

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2005-025

October 24, 2006

NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY

Case File Number 3100

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

Summary: The Complainant reported what he believed to be a questionable financial practice by employees in a program area at the Northern Alberta Institute of Technology (“NAIT”) to officials at NAIT. The complaint was investigated internally by the Director of Corporate Services. When the Complainant was unsatisfied with the results of this investigation, he reported the Director’s conduct to the Institute of Chartered Accountants of Alberta.

The Complainant then wrote to the Commissioner under the *Freedom of Information and Protection of Privacy Act* (the “Act”), complaining that NAIT had breached his privacy by disclosing his personal information to the Director of Corporate Services and to the Institute of Chartered Accountants of Alberta during its investigation of the of the Director’s Conduct.

The Adjudicator found that the disclosure from one NAIT employee to another was authorized under section 40(1)(h) (information necessary for the performance of the duties of the officer), and that the disclosure from that second employee to the Institute of Chartered Accountants of Alberta was authorized under section 40(1)(f) of the Act (for any purpose in accordance with an enactment of Alberta). The Adjudicator also found under section 40(4) of the Act that NAIT had disclosed personal information only to the extent necessary to carry out the purposes of section 40(1)(f) and 40(1)(h), in a reasonable manner.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 40(1)(f), 40(1)(h), 40(1)(m), 40(4), 72; *Regulated Accounting Profession Act* R.S.A. 2000 c. R-12 ss. 69(2), 69(4), and 78(1).

I. BACKGROUND

[para 1] While employed by the Northern Alberta Institute of Technology (the “Public Body”), the Complainant reported what he believed to be a questionable financial practice to officials at the Public Body. The complaint was investigated internally by the Public Body’s Director of Corporate Services (the “Director”), who is a Chartered Accountant.

[para 2] The Complainant had concerns about the Director’s investigation and filed a conduct complaint against the Director with the Institute of Chartered Accountants of Alberta (the “Institute”). In the course of the Institute’s investigation, the Director provided one of the Institute’s officials with a document that included personal information about the Complainant. When the Complainant learned about the disclosure, he asked the Commissioner to review the actions of the Public Body under the *Freedom of Information and Protection of Privacy Act* (the “Act”).

[para 3] The matter was set down for a written inquiry. I invited the Institute to participate in the inquiry as an intervener. I also asked the Institute to provide specific information about its complaint process. The Institute accepted the invitation and addressed my information request. Interveners are expected to bring a broader perspective to the issues than the parties. They have no standing. In this case, the Institute was given the opportunity to submit written briefs and receive the briefs of other parties, except those provided in camera.

[para 4] The Public Body and the Institute provided initial submissions, but no rebuttals. The Complainant provided an initial submission and a rebuttal. One part of his rebuttal was submitted, and accepted, in camera.

II. RECORD AT ISSUE

[para 5] The record disclosed is a two-page document entitled “Chronology of Events” (the “Chronology”). This record was created by the Public Body’s Vice President, Finance and Administration. Its sub-title includes reference to the Complainant. It outlined events and dates related to the allegations of improper financial control in the program area, the subsequent investigations, and the Complainant’s involvement. There are entries which contain the Complainant’s personal information, as defined in the Act. The Vice President disclosed that document to the Director. The Director disclosed it to the Institute during its investigation of the Complainant’s complaint about the conduct of the Director.

III. ISSUE

[para 6] One issue will be addressed in this inquiry:

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

[para 7] In the Complainant's original letter of complaint to the Commissioner, his initial submission in the inquiry, and his rebuttal, he raised a number of other issues, such as labour relations, human rights, or contractual issues. For example, he has concerns about how the internal investigation was conducted, what evidence was gathered, and how it was assessed. The Act does not authorize me to adjudicate those issues.

[para 8] The Complainant referred to some issues that are within the general jurisdiction of the Act. For example, he refers to:

- a request for correction of his personal information that he made to the Public Body, the results of which were not satisfactory to him,
- the Public Body's level of compliance with results of a previous investigation by the Commissioner's staff,
- the adequacy of the Public Body's response to a previous access request he made prior to the date of the last entry in the Chronology document,
- the Institute's mention of the number of information access requests he has made,
- the inaccuracy of some of the information in the Chronology.

[para 9] I cannot deal with matters previously before the Commissioner, even if the Complainant was not satisfied with the results. Likewise, I cannot deal with issues that the Public Body has not had an opportunity to address. The Complainant did not object to the parameters of the single issue as set out in the Notice of Inquiry. The Public Body has not had a proper chance to respond to any other issues. I find that the issue the parties were directed to address encompasses the real substance of the Complainant's concerns. I have confined this decision to that issue.

