# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER F2012-01

January 12, 2012

## HOLY FAMILY CATHOLIC REGIONAL DIVISION NO. 37

Case File Number F5645

**Office URL:** www.oipc.ab.ca

**Summary:** The Complainant complained that the Holy Family Catholic Regional Division No. 37 (the "Public Body") disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Public Body conceded that it had disclosed the Complainant's personal information to the RCMP by alerting it to a meeting that the Public Body was having with the Complainant, who it felt was a disgruntled employee, and providing his name and age. The Public Body argued that it had the authority to do so under section 40(1)(ee) of the Act, on the basis that its head believed, on reasonable grounds, that the disclosure would avert or minimize an imminent danger to the health or safety of any person.

The Adjudicator noted that, for section 40(1)(ee) to authorize the disclosure of personal information, the following three requirements must be met: (i) the head of a public body must have reasonable grounds to believe that (ii) there is an imminent danger to the health or safety of someone and that (iii) the disclosure will avert or minimize that danger. The Adjudicator stated that the head must actually and honestly believe, based on some form of objective evidence, that a danger or risk to the physical or psychological health or safety of others is present, or will be present in the relatively near future, and that the disclosure to the particular person or body will serve the purpose of averting or minimizing that situation.

The Adjudicator found that the circumstance set out in section 40(1)(ee) existed in this particular case, so as to authorize the disclosure of the Complainant's personal

information. The Complainant's prior behaviour and correspondence had shown that he was very angry with his employer and was having difficulty coping with the situation emotionally, and the meeting in question was intended to discuss the Complainant's employment, which included the possibility of calling for his resignation. Given this, the head of the Public Body reasonably believed that the Complainant's emotions could escalate at the meeting to produce a danger to the safety of other employees. The disclosure to the RCMP served the purpose of minimizing the imminent danger by placing police in a better position to respond to a dangerous situation if one arose.

As the Public Body had the authority to disclose the Complainant's personal information for an authorized purpose under section 40(1)(ee), and did so only to the extent necessary to enable the Public Body to carry out that purpose in accordance with section 40(4), the Adjudicator concluded that the Public Body had not contravened the Act.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(i), 1(n)(iii), 1(n)(viii), 30, 32, 40, 40(1)(e), 40(1)(ee), 40(4), 53(1)(a), 65(3) and 72; *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2, s. 2(1): *School Act*, R.S.A. 200, c. S-3, s. 118.

**Authorities Cited: AB:** Orders 2000-021, F2006-019 and F2007-019; *R. v. Loewen*, 2010 ABCA 255, affirmed 2011 SCC 21. **CAN:** *R. v. Latimer*, 2001 SCC 1.

**Other Sources Cited:** *Concise Oxford Dictionary*, 8th ed. (Oxford University Press, 1991); Office of the Privacy Commissioner of Canada, *Investigators Guide to Interpreting the ATIA* (Ottawa: November 2006), "Section 17 [Safety of individuals]", p. 4.

## I. BACKGROUND

[para 1] The Complainant was employed by the Holy Family Catholic Regional Division No. 37 (the "Public Body"). In correspondence dated January 25, 2011, he complained to this Office that the Public Body had disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the "Act"). His complaint was that, on March 26, 2010, the Public Body had contacted the RCMP to inform police that the Complainant was a disgruntled employee and to alert police of a meeting that representatives of the Public Body were having with him that day.

[para 2] The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Complainant requested an inquiry in correspondence dated April 25, 2011. A written inquiry was set down.

## II. INFORMATION AT ISSUE

[para 3] The information that the Public Body allegedly disclosed in contravention of the Act is the Complainant's name and age, the fact that he was meeting with the Public Body, and the opinion that he was a disgruntled employee.

## III. ISSUE

[para 4] The Notice of Inquiry, dated July 12, 2011, set out the issue of whether the Public Body disclosed the Complainant's personal information in contravention of Part 2 of the Act.

[para 5] In his submissions, the Complainant complains that the Public Body did not inform him of the disclosure of his personal information to the RCMP. He instead learned about the disclosure after obtaining access to his personnel file and seeing a note there. However, the Act does not require a public body to give an individual notice regarding disclosure of his or her personal information (except in the context of section 30 or 32, neither of which is applicable in this case).

[para 6] The Complainant further complains that the note, which said that he was a disgruntled employee and that police had been alerted to the meeting between the parties, continued to exist in his personnel file and perpetuated a false accusation of misconduct. Local public bodies, such as the Public Body, may set rules relating to the destruction of records and the Commissioner has the authority, under section 53(1)(a) of the Act, to conduct investigations to ensure compliance with those rules. However, I have no jurisdiction, given the extent of my delegated authority in the context of an inquiry, to address a public body's compliance with any rules that it has set regarding the destruction of records. Under section 65(3), my jurisdiction is limited to determining whether a public body has contravened Part 2 of the Act, yet Part 2 does not contain any requirement for a public body to destroy personal information at a certain point in time. If the Complainant has concerns that the Public Body is improperly retaining the note in its file, he should directly ask the Public Body to destroy the note, bearing in mind any rules that it may have, such as retention and disposition schedules.

[para 7] The Complainant argues that the Public Body violated the *School Act* and other legislation in the course of its employment-related dealings with him. For instance, he believes that he was denied the right to return to work, and that the Public Body made an improper monetary offer in exchange for his resignation at the meeting of March 26, 2010. I have no jurisdiction to address any of these issues.

