

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2013-21**

June 28, 2013

**EDMONTON AND AREA  
CHILD AND FAMILY SERVICES AUTHORITY**

Case File Numbers F6246 and F6247

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

**Summary:** Three Complainants, a mother and her two daughters, made a complaint to the Commissioner that the Edmonton and Area Child and Family Services Authority (the Public Body) disclosed their personal information to the younger daughter's father in contravention of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when it provided copies of two records to him.

The first record consisted of the findings of an investigation into allegations of abuse made regarding the younger daughter. The second record consisted of an assessment report documenting an assessment with respect to allegations that access exchanges of the younger daughter were volatile and should, for that reason, not involve the older daughter.

The Adjudicator determined that the Public Body was authorized under the FOIP Act to disclose the findings of the investigation regarding the allegations of abuse, as she found that the disclosure had been made for the same purpose for which the personal information had been collected. However, she found that the Public Body was not authorized to disclose all the personal information in the assessment report about the older daughter or the mother. While most of the personal information in the report had been disclosed for the same purpose for which the Public Body had collected the Complainants' personal information, disclosure of some of the personal information did not serve this same purpose. The Adjudicator also found that the younger daughter's

father was not a guardian of either daughter, and that most of the personal information disclosed from the report could not be said to be necessary for planning or providing care or services for a child. She therefore found that section 126(1)(a) and (b) of the *Child, Youth and Family Enhancement Act* did not authorize disclosure of the entire assessment report. The Adjudicator also found in the alternative, that the Public Body had not established that it had disclosed only the personal information from the assessment report necessary for meeting its purposes in disclosing the assessment report in a reasonable way.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 41, 72; *Child, Youth and Family Enhancement Act* R.S.A. 2000, c. C-12, s. 126

**Authorities Cited: AB:** Order F2006-006

## I. BACKGROUND

[para 1] On June 7, 2012, the Complainants, (a mother and her two children) made a complaint to the Commissioner that caseworkers with Edmonton and Area Child and Family Services Authority (the Public Body) had disclosed their personal information to the biological father of the younger child without authority under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). Caseworkers had interviewed the Complainants and created a report, dated September 27, 2011, containing what the Complainants had said in the interview. The Public Body then disclosed the entire report to the younger daughter's biological father. The Complainants also complained that the Public Body disclosed a letter dated September 7, 2010 to the same person, explaining the disposition of another investigation it had conducted.

[para 2] The letter of September 7, 2010 refers to allegations of possible physical abuse by the younger daughter's father in relation to the younger daughter. It also refers to allegations of physical abuse by the mother in relation to the younger daughter. It contains the conclusion of the Public Body that there was no substance to the allegations. However, the letter concludes that the younger daughter was vulnerable to emotional abuse:

Concerns do exist regarding the access dispute between the parents and both have been cautioned not to expose their daughter [the younger daughter] to this or place her in the middle of their dispute as it may lead to emotional abuse of their child.

The letter of September 7, 2010 avoids stating the identity of those who had made reports that the younger daughter might be in need of intervention. However, in its submissions, reproduced below, the Public Body acknowledges that the biological father and the mother had made the reports about each other. The Public Body sent copies of the same letter to the younger daughter's father and the mother, addressed to each. The Public Body did not indicate that it was sending copies to the other party, so that it is likely that neither was aware that the other received a copy, until the father filed the letter in Court in May, 2012.

[para 3] The report of September 27, 2011 was disclosed to the younger daughter's father in its entirety. This letter contains information gained from interviews with the mother, her younger daughter, and her older daughter. The report contains the opinions of an assessor about the mother, the younger daughter, and the older daughter, and recounts details of the interviews conducted with the younger daughter and the older daughter, including both daughters' views regarding the father of the younger daughter.

[para 4] The report refers to access exchanges for the younger daughter. These access exchanges were being conducted in the following way: when the younger daughter's father returned or picked her up, the exchange was done at a police station, and the older daughter, rather than the mother, was present at the police station. A letter dated July 15, 2011 from the mother's lawyer to the Public Body indicates that this arrangement was in place to comply with the terms of a Court Order.

