

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2008-022

March 20, 2009

ENERGY RESOURCES CONSERVATION BOARD

Case File Number F4046

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that the Energy Resources Conservation Board (the “Public Body”) contravened the *Freedom of Information and Protection of Privacy Act* (the “Act”) when it revealed to a gas facility operator that he was the individual who had reported a gas odour. The Public Body argued that it did not disclose the Complainant’s personal information, as it merely indicated that the Complainant had been doing pipeline security work. If it did disclose the Complainant’s personal information, the Public Body argued that had the authority to do so under various sections of the Act.

Under section 1(n) of the Act, “personal information” means “recorded information about an identifiable individual”. The Adjudicator found that the information disclosed by the Public Body allowed third parties to identify the Complainant, therefore making it about an identifiable individual. Identity can be revealed even though a name is not disclosed. The Adjudicator also found that the disclosed information was recorded information, as both the disclosed and recorded information revealed the Complainant’s identity.

The Public Body argued that its disclosure was authorized under section 40(1)(c) (purpose the same as or consistent with the purpose of collection). It submitted that, in order to carry out its investigation and resolution of the gas odour complaint, it was required to tell the gas facility operator that the complaint was from an individual who was a “mobile” as opposed to “stationary” sensor. The Adjudicator found that, while collection of information about the Complainant and the complaint may have been

authorized for the purpose of the Public Body's own investigation and resolution of the matter, disclosure of the fact that the Complainant was doing pipeline security work did not have a reasonable and direct connection to that purpose. The disclosure was not necessary because, in order to enable the gas facility operator to respond to the odour complaint, the Public Body could have simply told it that the Complainant was mobile, rather than that he was doing pipeline security work.

The Adjudicator also found that the Public Body's disclosure was not limited to the extent necessary to enable it to carry out an authorized purpose in a reasonable manner under section 40(4) of the Act. Finally, the Adjudicator found that the Public Body did not establish that the disclosure was authorized under section 40(1)(e) (purpose of complying with an enactment), 40(1)(f) (purpose in accordance with an enactment authorizing or requiring disclosure), 40(1)(bb.1) (routine disclosure in a business context) or 40(1)(ee) (disclosure to avert or minimize danger to health or safety).

The Adjudicator concluded that the Public Body disclosed personal information in contravention of Part 2 of the Act, and ordered it to stop doing so.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 2(b), 33, 40, 40(1)(c), 40(1)(d), 40(1)(e), 40(1)(f), 40(1)(bb.1), 40(1)(bb.1)(i), 40(1)(ee), 40(4), 41, 41(a), 41(b), 72 and 72(3)(e); *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6, s. 4(f); *Oil and Gas Conservation Regulations*, Alta. Reg. 151/71, ss. 7.070, 9.040 and 9.050.

Authorities Cited: AB: Orders 99-018, F2006-019 and F2007-019.

I. BACKGROUND

[para 1] In correspondence received April 11, 2007, the Complainant complained to this Office that the Alberta Energy and Utilities Board, which later became (in part) the Energy Resources Conservation Board (the "Public Body"), disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the "Act"). He alleged that, on March 1, 2007, the Public Body improperly revealed that he was the individual who had reported a gas odour coming from a gas processing plant.

[para 2] Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry.

II. RECORDS AT ISSUE

[para 3] As this inquiry involves the alleged unauthorized disclosure of personal information, rather than an access request, there are no records at issue.

III. ISSUE

[para 4] As set out in the Notice of Inquiry dated September 29, 2008, the single issue is whether the Public Body disclosed the Complainant's personal information in contravention of Part 2 of the Act.

IV. DISCUSSION OF THE ISSUE

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

[para 5] Under Part 2 of the Act, a public body may disclose an individual's personal information in accordance with sections 40 and 41, the relevant parts of which are reproduced later in this Order.

[para 6] In inquiries involving the alleged unauthorized disclosure of personal information, the initial burden of proof normally rests with the complainant, in that the complainant has to have some knowledge, and adduce some evidence, regarding what personal information was disclosed, and the manner in which the personal information was disclosed; the public body then has the burden to show that its disclosure of personal information was in accordance with the Act (Order F2006-019 at para. 51; Order F2007-019 at para. 8).

