ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2011-007

July 5, 2011

UNIVERSITY OF CALGARY

Case File Number F4834

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Summary: The Complainant had taken sick leave while employed with the University of Calgary (the "Public Body") at its Doha, Qatar campus. She complained that during the course of her sick leave, the Public Body collected, used and disclosed her personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "Act").

The Public Body had a Staff Wellness Centre ("Wellness Centre") that administered sick leave for employees. The Wellness Centre was managed by third party contractors. The Public Body's Human Resource Department was also involved in managing the Complainant's sick leave.

The Adjudicator found that the third party contractors managing the Wellness Centre were acting on behalf of the Public Body when managing the Complainant's sick leave; therefore, the Act applies to the collection, use and disclosure of the Complainant's personal information by the contractors, as it related to the sick leave.

The Adjudicator determined that for the most part, the collection, use and disclosure of the Complainant's personal information was authorized under the Act. However, in some instances, the collection, use and disclosure was in contravention of the Act.

Statutes Cited: AB: *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5, *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 2, 33, 34, 39, 40.

BC: *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, ss. 27.

Ont: *Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c. F.31, ss. 39, *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c. M.56, ss. 29, *Revised Regulations of Ontario,1990, Regulation 823*, ss. 4.

Sask: *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, ss. 26, *Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, ss. 25.

Authorities Cited: AB: Orders 98-002, F2005-003, F2006-018, F2006-019, F2010-022.

I. BACKGROUND

[para 1] An individual complained that the University of Calgary (the "Public Body") collected, used and disclosed her personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act*.

[para 2] The Complainant is a former employee of the Public Body. She was employed at the Public Body's campus in Doha, Qatar, beginning in September 2007. She ceased employment following a short-term sick leave from May 2008 to October 2008; the sick leave claim concluded in November 2008.

[para 3] The Public Body contracts out the management of short term disability benefits ("sick leave") to a private sector Contractor that operates through the Public Body's Staff Wellness Centre ("Wellness Centre"). The Public Body's Human Resources ("HR") department and a few other Public Body employees were also involved with the sick leave management as well as with other personnel matters related to the Complainant.

[para 4] In her initial submission, the Complainant provided copies of emails exchanged between the various parties involved, as well as copies of what appears to be her entire client file from the Wellness Centre.

II. INFORMATION AT ISSUE

[para 5] The information allegedly collected, used and disclosed in contravention of the FOIP Act includes information about the Complainant's medical conditions and treatment, as well as information about her travel itinerary (e.g. destination, duration).

III. ISSUES

[para 6] The Notice of Inquiry, sent January 6, 2011, lists the issues as follows:

1. **Did the Public Body collect the Complainants' personal information in contravention of Part 2 of the Act?**

2. **Did the Public Body use the Complainants' personal information in contravention of Part 2 of the Act?**

3. **Did the Public Body disclose the Complainants' personal information in contravention of Part 2 of the Act?**

IV. DISCUSSION OF ISSUES

Issues outside the scope of this inquiry

[para 7] In her submission, the Complainant raised a number of issues that are outside the scope of this inquiry. Some of these issues concerned the appropriateness of the manner in which the job duties of various Public Body employees were performed. I have no jurisdiction to consider whether employees of the Public Body properly did their jobs, other than as to whether they collected, used and disclosed personal information in accordance with the Act. The Complainant also questioned whether the actions of the Public Body were in accordance with the *Alberta Human Rights Act*. I do not have jurisdiction with respect to that legislation.

[para 8] The Complainant raises attempts by various employees to collect personal information that they did not have the authority to collect. While an obvious attempt to collect personal information in an unauthorized manner may be understandably disconcerting to the Complainant, the Act contemplates only *actual* collections, uses and disclosures of personal information, and I am bound by those limits.

[para 9] Lastly, the Complainant raised several issues around the accuracy and completeness of her personal information collected by the Public Body. These issues are within the purview of the FOIP Act, but were not determined to be issues for this inquiry, so I will not be addressing them here.

1. **Did the Public Body collect the Complainants' personal information in contravention of Part 2 of the Act?**

[para 10] Before turning to the issues of collection, I will address whether the Contractors are providing services on behalf of the Public Body such that the Public Body is responsible for their collection, use and disclosure of the Complainant's personal information.

[para 11] In the course of the Complainant's sick leave, two different organizations provided services through the Public Body's Wellness Centre: Contractor #1 from May 2008 to June 2008, and Contractor #2 from July 2008 to November 2008. Contractor #2 also apparently subcontracted other doctors to provide independent medical examinations.

[para 12] Both of the Contractors are private sector organizations contracted by the Public Body to administer the Disability Management Program for the Public Body. The program is run through the Wellness Centre, which appears to be part of the Public Body. The program uses the Public Body letterhead. All staff members at the Wellness Centre stayed through the change-over between Contractors, and they all have email addresses affiliated with the Public Body; this suggests to me that they are employed directly by the Public Body rather than by the Contractor. Either way, for the reasons below, the FOIP Act applies to the staff of the Wellness Centre with respect to the Complainant's sick leave. The only apparent interaction between the Contractors and the Complainant (and client) is a consent form signed for each Contractor, each of which is on the Contractors' respective letterhead. The submission of the Public Body indicates that they consider the Contractors to be providing services on behalf of the Public Body, such that the rules in the FOIP Act will apply to the Contractors to the extent of the services provided. The Complainant makes a similar argument. I accept these arguments, and add that the Public Body is also responsible for the doctors subcontracted by the Contractors (or the Wellness Centre, as the case may be).

[para 13] This case involved some circumstances that are perhaps not common for the Public Body's management of sick leave benefits. For example, the Complainant was located in Qatar, and finding appropriate medical care took more effort than it might have in Canada. In addition, a leave of indeterminate length created logistical issues for the Public Body, specifically with respect to filling the Complainant's position (either temporarily or permanently), dealing with her housing, and managing residency issues.

Collection

[para 14] Authority for collecting personal information is found in section 33 of the Act. This section states

> *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.*

Previous orders have determined that managing human resources is an operating activity of a public body under section 33(c) (see Orders F2006-019, F2005-003).