[para 5] Copies of the report of September 27, 2011 were also provided to both the mother and to the younger daughter's father. As with the letter of September 7, 2010, one copy of the report was addressed to the younger daughter's father and one copy was addressed to the mother, without indicating that anyone else would be receiving a copy of the report. As noted, the report states that an assessor interviewed the older daughter, and it contains excerpts from the interviews, including opinions attributed to the older daughter. The report also contains other details about the older daughter's life. It also expresses the view that both the daughters are caught in the middle of a contentious custody battle which may result in emotional injury to them. Finally, the report contains opinions about the mother and the way in which she fulfills her role as a mother to her two daughters. The report concludes by providing three recommendations.

[para 6] The Commissioner authorized mediation to resolve the complaints that the Public Body had disclosed personal information in contravention of the FOIP Act by disclosing the letter of September 7, 2010 and the report of September 27, 2011 to the younger daughter's father. Mediation was unsuccessful and the matters were scheduled for a written inquiry.

[para 7] Once I reviewed the parties' submissions for the inquiry, I determined that I had questions for the Public Body. In a letter dated April 8, 2013 I said:

I have reviewed the submissions of the parties. At this time, I note that the Public Body refers in its submissions to [the younger daughter's father], the third party to whom it disclosed the personal information of [the Complainant's children], as being the guardian of [the Complainant's children]. In other places in its submissions it refers to [the younger daughter's father] as being "deemed" and "considered" to be the guardian of [the Complainant's children]. I note that the Complainants deny that [younger daughter's father] is a guardian. The Complainants also submitted an order of the Court of Queen's Bench denying [the younger daughter's father's] guardianship application for [the younger child].

The Public Body has not provided any evidence to support its position that [the younger daughter's father] is a guardian of either child. However, the Public Body argues that its disclosure of the Complainants' personal information is authorized by section 126(1)(b) of the *Child, Youth and Family Enhancement Act* (CYFEA), on the basis that it considers [the younger

daughter's father] to be a guardian, or deems him to be so. If section 126(1)(b) of the CYFEA authorizes the disclosure, then the disclosure is also authorized by section 40(1)(f) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

Section 126(1)(b) states:

126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the *Freedom of Information and Protection of Privacy Act*, in proceedings under this Act, in accordance with Part 2, Division 2 or this Part or as follows:

(b) to the guardian of the child to whom the information relates or the guardian's lawyer;

The CYFEA defines the term "guardian" for the purposes of that statute. Section 1(1)(l) of this Act states:

1(1) In this Act,  
(l) "guardian" means  
(i) a person who is or is appointed a guardian of the child under Part 2 of the Family Law Act, or  
(ii) a person who is a guardian of the child under an agreement or order made pursuant to this Act;

There is no evidence before me that [the younger daughter's father] is a guardian within the terms of section 1(1)(l) of the CYFEA. There is also no evidence before me that [the younger daughter's father] could be deemed or "considered to be" a guardian if the requirements of section 1(l) are not met.

If the Public Body intends to maintain its position that its disclosure was authorized by section 126(1) of the CYFEA, I ask that it either provide evidence of guardianship, or expand its arguments that it may deem individuals to be guardians.

If the Public Body establishes that [the younger daughter's father] is a guardian, and that its disclosure was authorized by section 126(1) of the CYFEA, and therefore section 40(1)(f) of the FOIP Act, then the Public Body must also establish that it complied with section 40(4) of the FOIP Act.

Section 40(4) of the FOIP Act states:

40(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.

The Public Body states that its disclosure was authorized under section 40(4) of the FOIP Act; however, it does not explain how the information it disclosed was necessary for carrying out its purposes in disclosing the information.

I also note that the Public Body states in its rebuttal submissions that even if [younger daughter's father] is not a guardian, that the disclosure of the Complainants' personal information was done "rightfully".

I ask that the Public Body provide further argument, and evidentiary support for its arguments, in relation to section 126(1) of the CYFEA, and further argument in relation to the application

of section 40(4) of the FOIP Act. In addition, I ask it to provide support for its position that the disclosure was “rightful” even if it was not authorized by section 126(1) of the CYFEA.

[para 8] The Public Body provided submissions in response to my questions. The Complainants were provided the opportunity to respond to the Public Body’s further submissions and they did so.

## II. ISSUE

**Issue A: Did the Public Body disclose the Complainants’ personal information in contravention of Part 2 of the Act?**

## III. DISCUSSION OF ISSUE

**Issue A: Did the Public Body disclose the Complainants’ personal information in contravention of Part 2 of the Act?**

a. *Was the information that was disclosed by the Public Body the personal information of the Complainants?*

[para 9] Personal information is defined by section 1(n) of the FOIP Act. This provision states:

*In this Act,*

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

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

*(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual’s age, sex, marital status or family status,*

*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual’s health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else’s opinions about the individual, and*

*(ix) the individual’s personal views or opinions, except if they are about someone else;*

Personal information under the FOIP Act is information about an identifiable individual.

