ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2010-035

June 2, 2011

RED DEER PUBLIC SCHOOL DISTRICT NO. 104

Case File Number F4844

Office URL: www.oipc.ab.ca

Summary: The Complainant and Red Deer Public School District No. 104 ("the Public Body") were involved in a Ministerial Review concerning the Complainant's son, who attended a school run by the Public Body. The Complainant provided the Public Body with a copy of her submission to the Ministerial Review Board. The Complainant's submission contained statements about certain teachers employed by the Public Body. A principal who was employed by the Public Body disclosed part of the Complainant's submissions to the teachers. The teachers subsequently disclosed a portion of the Complainant's submissions to the Alberta Teachers' Association ("ATA"). Ultimately a defamation law suit was initiated against the Complainant by the ATA, principal, and teachers. The principal and teachers were successful in the law suit.

Years after the law suit had concluded, the Complainant complained to the Office of the Information and Privacy Commissioner ("this office") that the Public Body had failed to take steps to prevent the disclosure of her submission to the Ministerial Review to the ATA and to prevent its use in the defamation lawsuit, contrary to the *Freedom of Information and Protection of Privacy Act* (the Act or the FOIP Act).

The Adjudicator rejected the Public Body's objection to the inquiry on the basis of the time that had elapsed. She determined that the Commissioner had exercised his discretion to conduct a review and inquiry into the Complainant's complaint pursuant to section 66(2) of the Act, and that she had no authority to consider the propriety of that decision.

The Adjudicator found that the Public Body had disclosed the Complainant's personal information when the principal disclosed such information to the teachers in the course of the Ministerial Review and that the disclosure for the purpose of conducting the review had been authorized. She noted that the Public Body had also disclosed the Complainant's personal information in its Affidavit of Records in the law suit; however, these latter disclosures were not part of the original complaint, and in any event were excluded from the scope of the Act pursuant to section 4(1)(a) of the Act. Therefore she declined to consider them.

As well, the Adjudicator found that the Public Body was not obliged to secure information against the disclosure of the Complainant's personal information by the teachers to the ATA, and thus it had not contravened section 38 of the Act. Finally, she found that the Public Body had not disclosed or used the personal information of the Complainant in contravention of the Act.

Statutes Cited: AB: *Alberta Rules of Court* 390/1968**;** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 4(1)(a), 17, 38, 40, 65, 66, 70, and 72; *School Act*, R.S.A. 2000, c. S-3.

Authorities Cited: AB: Order 2000-026.

I. BACKGROUND

[para 1] The Complainant's son was a student at Red Deer Public School District No. 104 ("the Public Body") approximately 10 years ago. In 2001 she appealed the Public Body's decision to keep her son in a certain academic program to the Minister of Learning under the *School Act* ("Ministerial Review"). As part of the Ministerial Review, the Complainant prepared submissions for the review panel, which were also provided to the Public Body.

[para 2] The Complainant's submissions for the Ministerial Review made accusations of wrongdoing against specific teachers with whom her son had come into contact. On receiving the Complainant's submissions, the principal of the Public Body ("the principal") disclosed the content of the submissions to the teachers who had been accused of wrongdoing ("teachers" or "employees") by the Complainant. The teachers subsequently contacted the Alberta Teachers Association ("ATA"), which then issued a letter to the Complainant telling her to cease and desist what it regarded as her defamatory conduct. There is also some possibility that the principal disclosed the Complainant's submissions for the Ministerial Review to the ATA himself.

[para 3] Eventually, a law suit was filed by the principal (on his own behalf), the teachers, and ATA, as co-plaintiffs, against the Complainant for defamation ("defamation action" or "defamation lawsuit").

[para 4] As a part of the defamation lawsuit, the parties exchanged Affidavits of Records with one another. The records exchanged as a result of the defamation lawsuit also included the Complainant's submissions for the Ministerial Review. Although this

exchange of information was raised as a breach of the Act by the Complainant in her submission in this inquiry, it does not appear to have been part of the Complainant's original complaint or request for inquiry. Further, given that the records were disclosed as part of an Affidavit of Records, these would in any event be records in a court file which are exempt from the Act pursuant to section 4(1)(a) of the Act. Therefore, I will not be considering this disclosure of information in this Order.