[para 15] Additionally, section 34 sets out requirements with respect to the manner of collection as follows:

> *34(1) A public body must collect personal information directly from the individual the information is about unless*
>
> *(a) another method of collection is authorized by*
>
> *(i) that individual,*
>
> *(ii) another Act or a regulation under another Act, or*
>
> *(iii) the Commissioner under section 53(1)(h) of this Act,*
>
> *(b) the information may be disclosed to the public body under Division 2 of this Part,*
>
> *(c) the information is collected in a health or safety emergency where*
>
> *(i) the individual is not able to provide the information directly, or*
>
> *(ii) direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person,*
>
> *(d) the information concerns an individual who is designated as a person to be contacted in an emergency or other specified circumstances,*
>
> *(e) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary,*
>
> *(f) the information is collected from published or other public sources for the purpose of fund-raising,*
>
> *(g) the information is collected for the purpose of law enforcement,*
>
> *(h) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body,*
>
> *(i) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority,*
>
> *(j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,*
>
> *(k) the information is necessary*
>
> *(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or*
>
> *(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the*

Government of Alberta or a public body and is collected for that purpose,

(l) the information is collected for the purpose of informing the Public Trustee or a Public Guardian about clients or potential clients,

(m) the information is collected for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,

(n) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body, or

(o) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.

(2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, it could reasonably be expected that the information collected would be inaccurate.

[para 16] The Public Body listed several reasons for why it collected the Complainant's personal information, related to the management of the Public Body's occupational health services ("OHS") and general employee management:

- Managing the sick leave and establishing the need for sick leave with pay,
- Providing appropriate care,
- Obtaining confirmation of the Complainant's travel plans with respect to her travel benefits,
- Making decisions about the Complainant's continued housing benefits in Qatar,
- Determining whether the Complainant was fit to travel back to Canada while on medical leave to manage the employee's Residency Permit, and
- Managing the Complainant's Residence Permit.

[para 17] I agree that the above listed purposes are directly related to managing the Complainant's sick leave and other employment benefits (e.g. housing and travel), as well as personnel management.

[para 18] With respect to necessity, public bodies must be granted latitude in determining what personal information is necessary for a given purpose; previous orders

have stated that a public body's decision with respect to the necessity of information collected for a particular purpose should not be interfered with unless it is patently unreasonable (see Order 98-002 at para. 152 and Order F2006-018 at para. 18).

[para 19] There appear to have been two separate departments in the Public Body collecting the Complainant's personal information: the Wellness Centre, run by the Contractors, and the HR department. HR personnel on both the Calgary and Qatar campuses were involved but I have no reason to believe that they ran distinct offices (as opposed to simply having separate locations), so I will consider the actions of all the HR personnel as one group.

[para 20] Based on the evidence provided by the Complainant, the employees of the Wellness Centre that interacted with the Complainant consisted of OHS nurses, an OHS case manager, a Team Leader and two doctors acting as consultants (subcontracted by one of the Wellness Centre Contractors). These OHS staff members appear to have been directly employed by the Public Body (as opposed to being employees of the Contractor). Since the Contractor is acting on behalf of the Public Body with respect to the Complainant's sick leave, this distinction will not affect the outcome, and I will consider the OHS staff, any employees of the Contractor, and any person subcontracted by the Contractor, as one group.

[para 21] Although the Wellness Centre and the HR department were both managing the Complainant's sick leave, in their distinct capacities, the records of the Wellness Centre were specifically kept separate from the Public Body's own records, in order to preserve the confidential nature of the Wellness Centre's services. Prior to this inquiry, the Complainant had made an access request to the Public Body for records related to the same matters at issue here. In Order F2010-022, the Adjudicator considered the Public Body's response to that access request made by the Complainant. The Adjudicator determined that the Public Body did not have custody or control over most of the records of the Wellness Centre, or of the doctor associated with the Wellness Centre, for the purposes of Part 1 of the FOIP Act.

[para 22] The Wellness Centre functions included confirming the Complainant's medical eligibility for sick leave, setting up medical appointments and assessing the Complainant's progress. The consent form of Contractor #2 states that the Contractor's role is to clarify and understand the employee's condition, provide support for the employee's illness or injury, and evaluate the medical documentation to confirm eligibility for benefits and absence from work.

[para 23] The HR department was also concerned with ensuring the sick leave and disability claim were managed in accordance with the Public Body's overall benefits plan. It also administered the Complainant's other benefits (e.g. travel) and general personnel matters.

[para 24] The Complainant was required to supply a Fitness to Work form ("FTW form"), filled out by her physician, on a bi-weekly basis to the Wellness Centre. The

process described to the Complainant by staff at the Wellness Centre was that the Wellness Centre would update the Complainant's supervisor and HR as to the Complainant's fitness to work status, and would coordinate with HR on return to work plans.

[para 25] Other Public Body employees, such as the Complainant's supervisor, were involved in the collection, use and disclosure of the Complainant's personal information in relation to this incident. I will address the actions of these individuals separately.

Collection by the Wellness Centre

[para 26] The Wellness Centre collected information about the Complainant's medical history, diagnoses, prescriptions, appointments etc. Much of the information was collected indirectly, but some was collected directly from the Complainant. Given the function of the Wellness Centre – ensuring employees/clients are medically eligible for sick leave, providing the necessary information to the HR department to allow them to manage the benefits from their end, and assisting the employee/clients with their illness (e.g. help finding appropriate medical specialists) – the evidence I have been given indicates that the Wellness Centre collected the Complainant's personal information in accordance with section 33(c) of the Act.

Information that was collected by the Wellness Centre indirectly

[para 27] Over the course of her sick leave, the Complainant signed two consent forms: one at the beginning of her sick leave, and one when a new Contractor took over. The Complainant argued that on both forms, the personal information described is too broad. Specifically, the Complainant objects to the collection of diagnoses.