[para 10] The letter of the September 7, 2010 was addressed to the mother and to the younger daughter's father separately. This letter states that a caller made allegations that the younger daughter's father may have been abusing the younger daughter during access visits. The letter also documents that someone made a complaint that the younger daughter was physically abused by the mother. The letter finds that all these allegations are unfounded. The letter contains information about the younger daughter as an identifiable individual as well as information about the mother, including her name and the statements she made to the police when they investigated the complaint of physical abuse.

[para 11] The report of September 27, 2011 contains the opinions of the two daughters and the mother about the younger daughter's father. While an individual's opinion about another individual is the personal information of the other individual, the fact that an individual holds the opinion remains the personal information of the individual. This point is made in Order F2006-006 in which the Adjudicator noted:

A third party's personal views or opinions about the Applicant - *by that reason alone* - are expressly not their personal information under section 1(n)(ix). However, the identification of the person providing the view or opinion may nonetheless result in there being personal information about him or her. Section 1(n)(ix) of the Act does not preclude this conclusion, as that section only means that the content of a view or opinion is not personal information where it is about someone else. In other words, the *substance* of the view or opinion of a third party about the Applicant is not third party personal information, but the *identity* of the person who provided it is third party personal information.

The opinions about the younger daughter's father are *his* personal information; however the fact that the Complainants hold these opinions is *their* personal information.

[para 12] The report also contains the opinions of the caseworkers regarding the mother, the older daughter, and the younger daughter. These opinions are the personal information of the Complainants.

[para 13] I find that the personal information of the younger daughter and the mother is present in the letter of September 7, 2010, and the personal information of all the Complainants is present in the report of September 27, 2011. I therefore find that the Public Body disclosed the personal information of the Complainants. I will now consider whether it did so in accordance with, or contravention of, Part 2 of the FOIP Act.

b. *Was the Public Body authorized to disclose the personal information?*

[para 14] Section 40 of the FOIP Act provides in part:

*40(1) A public body may disclose personal information only*

...

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

...

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

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

[...]

*(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.*

c. *Were the disclosures authorized under section 40(1)(c) and 40(4)?*

i) The letter of September 7, 2010

[para 15] Section 40(1)(c) authorizes disclosure of personal information if the purpose in disclosing the information is consistent with the purpose in collecting it. The Public Body states:

The FOIP Act allows disclosure of the Complainant's personal information for the purposes for which the information was collected or compiled under s. 40(1)(c). The information was collected or compiled as part of an assessment process and provides the guardians<sup>1</sup> with the decision and the outcomes of the two assessments.

[para 16] Section 41 of the FOIP Act restricts the application of section 40(1)(c). It provides:

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

*(a) has a reasonable and direct connection to that purpose, and*

*(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

In order to establish that section 40(1)(c) authorizes the disclosure of personal information, a public body must establish that the disclosure meets the requirements of section 41.

[para 17] From the contents of the letter, I infer that the Public Body collected personal information about the younger daughter and the mother as part of its

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<sup>1</sup> Whether or not the younger child's father is her guardian will be addressed further below.

investigation into allegations of abuse regarding the younger daughter. It then disclosed the results of its investigation to the younger daughter's father and to the mother in separate letters containing the same information. The results of the investigation were that there was no indication of physical abuse, but there was a potential for emotional injury as a result of the making of unsubstantiated allegations of abuse. Essentially, the Public Body investigated an allegation of abuse in order to ensure that a child was not being subjected to abuse, and disclosed the information it obtained in the investigation both to conclude the investigation and to ensure that the child would not be subjected to abuse. Thus I find that there is a reasonable and direct connection between the Public Body's purpose in collecting the personal information and the Public Body's purpose in disclosing the personal information within the terms of section 41(a).