IV. DISCUSSION OF THE ISSUE

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

[para 10] The undisputed facts of this inquiry are that the Chronology was disclosed twice: once by the Vice President to the Director, and once by the Director to the Institute. I will deal with each disclosure separately.

a. Disclosure by the Vice President, Finance and Administration to the Director, Corporate Services

[para 11] The Public Body argued that the Vice President instructed the Director to conduct an internal review of the Complainant's formal complaint and that the Chronology was necessary for the Director to carry out the investigation.

[para 12] The Complainant argued that the Chronology should not have been created in the first place, that its creation was prejudicial to him, and that some of its contents are wrong. He is of the view that the Director's position within the organization and his duties, including his duties around the investigation of the program area, did not warrant the Director having the Complainant's personal information. The Complainant questioned the integrity of the Director and other personnel of the Public Body, and wondered if the Director intentionally obtained his personal information wrongfully.

[para 13] I am not reviewing how the internal investigation was conducted, or whether the view held by senior management of the Complainant's role in the matter, as reflected in the Chronology, was correct or proper. I find that the document was created to assist senior officials in managing the ongoing events around allegations of financial accountability in the Public Body, and ongoing inquiries by the Complainant. The Public Body had a duty to investigate the Complainant's formal complaint.

[para 14] The Public Body set out the Director's duties and responsibilities, and claimed that the Act authorized the disclosure under sections 40(1)(f),(h) and (m) of the Act. They read as follows:

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,

...

(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,

...

(m) to the Auditor General or any other prescribed person or body for audit purposes,

[para 15] I accept that the Director was an officer and employee of the Public Body who needed the information to perform his duties. He was responsible for reporting to the Finance and Audit Committee of the Board of Governors on the ongoing events regarding the financial accountability issue. He was required to respond to ongoing inquiries from the Complainant and others. I find that the Public Body's purpose for the disclosure from the Vice President to the Director fell within section 40(1)(h) of the Act.

[para 16] The Complainant objected in particular to disclosure of two entries in the Chronology that speak to his employment status at certain times and the reasons for his absence. The fact that he was not present in the work environment, and why, is salient to reporting his role in the chronology of events. It is part of the explanation of his lack of

involvement in the investigation at one point. It is critical to understanding the dynamics of the workplace environment at the time of the original investigation, and at subsequent times. Its absence in the Chronology would leave other entries about the Complainant's involvement much out of context, and possibly misleading. I find that there is sufficient evidence before me to justify the use of the Complainant's personal information in the creation of the document.

[para 17] I agree with the Complainant that personal information about his employment status is sensitive. However, the Chronology gives no specific details as to why the Complainant was granted any specific status. Most of the information I have before me regarding this point comes from the Complainant himself in his in-camera rebuttal submission.

[para 18] From the evidence before me, I conclude that the Public Body met the requirement of section 40(4) of the Act by disclosing personal information only to the extent necessary to enable it to carry out its proper purpose.

[para 19] Having found that the disclosure from the Vice President to the Director met the requirements of sections 40(1)(h) and 40(4) of the Act, I do not find it necessary to address whether that disclosure was also authorized by the other sections of the Act put forward by the Public Body.

b. Disclosure by the Director, Corporate Services to the Institute's official

[para 20] When the Complainant filed a conduct complaint with the Institute about the Director, the Complainant called the Director's professional conduct into question. The results of the investigation could have adversely affected the Director's professional future. Therefore, the Director had a right to offer a full defence to the allegations raised by the Complainant. The Public Body argued that the Director disclosed the Chronology to the Secretary of the Complaints Inquiry Committee from the Institute, for that purpose.

[para 21] The Complainant considered that disclosure to be a gratuitous provision of potentially discrediting information about him. He says the information in the document was irrelevant to the conduct complaint.

[para 22] Both the Public Body and the Institute referred me to section 40(1)(f) of the Act as the authority for the disclosure from the Director to the Institute. The Public Body said the complaint arose out of the execution of the Director's duties as its officer and employee. The Public Body says that responding to the complaint also fell within his duties because his status with the Institute is fundamental to his position with the Public Body. The Public Body says it instructed the Director to cooperate fully with the Institute in its investigation, and that the Institute's official requested a copy of the document and was authorized to do so. It says the disclosure was authorized by section 40(1)(f) and done only to the extent necessary as required by section 40(4).