[para 5] The principal and teachers were ultimately successful at the trial of the defamation action, which concluded in 2005.

[para 6] On March 2, 2009, the Complainant wrote to the Office of the Information and Privacy Commissioner ("this office") and complained that her personal information had been disclosed to the ATA contrary to the Act. The Commissioner authorized a portfolio officer to investigate and attempt to resolve the issues between the parties, but this was not successful, and on July 30, 2009, the Complainant requested an inquiry. Both the Complainant and the Public Body provided initial and rebuttal submissions.

II. INFORMATION AT ISSUE

[para 7] The information at issue in this inquiry is the Complainant's personal information that was allegedly disclosed by the Public Body to its employees, and by the employees to the ATA.

III. ISSUES

[para 8] The Notice of Inquiry dated, November 15, 2010 lists the issues for this inquiry as follows:

> **Issue A:**
>
> **Is the information at issue the Complainant's personal information as defined in section 1(n) of the Act?**
>
> **Issue B:**
>
> **Did the Public Body use and/or disclose the Complainant's personal information by providing it to its employees?**

Issue C:

In using or disclosing the Complainant's personal information by providing it to its employees, did the Public Body meet the requirements of section 38 of the Act (protection of personal information)?

In answering this question, the parties may consider the extent of the obligations of a Public Body, when it conveys personal information of third parties to its employees for work-related purposes, to limit or try to limit the manner in which the employees use or disclose that information, and whether the Public Body met any such obligations in this case.

[para 9] In its initial submissions, the Public Body also raised the issue of whether this inquiry should proceed given that the basis for the complaint arose in 2001 and a complaint was not made to this office until 2009. This is a valid issue and one which I will deal with as a preliminary issue.

[para 10] As well, the parties chose to provide submissions mainly on the issue of whether there was an unauthorized disclosure by the Public Body to the ATA and provided little argument on the applicability of, and the Public Body's adherence to, section 38 of the Act – which is the issue that was framed for this inquiry.

[para 11] To address this latter fact, it is necessary for me to comment on the manner in which the issue was framed. The facts as alleged by the Complainant involve a disclosure *by the Public Body to the ATA*. However, it is my understanding that the personal information in this case was initially disclosed by the principal to the teachers for the purpose of conducting the Ministerial Review (which I will refer to the as the "institutional purpose"), and was subsequently disclosed *by the teachers* to the ATA for the purpose that action could be taken against the Complainant (both a "cease and desist" letter, and, ultimately, a civil action) relative to statements she had made about them. (I note that this is also a "use" of the information by the teachers and principal.)

[para 12] As the latter purpose seemed to be a private purpose of the principal and teachers (and possibly of the ATA), rather than the purpose of the Public Body, the facts were understood by this office as involving disclosure by the Public Body *only to the teachers* (rather than to the ATA), and the subsequent disclosure by the teachers to the ATA was regarded as a private action rather than one of the Public Body. The question relative to the Public Body was thus whether in providing the personal information of the Complainant to the teachers, it was required to, and did, appropriately secure the information against subsequent unauthorized use (which it might have done by, for example, advising the teachers that they were not to use the information for their own private purposes).

[para 13] However, the submissions of the Public Body suggest that this may have been an improper understanding or interpretation of the facts. I say this first because the

Public Body appears to have accepted, by reference to its submissions and the "admitted disclosure" referred to therein, that it is appropriate to characterize the facts as a disclosure of the Complainant's personal information *by the Public Body to the ATA* (rather than only to the teachers), which suggests that it regards the teachers' disclosures to the ATA (and possibly also their use of the information to institute a legal proceeding) as having been done by the Public Body acting through the agency of the teachers.