[para 28] The relevant portion of the first consent form reads:

> *I, [Complainant's name], authorize the release of personal information as follows:*
>
> *To/From: Occupational Health Consultants, Staff Wellness Centre*
>
> *To/From: [name and title of a Public Body HR staff member]*
>
> *Purpose: To provide [named HR staff member] with general wellness information*
>
> *Information to be provided consists of: Attendance, assessment, diagnosis, recommendations, ongoing progress*

[para 29] The relevant portions of the second consent form reads:

1. *I, [Complainant's name] consent to oral and written communication and information exchange regarding my health condition between Shepell-fgi's Disability Management Services, Great-West Life and their providers, provincial Workers' Compensation Boards, the University of Calgary Health & Wellness Consultant, any independent evaluators, agents and consultants acting on behalf of Shepell-fgi, any health care practitioner, licensed physician, medical practitioner, hospital, clinic, medical or medically related facility, rehabilitation providers, or any other organization, institute or person which has records or reports related to my health, and rehabilitation…*

2. *I, [Complainant's name] consent to oral and written communication and information exchange regarding my Fitness to Work information between Sheppel-fgi's Disability management Service and agents of the University of Calgary as required.*

3. *…*

4. *Shepell-fgi's role in the provision of Disability Management Services is to clarify and understand your condition, provide support to you for your illness or injury and to evaluate the medical documentation to confirm your eligibility for benefits and absence from work. On occasion, Shepell-fgi may use the services of an independent evaluator to assist with this determination.*

[para 30] The consent forms do not provide the Public Body authority to collect the information within the terms of the Act. Rather, the prohibition on collection imposed by section 33 can be overcome only if one of the exceptions in 33(a), (b) or (c) is met, and consent is not among these exceptions. For the collection of personal information that is authorized under section 33, consent as revealed by the filling out of such a form can constitute one ground on which a public body can base its authority to collect indirectly under section 34, specifically, section 34(1)(a)(i) (indirect collection permitted where authorized by the individual the information is about).

[para 31] The Complainant mentions a change of consent form requested by HR in mid-June, which would have allowed HR to have access to FTW forms. It is not clear to me why HR would need to see these forms, since it is the role of the Wellness Centre to receive these forms and relay the employee's Fitness to Work status. Some confusion on this point was also noted by Wellness Centre staff in their files provided to me by the Complainant. However, I have no evidence that such a consent form was provided by the Complainant or relied on by HR or the Wellness Centre and so can provide no further comment. Other than the first FTW form, which was supplied to HR by the Complainant herself, I have no evidence that access to these forms was provided to HR by any Wellness Centre staff.

[para 32] The Complainant argues, with respect to the second (and more thorough) consent form, that although it permits the Contractor to "access information from a broad range of health care providers, it does not state that this cancels the employee's right under the Privacy Act to know what information is being requested, or from whom, and what it will be used for, and who it will be disseminated to, before it is requested."

[para 33] The Complainant also states that her personal information was inappropriately collected from sources other than herself.

[para 34] A public body is required to provide notice to individuals when information must be collected directly from the individual under section 34(1) of the Act. This notice must address the purpose of the collection, the legal authority, and contact information for someone in the public body who can answer questions about the collection (section 34(2)). However, notice is not required if the public body collects the personal information from a source other than the individual the information is about under one of the exceptions to direct collection set out in section 34(1).

[para 35] The Public Body argues that it was authorized to collect the Complainant's personal information indirectly under section 34(1).

[para 36] I found above that the purposes listed by the Public Body for the collection of the Complainant's personal information are directly related to managing the Complainant's sick leave and other employee benefits. As such, I find that section 34(1)(n) gave the Public Body authority to collect this information indirectly, in addition to, or regardless of, whether she had consented to such indirect collection in accordance with section 34(1)(a)(i).

[para 37] Given that, I do not need to address the application of other provisions in section 34(1) with respect to that information.

Information collected by the Wellness Centre directly

[para 38] Section 34(2) requires notice to be given to an individual whose personal information is collected by a public body, and is required under section 34(1) to be collected directly. Section 34(1) states that a public body must collect personal information directly *unless* one of the exceptions in section 34(1)(a) – (o) applies. Any collection done for a purpose that falls under section 34(1)(a) – (o) is not *required* to be done directly (although neither is it *required* to be done indirectly; the public body has a choice). The literal interpretation of section 34(2) is that notice is not required when information is collected for a purpose under section 34(1)(a) – (o).

[para 39] I adopt this interpretation despite the fact that in Order F2006-019, the Adjudicator disagreed with the literal interpretation of section 34(2). The Adjudicator instead found that the requirement to notify individuals under section 34(2) applies even where the public body *could have* collected the information indirectly but did so directly. The Adjudicator said:

> To say that a public body is not required to fulfill the notice requirements of subsection 34(2) if it chooses to, but does not have to, collect information directly would defeat fair information practices and the overall intent of section 34. It would allow public bodies to collect information directly – but surreptitiously – from individuals simply on the basis that they had an option, which they did not use, to collect the information indirectly. In my view, this would amount to conscripting individuals into disclosing information about themselves, and would go against the general principle in section 34 according to which individuals should know the purpose and legal authority for a collection of information before they provide their own personal information.
>
> Accordingly, I conclude that a public body either may collect information indirectly, and without notice, on one of the limited bases set out in subsection 34(1) or – if it is required to or chooses to collect information directly – it should meet the notice requirements set out in subsection 34(2) (unless subsection 34(3) applies). This interprets the exceptions in section 34 narrowly and gives a fair, large and liberal construction that best ensures the attainment of the objects of the Act. I shall call this interpretation of section 34 the "modern" interpretation.
> [Order F2006-019 at paras. 27 and 28.]

[para 40] The Adjudicator took the view that the literal interpretation of section 34(2) relies on what a public body can do or could have done, instead of what they *did* or *will* do, and that "the literal interpretation requires a consideration of the purpose or nature of the collection in order to determine whether an indirect collection is possible under any of the enumerated situations set out in paragraphs 34(1)(a) through (o)…" (at para 23). The Adjudicator concluded that for a public body's duty to depend on a hypothetical situation – whether personal information *could have been* collected indirectly – is somewhat absurd.