1. Did the Public Body disclose the Complainant's personal information?

[para 7] The Complainant alleges that the Public Body revealed that he was the individual who had reported a gas odour near a particular gas facility. In a diary prepared by the Complainant, he states that later on the day that he reported the odour to the Public Body, a third party approached him with the knowledge that the Complainant had made the gas odour complaint.

[para 8] In its submissions, the Public Body indicates that one of its employees was asked by a representative of the gas facility in question to give the identity of the individual who had reported the gas odour, and the employee "replied that the call was made by an individual who was doing pipeline security work at the time". According to the Public Body, the representative of the gas facility "then stated that it must have been [the Complainant], and that workers at the plant had regularly seen his truck driving around the area of the plant". The Public Body states that its employee did not disclose the Complainant's name or confirm his identity, and had actually recorded the name of the Complainant incorrectly.

[para 9] The Public Body submits that the employee's statement that the odour complaint came from an individual doing pipeline security work did not amount to a disclosure of the Complainant's personal information. It argues that there was only a general reference to a type of employment that could relate to a number of individuals

working in the area – as opposed to a specific employment title of a single individual – and that the information was therefore not sufficiently particular to the Complainant to constitute personal information that revealed his identity. The Public Body submits that the ability of the representative of the gas facility to identify the Complainant was due to the Complainant being observed in the area by workers at the plant, and due to a verification of the Complainant’s identity by another third party who knew the nature of the Complainant’s work – all of which the Public Body argues its employee could not have reasonably foreseen.

[para 10] Under section 1(n) of the Act, “personal information” means “recorded information about an identifiable individual”. The Public Body submitted a copy of a “Complaint Detailed Record Report”, in which its employee recorded information about the Complainant’s call regarding the gas odour. The complaint report includes information about the Complainant, such as his name, details about his complaint, the closest town to him, and whether he had made efforts to resolve his concerns informally with the operator of the gas facility. While the Public Body points out that the Complainant’s last name was originally recorded incorrectly, I do not find that the erroneous naming of the Complainant means that his personal information was not recorded. The erroneous last name and the Complainant’s actual last name are sufficiently similar, particularly when pronounced, that I construe the error more or less as a misspelling. Moreover, the Public Body does not state that the Complainant’s first name was taken down incorrectly, so I assume that it was recorded correctly. I find that the Complainant’s identity was recorded.

[para 11] A public body’s oral disclosure of recorded personal information falls within the purview of the Act (see, e.g., Order F2006-019 at para. 83). Even if the Public Body did not actually disclose the Complainant’s name or a specific job title, it disclosed the fact that the Complainant had been doing particular work. Because the Complainant was identifiable as a result of the Public Body’s disclosure, disclosure of the information about his work amounted to disclosure of his identity and therefore his recorded personal information. The fact that third parties were able to deduce the identity of the Complainant proves, in my view, that the information about the Complainant doing pipeline security work was information about him as an identifiable individual.

[para 12] It does not matter that the employee of the Public Body did not foresee that the Complainant would be able to be identified through the limited information that the employee disclosed. The employee nonetheless disclosed information that revealed who the Complainant was, as recorded in the complaint report. Complainants often have some connection to the matter being complained about, such that a general reference or description is sufficient to permit identification. This is despite that fact that a name is not disclosed, there are other individuals falling within the same description, or the individual can be identified only because of additional things seen and known by third parties.

[para 13] The foregoing conclusion is consistent with comments of the former Commissioner to the effect that there may exist information about an identifiable

individual – and therefore personal information – as a result of contextual information or particular circumstances, even if a name is not disclosed:

I agree with the Third Party that it is not necessary to specifically name employees for there to be recorded information about an identifiable individual. Facts and events, the context in which information is given, as well as the nature and content of the information may also be personal information if it is shown to be recorded information about an identifiable individual. The key here is whether there is an “identifiable” individual. (Order 99-018 at para. 21.)

[para 14] I acknowledge that the complaint report submitted by the Public Body did not specifically include the fact that the Complainant was doing pipeline security work. It is unclear whether the employee who received the gas odour complaint recorded this information elsewhere, or simply remembered it and recounted it to the gas facility operator from memory.