[para 18] The Public Body did not provide detailed arguments as to how disclosure of the letter of September 7, 2010 was necessary for performing its statutory duties. However, in my view, disclosing the letter was necessary for the Public Body to perform its statutory duties effectively. From my review of the CYFEA, I am satisfied that the Public Body has a role in protecting children from physical and emotional abuse. The Public Body has authority to investigate reports of abuse to ensure that children are not abused, and to take protective measures if it finds that they are. In this case, the Public Body investigated complaints of physical abuse, but determined that these were unsubstantiated. However, it became concerned as a result of its investigation that there was a potential for emotional abuse, if complaints of this nature continued to be made. The Public Body investigated in order to determine whether measures to protect a child from abuse were necessary. The Public Body disclosed the mother's and the younger daughter's personal information to indicate that it understood the allegations that had been made and to support its conclusion that protective measures in regard to physical abuse were not necessary and to ensure that the younger daughter was not subjected to emotional injury or abuse.

[para 19] If the Public Body had not brought the possibility of emotional injury resulting from unsupported allegations of abuse to the attention of the parents, it would not be fulfilling its statutory function of protecting children from injury or abuse, which was the purpose of its investigation. I therefore find that the disclosure was necessary for the Public Body to perform its statutory duties within the terms of section 41(b).

[para 20] With regard to whether the disclosure of the personal information in the letter of September 7, 2010 meets the requirements of section 40(4), such that the Public Body disclosed only the personal information necessary for meeting its purposes in disclosing the information in a reasonable way, I am satisfied that the Public Body complied with the terms of section 40(4). The Public Body disclosed only the personal information necessary to satisfy the recipients of the letter that the allegations of physical abuse had been thoroughly investigated and found to be unsubstantiated, and to bring to the attention of the parties that complaints of this kind can lead to the emotional injury of a child.

- ii) The report of September 27, 2011



[para 21] With respect to the report of September 27, 2011, on review of its contents I find that most, but not all, of it was also disclosed for the purposes for which it was collected.

[para 22] Like the letter of September 7, 2010, the report of September 27, 2011 presents the findings of an employee of the Public Body who investigated a report that the older daughter was conducting access exchanges that were sometimes volatile. However, in this case, the report was not made by one of the parents, but was apparently made by employees at the police station at which the access exchanges are made.

[para 23] The report addresses the quality of communication between the mother and the younger daughter's father and its potential effects on the mother's two daughters. This aspect of the investigation arises from a concern that was raised by the police station employees that the access exchanges had been volatile, although it is not indicated in the materials before me how the volatility involved the older daughter. The report recommends that both the younger daughter's father and the mother seek individual counseling in order to avoid conflict and "to focus on the best interest of the child".

[para 24] I accept that changing the access exchange arrangements, or alternatively, their volatility, would require the younger daughter's father to receive notice that the access exchanges were considered volatile and potentially harmful to the emotional well-being of the two daughters. It was clearly necessary to bring this issue to the attention of a party who was contributing to this volatility in order to achieve resolution. I also accept that it would be necessary to refer to the older daughter in the report provided to the father of the younger daughter to enable him to address the need to either consent to changing the access exchange terms or to assist in reducing their volatility.

[para 25] However, as discussed above, the Public Body included in the report the opinions of the older daughter, including the fact that she holds particular opinions about the younger daughter's father, some of which do not have any relation to the manner in which access exchanges were conducted or her thoughts regarding them, as well as information about her education and extracurricular activities.

[para 26] Similarly, the report contains opinions attributed to the mother, as well as the assessor's opinions about the mother, which, as presented in the report, do not appear to be related to the issue of whether the older daughter should be conducting access exchanges.

[para 27] The report was prepared to provide the outcome of the assessment regarding the concerns raised about the access exchanges. As a result, I am not persuaded that providing the opinion of the older daughter about the younger daughter's father and her views about his treatment of her mother or information about her education and extracurricular activities, serves the purpose of addressing the issues raised about the suitability of having her conduct the access exchanges. Similarly, I find that it was unnecessary to disclose the personal information regarding opinions of, or about, the mother and the information about and opinions of the older daughter in order to achieve

the objectives of the Public Body in preparing the assessment report, as disclosing this information is unrelated to its objectives.