[para 41] I take the Adjudicator's point that basing a duty or requirement on a hypothetical situation instead of what the public body actually *did*, may be problematic.

[para 42] However, instead of focusing on the manner of collection – was it in fact direct or indirect collection – I focus on the actual circumstances of the collection – was the circumstance one that falls within the exceptions listed in section 34(1)(a) – (o)?

[para 43] Section 34(1)(a) – (o) is a list of situations for which the Legislature has determined that a public body need not collect personal information directly from the individual. An examination of the list indicates that this is a list of circumstances in which direct collection would not be feasible or practicable. In other words, a group of situations has been identified, for which the purpose of the collection will often be best met by indirect collection. For example, a public body may collect indirectly when the collection is for the purpose of determining eligibility for an honour or award (section 34(1)(e)), or for law enforcement (section 34(1)(g)).

[para 44] Section 34(3) offers another exception to the requirement to collect personal information directly. However, it stands in contrast to the exceptions found in section 34(1)(a)-(o) in that it contains a test: the head of the public body must reasonably

expect that the information collected would be inaccurate if it were collected directly. This section seems to require some examination of a particular circumstance in order to determine whether inaccuracy is reasonably likely. The exceptions in section 34(1)(a) – (o) do not require such examination by the head of the public body; if the situation falls within one of the enumerated exceptions, indirect collection is permitted, whether or not collecting directly from the individual would reasonably be expected to result in inaccurate or otherwise deficient information.

Other jurisdictions

[para 45] In comparison to Alberta's FOIP Act, both the British Columbia and the Ontario *Freedom of Information and Protection of Privacy Act* (FIPPA) have equivalents of section 34 that have been constructed more narrowly than the Alberta provision. For example, the provision in the British Columbia FIPPA (section 27) states:

> *27(1) A public body must collect personal information or cause personal information to be collected directly from the individual the information is about unless*

[subsections (a) – (c) enumerate exceptions to direct collection similar to sections 34(1)(a), (b), (c), (e), (g) and (h) in the Alberta FOIP Act]

> *(2) A public body must ensure that an individual from whom it collects personal information or causes personal information to be collected is told*
>
> *(a) the purpose for collecting it,*
>
> *(b) the legal authority for collecting it, and*
>
> *(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.*
>
> *(3) Subsection (2) does not apply if*
>
> *(a) the information is about law enforcement or anything referred to in section 15 (1) or (2),*
>
> *(b) the minister responsible for this Act excuses a public body from complying with it because doing so would*
>
> *(i) result in the collection of inaccurate information, or*
>
> *(ii) defeat the purpose or prejudice the use for which the information is collected, or*
>
> *(c) the information*
>
> *(i) is not required, under subsection (1), to be collected directly from the individual the information is about, and*
>
> *(ii) is not collected directly from the individual the information is about.*

[para 46] Not only are there fewer exceptions permitting indirect collection, the notice provision in section 27(2) (the equivalent of Alberta's section 34(2)) requires a public body to notify individuals from whom personal information is being collected if

- the information is about that individual, *or*
- the information is being collected from that individual, but pertains to another individual (i.e. information about one individual is being collected indirectly from another individual).

[para 47] Lastly, section 27(3) of the BC Act provides fewer exceptions to the notice requirement than the requirement to collect personal information directly. Section 27(3)(c) explicitly states that notice is *not* required if indirect collection is permitted under the provision, *but only if* the information is *in fact* collected indirectly. In other words, the BC Legislature specifically addressed the situation with which I am now dealing and unequivocally stated its intention that unless one of the other two exceptions in section 27(3) apply, direct collection requires notice even if the information is collected in one of the circumstances in which indirect collection is permitted under section 27(1) (this provision was added to the BC FIPPA Act in 2003, 10 years after the BC FIPPA came into force).

[para 48] Ontario has both FIPPA, which applies to provincial entities, and a separate but similar Act that applies to municipal entities (the *Municipal Freedom of Information and Protection of Privacy Act*, or MFIPPA). The Act that applies to provincial entities permits indirect collection in enumerated situations similar to those in both Alberta's and BC's Acts (section 39(1) of Ontario's FIPPA). Notice to individuals is required regardless of whether the collection is direct or indirect, and there are very limited exceptions to notice:

> *39(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,*

[subsections (a) – (h) enumerate exceptions to direct collection similar to sections 34(1)(a), (b), (e) and (g) in the Alberta FOIP Act]

> *(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,*
>
> *(a) the legal authority for the collection;*
>
> *(b) the principal purpose or purposes for which the personal information is intended to be used; and*
>
> *(c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection. R.S.O. 1990, c. F.31, s.39(2).*
>
> *(3) Subsection (2) does not apply where the head may refuse to disclose the personal information under subsection 14(1) or (2) (law enforcement), section*

14.1 (Civil Remedies Act, 2001) or section 14.2 (Prohibiting Profiting from Recounting Crimes Act, 2002). 2002, c. 2, s. 19(6); 2007, c. 13, s.43(3).

[para 49] Section 29 of Ontario's municipal Act is very similar but also provides an exception to the notice requirements where the Minister waives the notice (section 29(2)) or where the regulation otherwise permits. Section 4 of the General regulation under the municipal Act states:

> *4(1) An institution is not required to give notice of the collection of personal information to an individual to whom it relates if the head complies with subsection (2) and if,*
>
> *(a) providing notice would frustrate the purpose of the collection;*
>
> *(b) providing notice might result in an unjustifiable invasion of another individual's privacy; or*
>
> *(c) the collection is for the purpose of determining suitability or eligibility for an award or honour. R.R.O. 1990, Reg. 823, s. 4(1).*
>
> *(2) For the purpose of subsection (1), the head shall make available for public inspection a statement describing the purpose of the collection of personal information and the reason that notice has not been given. R.R.O. 1990, Reg. 823, s. 4(2).*

[para 50] These are examples where the exceptions to notification in public sector access and privacy legislation are explicitly narrow. As I have stated, I do not believe that the equivalent exceptions in Alberta's legislation are so narrow. If the Alberta Legislature had wanted to adopt such an approach, it was open to it to do so.