[para 15] Even if the Public Body did not specifically record somewhere the fact that the Complainant was doing pipeline security work, I find that it nonetheless disclosed recorded information about the Complainant, namely his identity. The Public Body recorded the Complainant’s identity in the complaint report and the information that it disclosed revealed the Complainant’s identity. Although different words were used in the written complaints report and at the time of the oral disclosure, the information recorded and disclosed amounted to the same thing. In each case, it was information that identified the Complainant. It would be counter to the Act’s purpose of controlling the disclosure of personal information by a public body – as set out in section 2(b) – if a public body were able to circumvent the Act by saying that it disclosed different information from what was actually recorded when the disclosed information essentially amounts to, or reveals, the information that was recorded.

[para 16] I conclude that the Public Body disclosed the Complainant’s personal information.

2. Was the Public Body’s disclosure of the Complainant’s personal information in accordance with the Act?

[para 17] The Public Body first acknowledges that it did not have the consent of the Complainant to disclose his personal information under section 40(1)(d). It submits, however, that if it did disclose the Complainant’s personal information, it had the authority to do so under the following provisions of Part 2 of the Act:

- 33 No personal information may be collected by or for a public body unless*
- (a) *the collection of that information is expressly authorized by an enactment of Alberta or Canada,*

(b) *that information is collected for the purposes of law enforcement, or*

(c) *that information relates directly to and is necessary for an operating program or activity of the public body.*

...

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,*

...

(e) *for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*

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

...

(bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

(i) *is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and*

(ii) *does not reveal other personal information about the individual or personal information about another individual,*

...

(ee) *if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person, or*

...

(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.

41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

- (a) *has a reasonable and direct connection to that purpose, and*
- (b) *is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[para 18] The Public Body explains that it has authority to receive, investigate and respond to complaints about odours coming from gas processing facilities under section 4(f) of the *Oil and Gas Conservation Act* and sections 7.070, 9.040 and 9.050 of the *Oil and Gas Conservation Regulations*. It also attached a copy of a document entitled “Requirements and Procedures for Facilities” to demonstrate that responding to gas odour complaints is part of an operating program or activity of the Public Body. The Public Body accordingly suggests that its collection of information about the Complainant was authorized under section 33 of the Act.

[para 19] The Public Body then submits that it disclosed the Complainant’s personal information for the purpose for which the information was collected or compiled, or for a use consistent with that purpose, as authorized by section 40(1)(c) of the Act. Specifically, it states that its employee told the representative of the gas facility that the individual who had made the odour complaint was doing pipeline security work in order to indicate that the complaint was from a “mobile sensor”, and not a “stationary sensor” such as a landowner. According to the Public Body, knowledge of the origin of an odour complaint is needed in order for the gas facility operator to properly assess the matter and respond. If the operator knows that the location of the alleged odour release is not stationary, this apparently assists in knowing which monitor to test or check. The Public Body also submits that its disclosure was in the interest of public safety. The Public Body goes on to argue that disclosure of the fact that the Complainant was doing pipeline security work met the requirements of sections 40(4) and 41, reproduced above.

[para 20] I find that the Public Body’s disclosure of information that effectively revealed the identity of the Complainant was not for the same purpose as that for which it collected information regarding the Complainant’s identity. The Public Body’s document entitled “Environment Procedures – Complaints”, a copy of which it submitted, indicates that the purpose of collecting a complainant’s name is to allow quick identification of and response to a situation, as well as to permit follow-up communication with the complainant if required. Disclosure of the Complainant’s identity to the gas facility operator in this case was not for the same purpose as allowing the Public Body to identify, respond to and follow-up on the matter itself.

[para 21] I will now review whether the Public Body’s disclosure of the Complainant’s personal information was “consistent” with the purpose of collection. Section 41 states that, for the purpose of section 40(1)(c), a disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the disclosure has a reasonable and direct connection to that purpose, and is necessary for the public body to perform its statutory duties or operate a legally authorized program.