## IV. DISCUSSION OF ISSUE

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

[para 8] In inquiries involving the alleged unauthorized disclosure of personal information, the initial burden of proof normally rests with the complainant, in that the complainant has to have some knowledge, and adduce some evidence, regarding what personal information of his or hers was disclosed, and the manner in which that personal information was disclosed; the public body then has the burden to show that its disclosure of the personal information was in accordance with the Act (Order F2006-019 at para. 51; Order F2007-019 at paras. 8 and 9).

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

[para 9] The Complainant submitted a copy of a note that the Corporate Secretary of the Public Body wrote on March 26, 2010. It reads as follows:

> *I informed [a particular member] of the RCMP that we were dealing with a disgruntled employee this morning at 11:00 am. I provided the name of the employee and his age. The RCMP advised us to call 911 if we required their support. The officers on duty will be alerted that we are dealing with this individual this morning.*

[para 10] Section 1(n) of the Act defines "personal information", in part, as follows:

> *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,*
> > …
> >
> > *(iii) the individual's age, sex, marital status or family status,*
> > …
> >
> > *(viii) anyone else's opinions about the individual, and*
> > …

[para 11] A public body's oral disclosure of recorded personal information falls within the purview of the Act (see, e.g., Order F2006-019 at para. 83). Here, the Public Body concedes that it disclosed the Complainant's personal information, although it adds that it identified the Complainant, by disclosing his name and age, only after the RCMP requested that information in order to better respond if a dangerous situation occurred.

[para 12] Under section 1(n), "personal information" means *recorded* information about an identifiable individual. It is not entirely clear whether all of the information about the Complainant had been recorded prior to the disclosure by the Public Body, which is necessary for the information to fall within the terms of section 1(n). However, I find that most of the information had been recorded. The Public Body had a record of the Complainant's name, and it likely had a record of his age or date of birth, given that the Corporate Secretary knew the Complainant's age. The Complainant indicates that the Public Body's direction for him to meet on March 26, 2010 was by way of an e-mail on March 24, 2010, meaning that the fact of the meeting had been recorded. Finally, I note a letter of February 23, 2010 in which the Public Body's solicitor referred to the Complainant as "disgruntled".

[para 13] Although some of the information about the Complainant may not actually have been recorded prior to its disclosure to the RCMP, I will presume that all of it was

recorded for the purpose of the discussion in this Order. Accordingly, I find that the Public Body disclosed the Complainant's personal information, within the terms of section 1(n), in that it disclosed his name [section 1(n)(i)], his age [section 1(n)(iii)], the opinion that he was a disgruntled employee [section 1(n)(viii)], and the fact that he was meeting with the Public Body [other recorded information].

**2. Did the Public Body have the authority to disclose the Complainant's personal information?**

[para 14] Under Part 2 of the Act, a public body may disclose an individual's personal information if one or more of the purposes or circumstances set out in section 40 is present. Section 40 reads, in part, as follows:

> *40(1) A public body may disclose personal information only*
>
> …
>
> *(e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,*
>
> …
>
> *(ee) if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person, or*
>
> …
>
> *(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.*

[para 15] The Public Body primarily argues that it had the authority to disclose the Complainant's personal information under section 40(1)(ee). It says that it also had authority under section 40(1)(e).

(a) Disclosure to avert or minimize an imminent danger to health or safety

[para 16] The Public Body submits that its Superintendent, who is the head of the Public Body for the purposes of the Act, had reasonable grounds to believe that the circumstance set out in section 40(1)(ee) of the Act existed because the Complainant and the Public Body were engaged in a dispute concerning the Complainant's employment, and his language in correspondence and demeanor at prior meetings made her concerned that emotions during the March 26, 2010 meeting could escalate to produce a situation where there would be danger to the safety of employees of the Public Body.

*(i) Additional background as recounted by the parties*

[para 17] In a letter dated November 9, 2009, the Complainant's supervisor, being the Assistant Superintendent of Technology and Human Resources (the "Assistant Superintendent"), asked the Complainant to rectify four issues with the Public Body's computer system. In an e-mail on November 13, 2009, the Complainant raised longstanding employment-related concerns that he had been experiencing, and indicated that he would be seeing a doctor and a lawyer. That same day, the Public Body received a letter from the Complainant's lawyer outlining his employment-related concerns and requesting that they be addressed.

[para 18] In an e-mail on November 16, 2009, the Assistant Superintendent asked the Complainant for various computer system passwords in order to operate the network following the malfunction of a router that occurred while the Complainant was away. In his reply e-mail that same day, the Complainant said that he was seeing his doctor out-of-town and did not have the passwords on hand, offering an alternate solution regarding the malfunctioning router.

[para 19] On November 17, 2009, the Complainant, Assistant Superintendent and Corporate Secretary met to discuss the Complainant's failure to provide the passwords when asked. In his affidavit sworn September 1, 2011, the Corporate Secretary (who has since retired) states:

> *Upon entering that meeting, [the Complainant] utilized a loud and confrontational tone, stating that he was "extremely pissed off" at having to attend the meeting. [He] declined to sit down for some time at the beginning of the meeting.*
>
> *Throughout the meeting, I noted [the Complainant] to be uncharacteristically emotional. He would often shake his head, sigh loudly, and mutter "no, no, no" under his breath while [the Assistant Superintendent] discussed the concerns of the Division, and then interrupt [the Assistant Superintendent] in a loud voice. His demeanor appeared to me to be confrontational, angry, and agitated, frequently shifting his body and sighing. Near the end of the meeting, [the Complainant's] voice was very loud and nearly shouting. At this time, I raised my voice in response to [him].*

Sometime after the meeting (no date is indicated), the Corporate Secretary provided the Superintendent with a written account of his perceptions at the meeting, as the Complainant had complained about the Corporate Secretary's own loud voice at the meeting. The written account is consistent with the account in the affidavit. In his affidavit also sworn September 1, 2011, the Assistant Superintendent provides a similar account of the Complainant's demeanor at the meeting on November 17, 2009.