[para 51] Alberta's FOIP Act is not the only example of public sector access and privacy legislation that provides a broad exception to notification. Saskatchewan's legislation has a very similar provision. Saskatchewan's *Freedom of Information and Protection of Privacy Act* has the same requirement to collect personal information directly from the individual it is about, with given exceptions. The notice provision has exceptions very similar to Alberta's:

> *26(2) A government institution that collects personal information that is required by subsection (1) to be collected directly from an individual shall inform the individual of the purpose for which the information is collected unless the information is exempted by the regulations from the application of this subsection.*
>
> *(3) Subsections (1) and (2) do not apply where compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.*

(Like Ontario, Saskatchewan has access and privacy legislation for both provincial bodies and local bodies (the FOIP Act for provincial bodies, and the *Local Authority Freedom of Information and Protection of Privacy Act* for local bodies). The provisions are substantially the same on this point; the relevant sections in the Act for local bodies are sections 25(2) and 25(3)).

Statutory Interpretation

[para 52] In Order F2006-019, the Adjudicator made the following remarks with respect to statutory interpretation:

> [T]he modern approach to statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*R v. Sharpe*, 2001 SCC 2 at para. 33, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). I also note section 10 of the Alberta's *Interpretation Act*, which states: "An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects."

Section 2 of the Act provides the principles of the Act; section 2(b) states:

> 2 *The purposes of this Act are*
>
> …
>
> *(b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,*

[para 53] The Adjudicator concluded that section 34(2) must be read with this principle in mind, and that doing so indicates that section 34(2) should be interpreted narrowly.

[para 54] A public body is limited by section 33 in the personal information it is permitted to collect (by any means); if the collection is authorized, section 34(1) requires direct collection unless an exception applies. My view is that sections 33 and 34(1) provide the balance by which the Legislature intended to fulfill the purpose set out in section 2(b), while maintaining a public body's ability to fulfill its mandate and operate effectively. It is foreseeable that in the situations listed in section 34(1)(a) – (o), there would often be concerns about the accuracy and reliability of the information if collected directly; presumably for that reason, the indirect collection is permitted in every case, regardless of whether accurate and reliable information could be obtained directly from the individual in any particular circumstance.

[para 55] The literal interpretation of section 34(2) mirrors the balance in section 34(1). I agree that notifying individuals as to the purposes for collecting personal information allows those individuals to make decisions about whether to give their personal information to a public body in a particular situation. However, if section 34(1)

permits the public body to collect the personal information indirectly, an individual's decision to not provide the information him or herself is not as meaningful (although I would not argue that it is completely meaningless to have an opportunity to refuse to cooperate if an individual so chooses). To me it seems that the real control over the manner in which personal information is collected lies in section 34(1) and the balance struck by the Legislature in that provision is mirrored in section 34(2).

[para 56] If section 34(2) is interpreted to require notice in all cases of direct collection regardless of whether personal information could be collected indirectly under section 34(1)(a) – (o), the only exception that would permit a public body to *not* give notice when collecting directly is in section 34(3). However, for the reasons below, I find that section 34(3) is too narrow to support this as a practicable interpretation.

[para 57] Section 34(3) provides an additional exception to both section 34(1) and 34(2); both the direct collection and notice provision may be waived in circumstances additional to those listed in section 34(1)(a) – (o), if the test in section 34(3) is met. The BC and Ontario Acts quoted above have similar exceptions, but they only create an exception to the notification provision; they do not add a new exception to the requirement to collect personal information directly. It is clear in both BC's and Ontario's legislation that the notice requirements do not simply mirror the direct collection requirements. Instead, notice is required when personal information is collected directly, even where indirect collection is permitted. The exceptions to giving notice are distinct from the exceptions to direct collection. If Alberta's notification requirement were similarly intended to apply to all direct collections regardless of whether an exception in 34(1) *could* apply, with section 34(3) providing an exception to notice where notice would reasonably be expected to result in inaccurate information, a provision similar to those in the BC or Ontario Acts would have more clearly expressed this intention.

[para 58] Under section 34(3), the head of the public body must turn his or her mind to the collection to determine that inaccurate information is reasonably expected. This might create a burden, especially in the law enforcement arena, where notice would often result in inaccurate or unreliable information. Perhaps many of these situations can be foreseen such that the test in section 34(3) may be met; however it seems possible that a police officer might find him or herself in a situation where they have the opportunity to collect information directly from a suspect but the situation was unforeseen and so the test in section 34(3) cannot be met. Both the BC and the Ontario Acts provide an exception to notice for law enforcement. In other words, interpreting section 34 to require notice upon all direct collections regardless of whether the circumstances fall under section 34(1)(a) – (o) with section 34(3) providing the only exception to notice, may result in problematic situations in which public bodies may have to provide notice even where doing so would defeat the purpose of the collection.

[para 59] Another example is where a public body is collecting personal information directly from an individual to determine suitability for an award; it might be difficult in that situation for that public body to find that it is reasonably expected that the

prospective award recipient would provide inaccurate information such that section 34(3) would provide an exception to the notice requirement.

[para 60] It would appear therefore, that section 34(3) is too narrow to apply in some situations where a notice of a direct collection would defeat the purpose of the collection. In contrast to section 34(3), BC's and Ontario's Acts contain broader exceptions to notice that appear to address these concerns. BC's Act authorizes the minister responsible for the Act to waive the notification requirement where notification would result in inaccurate information, or where it would defeat the purpose of the collection or prejudice its use (section 27(3)(b)). Ontario's Act authorizes the minister responsible for the Act to waive the notification requirement; no purposes or tests are specified (section 39(2) in the provincial Act and 29(3)(b) in the municipal Act).

[para 61] Therefore I find that section 34(3) does not create a workable "stand-alone" exception to providing notice when collecting personal information directly, which supports the argument that public bodies are not required to give notice when collecting personal information, whether directly or indirectly, in circumstances under section 34(1)(a) – (o).