[para 22] Here, the collection of the Complainant's identity and information about his complaint was for the purpose of enabling the Public Body to have the necessary information to investigate and resolve what it characterizes as a public safety issue. However, disclosure to the gas facility operator of the nature of the Complainant's work or why he was in the area did not, in my view, have a reasonable and direct connection – under section 41(a) of the Act – to that purpose or to the Public Body's own possible need for the information. The disclosure had an *unreasonable* connection because the Public Body should have taken steps to protect the Complainant's identity by disclosing only that the complaint “was from a mobile sensor”, not that the Complainant “was doing pipeline security work at the time”. Disclosure of the information about the Complainant's work had, at most, an *indirect* connection to the purpose of resolving the complaint by allowing the gas facility operator to respond. Finally, disclosure was not *necessary* – under section 41(b) – for performing the statutory duties or operating a legally authorized program of the Public Body, as disclosure of the information about the Complainant's work was not required in order to convey the source of the complaint as mobile in the course of investigating and resolving the matter.

[para 23] Accordingly, I find that the Public Body's disclosure of the Complainant's personal information was not for a purpose consistent with the purpose of collection. As I have also found that it was not for a purpose the same as the purpose of collection, I conclude that the Public Body did not have the authority to disclose the Complainant's personal information under section 40(1)(c) of the Act.

[para 24] In reaching the foregoing conclusion, I do not mean to suggest that the Public Body may *never* disclose the personal information of complainants without their consent. It is possible for the Public Body to have the authority to disclose information about a complainant in order to investigate and resolve a gas odour complaint – even if this means that the complainant's identity would end up being revealed. However, even if the Public Body arguably had the authority, in this particular inquiry, to disclose the Complainant's personal information under section 40(1)(c), section 40(4) of the Act states that a public body may disclose personal information only to the extent necessary to enable the public body to carry out an authorized purpose in a reasonable manner.

[para 25] I find that the Public Body did not comply with section 40(4). Disclosure of the information about the Complainant's work – which effectively revealed his identity in this case – was not necessary to carry out the purpose that the Public Body explains, namely to investigate the gas odour and provide sufficient information to enable the gas facility operator to respond. Again, it was not necessary or reasonable to say that the Complainant was doing pipeline security work in order to convey that the odour complaint was from a mobile sensor. The Public Body needed only to say that the odour complaint was from a mobile sensor. Had the Public Body limited its disclosure to this information, it would have been less likely for the Complainant to be identified, given the fewer number of individuals doing pipeline security in the area than individuals constituting mobile sensors generally (such as other workers in the vicinity, individuals driving by, or other people who are not landowners). If mere disclosure of the fact that the Complainant was a mobile sensor would have nonetheless revealed his identity, that

particular disclosure of the Complainant's personal information might have been authorized as necessary and reasonable.

[para 26] I considered that I might be misunderstanding why it was necessary or reasonable for the Public Body to specifically disclose the fact that the Complainant was doing pipeline security work in order to enable the gas facility operator to respond to the alleged odour. However, the Public Body has only indicated in this inquiry that the gas facility operator needed to know whether the complaint came from a "mobile" or "stationary" sensor. From the language used in its submissions – the Public Body gives the example of a landowner as a stationary sensor and refers to "someone" who was mobile versus stationary – I understand the references to mobile and stationary sensors to be to the individuals making complaints (not technical devices) and that there may therefore be any number of mobile and stationary sensors in a particular vicinity. Having read the Public Body's submissions, I fail to see how disclosure of the fact that the Complainant was doing pipeline security work was reasonable, necessary or had a direct connection to the objective of conveying that the gas odour complaint came from a mobile sensor, or was otherwise authorized for the purpose of investigating and resolving the matter. The Public Body has the burden of establishing an authorized disclosure under the Act.

[para 27] I also acknowledge the possibility that the gas facility operator required additional information in order to respond to the gas odour complaint. For instance, it may have been necessary to know how close the Complainant was to the facility or a particular pipeline when he noticed the odour, or when and how frequently he had noticed it. Again, however, the Public Body would only possibly have had the authority to convey that specific information, not information about the nature of the Complainant's work or the reason why he was in the area.

[para 28] The Public Body alternatively submits that its disclosure of the Complainant's personal information was authorized under sections 40(1)(e) and 40(1)(f). These authorize disclosure for the purpose of complying with an enactment, and for any purpose in accordance with an enactment that authorizes or requires the disclosure. The Public Body does not differentiate its arguments in relation to sections 40(1)(c), (e) and (f) of the Act. I therefore presume that, for all three, the Public Body is referring to its authority under the *Oil and Gas Conservation Act* and the *Oil and Gas Conservation Regulations*, and that, in relation to sections 40(1)(e) and (f), it is again referring to the purpose of disclosing to the gas facility operator the fact that an odour complaint came from a mobile rather than stationary sensor.