[para 20] On the evening of November 17, 2009, the Complainant sent an e-mail to the Superintendent, Assistant Superintendent and Corporate Secretary, among others, in which he discussed the disagreement regarding the passwords and also expressed concerns about one of his former supervisors. He wrote as follows:

> *My wife had asked me why I kept staying [in town] when things went so bad – why could[n't] I just move on? She also noticed my behavior had changed for the last few years – I became agitated very easily. She had asked me was there someone [in town who] made life miserable for me?*
>
> *[…]*
>
> *The bad things about [the former supervisor] could last pages. My professional relationship with [him] over the years had led me to become emotionally numb. In some way, I developed more intense anger over some little thing.*

[para 21] Shortly after the meeting of November 17, 2009, the Complainant provided a note from his doctor, stating that he was not able to work because of medical reasons until February 1, 2010. The Complainant explains that he took a leave of absence to visit his ailing father overseas, experiencing stress as a result of this emotional situation. He indicates that, on January 18, 2010, his doctor certified that he was able to return to work on February 1, 2010.

[para 22] In a letter dated January 25, 2010, the Complainant complained to the Minister of Education that the Superintendent had violated his rights as an employee by allowing other senior administrative members to treat him in a disrespectful manner. On January 30, 2010, the Complainant wrote to members of the Board of Trustees of the Public Body, complaining about the Corporate Secretary's treatment of him at the meeting of November 17, 2009. He insisted that, when he returned to work the following day, there must be a third employee present at any meeting between him and the Corporate Secretary.

[para 23] The Complainant returned to work on February 1, 2010, at which time he met with the Superintendent, the Corporate Secretary and the Assistant Superintendent. In her affidavit sworn September 1, 2011, the Superintendent describes the Complainant's demeanor at the meeting as follows:

> *At the meeting of February 1, 2010, [the Complainant] was confrontational, stating that litigation would result if his various employment concerns were not met. I recall [the Complainant] stating that he was "pissed off".*
>
> *During the meeting, I noted that [the Complainant's] demeanor was highly agitated. He spoke abruptly in a sharp and abrupt tone. As I was talking he would routinely look down, shake his head, muttering "no, no, no" under his breath, and then interrupt with something unrelated to the matter being discussed. As the meeting progressed, I noted that [the Complainant] became flushed and that he was breathing heavily.*

In their respective affidavits, the Corporate Secretary and the Assistant Superintendent give a similar version of events.

[para 24] In an e-mail to members of the Board of Trustees of the Public Body on February 2, 2010, the Complainant wrote as follows:

> *I was completely shock[ed] when [the Corporate Secretary] yelled at me [on November 17, 2009]. I believed the people in the office were also scared to this happening. Then I went home, my mind suddenly went completely blank. I felt frightened and helpless. I could not function as a normal person for the remaining of the day. After that I had anger at [the Superintendent] and [the Assistant Superintendent] because they had acted negligently. They were the most senior administrator personnel on site. They had an obligation to protect me from such hostile environment. I was also angry at [the Corporate Secretary] for causing me such severe mental harm.*
>
> *Last week, for two days, my mind was bothered with an abnormal fear (or anxiety). I was struggling with upsetting emotions that [the Corporate Secretary] would continue to verbal abuse me as soon as I returned to HFCRD #37. I felt so numb and was unable to trust any of the senior administrative personnel in my office. […]*

[para 25] In her affidavit, the Superintendent says that, due to her concerns about the Complainant's medical fitness to perform his duties arising from his past behavior and the statements in the above excerpted e-mail, she directed him on February 5, 2010 to undergo an independent medical examination for the purpose of determining whether he was medically fit for work. This was pursuant to section 118 of the *School Act*, and the examination took place on March 8, 2010.

[para 26] Later in this Order, I will return to the e-mails and affidavits that I have excerpted above, as well as the report of the psychiatrist who conducted the independent medical examination. The parties refer to the content of these documents when making their submissions on whether the circumstance set out in section 40(1)(ee) of the Act existed in this case.

[para 27] On March 26, 2010, the Complainant, Superintendent, Assistant Superintendent and Corporate Secretary met to discuss the results of the independent medical examination, the legal dispute between the parties, and the future of the Complainant's employment relationship with the Public Body. The Public Body offered the Complainant compensation in exchange for his resignation, which he refused.

[para 28] In a letter dated April 14, 2010, the Corporate Secretary wrote to the Complainant to advise him that his employment with the Public Body had been terminated, effective that day.

### *(ii) The criteria for applying section 40(1)(ee)*

[para 29] For section 40(1)(ee) of the Act to authorize the disclosure of personal information, the following three requirements must be met: (i) the head of a public body must have reasonable grounds to believe that (ii) there is an imminent danger to the health or safety of someone and that (iii) the disclosure will avert or minimize that danger. For clarity, the phrase "believes, on reasonable grounds," qualifies both aspects of section 40(1)(ee) that follow. It is not only sufficient for the head of the public body to believe, on reasonable grounds, that the disclosure will avert or minimize an imminent

danger, but it is also sufficient for the head to believe, on reasonable grounds, that there is an imminent danger to the health or safety of any person in the first place. In other words, there does not actually have to be an imminent danger – the head needs only to reasonably believe that one exists – although I will return to the meaning of "imminent danger" below.

[para 30] In his request for an inquiry, the Complainant cites *R. v. Loewen*, 2010 ABCA 255 at para. 18, affirmed 2011 SCC 21, for the statement that "reasonable grounds" conveys "the idea of an event not unlikely to occur for reasons that rise above mere suspicion". He says further that a belief on reasonable grounds has both a subjective and objective component, in that the head of a public body relying on section 40(1)(ee) must honestly hold his or her belief, and the belief must be supported by facts such that a reasonable person would be able to conclude the same thing.

[para 31] The Public Body agrees that subjective belief is a necessary element of the test under section 40(1)(ee). As for determining whether there are reasonable grounds to hold the belief, the Public Body also agrees that the question to answer is whether a reasonable person, placed in the situation of the head of the public body with the same information available, could reach the same conclusion.

[para 32] In his submissions, the Complainant refers to the need for "compelling" evidence that he posed an imminent danger to the safety of others. In my view, the objective evidence necessary to permit a public body's reliance on section 40(1)(ee) does not have to meet that threshold. For section 40(1)(ee) to be engaged, the objective evidence needs only to be sufficient to give rise to a belief "on reasonable grounds" that there is an imminent danger to the health or safety of any person. The express reference to reasonable grounds indicates that the intent is for the head of a public body to have a reasonable, but not necessarily compelling, basis for believing that the circumstance set out in section 40(1)(ee) exists.

[para 33] To summarize so far, in order for a public body to be authorized to disclose personal information in reliance on section 40(1)(ee) of the Act, its head must actually and honestly believe, based on some form of objective evidence, that the disclosure will avert or minimize an imminent danger to the health or safety of any person.

[para 34] As for what constitutes an imminent danger to the health or safety of someone, the Complainant submits that "imminent danger" means an urgent situation of clear peril, that disaster must be unavoidable or near, and that it is not enough that the peril is foreseeable or likely, as it must be on the verge of transpiring and virtually certain to occur. He says that there should be a set of facts that would cause a person of ordinary and prudent judgment to believe that death or serious physical harm could occur within a short time. By way of example, he writes that, before it called the RCMP, the Public Body should have had evidence that he "was about to burn down a building or [was] making [a] direct threat".

[para 35] Conversely, the Public Body argues that it cannot be the intent of the Act to require a public body to await a direct threat, or actually witness physical danger, before making a disclosure under section 40(1)(ee). It submits that "imminent danger" includes a *risk* of danger, and that it is not necessary for the head of a public body to be certain that danger will materialize. In support, the Public Body argues that the word "safety", which also appears in section 40(1)(ee), encompasses risk. It notes that "safety" has been defined as "the condition of being safe; freedom from danger or risks" [*Concise Oxford Dictionary*, 8th ed. (Oxford University Press, 1991), cited, e.g., in Office of the Privacy Commissioner of Canada, *Investigators Guide to Interpreting the ATIA* (Ottawa: November 2006), "Section 17 [Safety of individuals]", p. 4]. The Public Body further writes as follows:

> Careful judgment calls must be made by public bodies in such situations. It is respectfully submitted that an interpretation of s. 40(1)(ee) which either unduly limits the ability of public bodies to make minimal precautionary security disclosures to law enforcement, or which holds the heads of public bodies to an impracticable standard when assessing whether the potential of a threat to safety warrants such disclosures, has the potential to chill appropriate safety disclosures.

The Public Body adds that, although some public bodies that routinely deal with situations of potential conflict have their own security personnel, many others must rely on local law enforcement when a security concern arises. The Public Body further argues that the Superintendent's concern about the Complainant in this case should not be viewed through the eyes of a trained security professional but rather a cautious administrator.

[para 36] The Complainant's submissions on the meaning of "imminent danger" and the requirements to be met under section 40(1)(ee) refer to statements made by the Supreme Court of Canada in *R. v. Latimer*, 2001 SCC 1. However, that matter was in an entirely different context, namely whether an accused charged with first degree murder could be acquitted on the basis of the defence of necessity. The Supreme Court's statements that the defence requires clear and imminent peril, all other reasonable legal alternatives to be exhausted, and proportionality between the harm inflicted and the harm avoided, have little applicability in this inquiry. The balance to be struck in interpreting section 40(1)(ee) of the Act involves weighing danger to the health and safety of others against an individual's privacy. The threshold that must be met in order for a public body to rely on the section is far less than the threshold that must be met for an individual to justify murder.

[para 37] Given the context, and in order to lend some practicality to the application of section 40(1)(ee), I agree with the Public Body that the reference to "danger" includes a risk to the health or safety of others. Further, it is not necessary for death, serious injury, physical harm or property damage to be the potential result, as health and safety may be at stake in ways short of these outcomes. For instance, health and safety may be jeopardized by way of exposure to abusive or offensive language that causes distress or emotional disturbance in others.

[para 38] As for what the word "imminent" means in the context of section 40(1)(ee), the danger or risk must, in my view, be anticipated to happen in the relatively near future, but the danger or risk does not have to be immediate or on the verge of transpiring. Although the Legislature chose quite strong language, the requirement for "imminent danger" is tempered by the section's other reference to a belief "on reasonable grounds". It would be virtually impossible for a public body to rely on the provision if it were necessary for there to be, as argued by the Complainant, an urgent situation of clear peril or a close to unavoidable disaster. To expect a public body to wait for such a situation to arise risks jeopardizing the health and safety of others, contrary to the very purpose of section 40(1)(ee). When balancing the privacy of an individual against the health or safety of others, it is appropriate to err on the side of protecting health and safety. Having said this, there remains a safeguard with respect to protecting privacy, in that a disclosure to avert or minimize an imminent danger must only be to the extent necessary, and done in a reasonable manner, in accordance with section 40(4).

[para 39] Therefore, regarding the requirement of imminent danger to the health or safety of any person in order for section 40(1)(ee) of the Act to apply in a given case, the head of a public body must believe, on reasonable grounds, that a danger or risk to the physical or psychological health or safety of others is present, or will be present in the relatively near future. I cannot give further guidance as to how near in time the danger or risk must be, as it depends on the circumstances, and "imminent" is a relative term. There may be situations in which the danger or risk is even several days or weeks away, yet a disclosure of personal information would still be authorized under section 40(1)(ee). Conversely, a different set of facts might require that the imminent danger be very proximate. Flexibility is necessary in order to give the heads of public bodies a margin in their determination of whether there are reasonable grounds for believing that the circumstance set out in section 40(1)(ee) exists.

[para 40] Finally, for a public body to have the authority to disclose personal information under section 40(1)(ee) of the Act, its head must believe, on reasonable grounds, that the disclosure will "avert or minimize" an imminent danger to the health or safety of any person. In other words, the disclosure to the particular person or body must serve the purpose of averting or minimizing the imminent danger. There must be a link between disclosing the personal information and averting or minimizing the danger.

*(iii) Whether the circumstance set out in section 40(1)(ee) existed in this case*

[para 41] The Complainant submits that the affidavits of the three representatives of the Public Body reveal that there was only a suspicion of danger, and that they do not provide the necessary objective evidence to support the Superintendent's belief that he posed an imminent danger. He accordingly argues that there were no reasonable grounds for the Superintendent, as head of the Public Body, to believe that the circumstance set out in section 40(1)(ee) of the Act was present, so as to justify the disclosure of his personal information to the RCMP.

[para 42] In its submissions, the Public Body says that its Superintendent considered the following three sets of factors in reaching her belief that the meeting of March 26, 2010 with the Complainant posed a danger to the safety of employees of the Public Body: (a) the observations of the Corporate Secretary and Assistant Superintendent at the meeting of November 17, 2009; (b) her own observations of the Complainant and those of the Corporate Secretary and Assistant Superintendent at the meeting of February 1, 2010; and (c) indications of increasingly heightened emotion on the part of Complainant in his correspondence dealing with the employment-related dispute. In particular, the Public Body notes that the Complainant described himself, in the e-mails of November 17, 2009 and February 2, 2010 excerpted earlier in this Order, as feeling "emotionally numb", "agitated" and "angry" and experiencing "abnormal fear", "anxiety", "upsetting emotions" and "intense anger".

[para 43] Bearing in mind the test that I articulated above, I find that the Superintendent, as head of the Public Body, believed, on reasonable grounds, that the disclosure of the Complainant's personal information would minimize an imminent danger to the safety of others.

[para 44] First, the Superintendent subjectively believed that the Complainant posed a danger to the safety of other employees of the Public Body. I have no reason to suspect that she did not actually and honestly hold her belief. The Corporate Secretary and Assistant Superintendent effectively held the same one. I also find that the Superintendent's belief that the circumstance set out in section 40(1)(ee) existed was objectively based on the Complainant's behaviour and writings, which have been recounted or excerpted elsewhere in this Order. At two meetings prior to the Public Body's disclosure on March 26, 2010, the Complainant had been angry, agitated and confrontational. He had written e-mails stating that he was angry, agitated and the like. While I would not necessarily say that one heated interaction, or a single written reference to feeling emotional, gives rise to a reasonable concern about the safety of others, the evidence in this case shows that the Complainant was very angry with his employer and some of his co-workers, and he repeatedly indicated in his correspondence that he was effectively having difficulty coping with the situation emotionally.

[para 45] As I previously explained, a "danger" includes a risk to the safety of others, and the risk need not be at the level of seriousness argued by the Complainant. In this case, it was sufficient for the Superintendent to believe that the Complainant's emotions at the meeting might escalate. While the Public Body does not elaborate on what it means, it essentially anticipated that the Complainant might become angry and confrontational. While the Complainant notes that he has never been violent, the reasonable possibility of a verbal confrontation or emotional instability falls within the type of danger contemplated by section 40(1)(ee), as the provision contemplates not only physical danger, but also a risk of psychological harm to others.

[para 46] The danger posed by the Complainant was also "imminent", given the meaning that I have assigned to that term within the context of section 40(1)(ee). The meeting with the Complainant, at which the Superintendent believed that an incident

might occur, was about to take place the same day that the Public Body disclosed his personal information to the RCMP.

[para 47] Finally, the disclosure to the RCMP served the purpose of minimizing the imminent danger that the head of the Public Body reasonably believed to exist. By alerting police to the meeting taking place, advising that the Complainant was disgruntled, and providing his identity, the Public Body disclosed information that would enable the RCMP to be in a better position to respond to a dangerous situation if one arose, which would have the effect of minimizing that dangerous situation.

[para 48] I note that the Complainant's e-mail of November 17, 2009 dealt primarily with his concerns about a former supervisor, who had retired at the end of the previous school year and therefore had a relatively minor connection to the more immediate events involving the Complainant, Corporate Secretary, Assistant Superintendent and Superintendent. Further, the meeting that occurred on November 17, 2009 was itself four months prior to the meeting of March 26, 2010, possibly suggesting that the Complainant's demeanor at that earlier meeting did not have a sufficient temporal link to the disclosure to the RCMP.