[para 62] A number of the exceptions under section 34(1) are not situations in which direct collection is even practically possible (e.g. sections 34(1)(a)(i) or (iii), 34(1)(b), (c), (d), or (f)). The remaining exceptions, where indirect collection is permitted but direct collection is possible, do not create the circumstances in which individuals lose control over their personal information that they would have otherwise had. As noted above, control over one's own personal information may be somewhat illusory or insignificant given that it is open to the public body to collect the information from another source if the individual is unwilling to provide it. This argues against a requirement for notice to be given in such circumstances.

[para 63] Additionally, for most of the situations in which indirect collection is permitted but the collection is being done directly, individuals will be aware that a public body is collecting their personal information and why this is being done (with some exceptions such as surveillance). For example, when an individual applies for a social benefit program and the public body supplying the program collects financial information from that individual, the individual is likely aware that this is to determine eligibility. Further, it remains open to an individual to ask questions, and refuse to provide information, forcing the public body to use its authority to collect the information indirectly. For this reason, if for no other, I would strongly encourage an automatic default practice of providing proper notice as set out in section 34(2) for any case of direct collection regardless of the absence of a legal requirement, unless notice would defeat the purpose of the collection.

[para 64] Returning to the facts of this case, in accordance with these conclusions and in contrast to the conclusion reached in Order F2006-019, I find that where the actual circumstances of the collection of the Complainant's personal information by the Public Body fell within one of the exceptions to direct collection under section 34(1), the Public

Body was not required to give the Complainant notice under section 34(2). Since I have found that the purposes for the collection fall under section 34(1)(n), and that the Complainant authorized the indirect collection when she signed the consent forms (within the terms of section 34(1)(a)(i)), the Public Body was not required to give the Complainant notice under section 34(2).

[para 65] Another instance of direct collection by the Wellness Centre relates to the Complainant's complaint that an Independent Medical Examination ("IME") was conducted for purposes other than those about which she was told. The purpose of an IME is to provide a report to the Wellness Centre concerning the Complainant's fitness to work. Wellness Centre staff told the Complainant via email that the purpose of her visit to the doctor who performed the IME was to quicken her access to medical treatment once she returned to Canada, as she would have had to wait a few weeks to see her own doctor. However, when she arrived for her appointment, the doctor told the Complainant that he was not *treating* her but was rather conducting an IME for her employer. It is my understanding that the normal situation for IMEs is that they are for the benefit of the employer/insurer and not the employee/client.

[para 66] The doctor performing the IME was contracted by the Wellness Centre and is therefore performing a service on behalf of the Public Body. Since the doctor interviewed the Complainant for the purpose of creating a medical report for the Wellness Centre, the collection was for the purpose of managing the Complainant's sick leave. Additionally, the second consent form signed by the Complainant stated that the Contractor may use the services of an independent evaluator during the course of its services to the Complainant. As the purposes for collection fall under the exceptions to direct collection (sections 34(1)(a)(i) and 34(1)(n)), notice was not required under section 34(2).

[para 67] The Complainant alleges that the Wellness Centre staff resorted to "trickery" to get the Complainant to attend the IME (and provide her personal information to the doctor). If it is a requirement of sick leave for an employee to attend an IME in order to provide a medical report to the Wellness Centre, there would be no need to resort to subterfuge. From the emails provided to me, it appears that the staff member believed that the IME would provide medical support to the Complainant, perhaps fulfilling a dual role. This does not indicate bad faith on behalf of the Wellness Centre.

[para 68] It appears from the submissions and evidence before me that the Complainant had some misunderstanding about who would be collecting her personal information, who would be using it, and with whom it would be shared. For example, the first consent form signed by the Complainant named a particular HR staff member to whom the Wellness Centre would disclose the Complainant's personal information. Arguably this form was somewhat misleading: by naming one HR staff member, the form might be taken to imply that other HR staff would not be privy to the information. It is understandable then, that the Complainant was surprised by the involvement of other HR staff, even if their involvement was in accordance with the Public Body's usual processes. Some of the issues in this case may have been prevented had the Public Body

clearly communicated the processes for managing sick leave claims, and the people that might be involved. However, given that the collection was authorized for the purposes for which each individual used the information, I find that these circumstances do not constitute a contravention of the Act.

Collection by HR

[para 69] The Complainant's concerns include that an HR staff member read an FTW form. An email from an HR staff member to the Wellness Centre indicates that the Complainant sent her first FTW form to HR instead of to the Wellness Centre. This may have been because the Complainant had more contact with this HR person than Wellness Centre staff, or it may have been due to confusion about the proper procedure.

[para 70] The email indicates that the HR staff member may have read the FTW form, which was sent as an attachment. However, there is no evidence that the HR person requested the FTW form from the Complainant, or otherwise intended to collect the information. If the attachment was in fact opened (of which there is also no conclusive evidence), it may have only been to ascertain the general nature of the contents. Notably, the form appears to have been given to the HR staff member, and forwarded from her to the Wellness Centre (on request of the Wellness Centre) on the same day. As part of the normal process for sick leave, HR staff do not receive all the information on a FTW form, only the FTW status of the employee; therefore collection by HR of this form would not be authorized under section 33. However, I accept that this action on the part of the staff member (assuming the HR staff member read the attachment) was inadvertent (although it indicates that the process for the collection, use and disclosure of personal information for the purposes of managing sick leave may not have been clearly explained to the Complainant from the outset). Since the Complainant emailed the FTW form to the HR staff member herself, and the HR staff member forwarded it on to the appropriate person at the Wellness Centre within hours of receiving the email, I regard it as more probable that there was no intentional collection of the information by this person, I find that there was no collection, and thus that the Act was not contravened.

[para 71] I turn to the aspect of the Complaint that concerns a travel itinerary. This relates to whether the Complainant may have taken an unauthorized vacation, and whether the itinerary was collected by HR in order to make a determination about this.

[para 72] The background facts are as follows. When the Complainant was offered her position, which began in September 2007, she was given an outline of her benefits. According to the offer letter, after six months of employment, she became eligible for a return trip to Canada, subject to approval of her supervisor and the CEO (which seems to be the Vice-Provost). The Annual Travel Guidelines policy document, provided to me by the Complainant, indicates that all vacation time must be approved by a supervisor. Flights booked with the intent of redeeming the benefit are to be arranged through a designated travel agent, who then sends a quote to HR for approval. Once approved, the employee may make changes to the ticket (e.g. change the destination), but is responsible for any additional costs.