[para 29] The Public Body does not identify the specific legislative provision with which it was trying to comply when it disclosed the information about the Complainant doing pipeline security work. It likewise points to no specific provision that authorized or required it – even in an indirect way – to disclose the information. While section 4(f) of the *Oil and Gas Conservation Act* and sections 7.070, 9.040 and 9.050 of the *Oil and Gas Conservation Regulations* deal with aspects of the Public Body's operations and the responsibilities of gas facilities, none of these address the disclosure of information. I

therefore find that the Public Body has not established that its disclosure was authorized under section 40(1)(e) or (f) of the Act.

[para 30] Even if the Public Body did have the authority to disclose the Complainant's personal information under section 40(1)(e) or (f), I would again find that it did not meet the requirements of section 40(4). Even if disclosure of the fact that the report of the gas odour came from a mobile sensor was to enable the Public Body to comply with, or carry out disclosure in accordance with, the *Oil and Gas Conservation Act* and/or the *Oil and Gas Conservation Regulations*, I do not see how disclosure of the fact that the Complainant was doing pipeline security work was necessary to meet either of those purposes, or was done in a reasonable manner.

[para 31] The Public Body alternatively submits that its disclosure of the Complainant's personal information was authorized under section 40(1)(bb.1) of the Act. I find that the Public Body's disclosure of the fact that the Complainant was doing pipeline security work does not fall within this section, as it is not "information of a type routinely disclosed in a business or professional context". The Public Body's document entitled "Environment Procedures – Complaints" states that "staff must receive permission from the complainant to release their name". This demonstrates that information conveying a complainant's identity is, in fact, *not* routinely disclosed. If I were to find that section 40(1)(bb.1) applied in the circumstances of this inquiry, it would mean that the Public Body would always have the authority to disclose to a gas facility operator the name and business contact information of an individual reporting a gas odour, as such disclosure would be routine.

[para 32] Further, the disclosure in this case was not "limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address", as required by section 40(1)(bb.1)(i). The Public Body disclosed the fact that the Complainant was doing pipeline security work, not his name or the type of business contact information contemplated.

[para 33] Finally, the Public Body submits that its disclosure of the Complainant's personal information was authorized under section 40(1)(ee) of the Act, on the basis that disclosure was to avert or minimize an imminent danger to the health or safety of a person. However, there is no suggestion here that the gas odour complaint made by the Complainant was in connection to an imminent danger to the health or safety of any person, or that disclosure of the fact that the Complainant was doing pipeline security work was for the purpose of averting or minimizing any such danger. I note, in the Public Body's submissions, that the employee who received the call from the Complainant "asked whether the circumstances constituted an emergency, and the Complainant indicated that they did not".

[para 34] I find that the Public Body has not shown that its disclosure of the Complainant's personal information was authorized under section 40(1)(c), (e), (f), (bb.1) or (ee) of the Act. Further, even if it is arguable that the Public Body had the authority to disclose the Complainant's personal information for a purpose set out in section 40(1)(c),

(e) or (f), the disclosure in this case was not limited to the extent necessary to enable the Public Body to carry out an authorized purpose in a reasonable manner under section 40(4). [It is not arguable at all that disclosure was for a purpose set out in section 40(1)(bb.1) or (ee).]

[para 35] I conclude that the Public Body contravened Part 2 of the Act when it disclosed the fact that the Complainant was doing pipeline security work at the time that he reported the gas odour.

[para 36] Although the Public Body's disclosure fell short of the Act's requirements in this case, I note that the Public Body was making a good faith effort to comply. Its written procedures recognize that permission from a complainant is normally required in order to release his or her name, and the Public Body did not disclose or confirm the Complainant's name when asked to do so by the gas facility operator. Nonetheless, the Public Body failed to recognize that information other than a name can also reveal the identity of a complainant.

V. ORDER

[para 37] I make this Order under section 72 of the Act.

[para 38] I find that the Public Body disclosed the Complainant's personal information in contravention of Part 2 of the Act. Under section 72(3)(e), I order the Public Body to stop disclosing personal information in contravention of Part 2.

Wade Riordan Raaflaub
Adjudicator