[para 14] As well, there is some suggestion in the evidence provided by the Complainant that the principal may have disclosed the Complainant's submissions to the ATA himself. On examination at the trial of the defamation action, the principal could not say for certain that he had not provided this information to the ATA himself. However, the Court in the defamation lawsuit was later made aware of a fax from one of the teachers to the ATA which disclosed the Complainant's submissions for the Ministerial Review. Thus I conclude that the teachers disclosed the Complainant's submissions for the Ministerial Review to the ATA but, a possibility remains that the principal also disclosed this information.

[para 15] In view of these considerations, I will first address the question, set out in the Notice of Inquiry, of whether the Public Body properly secured the information against subsequent unauthorized disclosure when it initially provided the information to the teachers.

[para 16] As well, in case it is proper to regard the information disclosure to the ATA, (and the use of the information for instituting a legal proceeding), as the act of the Public Body done through the agency of the teachers and principal, I will also consider whether the Public Body can be held responsible as having disclosed the information without authorization to the ATA.

IV. DISCUSSION OF ISSUES

Preliminary Issue:

[para 17] In its initial submissions, the Public Body argued that although there is no limitation period in the Act, this office ought to refuse to hold this inquiry, pursuant to section 70 of the Act, because of the length of time that elapsed between the alleged disclosure of the Complainant's personal information and the Complainant's complaint to this office. The Public Body argued that this has caused it actual prejudice because key witnesses have retired or moved, document collections may now be incomplete, and memories have faded.

[para 18] The Complainant argued that applying section 70 of the Act and refusing to hold this inquiry would prejudice her.

[para 19] Section 65(3) of the Act gives a person the right to make a complaint to this office if he or she believes that his or her own personal information has been collected, used, or disclosed in contravention of the Act. Section 66 of the Act then states:

66(1) To ask for a review under this Division, a written request must be delivered to the Commissioner.

(2) A request for a review of a decision of the head of a public body must be delivered to the Commissioner

(a) if the request is pursuant to section 65(1), (3) or (4), within

(i) 60 days after the person asking for the review is notified of the decision, or

(ii) any longer period allowed by the Commissioner,

…

[para 20] It is not clear whether and how the time limitations in section 66(2)(a) of the Act apply to a complaint (in contrast to an access request). An allegedly wrongful disclosure of personal information may not consist of a decision made by the head of a public body and indeed in this case the decision to disclose was made by an employee. As well, arguably the language of the provisions is such that it should be interpreted as applying only to decisions respecting requests for access. On this interpretation the Public Body is right that there is no applicable limitation period – either to this complaint or to complaints generally. This interpretation is supported by the fact that complainants are often not immediately aware of when their personal information has been collected, used or disclosed by a public body.

[para 21] Alternatively, section 66(2)(a) of the Act does apply, in which case the Complainant is beyond the timeline set out in section 66(2)(a)(i) of the Act. As the Complainant herself points out, the principal admitted to disclosing the information to the teachers at the defamation trial which occurred in October of 2005, and the complaint was not received by this office until 2009.

[para 22] Even if section 66(2)(a) of the Act applies, however, section 66(2)(a)(ii) of the Act allows the Commissioner to exercise his discretion to allow a complaint to be accepted for review beyond the 60 day timeline. By accepting this complaint and referring it to mediation, and then to inquiry, the Commissioner has exercised his discretion to accept the Complainant's request for review beyond the 60 days.

[para 23] As the Commissioner has made this decision, it is not within my authority to review it. If the Public Body wanted to have the Commissioner's decision to exercise his discretion under section 66(2)(a)(ii) of the Act reviewed, the proper course of action would have been to ask the Court to judicially review his decision. As this did not happen, I will continue with this inquiry.

A: Is the information at issue the Complainant's personal information as defined in section 1(n) of the Act?

[para 24] Section 1(n) of the Act states:

> *1(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 25] As I will explain further below, there is some disagreement between the parties as to what information was actually disclosed by the Public Body to its employees. However, regardless whether the information that was disclosed by the Public Body was comprised of all of the information that the Complainant states was used/disclosed, or only the portion that the Public Body admits to using/disclosing, it is clear that the some of the information that was used/disclosed was the Complainant's personal information as defined in section 1(n) of the Act, including her name, address, and personal views and opinions.