[para 73] The Complainant made a round trip from Qatar to Canada for treatment, in the middle of her sick leave. This trip seems to have been paid for using the travel benefits described above. In its submission, the Public Body stated that it does not normally support vacation during a sick leave. At the request of HR, Wellness Centre staff reminded the Complainant of this policy, and ensured she knew that she would still be required to provide bi-weekly updates on her fitness to work.

[para 74] From the emails, the HR person was aware that the Complainant was returning to Canada to seek treatment from doctors with whom she had previously undergone treatment; in fact, the Complainant had been encouraged to return to Canada for treatment. A week before the Complainant left, an HR staff member contacted the travel agent and requested the Complainant's itinerary, which was provided.

[para 75] At this point, the HR person disclosed some of the itinerary details to the Complainant's supervisor, including information about a week's layover before the Complainant reached Canada, which seemed to cause the HR person some concern. However, this same day, the HR person emailed the Complainant, telling the Complainant that HR had been informed about the recommendation for medical treatment in Canada, and wishing the Complainant a good flight. This email did not indicate any concern about vacation being taken during sick leave.

[para 76] The Public Body cites the fact that vacation is not normally permitted during sick leave as a reason for collecting the travel itinerary. If HR was investigating a possible breach of travel benefits, the collection of an employee's itinerary may be authorized under section 33(c).

[para 77] However, in my view, the Public Body has provided insufficient evidence as to whether there was a management purpose, given the facts of the situation, to collect the travel itinerary. Despite the fact that the Complainant was reminded about the Public Body's vacation/sick leave policies , I cannot tell, based on the facts before me, whether prior to collecting the itinerary, there was some indication that the Complainant was not or would not comply with these. Further, although there is some discussion of a layover, I cannot tell whether this was known or suspected before the itinerary was collected (hence in some way prompted the collection), nor was it explained to me whether or how the fact of a layover might contravene the terms of the policy such that an investigation was or might be warranted. Therefore, I find that the Public Body has not demonstrated to me that the collection of the travel itinerary was required for administering either the Complainant's sick leave or other benefits.

[para 78] Similarly I can find no reason for the HR person to share the Complainant's itinerary with her supervisor. The Complainant's supervisor did not manage sick leave benefits, either from the HR standpoint or the Wellness Centre standpoint. The vacation policy made it clear that an employee's supervisor authorizes vacation time but it was clear that the Complainant's travel to Canada was not considered vacation.

[para 79] I turn finally to the complaint concerning the fact that near the end of the Complainant's sick leave, an HR staff member requested information from the Wellness Centre as to whether the Complainant was fit to travel back to Canada. From the documents provided to me by the Complainant, it appears that HR staff was concerned about the Complainant's Residency Permit, which was to expire in September 2008. HR is responsible for managing these permits, and as such I would expect that HR staff would need to know whether the Complainant is fit to travel in order to determine if she can leave before the permit expires, or if other plans were required. Therefore I find this collection was authorized.

Use and Disclosure

[para 80] The Public Body indicates the Complainant's personal information was "circulated" within the Public Body to accomplish purposes for which it was collected, and that the Complainant consented to the use of her personal information in the consent forms.

[para 81] A public body may use personal information only in certain circumstances, and only as necessary. The relevant provisions of section 39 of the Act state:

39(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[para 82] Similarly, a public body may disclose personal information only in certain circumstances, and only as necessary. In this case, the Public Body cited several provisions as applying in this case. The relevant provisions of section 40 state:

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,

(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to 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,

...

(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,

...

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

...

(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.

Use/Disclosure – HR staff

[para 83] When personal information is used by employees within a work unit, this is often (although not always) a use of personal information. If the information is "shared" with another work unit, this may constitute a disclosure. In this case, I have found that all of the parties involved in the "sharing" of information were acting on behalf of the Public Body. Whether the sharing of personal information was a use or disclosure is, in these circumstances, more of an academic question than a useful distinction. For simplicity, I will combine the discussion on use and disclosure.

[para 84] In its submission, the Public Body admitted that the Complainant's personal information had been improperly disclosed, but that these disclosures were inadvertent. Specifically, the Public Body noted that employees were inappropriately cc'd on emails including health information. Additionally, it noted that the Wellness Centre should not have been informed of work performance issues involving the Complainant. The Public Body also stated in its submission that it has taken steps to prevent such unauthorized disclosures in the future. I will discuss the adequacy of those steps below.

[para 85] As noted above, the HR staff collected the Complainant's personal information for the purpose of managing personnel. The Complainant's supervisor and a Vice-Provost at the Public Body were privy to some of the Complainant's personal information during her sick leave. Upon reviewing the evidence before me, I have determined that the supervisor and Vice-Provost were also involved in managing personnel. Therefore the use/disclosure of the information by these persons was for the same purpose as the collection.

[para 86] Although I have found an authorized purpose, the question still remains whether the supervisor and Vice-Provost needed the information they were given, for personnel management purposes, within the terms of sections 39(4) and 40(4). I have limited evidence of the Vice-Provost's involvement; she was informed by the

Complainant's supervisor via email at the beginning of the Complainant's sick leave, seemingly because the sick leave interrupted or otherwise affected the conclusion of an unrelated personnel matter in which the Vice-Provost was either involved or of which she was aware. In that email, the supervisor mentioned the nature of the Complainant's medical issue. At another point near the end of the leave, the Vice-Provost emailed an HR staff member requesting an update as to whether the Complainant had left Qatar and any other plans with regard to her file. The HR staff member informed the Vice-Provost that the Complainant had returned to Canada, and that an independent medical examination and long-term disability application would be forthcoming.