[para 28] To conclude, the purpose of the report was to address a complaint regarding the manner in which access exchanges were being conducted, and the information that was properly disclosed for this purpose was disclosed for the purpose for which it was collected within the terms of section 40(1)(c). This is the information regarding the access exchanges and their volatility and the potential for emotional abuse of the two daughters, as well as the recommendations in the report. However, I find that section 40(1)(c) does not authorize disclosure of the personal opinions of the mother and the older daughter, or opinions about them formed by the assessor or information about the older daughter's education and activities, where this information is unrelated to the access exchanges. As the information is unrelated, that there is no reasonable or direct connection between the Public Body's purpose in collecting the personal information and the Public Body's purpose in disclosing the personal information within the terms of section 41(a). As discussed above, section 40(1)(c) cannot apply unless the terms of both section 41(a) and (b) are met.

d. *Were the disclosures authorized under section 40(1)(e) or (f)?*

[para 29] The Public Body also points to section 126 of the *Child, Youth and Family Enhancement Act* (CYFEA) as authorizing its disclosure of the Complainants' personal information, within the terms of section 40(1)(f). As I have found that disclosure of a part of the personal information was not authorized under section 40(1)(c), I must also consider its arguments under subsections 40(1)(e) or (f) relative to that part of the information.

[para 30] Section 40 of the FOIP Act states, in part:

*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,*

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

[para 31] Section 126 of the CYFEA states, in part:

*126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the Freedom of Information and Protection of Privacy Act, in proceedings under this Act, in accordance with Part 2, Division 2 or this Part or as follows:*

*(a) to any person or organization, including an agency providing services to a child, if the disclosure is necessary to plan services for or provide services to the child or the child's family or to plan or provide for the day-to-day care or education of the child;*

*(b) to the guardian of the child to whom the information relates or the guardian's lawyer[...]*

[para 32] If either of the two subsections of CYFEA cited above (sections 126(1)(a) or 126(1)(b)) apply to the Public Body's disclosure of the Complainants' personal information, then the disclosure would be authorized under section 40(1)(f) and possibly section 40(1)(e) of the FOIP Act.

[para 33] In its initial submissions, the Public Body argued:

Significant persons in this submission are the Complainant and the [younger daughter's father]. The Complainant is the biological mother of the child and youth referred to in this submission. The [younger daughter's father], whom the information was allegedly wrongly disclosed to, is the former common law husband to the Complainant. The [younger daughter's father] is also the biological father to the child referred to in this submission, and a guardian to the Complainant's other offspring, referred to as the youth.

According to information collected during assessment of the [mother] and the [younger daughter's father], the [mother] and the [younger daughter's father] cohabited for a period of approximately two years. The [younger daughter's father] acted as parent to the [older daughter] and is the biological father of the [younger daughter]. Both the [mother] and the [younger daughter's father] were involved in an active and ongoing custody dispute in 2010 and 2011, and are considered guardians of both the [younger daughter] and the [older daughter].

In 2011 the [older daughter's] mother and the [younger daughter's father], as "guardians", were subject of an Intervention Assessment in relation to reported concerns of emotional injury regarding both the [older daughter] and the child. The document speaks to child intervention allegations, the outcome of the assessments and recommendations of the CFSA.

Human Services Region 6 Edmonton and Area CFSA employees were participants in the assessment. Both the Complainant's mother and the [younger daughter's father] were deemed to be "guardians" of the Complainant and the child in the assessment dated September 27, 2011.

Under s. 126 of the *Child Youth and Family Enhancement Act* (CYFEA) the employees of the CFSA were authorized to notify both guardians of the decision (the outcome of the assessment as related to the safety condition of the Complainant and the child), and provide clear [rationale] for the decision as related to the safety condition of the Complainant and the child.

[para 34] This argument points to section 126(1)(b) as authority for the disclosure of the Complainants' personal information in the report of September 27, 2011. The Public Body also reproduced section 126(1)(a) in its initial submissions, but did not make detailed arguments in relation to the application of this provision to the letter of September 7, 2010 or the report of September 27, 2011 in its initial submissions.

[para 35] In its rebuttal submissions, the Public Body provided further explanation of its position that section 126(1)(a) authorizes its disclosure:

The Public Body maintains that even if the [younger daughter's father] was not deemed the Complainant's guardian, the information was disclosed to [the] [younger daughter's father] rightfully.

The Complainant [the older daughter] was very much a part of the child's family unit. The Complainant was involved in the day-to-day care and providing services for the child, as evidenced in the letter of September 27, 2011, wherein the Complainant's biological mother and the [younger daughter's father] had the Complainant conduct the access exchanges for the child, her sister, between the parties.