[para 26] That being said, pursuant to sections 1(n)(viii) and 1(n)(ix) of the Act, the Complainant's opinions about the teachers are the teachers' personal information and not that of the Complainant. In the context of the Complainant's opinions about the teachers, the only personal information that is hers is that she gave the opinions. As well, it is arguable that the fact that it was the Complainant who stated these views about them is at the same time the personal information of the teachers.

B: Did the Public Body use and/or disclose the Complainant's personal information by providing it to its employees?

[para 27] The Public Body stated the following in its submissions:

> The Public Body used and/or disclosed the Complainant's personal information, contained in the Admitted Disclosures and the Disclosures with Consent, to its employees. Such disclosures were authorized by provisions in the FOIP Act.

[para 28] As well, it provided the following list of "admitted disclosures":

a. Notes of May 31, 2001 meeting prepared by [a teacher] and faxed to [an ATA representative];

b. Fax from [a teacher] to [an ATA representative], dated November 29, 2001 enclosing the Complainant's submission to the Ministerial Review; and

c. Record of telephone conversations between [the principal], [two teachers] and [an ATA representative].

[para 29] These "admitted disclosures" describe disclosures by the Public Body's employees to the ATA and not by the Public Body to the teachers. However, as I assume that the Public Body was the initial recipient of the information, I accept this as evidence that the Public Body disclosed the Complainant's personal information found in her submissions for the Ministerial Review to the teachers, who subsequently provided the

information to the ATA and used it to commence a defamation lawsuit against the Complainant.

[para 30] As well, the Complainant provided excerpts from the defamation trial transcript, which included evidence given by the principal. This indicates that during direct and cross examination, the principal admitted that he disclosed part of the Complainant's submissions for the Ministerial Review to the teachers mentioned in the submissions. The Public Body argues that only a portion of the Complainant's submission for the Ministerial Review was provided by the principal to the teachers. The Complainant believes that the entire submission (which was over 100 pages) was disclosed to the teachers. Based on the content of the transcript and the arguments of the Public Body, I believe it more likely that only portions of the Complainant's submission were disclosed to the teachers by the principal. However, it is clear in any case that the Complainant's personal information, consisting of her statements about the teachers as found in her submission to the Ministerial Review, were disclosed to the teachers, and this personal information of the Complainant was subsequently provided to the ATA and used in the defamation lawsuit.

[para 31] The evidence before me reveals that the ATA sent a "cease and desist" letter to the Complainant. I conclude that the purpose of the disclosure to the ATA by the teachers was to seek the ATA's assistance and support with regard to the statements the Complainant had made about them.

[para 32] I note that the "admitted disclosures" also refer to other documents, as described in a. and c. above. However, the Complainant appears to be concerned primarily with the part of her submission to the Ministerial Review that gave rise to the defamation action. In any event, given the content of the documents a. and c. above, I believe my finding would be equally applicable to all of the admitted disclosures. Therefore, I will focus for the remainder of this Order on the disclosure of the Complainant's submissions for the Ministerial Review.

[para 33] As noted earlier, the Public Body also mentions that information that was disclosed by the Public Body to its employees included "disclosures with consent". This category of information refers to records that were contained in the Affidavits of Records sworn by the plaintiffs, including the principal and the teachers, in the defamation action. This disclosure was not part of the original complaint. It would, in any event, be excluded from the scope of the Act by section 4(1)(a) which states:

> *4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*
>
> > *(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record*

> *of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;*

[para 34] This section provides that the Act does not apply to information in a court file. An Affidavit of Records is a filed document required in a court proceeding pursuant to the *Alberta Rules of Court*.

C: In using or disclosing the Complainant's personal information by providing it to its employees, did the Public Body meet the requirements of section 38 of the Act (protection of personal information)?