[para 87] According to the Public Body's website, the Vice-Provost is responsible for the Qatar campus. The Complainant's supervisor appears to report to the Vice-Provost. The Public Body did not offer any evidence as to the Vice-Provost's role in this situation but I can assume that her role would be limited to staffing concerns, such as whether the Complainant's position needs to be filled and whether it can be permanently filled or only temporarily. It seems likely that it could be difficult to fill a temporary position for a campus located in Qatar, and so Public Body staff involved in filling that position may have a greater need for general updates than they normally would have regarding sick leave (e.g. on the duration of the leave). Additionally, the evidence before me indicates that the Public Body has assigned housing for staff at the Qatar campus, and the Complainant would have to have vacated her home there in order to house a new employee. For this reason, I find that the Vice-Provost had a role in personnel management with respect to the Complainant, and keeping her updated with limited information was for the same or consistent with the purpose of the collection of the Complainant's personal information, under sections 39(1)(a) (use) and 40(1)(c) (disclosure).

[para 88] That said, I do not think the Vice-Provost needed to be informed about the nature of the Complainant's illness. Medical information is often very sensitive, and should not be discussed freely. Since the staff of the Qatar campus all appear to reside in the same compound, and since it seems that there is likely not a large number of staff members, it is possible that the Vice-Provost would have become privy to this information at some point from other sources. However, that does not justify or authorize the disclosure by the Complainant's supervisor of details of the Complainant's medical information that were not necessary for the recipient to know. I find, therefore, that this use/disclosure of the Complainant's personal information was not "only to the extent necessary" within the terms of sections 39(4) and 40(4).

[para 89] With respect to the updates provided to the Complainant's supervisor about the Complainant's sick leave, I find that they were for personnel management, and were a consistent use of the Complainant's personal information. Although the supervisor was more involved, and received more updates than the Vice-Provost, I have no evidence before me that indicates the updates contained more information than was necessary or appropriate. The supervisor's knowledge of the Complainant's specific medical issues seems to have come from the Complainant herself.

[para 90] The Complainant argues that the Public Body agreed to limit the number of individuals who would be informed of the circumstances of the Complainant's sick leave. Specifically the Complainant states that she requested the only the Qatar HR staff be informed, and not the HR staff in Calgary.

[para 91] The Public Body does not require the consent of the Complainant to disclose personal information to staff members who require it to perform their employment duties; section 40(1)(h) authorizes this type of disclosure. Other than what I have discussed above, I believe that the HR staff members who were informed of the Complainant's circumstances were informed appropriately. For example, at one point the Qatar staff member dealing with the Complainant went on vacation and the file had to be moved to another staff member for that time.

[para 92] The Complainant alleges, based on an email from a Qatar HR staff member to the Wellness Centre, that information about the Complainant's sick leave was communicated to the Qatar government program sponsor. It might be that this information was communicated orally, in which case the FOIP Act does not apply. It might be the case that information about an anonymous employee's sick leave was communicated, in which case it would not be a disclosure of the Complainant's personal information, or it might be that the Complainant's recorded personal information was disclosed to a Qatar government employee or official. In the latter case, the FOIP Act would apply; however, I do not have any evidence to support that claim.

[para 93] Some of the emails provided to me indicate a lack of understanding among the various parties concerning the amount and type of personal information that each party has authority under the Act to collect, use and disclose. At one point the Complainant's supervisor contacted the Wellness Centre staff to inquire about details of the Complainant's treatment, stating "I realize you must maintain some confidentiality; however, this illness affects more people than just [the Complainant]." At another point, an HR staff member contacted the Wellness Centre in order to inform them that there were issues with the Complainant other than sick leave, including personnel matters.

[para 94] I have mentioned the need for clear procedures regarding the administration of sick leave, and the unique circumstances of the Complainant's situation. The Public Body has mentioned steps it has taken to prevent unauthorized disclosures in the future, including privacy training given to the Qatar staff. The Public Body has provided me with its Electronic Communications Policy, and an updated letter of appointment that the Public Body states was updated to expressly give notice to new employees about how personal information in their files is to be used and disclosed by the Public Body.

[para 95] According to affidavit evidence, the Electronic Communications Policy addresses forwarding of email and using email to transmit confidential personal information. Upon reading the Policy, I note that it prohibits users from creating or distributing material that would violate the privacy of others. It also makes the reader aware that electronic communications are inherently insecure and that users must ensure

that the contents of a message are secured in accordance with the Information Security Classification Standard when using email and other electronic technology to distribute Confidential Information (which is defined as including "most personal information") to an external address. This latter provision in the policy incidentally touches on the transmission of confidential personal information.

[para 96] The affidavit of the Access & Privacy Coordinator states that the Public Body's HR department previously assisted employees in transmitting personal information to health care practitioners, and that this practice has been discontinued. Rather, employees now transmit the information themselves. I agree that this new practice is an improvement, especially as the HR department should not be collecting employee health information. I can find no mention in the Policy of forwarding email. It is clear that this issue should be addressed.

[para 97] The notice provided in the new letter of appointment for new employees states that personal information is collected, used and disclosed for the purposes of managing compensation and benefits, including: sick leave; confirming expenses incurred and reimbursed; making decisions concerning housing; and managing applications for residence permits. It may also be beneficial to remind employees how personal information may be collected, used and disclosed at the time that sick leave is claimed; this may prevent some of the issues that arose in this case.

V. ORDER

[para 98] I make this Order under section 72 of the Act.

[para 99] I find that the Public Body properly collected the Complainant's personal information in most cases, but collected some personal information in contravention of Part 2 of the FOIP Act, as discussed above at paragraphs 77 and 78. I order the Public Body to stop collecting personal information in this manner, in contravention of Part 2 of the Act. The Public Body may comply with this order by providing training to staff concerning the appropriate management of personal information in the administration of the sick leave process.

[para 100] I find that the Public Body used/disclosed the Complainant's personal information in contravention of Part 2 of the FOIP Act in some instances, as described in paragraph 88, above. I order the Public Body to stop using and disclosing personal information in this manner, in contravention of Part 2 of the Act. The Public Body may likewise comply with this order by providing training to staff concerning the appropriate management of personal information in the administration of the sick leave process.

[para 101] I further order the head of the Public Body to notify me and the Complainant, in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator