the Applicant's submissions which allow me to reach a finding that disclosure of third party personal information would not be an unreasonable invasion of their privacy.

[para 33] I find that section 17 applies to the personal information contained the listed records, with the exception of items #1-5 of record C-7-B.

C. Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?

[para 34] Section 10(1) states:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 35] There appear to be two primary concerns raised by the Applicant in this regard. The first is that the obligation under section 10(1) falls to the "head of a Public Body." The Applicant queried why the President, as head of the Public Body, did not appear to have been involved in dealing with her access to information request. The access requests have been dealt with by the designated FOIP Coordinator of the Public Body and not the President.

[para 36] The Applicant raised this issue in her original submission, which was made *in camera*. Consequently, the Public Body has not had an opportunity to respond. However, it is the norm that public bodies act through persons authorized, designated, or delegated by the head, In the absence of evidence that anything inappropriate was done regarding the authority of the person who responded to the Applicant on behalf of the Public Body, I am satisfied that the matter has been properly handled by the Public Body.

[para 37] The second issue under section 10(1) raised by the Applicant deals with whether the Public Body has made every reasonable effort to assist and to respond to the Applicant openly, accurately and completely. I believe there are two aspects to this concern. One is whether an adequate search for all responsive records has been made and whether all responsive records have been produced. Second, there is a specific concern with respect to the lack of production of particular copies of evaluations completed by students of the Applicant.

[para 38] The Public Body has produced copies of the internal memoranda it issued to the different parts of the Public Body in attempting to respond to the Applicant's request. From these materials, the nature of the records that have been produced, and the fact that the Applicant was employed for a relatively short period, I am satisfied that the Public Body has conducted an adequate search for responsive records.

[para 39] With respect to the specific issue of the 24 Student Instructor Feedback Surveys that were part of the performance appraisal process for instructors, the Public Body has advised that its standard procedure is that individual surveys are destroyed after the results have been compiled onto a summary form. Any handwritten comments from students on the surveys are typed verbatim onto another form and the original surveys are destroyed. Neither the instructor nor his or her supervisor sees the originals of the surveys or the student comments. The tabulated results of the survey are also entered onto a summary form.

[para 40] The Public Body asserts that the original Student Instructor Feedback Surveys are destroyed "in accordance with the Public Body's standard procedure respecting the administration and management of the survey records". The Public Body confirmed that, with respect to the evaluations of the Applicant, standard procedure was followed and they were destroyed once the results had been tabulated and the handwritten comments typed verbatim onto the summary form. Prior to the commencement of this inquiry, the Applicant had received all responsive records that were created from the Student Instructor Feedback Surveys. In other words, the Applicant had received all of the information which was contained in the student feedback forms, albeit in a different format.

[para 41] I find that the Public Body has met its burden to the Applicant under section 10(1) of the Act.

V. ORDER

[para 42] I make this Order under section 72 of the Act.

[para 43] I find that the information contained in the following records is not responsive to the Applicant's access request. The Public Body is not required to provide that information to the Applicant:

> C-1 (except the last line), C-2, C-3, C-4, C-5, C-6, C-8, C-9, C-10 (except last line), C-11, C-12 (except first 8 lines and last 5 lines), C-13, C-14, C-15, and P-10

[para 44] I find that section 17 applies to the personal information contained in the following records. I confirm the Public Body's decision not to disclose the personal information to the Applicant:

> C-1 (last line), C-7-A, C-10 (last line), C-12 (first 8 lines and last 5 lines), P35, P-44, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-14, S-15, S-17, S-18-A, S-18-B, and S-20

[para 45] I find that section 17 does not apply to the personal information contained in record C-7-B, except item # 6. I order the Public Body to disclose record C-7-B to the Applicant, with item #6 severed. (I have included a copy of record C-7-B with the Public Body's copy of this Order indicating which information is to be severed and which information is to be released.)

[para 46] I find that the Public Body has met its duty to the Applicant under section 10(1) of the Act.

[para 47] I further order the Public Body to notify me, in writing, within 50 days of receiving this Order, that the Public Body has complied with this Order.

Dave Bell
Adjudicator