In answering this question, the parties may consider the extent of the obligations of a Public Body, when it conveys personal information of third parties to its employees for work-related purposes, to limit or try to limit the manner in which the employees use or disclose that information, and whether the Public Body met any such obligations in this case.

[para 35] Section 38 of the Act states:

> *38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 36] The Complainant argues that the Public Body failed to meet its obligation under section 38 of the Act (though it is not clear if she was referring to the Public Body's disclosing her personal information to its employees, or the employees, disclosing her personal information to the ATA.)

[para 37] The entirety of the Public Body's submission on section 38 is as follows:

> Yes. The Public Body has reasonable security arrangement against such risks as unauthorized access, collection, use, disclosure or destruction.

[para 38] Rather than presenting more substantial evidence or arguments relative to section 38, the Public Body chose to comment on the propriety of providing the personal information to the teachers in the context of the Ministerial Review. It argued that it was authorized to make the disclosures to the teachers under section 40 of the Act.

[para 39] The portions of section 40 that have been raised as, or may be, relevant, state:

> *40(1) A public body may disclose personal information only*
>
> *…*
>
> *(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*
>
> *(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 ... if the information is necessary for the performance of the duties of the ... employee ... ,*
>
> *(q) to a public body or a law enforcement agency in Canada to assist in an investigation*
>
> > *(i) undertaken with a view to a law enforcement proceeding, or*
> >
> > *(ii) from which a law enforcement proceeding is likely to result,*
>
> ...
>
> *(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,*
> …

[para 40] Specifically, the Public Body argued that sections 40(1)(q) and 40(1)(ee) of the Act authorize the Public Body to disclose the information to the teachers. The Public Body presented no compelling evidence that the information was disclosed to the ATA for the purposes of investigating the allegations made by the Complainant against the teachers and possibly disciplining the teachers. As well, I do not accept the Public Body's argument that the teachers were in any "imminent danger". Therefore, I do not agree with the Public Body's reliance on either of these provisions.

[para 41] However, I have no doubt that the Public Body was right to disclose the Complainant's comments about the teachers' activities to the teachers in the context of the Ministerial Review. This is clearly authorized under section 40(1)(c), as well as 40(1)(h). Teachers who were implicated in a Ministerial Review of the Public Body's dealings with a student, especially where accusations were made against them, must obviously be told about the accusations so that they can provide related information, as this will be necessary information for the conduct of the Ministerial Review. Disclosure of the information to the teachers is for the same purpose it was collected – to conduct the Ministerial Review – and is also necessary for the performance of the duties of the teachers to participate in the review.

[para 42] However, this conclusion does not help to address the question posed for the inquiry. That question is not whether the Public Body was authorized to disclose the information to the teachers for the purposes of the Ministerial Review (which it clearly was), but rather whether, when it did so, it was required, by section 38 of the Act, to ensure that the teachers would not subsequently disclose, or use, the information for the purposes for which they ultimately disclosed and used it.

[para 43] Since the Public Body said nothing further on this point in its submissions, I cannot find that it took any steps to ensure that no such subsequent use or disclosure would happen. In fact, there is a suggestion in the testimony of the principal, in the transcript mentioned above, that at or near the time at which he gave the information to the teachers for the purpose of the Ministerial Review, he also advised or suggested that they may wish to or ought to give the information to the ATA. However, his views as to what further action on the part of the teachers or the ATA that might entail were not made clear. Neither is it clear if he was making these comments on behalf of the Public Body or only as a function of his personal relationship with the teachers.

[para 44] My answer to the section 38 question is that the Public Body was not obliged to ensure that the teachers would not disclose and use the fact that the Complainant had made certain statements about them for the purpose of asserting their rights against the Complainant in the circumstances of this case.