[para 23] In its submission, the Institute set out in detail its legislative responsibility for regulating the professional conduct of its registrants, under the *Regulated Accounting Profession Act*, RSA 2000, c. R-12 (“RAPA”). It described the administrative processes for undertaking conduct complaints, the officials responsible, and their investigative powers. It described the Institute’s obligations around confidentiality of information, its right to require production, and its need for the information. It emphasized the public good of the professional regulatory function it serves.

[para 24] The Institute reviewed the particulars of the conduct complaint against the Director and provided substantial evidence of what occurred during the steps taken. Its evidence is that the Chronology was provided by the Director in response to a request from the Institute’s properly authorized official. It says the request was for information that was relevant to the conduct complaint and that it was properly collected and used. It says RAPA is “an enactment of Alberta that authorizes or requires the disclosure.”

[para 25] I accept the Institute’s description of its legislative authority and the public good it serves. I have reviewed the relevant sections of RAPA that authorize the Institute’s officials to collect information from registrants in the course of a conduct complaint. In particular, sections 69(2), 69(4), and 78(1) of RAPA authorize the Secretary to the Complaints Inquiry Committee to require the registrant (the Director in this case) to provide the records the Secretary considers to be relevant. Those sections state:

69(2) The CIC secretary, in the course of the review, may require the complainant or a registrant or former registrant to answer any inquiries or to provide any records or other information that the CIC secretary considers relevant for the purpose of the review, and that person must comply.

(4) In performing any function under this Part, the CIC secretary has the powers of an investigator under section 78.

78(1) For the purpose of conducting an investigation, an investigator

(a) may, at any reasonable time, require a registrant or former registrant

(i) to attend meetings with the investigator or others,

(ii) to answer any questions the investigator may have relating to the investigation and to answer the questions under oath, and

(iii) to give to the investigator any records, information or thing that, in the opinion of the investigator, is or may be relevant to the investigation that the registrant or former registrant possesses or that is under the control of the registrant or former registrant,

and

(b) may require a registrant or former registrant to give up possession of any records, information or thing described in clause (a) to allow the investigator to take it away to copy, examine or perform tests on it, in which case the investigator must return it within a reasonable time of being given it but must return it after a hearing is completed and any right to an appeal is expired, and the registrant or former registrant must comply.

[para 26] RAPA contains enforcement remedies and penalties for non-compliance with the disclosure requirements.

[para 27] The Complainant disputed that the Institute official requested the document, without offering evidence to support that claim. I find on the basis of the sworn evidence submitted by the Public Body and the submission of the Institute that the Director released the document on the request of the Institute's official. The Secretary of the Complaints Inquiry Committee's request indicated that she believed the contents of the document were relevant to her investigation. I am satisfied that the Secretary was authorized by RAPA to request a copy of the Chronology from the Director.

[para 28] I find that the disclosure of the Chronology by the Director to the Institute was authorized by section 40(1)(f) of the Act.

[para 29] The Complainant says some of the specific entries in the Chronology document are not correct. I cannot and need not assess his concerns. The entries are succinct. They summarize what happened over 17 months, including

- one internal investigation by the Director,
- one independent investigation by the Auditor General,
- the conduct complaint to the Institute,
- meetings of the Public Body's Board of Governors,
- correspondence and other communications between the Complainant and the Public Body,
- the Complainant's requests for access to information.

[para 30] Contrary to the Complainant's assertions, there is no evidence that the mention of his information requests was anything other than a factual statement about the information that was exchanged between the parties. I find the Chronology as a whole was relevant to the investigation of the Director's professional conduct.

[para 31] In my view, it is unreasonable for the Complainant to level serious allegations about the Director's professional conduct to the Institute and expect that the provisions of the *Freedom of Information and Protection of Privacy Act* would allow him to withhold information which was relevant to the investigation of his complaint. This was never the intent of the Act.

[para 32] I find that the disclosure from the Public Body to the Institute met the requirements of sections 40(1)(f) and 40(4) of the Act. I do not find it necessary to address whether that disclosure was also authorized by other sections of the Act.

V. ORDER

[para 33] I make this Order under section 72 of the Act.

[para 34] I find that the Public Body was authorized by section 40(1)(h) of the Act to disclose the Complainant's personal information to the Director of Corporate Services.

[para 35] I find that the Public Body was authorized by section 40(1)(f) of the Act to disclose the Complainant's personal information to the Institute of Chartered Accountants of Alberta.

[para 36] I further find that the Public Body met the requirement of section 40(4) of the Act during both disclosures by disclosing personal information only to the extent necessary to enable it to carry out the purposes of sections 40(1)(f) and 40(1)(h) in a reasonable manner.

Dave Bell
Adjudicator