[para 49] However, the Public Body points to the meeting and e-mail on November 17, 2009 to show the Complainant's increasingly emotional behaviour and the escalating tone of his correspondence. I also note that the Complainant remained very preoccupied with the fact that the Corporate Secretary had raised his voice at the meeting of November 17, 2009, bringing it up again in his e-mail of February 2, 2010. Therefore, in conjunction with the February meeting and e-mail closer to March 26, 2010, I find the earlier events to be part of the objective evidence giving rise to a reasonable belief that the Complainant posed a risk. In her affidavit, the Superintendent states that she anticipated the meeting of March 26, 2010 to be even more stressful for the Complainant than the prior meetings, as it was intended to discuss the legal dispute between the parties and the future of the employment relationship. I note that one of the anticipated outcomes of the meeting – and indeed the one that materialized – was the Public Body effectively calling for the Complainant's resignation. In view of the past conduct and correspondence of the Complainant in the course of his dealings with the Public Body, and the nature of the meeting on March 26, 2010, I consider the Superintendent to have been reasonable in her belief that the Complainant might react negatively at the meeting, and in a manner that could threaten the safety of others.

[para 50] Given all of the foregoing, the circumstance set out in section 40(1)(ee) of the Act existed in this case so as to authorize the disclosure of the Complainant personal information. I will now turn to the Complainant's remaining counterarguments, which do not affect my conclusion for the various reasons that follow.

[para 51] The Complainant argues that, while he was asked to undergo the independent medical examination, he had no prior history of mental illness, drinking or drug addiction problems, and that there had never been any violent incident involving him and the

Public Body. He notes the following conclusion in the psychiatrist's report dated March 19, 2010:

> *4. [The Complainant's] risk assessment did not yield any evidence of substantial or imminent risk of harm to self or to others.*

The Complainant submits that the psychiatrist is an expert and that his opinion should be respected. The Complainant says that the Superintendent suspected that he posed a risk to others by inappropriately relying on his e-mails and demeanor prior to the psychiatric assessment, whereas the psychiatrist essentially analyzed his prior conduct and found no evidence of a threat to anyone. I note that the psychiatrist was provided with, among other correspondence for his review, a redacted copy of the Complainant's e-mail of February 2, 2010 to the Board of Trustees, which is one of the e-mails on which the Superintendent relied in reaching her conclusions.

[para 52] The Public Body responds that the psychiatrist's general assessment was qualified as follows:

> *5. [The Complainant's] tolerance assessment yielded sufficient levels to tolerate expected stress levels in an occupational environment. However, the ongoing legal proceedings may significantly impact this variable, and as a result of the reportedly troubled relationship with the employer, the best interests may not be served in his immediate return to a prior workplace.*
>
> *6. This does not suggest that he is either impaired or disabled, but suggests that in view of the unresolved matters, his occupational environment may not currently be conducive to optional functioning, based on his skills level.*

The Public Body submits that the foregoing was an indication that the employment-related dispute between the parties could be expected to result in high stress on the part of the Complainant.

[para 53] The opinion of the psychiatrist, although relevant, is not determinative of whether the Complainant posed an imminent danger to the safety of others, within the terms of section 40(1)(ee) of the Act. I acknowledge the psychiatrist's statement that his assessment of the Complainant "did not yield any evidence of substantial or imminent risk of harm to self or to others". However, I agree with the Public Body that this statement was qualified by the psychiatrist's indication to the effect that the Complainant might have a varied capacity to tolerate stress in the workplace, given his troubled relationship with the Public Body. I have explained in this Order what I consider to constitute an "imminent danger" within the meaning of section 40(1)(ee), finding that there was a reasonable belief of such a danger in this case, whereas the psychiatrist might have meant something far more serious by his reference to imminent risk of harm to others. The Complainant notes no prior violence on his part, but I have stated that section 40(1)(ee) also permits a disclosure in order to avert or minimize incidents short of violence.

[para 54] The Complainant argues that the affidavits sworn by the Public Body's three representatives contain false information. He alleges that they have professional and personal stakes in the matter, have banded together, and have lied in their suggestions that he posed an imminent danger. The Public Body responds that the observations of the Superintendent, Assistant Superintendent and Corporate Secretary are consistent with one another, and that their recounting of events is corroborated by documentary evidence, including the Complainant's own e-mails.

[para 55] The Complainant submits that unsworn testimony should be given equivalent weight to the content of the sworn affidavits. Indeed, I do not necessarily give more credence to the version of events provided by the Public Body simply because it is contained in affidavits. However, I do give weight to the fact that two or three representatives of the Public Body, as the case may be, have similar accounts regarding the Complainant's demeanor at the meetings of November 17, 2009 and February 1, 2010. I have also relied on the Complainant's own statements in his e-mails of November 17, 2009 and February 2, 2010. Finally, while the Complainant alleges that statements in the affidavits are "absolutely untrue" or "a complete lie", he does not actually provide his own version of events of what transpired at the meetings, or how he and the representatives of the Public Body conducted themselves.