[para 45] This conclusion is based on my view of the relationship between sections 38 and 40(1)(b) of the Act, as well as on an analysis of the application of section 17. Section 40(1)(b) permits a public body to disclose personal information when the disclosure would not be an unreasonable invasion of the Complainant's personal privacy. Whether section 40(1)(b) applies or not requires an analysis under section 17. If this analysis results in the conclusion that section 40(1)(b) does apply so as to authorize a disclosure of personal information by a public body, section 38 does not, in my view, require a public body to secure against further disclosure and use for the same purposes for which information is authorized by section 40(1)(b) of the Act to be so disclosed. If information may be disclosed for an authorized purpose, it may be further disclosed and used for that purpose by the person or persons to whom it is disclosed.

[para 46] As already noted, because I have insufficient evidence to determine whether the principal was acting on behalf of the Public Body in suggesting that the teachers take the information to the ATA, or if he was, what further use he contemplated, I am not sure it is correct to say that the Public Body disclosed the information so as to enable the teachers to have their rights respecting defamation addressed. Whether or not that is so, the significant point is that, for the reasons given below, section 40(1)(b) would authorize disclosure for that purpose in the present circumstances. Since that is the case, it follows that the Public Body was not obliged to ensure that such further use and disclosure of the information for the purpose of addressing the teachers' rights would not happen.

[para 47] As I have said above, the conclusion under section 40(1)(b) of the Act involves an analysis under section 17. The portions of section 17 of the Act potentially relevant to this inquiry state:

> *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.*
> *...*

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

…

(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 personal information is relevant to a fair determination of the applicant's rights,

…

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

…

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, … .

[para 48] Section 17(4)(g) of the Act applies to the Complainant's personal information in her submissions for the Ministerial Review. This provision creates a presumption that disclosing the Complainant's personal information would be an unreasonable invasion of her personal privacy. However, the Public Body must still examine the factors listed in section 17(5) of the Act and all other relevant factors to determine if the disclosure of the Complainant's personal information would be an unreasonable invasion of her personal privacy.

[para 49] With respect to section 17(5)(e), I note that the Complainant would be exposed to financial or other harm through disclosure of her statements about the teachers if, in the course of a law suit, her statements were held to have been unsubstantiated. This was, in fact, found to be the case in the defamation lawsuit, and the Complainant was ordered to pay minimal damages. However, according to the provision, the exposure to the harm must be "unfair". Given the findings of the Court in the defamation case, the

financial harm associated with having to pay the damages was not unfair. Thus, this would not be a factor weighing against disclosure of the information. A similar conclusion was reached by this office in Order 2000-026, which I will discuss further below.

[para 50] With respect to section 17(5)(f), the Complainant argues that her submissions in the Ministerial Review were confidential and ought not to have been disclosed.

[para 51] In Order 2000-026, the writers of a complaint letter submitted that it was their right to write a letter to an elected member of government confidentially, and stated that they feared being sued by the employee should their names be released. The Commissioner, following reasoning from the British Columbia and Ontario information and privacy offices, found that:

> When making serious allegations and requesting investigations, the Third Parties ought to have expected that the contents of their complaints and their identities would be disclosed so the Applicants could respond to the allegations. The Third Parties were seeking a remedy for their complaints, so they must have known that disclosure of the contents of the letters, including their personal information would be necessary.
>
> (Order 2000-026 at para 55)

[para 52] I agree with this reasoning. The Complainant made allegations about the teachers that could have seriously impacted their careers. The Complainant made these allegations in an attempt to convince the Minister that her son was treated unfairly by the teachers and the Public Body and ought to be given different academic assistance as a result. Given the nature of the allegations, it would not be reasonable for the Complainant to assume that her submissions would be kept confidential insofar as the teachers were concerned, as the Public Body needed to address and respond to the allegations as a part of its submissions for the Ministerial Review. Thus, confidentiality would not be a factor that would weigh against disclosure in the present circumstances.

[para 53] I do not believe that section 17(5)(h) of the Act would apply to the Complainant's personal information, as I do not see how disclosing the fact she had given the opinions would unfairly damage her reputation.

[para 54] It is also a relevant circumstance under section 17(5) that by reference to sections 1(n)(vii) and 1(n)(ix) of the Act, the opinions about the teachers are the personal information of these persons rather than of the Complainant. Only the fact that she gave the opinion is the personal information of the Complainant, and even this is arguably at the same time also the personal information of the teachers, interwoven with that of the Complainant. This is a factor that would weigh in favour of disclosure of the information.

[para 55] Finally, and most significantly, the information would be relevant to a fair determination of the teachers' rights to not be defamed, which would weigh powerfully in favour of disclosure of the parts of the statements that are the Complainant's personal information.

[para 56] Weighing these factors, I believe the Public Body would be entitled to disclose the information to the teachers on its own motion in reliance on section 40(1)(b), on the basis that such a disclosure would not unreasonably invade the Complainant's privacy in the face of the potentially defamatory nature of the statements and the legitimate right of the teachers to have this matter addressed, including by a court. Similarly, had the teachers made an access request for the information at issue in this inquiry, I do not believe it would entail an unreasonable invasion of the Complainant's personal privacy for the Public Body to provide this information to them.

[para 57] Had the Public Body disclosed the information to the teachers to enable them to pursue a defamation action, which, in my view, it would be authorized to do, there would be no limitation on the ability of the teachers to further disclose and use it for this purpose.

[para 58] To conclude, in my view, the information at issue in this case was such as could properly have been provided to the teachers by the Public Body for the purposes for which they subsequently disclosed and used it - to have their rights addressed with respect to the defamatory statements the Complainant had made about them. Therefore, this subsequent disclosure and use was not a "risk" that the Public Body needed to secure against when it provided the information to the teachers for its institutional purpose of conducting the Ministerial Review. Thus I find that the Public Body did not contravene section 38 of the Act.

ii. Can the Public Body be held responsible as having disclosed the information without authorization to the ATA?

[para 59] The discussion in the foregoing section informs my view as to whether, if it is correct to regard the information disclosure as one by the Public Body to the ATA, the Public Body can be held responsible for having disclosed it without authorization.

[para 60] As already discussed, the evidence in this inquiry suggests that the teachers (and possibly also the principal) disclosed the statements the Complainant had made to the Ministerial Review (including the limited parts of those statements that were the Complainant's own personal information) to the ATA, and used it in initiating a legal action, for their own, private purposes and not on behalf of or as an agent of the Public Body.

[para 61] However, I acknowledge that a public body can act only through its employees. Thus, when employees use information for a non-institutional purpose, insofar as a public body ought to have but failed to secure against this, it can itself be regarded as being responsible. To some extent, there is a parallel here with the cases in which this office has dealt with the conduct of Canadian Police Information Centre (CPIC) searches by police officers for their own personal purposes rather than for law enforcement purposes. In those cases, this office has held that the public bodies (police services) should have secured against such unauthorized uses of personal information,

and also that the public bodies contravened the Act when the police officers improperly used the information.

[para 62] I note some important distinctions between the CPIC cases and the present circumstance. One is that in the CPIC cases, the use and disclosure of the information made available to the police officers was not for a legitimate purpose such as addressing defamation – rather, it was for inappropriate personal purposes. Second, the information in this case – even that part of it which is the personal information of the Complainant – also has a personal aspect for the persons (the teachers) who subsequently used and disclosed it; indeed much of it, and perhaps even all of it, is or is also the teachers' own personal information. In contrast, the CPIC cases involved only the information of third parties, not of the police officers themselves.

[para 63] Most importantly, in my view, for the reasons discussed above, the Public Body was not obliged, in these particular circumstances, to secure the information against the risk that the teachers might disclose and use it for the purpose of having their rights addressed, including by a court in a case involving defamation. Indeed, as I have explained, the Public Body would be authorized to disclose the information to the teachers for these purposes. On that account, the Public Body cannot, in my view, be held responsible for having contravened the Act when its employees further disclosed and used the Complainant's personal information for these same purposes.

V. ORDER

[para 64] I make this Order under section 72 of the Act.

[para 65] I find the Public Body did not contravene section 38 of the Act, or disclose and use the personal information of the Complainant in contravention of the Act.

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Keri H. Ridley
Adjudicator