The Public Body respectfully maintains its position as set out in our initial submission that:

a) The Public Body, in exercising its mandated authority to provide for the safety and well-being of Alberta children, properly disclosed the Complainant's [the older daughter's] personal information for the purposes of planning or providing services for the [younger daughter's father's] biological child and the child's family which included the Complainant, and in order to provide for the day to day care of the child, pursuant to ss. 126(1)(a) of the *Child, Youth and Family Enhancement Act*, and

b) The Public Body in properly exercising its authority pursuant to ss. 126(1)(a) of the *Child, Youth and Family Enhancement Act* was also in compliance with s. 40(1)(f) of the FOIP Act.

[para 36] In response to my request for further argument and evidence to support its position that section 126(1) of the CYFEA authorizes its disclosure of the Complainants' personal information, and for further argument in relation to the application of section 40(4) of the FOIP Act the Public Body stated:

In its rebuttal submissions dated March 26, 2013, the Public Body did not rely on the provisions under s. 126(1)(b) of the CYFEA – disclosure to a guardian – when it disclosed the information to the [younger daughter's father]. It continues to be the position of the Public Body that whether the [younger daughter's father] is or is not the complainant's guardian is not relevant to nor the basis of the disclosure by the [younger daughter's father].

As per the Public Body's rebuttal submissions, it continues to rely on the provisions in s. 126(1)(a) as the basis for disclosing the information to the [younger daughter's father].

The Public Body became involved with the [...] children twice.

The first time was as a result of cross-complaints by both the father, the [younger daughter's father], and the mother, one of the Complainants. The Public Body investigated the concerns and found there was no reason for involvement.

The information disclosed in the letter of September 7, 2010 was disclosed to the [younger daughter's father] in accordance with s. 126(1)(a) of the CYFEA for the purposes of "planning or providing services" and for making arrangements for the "day to day care" of the parties' biological child. The disclosure was made so that the Complainant and the [younger daughter's father] could understand that their allegations against each other were unfounded, and to help them understand that the potential effects of their allegations in the midst of their access dispute regarding their child, could potentially create emotional abuse of their child.

[para 37] The foregoing arguments present two theories of the Public Body's authority to disclose the Complainants' personal information to the father of the younger daughter.

[para 38] The first is that the disclosure of the letter of September 7, 2010 was authorized because it considered the father of the younger child to be a guardian within the terms of section 126(1)(b) of the CYFEA.

[para 39] The second theory, argued in rebuttal and in its answers to my questions, is that the disclosure was authorized by section 126(1)(a) of the CYFEA, on the basis that the younger daughter's father was involved in providing day-to-day care and services to her and that the disclosure of the Complainants' personal information was for the purposes of planning or providing services and for making arrangements for the day-to-day care of the younger daughter.

i) Section 126(1)(b)

[para 40] I will deal first with section 126(1)(b) – the idea that the younger daughter's father is a guardian. Section 126(1)(b) provides:

*126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the Freedom of Information and Protection of Privacy Act, in proceedings under this Act, in accordance with Part 2, Division 2 or this Part or as follows:*

*(b) to the guardian of the child to whom the information relates or the guardian's lawyer [...]*

[para 41] Section 126(1)(b) authorizes the Public Body to disclose any personal information relating to a child for any purpose, provided that it is the guardian of the child who is receiving the information, or the guardian's lawyer. Section 126(1)(b) would authorize disclosing the report and the letter to the father of the younger child, should it be shown to apply.

[para 42] As noted earlier, the Public Body made the following argument in its initial submissions:

Significant persons in this submission are the Complainant and the [younger daughter's father]. The Complainant is the biological mother of the child and youth referred to in this submission. The [younger daughter's father], whom the information was allegedly wrongly disclosed to, is the former common law husband to the Complainant. The [younger daughter's father] is also the biological father to the child referred to in this submission, and a guardian to the Complainant's other offspring, referred to as the youth.

According to information collected during assessment of the [mother] and the [younger daughter's father], the [mother] and the [father] cohabited for a period of approximately two years. The [younger daughter's father] acted as parent to the [older daughter] and is the biological father of the [younger daughter]. Both the [mother] and the [younger daughter's father] were involved in an active and ongoing custody dispute in 2010 and 2011, and are considered guardians of both the [younger daughter] and the [older daughter]. [My emphasis]

[para 43] The Complainants submitted for the inquiry an order of the Alberta Court of Queen's Bench dated March 26, 2010 dismissing the younger daughter's father's application for guardianship of the younger daughter and requiring him to obtain consent from the Court prior to making another application for guardianship. The Complainants also submitted another court order establishing that another individual is the father and a guardian of the older daughter. The Complainants also provided statements to establish that the younger daughter's father and the mother never entered a common-law relationship, as the father and the mother shared a residence for only ninety days.