[para 56] The Complainant does dispute that he received numerous verbal warnings about his interpersonal communication over the course of his employment, contrary to a statement made by the Corporate Secretary in a letter of May 11, 2010 written in the course of an appeal of the Complainant's termination. However, the number of warnings that the Complainant may have received does not change my view of his demeanor and correspondence leading up to the March 26, 2010 meeting. The Complainant notes that a response form completed by the Public Body on November 8, 2010, following a complaint that he had made to the Alberta Human Rights Commission, acknowledges that he was not under any disability and that any inappropriate conduct on his part was not due to a medical condition. However, the Complainant did not have to be suffering from any disability or medical condition in order for the head of Public Body to reasonably believe that he posed a danger within the terms of section 40(1)(ee).

[para 57] The Complainant submitted an audio recording of a statement made by the Superintendent to the RCMP on April 8, 2011, following a complaint that he made to police in relation to the events of March 26, 2010. He argues that the Superintendent's statement is not consistent with the Public Body's reasons for disclosing his personal information to the RCMP. He notes certain things that the Superintendent does not mention in the audio recording, but that the Public Body includes in its submission in this inquiry. However, the matter being discussed in the audio recording is primarily the agreement and monetary amount that the Public Body presented to the Complainant on March 26, 2010, and with which the Complainant had concerns. The RCMP officer did not ask the Superintendent for details about why the Public Body found it necessary to call the RCMP that day. The Superintendent stated, very generally, that the Complainant "had done quite a number of things to warrant us being a little bit concerned about him

returning to the office on that day", being March 26, 2010, which is consistent with the Public Body's version of events in this inquiry.

[para 58] Other alleged inconsistencies that the Complainant sees in the testimony or correspondence of representatives of the Public Body have little relevance to the issues in this inquiry, or are not sufficient to bring the Public Body's general account into question. For instance, he points out that he did not have the computer system passwords on hand when he was asked for them, not that he "could not remember the passwords", as stated by the Corporate Secretary in his letter of April 14, 2010. He also says that the Public Body's solicitor was mistaken in some of her facts, such as a date and a reference to a malfunctioning "server" rather than "router", when she requested the independent medical examination in her letter of February 23, 2010. However, nothing turns on the foregoing facts for the purpose of this inquiry. The Complainant also reads too much into a letter of February 1, 2010 from the Superintendent, in which she wrote that "[w]e look forward to our meeting on Monday, February 8, 2010". He submits that the sentence means that the Superintendent did not truly have concerns about safety, but the sentence is merely a typical and courteous way of closing a letter.

[para 59] The Complainant further argues that, if the Superintendent honestly believed that there was an imminent danger, she would not have asked him to meet with her and the other employees. He submits that the Public Body could have taken steps to minimize the perceived risk by relocating the meeting to what it considered a safer place, rather than hold it at the offices of the Public Body. He argues that there is no imminent danger if the perceived danger can be avoided by other alternatives. The Public Body responds that to expect it simply to avoid meeting with an employee whose demeanor shows increasing agitation and emotion, rather than take appropriate measures to address the risk, is not reasonable.

[para 60] In my view, a public body is not obligated to consider other ways of avoiding a perceived danger, which presents itself in the normal course of the public body's activities, before disclosing personal information under section 40(1)(ee) of the Act. A public body may avoid the danger by way of the disclosure itself, as the disclosure is precisely what the section permits. Moreover, in addition to authorizing a disclosure that will avert a danger altogether, section 40(1)(ee) authorizes one that will minimize the danger. Here, the Public Body was entitled to make the decision to hold the meeting with the Complainant on its premises, and minimize the risk that the meeting posed by way of the disclosure to the RCMP, rather than forego the meeting altogether or hold it elsewhere. Having said this, a public body is not necessarily authorized to make a disclosure in reliance on section 40(1)(ee) if it takes an unusual course of action that unreasonably places its representatives or others in a situation that poses a risk of danger. In this case, it was reasonable, and part of the expected activities of representatives of the Public Body as the Complainant's employer, to personally meet with him to discuss the employment relationship, including the possibility of his resignation.

[para 61] The Complainant says that he did not utter any threat to anyone at the meeting of March 26, 2010, and that this shows that he posed no risk. However, a head's

determination, as to whether the circumstance set out in section 40(1)(ee) exists, is necessarily made in advance of a danger actually – or ever – materializing. Heads of public bodies will inevitably sometimes be mistaken about the outcome of a situation perceived to pose a danger or risk, but this does not mean that they did not believe, on reasonable grounds, that such a situation would occur.

[para 62] Section 40(1)(ee) of the Act gives a public body the discretion to disclose an individual's personal information. A public body's rationale for exercising discretion in a particular way must be both demonstrable and reasonable, and it cannot abuse its discretion by making an arbitrary or irrational decision. Previous Orders of this Office have set out five types of abuse of discretion as follows: 1) where a delegate exercises his or her authority with an improper intention in mind, which includes acting for an unauthorized purpose, in bad faith, or on irrelevant considerations; 2) where a delegate acts on inadequate evidence or without considering relevant matters; 3) where the decision is unreasonable or discriminatory, creating an improper result; 4) where the delegate exercises his or her discretion on an erroneous view of the law; and 5) where a delegate fetters his or her discretion by rigidly adopting a policy which precludes a consideration of the individual merits of the case (see, e.g., Order 2000-021 at para. 51).

[para 63] Some of the Complainant's arguments in this inquiry raise the possibility that the Public Body did not properly exercise its discretion to disclose his personal information to the RCMP. First, he submits that some of the Public Body's considerations had little or no relevance to determining whether, from an objective point of view, he posed a danger at the meeting of March 26, 2010. Specifically, he notes the Public Body's submissions that the Superintendent knew that he was a member of the Canadian Armed Forces Reserve and thought that he may therefore have greater access to weapons, and that she was aware of recent news stories involving an employee who brought a weapon to work at an Edmonton car dealership and an incident of violence at the Workers' Compensation Board. He also argues that the Superintendent improperly relied on the existence of the legal dispute between the parties when determining that he posed a threat to her safety and that of other employees.

