

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2008-026

November 3, 2008

#### ALBERTA FINANCE AND ENTERPRISE

Case File Number F4078

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for records from Alberta Finance and Enterprise (the Public Body). He requested records relating to a process to locate former members of a pension plan who were past retirement age and had not contacted the plan administrator.

The Public Body responded to the Applicant's access request, but withheld the personal information of a third party from two records.

The Adjudicator confirmed the Public Body's decision to withhold the personal information of a third party.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.1, 17, 72

**Cases Cited:** *University of Alberta v. Pylypiuk*, 2002 ABQB 22

#### I. BACKGROUND

[para 1] On March 25, 2007, the Applicant made a request for records under the Act from the Public Body. He requested records containing information about a process to locate former members of a pension plan who are past retirement age and had not contacted the plan administrator.

[para 2] The Public Body responded to the Applicant on April 12, 2007. The Public Body provided records to the Applicant relating to his request, but severed the name of a third party under section 17 of the Act.

[para 3] On May 7, 2007, the Applicant requested review by this Office of the Public Body's decision to sever the name of a third party.

[para 4] The Commissioner authorized mediation. As mediation was unsuccessful, this matter was scheduled for a written inquiry.

[para 5] The Public Body provided written submissions. The Applicant did not provide any written submissions, other than the original request for review.

## II. RECORDS AT ISSUE

[para 6] Records 24 and 25, which comprise a document entitled "Operating Engineers Local 955 Pension Plan Statement on Termination of Pension Plan Membership", are at issue.

## III. ISSUES

**Issue A: Does section 17(1) apply to the Records and Information?**

## IV. DISCUSSION OF ISSUES

**Issue A: Does section 17(1) apply to the Records and Information?**

[para 7] Section 17 (1) requires the head of a public body to refuse to disclose a third party's personal information if the disclosure would be an unreasonable invasion of the third party's personal privacy. However, this provision cannot be read in isolation. Section 17 (2) establishes situations in which disclosure is not an unreasonable invasion of privacy, while section 17(3) and (4) describe the situations in which disclosure of personal information is presumed to be an unreasonable invasion of privacy. Section 17(5) is a non-exhaustive list of criteria for the head of a public to weigh when determining whether disclosure of personal information is an unreasonable invasion of a third party's personal privacy.

[para 8] Personal information is defined in the Act. Section 1(n) states:

*1 In this Act,*

*(n) "personal information" means recorded information about an identifiable individual, including*

*(i) the individual's name, home or business address or home or business telephone number,*

- (ii) *the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
- (iii) *the individual's age, sex, marital status or family status,*
- (iv) *an identifying number, symbol or other particular assigned to the individual,*
- (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
- (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*
- (vii) *information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
- (viii) *anyone else's opinions about the individual, and*
- (ix) *the individual's personal views or opinions, except if they are about someone else;*

[para 9] Section 17 states in part:

*17(1) 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.*

*(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

- (a) *the third party has, in the prescribed manner, consented to or requested the disclosure...*

*(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...*
- (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...*

*(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*

- (a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny...*
- (e) *the third party will be exposed unfairly to financial or other harm,*
- (f) *the personal information has been supplied in confidence,*

[para 10] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 11] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5). In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said:

In interpreting how these sections work together, the Commissioner noted that s. 16(4) lists a set of circumstances where disclosure of a Affected party's personal information is presumed to be an unreasonable invasion of a Affected party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. 16(5), and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. 16(1) and (4). In my opinion, that is a reasonable and correct interpretation of those provisions in s. 16. Once it is determined that the criteria in s. 16(4) is (sic) met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. 16(5). The factors in s. 16(5) must then be weighed against the presumption in s. 16(4).

[para 12] I will therefore consider whether the records at issue contain the personal information of a third party. If I find that these records do contain a third party's personal information, I will consider whether disclosing this information would be an unreasonable invasion of the third party's personal privacy.

[para 13] The Public Body argues that the records at issue contain the personal information of a third party within the meaning of sections 17(4)(d) and (g) of the Act. It states that it considered whether section 17(2) applied to the information and found that it did not. The Public Body notes that in determining whether disclosing the third party's personal information would be an unreasonable invasion of personal privacy, it reviewed the provisions of section 17(5). It found that none of the factors set out in section 17(5) applied.

[para 14] The Applicant's request for review indicates that he disagrees with the Public Body's decision that section 17(1) applies to the records and information.

[para 15] I find that the records at issue contain the personal information of a third party within the meaning of section 1(n) of the Act. I agree with the Public Body that section 17(2) does not apply to the information. I find that the third party personal information falls under both sections 17(4)(d) and (g) of the Act, as it is personal information about the third party's employment history, and the third party's name appears in the context of other information about him. As a result, the presumption that it would be an unreasonable invasion of the third party's personal privacy to disclose this information is raised.

[para 16] I agree with the Public Body that none of the factors set out in section 17(5) apply so as to rebut the presumption that it would be an unreasonable invasion of the third party's personal privacy to disclose the information. Rather, as the information was most likely supplied with the expectation that the plan would maintain its confidentiality, section 17(5)(f) applies and weighs against disclosure.

[para 17] I also find that severing the name of the third party from the other personal information about the third party is not possible in this case, as the specific nature of the other personal information could serve to identify the third party.

[para 18] I find that section 17(1) applies to the information withheld by the Public Body and that it would be an unreasonable invasion of a third party's personal privacy to disclose it.

## **V. ORDER**

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

[para 20] I confirm the decision of the Public Body to withhold the third party personal information from Records 24 and 25.

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Teresa Cunningham  
Adjudicator