[para 44] Although the Public Body presented its statements regarding the guardianship of the children and the existence of a previous common-law relationship as facts supporting its application of statutory provisions in its initial submissions, it retreated from these statements in its rebuttal submissions, once it reviewed the Complainants' evidence and exhibits.

[para 45] The evidence supplied by the Complainants establishes that the younger daughter's father is not a guardian of either of the children within the terms of the CYFEA. As a result, I find that section 126(1)(b) does not provide authority for the disclosure of any the Complainants' personal information to the younger daughter's father.

ii) Section 126(1)(a)

[para 46] As I have found that the section 40(1)(c) of the FOIP Act authorized disclosure of the letter of September 10, 2010, and most of the personal information in the report of September 27, 2011, I need to consider the Public Bodies arguments under section 126(1)(a) of the CYFEA only for the relatively minor parts of the personal information contained in the report that I have found not to be so authorized

[para 47] As set out above, the Public Body's theory is that it was necessary to disclose the personal information of the Complainants to enable the younger child's father to plan for her care and services. The Public Body explains its purpose in disclosing the Complainants' personal information in the report of September 27, 2011 in the following way:

The second time the Public Body became involved with the [...] children was as the result of concerns with the arrangements the parents made for the access exchange of the younger child. The parents, one of [the mother] and the [younger daughter's father], had arranged for the then 13 year [older daughter] to carry out the access exchange of the younger child, the [older daughter's] half-sister.

The Public Body investigated the concerns. The investigation included interviews. As a result of the investigation, the Public Body determined that using the 13 year old Complainant as the conduit for the access exchange in the context of this family was not in the best interests of the children.

The information was disclosed to the [younger daughter's father] in accordance with s. 126(1)(a) of the CYFEA – disclosure necessary “to plan or provide services to a child or a child's family” or to “plan or provide for the day to day care... of a child.

In order that the mother, one of the Complainants, and the [younger daughter's father] understand that:

- a) the access arrangements they had made using the 13 year old as the conduit for the access exchange was not in the best interests of the children,
  - b) to understand the effect of those access exchange arrangements on the children,
  - c) and thereby understand why the arrangements were not in the best interests of the children, and
  - d) accordingly to make other arrangements that did not include the 13 year old [older daughter] as the conduit of the access exchange,
- the information was disclosed to the [younger daughter's father] for the purposes of “planning or providing services” and for making arrangements for the “day to day care” of the younger child.

Therefore, both times, the disclosure was provided in accordance with s. 126(1)(a) of the CYFEA and therefore complies with s. 40(4) of the FOIP Act.

The Public Body respectfully submits these responses in answer to the Adjudicator's request for further information.

[para 48] The mother, who provided arguments on behalf of the Complainants, argues in rebuttal:

The only one who may plan services for my child, [name of youngest child] is me, [name of mother]. [The father of the younger daughter] is not able to plan services for [the older daughter] so therefore it was not necessary to disclose any information about [the older daughter] to [the father of the younger daughter].

The only people who may plan services for [the older daughter] are [her father] and me, [the mother]. [The younger daughter's father] is not able to plan services for [the older daughter] so therefore it was not necessary to disclose any information about [the older daughter] to the [younger daughter's father]. I believe that sharing the things [the older daughter] said about [the younger daughter's father] with him, may have even put her at risk.

[para 49] The Public Body argues that the disclosure of the Complainants' personal information in the report of September 27, 2011 was made so that the parties could understand that the access exchange arrangement for the younger daughter was not in the best interests of either of the mother's two daughters and to suggest that they make other arrangements.

[para 50] The report of September 27, 2011 contains the personal information of all the Complainants. The author of the report reproduced opinions about the younger daughter's father and attributed the opinions to the older daughter and reproduced them in the report. The report also contains the assessor's opinions about the mother in addition to opinions about the father.

[para 51] In my view, section 126(1)(a) is intended to enable disclosure of the personal information necessary for providing services to children, and planning or providing things like necessities of life, day care, activities, and education. It enables

disclosure of personal information necessary for providing or planning services or care to persons who provide services and care to a child, even though they may not be guardians of the child.

