

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-014

September 20, 2006

ATHABASCA UNIVERSITY

Review Number 3067

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

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* stating that the President of Athabasca University had breached the Complainant's privacy under Part 2 of the Act. The President had e-mailed a number of employees recommending that all future contact with the Complainant be limited to written communication. Attached to that e-mail were a series of prior e-mails the Complainant had forwarded to the President.

The Adjudicator found that Athabasca University had authority under section 40(1) of the Act to disclose the Complainant's personal information to its employees. However, the Adjudicator found that the disclosure was not in accordance with section 40(4) of the Act. The Adjudicator found that Athabasca University disclosed more personal information than was necessary to carry out the purposes in section 40(1). The Adjudicator ordered Athabasca University to develop a written policy and procedure regarding disclosures of personal information in these types of situations and ensure that its employees were informed of the same.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, C.F-25, ss. 1(n); 40(1)(c); 40(1)(h); 40(1)(x); 40(4); 72.

Authorities Cited: AB: Orders 97-004; F2003-017.

I. BACKGROUND

[para 1] The Complainant was enrolled at the Athabasca University (the “Public Body”). In June 2004, the Complainant contacted several individuals within the Public Body to discuss the possibility of resubmitting assignments and re-writing the final examination for one of her courses. The Complainant contacted a Counselor, the Academic Coordinator, the Vice-President Academic, the Ombudsperson and the President of the Public Body.

[para 2] In response, the Public Body informed the Complainant of the rules and regulations for students and encouraged the Complainant to file an appeal under the Public Body’s Academic Appeals policy.

[para 3] On July 2, 2004, the Complainant spoke by telephone with the President of the Public Body regarding the same issue. Following that conversation, the President e-mailed the Complainant restating the Public Body’s position regarding the course and informing the Complainant of the Public Body’s Non-Academic Misconduct Policy. He also informed the Complainant that he would be limiting all of his future communications with the Complainant to writing and that he would be recommending this approach to all concerned staff. The President sent a copy of this e-mail along with a sequence of prior e-mails to the Office of the Ombudsperson, the Ombudsperson, the Vice President Academic, the Academic Coordinator, the Tutor for the course, the Chair of the Department, and a Counselor with the Public Body.

[para 4] On August 15, 2004, the Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to this Office. The Complainant stated that, on July 2, 2004, the President of the Public Body had breached Part 2 of the Act by e-mailing her personal information to employees within the Public Body.

[para 5] The Commissioner authorized an investigation. The Complainant was not, however, satisfied with the outcome of the investigation and requested an inquiry. The matter was set down for a written inquiry. The Public Body made a submission to this Office. The Complainant did not make a submission.

II. RECORDS AT ISSUE

[para 6] The information that was disclosed on July 2, 2004 consists of an e-mail from the President of the Public Body to the Complainant along with a sequence of prior e-mails which outline the history of communication between the Complainant and Public Body employees. However, as this inquiry concerns the authority for the disclosure of the personal information within those e-mails, the records themselves are not at issue.

III. ISSUE

[para 7] The issue in this inquiry is:

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

[para 8] There are three sub-issues in this inquiry:

- A. Was the Complainant's personal information disclosed?
- B. Did the Public Body have the authority to disclose the information pursuant to section 40(1) of the Act?
- C. Did the Public Body disclose only that personal information that was necessary and in a reasonable manner pursuant to section 40(4) of the Act?

IV. DISCUSSION: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?

[para 9] The Act is silent as to which party has the burden of proof in a case where the issue raised is the improper disclosure of personal information under Part 2. Order 97-004 stated that a decision maker may determine who has the burden of proof in such a situation by considering who raised the issue and who is in the best position to meet the evidential burden. In Order F2003-017, the Commissioner determined that it was the Complainant who had the initial burden to establish that personal information was disclosed, while the public body had the burden to show that the disclosure was allowed under the Act.

A. Was the Complainant's personal information disclosed?

[para 10] Section 1(n) of the Act defines personal information as recorded information about an identifiable individual. Section 1(n) also enumerates several types of personal information.

[para 11] I have reviewed the records. I find that the e-mails disclosed by the Public Body on July 2, 2004, contain personal information about the Complainant including the name of the individual, information about her educational history and an opinion regarding the individual.

B. Did the Public Body have the authority to disclose the information pursuant to section 40(1) of the Act?

[para 12] The Public Body states that the disclosure of personal information on July 2, 2004 was authorized by sections 40(1)(c), 40(1)(h) and 40(1)(x) of the Act. These sections read:

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, ...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,...

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

[para 13] After a review of the complaint, the arguments of the Public Body and the personal information that was disclosed, I find that the Public Body was authorized to disclose the information pursuant to sections 40(1)(c) and 40(1)(h) of the Act.

[para 14] I find that the personal information was collected for the purpose of responding to the Complainant's complaint and that it was disclosed for that same purpose under section 40(1)(c). I find that the disclosure was made to those employees who had dealt with the Complainant regarding the course and were likely to be contacted by the Complainant. I find that the President, in making a decision to only accept written communications in the future, needed to convey to those employees that he would no longer accept phone calls from the Complainant, the reason for this decision and his advice that they should also limit future communication with the Complainant to writing.

[para 15] I also find that the disclosure was necessary for the performance of the duties of the employees under section 40(1)(h). I accept that the President of the Public Body disclosed the personal information in order to limit future communication between the Complainant and the Public Body to writing. I also accept that it was necessary for the employees to know of the President's recommendation for future communication with the Complainant and the reasons for the recommendation.

C. Did the Public Body disclose only that personal information that was necessary and in a reasonable manner pursuant to section 40(4) of the Act?

[para 16] The Public Body states that the disclosure was in accordance with section 40(4):

40(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 17] The Public Body states that it only disclosed the personal information to those employees who needed to know that information. The Public Body states that it did not send the e-mails to the Student's Union nor did it send the e-mails to other Public Body employees who were involved with the administration of the Complainant's other courses.

[para 18] I find that the Public Body's disclosure was not in accordance with section 40(4). Although the President of the Public Body only contacted those employees who needed to know of the President's decision, I question the need of the President to forward the entire sequence of e-mails to those employees. Section 40(4) states that a public body may only disclose that personal information which is necessary to carry out the purposes under section 40. In this case, the President of the Public Body could have informed the employees about his decision, the reason for this decision and advise employees of the same, by sending a single e-mail to those employees. I find that it was not necessary to disclose the entire sequence of e-mails. I acknowledge that the Complainant initially sent the entire sequence of e-mails to the President which, in my view, mitigates the breach under section 40(4) to some extent. However, the Complainant's initial disclosure of the e-mails to the President is not a consent to forward the entire sequence of e-mails onward.

V. ORDER

[para 19] I make the following Order under section 72 of the Act.

[para 20] I find that the Public Body's disclosure of the Complainant's personal information was in accordance with sections 40(1)(c) and 40(1)(h) of the Act, but not in accordance with section 40(4) of the Act.

[para 21] I order the Public Body to stop disclosing the Complainant's personal information in contravention of Part 2 of the Act.

[para 22] In addition, in order to ensure that similar breaches do not occur in the future, I order the Public Body, pursuant to section 72(4) of the Act, to do the following:

(a) develop a written policy and procedure regarding disclosures of personal information for situations where the Public Body finds it necessary to limit communication with students;

(b) inform its employees of this policy and procedure and their responsibilities under the Act.

Dave Bell
Adjudicator