[para 64] I agree with the Complainant that the Public Body's view that he might be prone to violence by virtue of his membership in the Armed Forces was an overly broad categorization of him. I also agree that his meeting with the Public Body had no logical connection to the unrelated events that had occurred at the car dealership and WCB. Further, the mere fact of the legal dispute between the parties was not sufficient to give rise to an objective concern about safety. However, I find that the foregoing considerations were not given so much weight by the Public Body that they overshadowed the relevant matters that the Public Body properly considered when making its decision to rely on section 40(1)(ee).

[para 65] Finally, the Complainant alleges bad faith or an improper motive on the part of the Public Body. Given the employment-related dispute between the parties, he says that the Public Body was being vindictive, or was at least biased, when it decided to disclose his personal information to the RCMP. He says that the disclosure was an

attempt to punish him for exercising his rights against his employer. However, on my review of the facts, events and correspondence leading up to the meeting of March 26, 2010, I see no evidence that the Public Body was acting in bad faith or for an improper motive. The minimal amount of personal information disclosed to the RCMP suggests that, while the Public Body considered the disclosure to be warranted, it made efforts to reduce any harm or stigma that might befall the Complainant by virtue of the disclosure.

(b) Disclosure only to the extent necessary

[para 66] Under section 40(4) of the Act, a public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes for which the information is disclosed in a reasonable manner.

[para 67] The Complainant argues that the disclosure of his personal information caused more harm to him than the harm that the Public Body was trying to avoid. He says that the call to the RCMP cast a shadow on his character and has made it difficult for him to find gainful employment. The Public Body submits that it provided only minimal personal information to the RCMP in order to make it aware of the meeting between the parties and to enable the RCMP to better respond if a dangerous situation arose. It notes that it did not disclose any details about the Complainant's employment or medical history, and that its opinion about him was restricted to saying only that he was disgruntled.

[para 68] I find that the Public Body complied with section 40(4) when it disclosed to police the Complainant's name and age, the fact that he was meeting with the Public Body, and the opinion that he was a disgruntled employee. The fact that the Complainant was meeting with representatives of the Public Body and the opinion that he was disgruntled provided the RCMP with information necessary for it to understand the concern of the Public Body, and why the RCMP was being contacted. Disclosure of the Complainant's name was to an extent necessary to permit the RCMP to know with whom it would be dealing if a situation arose. Finally, disclosure of the Complainant's age provided the RCMP with a brief advance description of him (i.e., relatively young or relatively old), so that it would have a general idea of the type of person with whom it would be dealing if it were required to attend at the Public Body's offices to alleviate a situation. In disclosing the foregoing personal information of the Complainant, the Public Body carried out the purpose of minimizing a danger to its employees in a reasonable manner.

[para 69] As the Public Body had the authority to disclose the Complainant's personal information for an authorized purpose under section 40(1)(ee), and did so only to the extent necessary to enable the Public Body to carry out that purpose in accordance with section 40(4), I conclude that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

(c) Disclosure for the purpose of complying with an enactment

[para 70] The Public Body submits that it also had the authority to disclose the Complainant's personal information under section 40(1)(e) of the Act, for the purpose of complying with another statute. It refers to section 2(1) of the *Occupational Health and Safety Act*, which reads as follows:

> *2(1) Every employer shall ensure, as far as it is reasonably practicable for the employer to do so,*
>
> *(a) the health and safety of*
>
> *(i) workers engaged in the work of that employer…*

[para 71] The Public Body says that, if it did not disclose the Complainant's personal information to the RCMP on March 26, 2010, and a dangerous workplace incident occurred, the result might have been that the Public Body, its head (the Superintendent) and its occupational health and safety officer (the Corporate Secretary) would be negligent and subject to legal liability. The Public Body argues that telling the police that the Complainant was a disgruntled employee meeting at its offices that day was for the purpose of meeting its obligations under the *Occupational Health and Safety Act*, within the terms of section 40(1)(e) of the FOIP Act. It additionally submits that section 40(1)(e) and the scheme set out in the *Occupational Health and Safety Act* should inform the interpretation of section 40(1)(ee), discussed earlier in this Order, so as to authorize precautionary security disclosures to law enforcement under the latter provision.

[para 72] I decline to decide whether the Public Body had the authority to disclose the Complainant's personal information under section 40(1)(e) of the Act. It is unnecessary for me to do so, given that I have found that the Public Body was authorized to disclose his personal information under section 40(1)(ee). Further, I have already interpreted section 40(1)(ee) without the need to refer to the *Occupational Health and Safety Act* or any other enactment. The result is that my interpretation of section 40(1)(ee) applies to any public body and to any situation in which a head relies on the provision for the purpose of averting or minimizing an imminent danger to the health or safety of any person.

## V. ORDER

[para 73] I make this Order under section 72 of the Act.

[para 74] I find that the Public Body had the authority to disclose the Complainant's personal information under section 40(1)(ee) of the Act, on the basis that its head believed, on reasonable grounds, that the disclosure would avert or minimize an imminent danger to the health or safety of any person. I also find that the Public Body disclosed the Complainant's personal information only to the extent necessary to enable it to carry out the authorized purpose in accordance with section 40(4).

[para 75] I conclude that the Public Body did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

Wade Riordan Raaflaub
Adjudicator