[para 52] I accept that the first recommendation appearing on the second page of the report could be construed as intended to assist the mother and the younger daughter's father to plan a new access exchange arrangement, and therefore can be construed as a disclosure made for the purpose of planning or providing day-to-day care of a child. "Both parents should have a third party person to conduct the exchanges of the child. If either parent is unable to secure a third party then the suggestion of hiring an agency that conducts drives / exchanges of the child may be beneficial." (The personal information contained in the other two recommendations I find was disclosed for the same purpose that the information was collected, within the terms of section 40(1)(c) of the FOIP Act, as discussed above.)

[para 53] I find it less convincing that any of the other personal information in the report is information that is necessary for planning or providing care or services to the younger daughter, given that the report is primarily concerned with analyzing the relationship between the mother and the father of the younger daughter. Arguably, there is utility in some parts of it insofar as it explains the effect that the Public Body believes this relationship has on the younger daughter, which it might be useful for both parents to understand.

[para 54] In any event, there is, in my view, some personal information in the report that has no direct connection to the goal of planning for the provision of services and care to the younger child. This is the same information the disclosure of which I found earlier was not sufficiently connected to the purpose for which the information was collected – the opinions of the older daughter and information about her education and extracurricular activities, or the opinions of, or about, the mother. I do not see why this information needed to be disclosed for the purpose of the younger child's father's planning to provide services or care to his child.

*e. If the disclosure of the report was authorized by a provision of section 40(1) of the FOIP Act, did the Public Body disclose only the personal information necessary for fulfilling its purpose in a reasonable manner, as required by section 40(4) of the FOIP Act?*

[para 55] I have already decided that there was no authority for disclosing the particular items of personal information contained in the report that are described in the preceding paragraph. However, had I found otherwise, I would find that including this information would not be necessary for the Public Body to carry out its purposes in a reasonable manner.

[para 56] Section 40(4) provides:



*40(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 57] As the Public Body did not address section 40(4) in its initial submissions, other than to state that its requirements were met, I asked it in my letter of April 8, 2013 to provide further argument in relation to this provision. The Public Body stated:

In order that the mother, one of the Complainants, and the [younger daughter's father] understand that:

- a) the access arrangements they had made using the 13 year old as the conduit for the access exchange was not in the best interests of the children,
  - b) to understand the effect of those access exchange arrangements on the children,
  - c) and thereby understand why the arrangements were not in the best interests of the children, and
  - d) accordingly to make other arrangements that did not include the 13 year old [older daughter] as the conduit of the access exchange,
- the information was disclosed to the [younger daughter's father] for the purposes of "planning or providing services" and for making arrangements or the "day to day care" of the younger child.

Therefore, both times, the disclosure was provided in accordance with s. 126(1)(a) of the CYFEA and therefore complies with s. 40(4) of the FOIP Act.

[para 58] Section 40(4) requires a public body to consider whether disclosing personal information is necessary for meeting its purposes in disclosing the information. With regard to section 40(1)(f), a public body must disclose only the information necessary for fulfilling its authorized purpose in disclosing the personal information, in a reasonable manner. With regard to section 40(1)(e), a public body must establish that only the personal information necessary for complying with an enactment in a reasonable way was disclosed.

[para 59] The Public Body has not explained why it was necessary for the Public Body to disclose the personal information I have described above regarding the mother and the older daughter to the younger daughter's father for meeting its purposes of reducing the volatility in access exchanges, and to effect the removal of the older daughter from this process. In my view, the Public Body's intention of conveying the message that the access exchange arrangements were not in the best interests of the children could have been met without disclosing as much of the Complainants' personal information as it did.

### *Conclusion*

[para 60] I have found that it has not been demonstrated that the disclosure of all the personal information in the report was authorized by a provision of section 40(1) of the FOIP Act. It has also not been demonstrated that the Public Body complied with the terms of section 40(4) of the FOIP Act when it disclosed some parts of the Complainants' personal information to the younger daughter's father. I will therefore order the Public Body to review the information it discloses about the Complainants prior to disclosing it,

in order to determine whether it is authorized to disclose their personal information and whether it is necessary to disclose the information to meet its purposes.

#### **IV. ORDER**

[para 61] I make this Order under section 72 of the Act.

[para 62] I order the Public Body to cease disclosing the personal information of the Complainants in contravention of Part 2 of the Act. Compliance with this portion of the Order may be achieved by ensuring that the Public Body has authority to disclose their personal information when it is considering disclosing their personal information, and by considering whether the disclosure is necessary for meeting its purposes in disclosing their personal information in a reasonable way.

[para 63] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Teresa Cunningham  
Adjudicator