

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2013-22**

July 18, 2013

**SOUTHWEST ALBERTA  
CHILD AND FAMILY SERVICES AUTHORITY (REGION 1)**

Case File Number F6105

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

**Summary:** An individual made a complaint that the Southwest Alberta Child and Family Services Authority (Region 1) (the Public Body) disclosed her personal information at a meeting preliminary to a guardianship hearing, in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The Complainant states that the meeting was attended by several individuals who were not being considered for guardianship and that an affidavit of a Public Body caseworker, containing the Complainant's personal information, was provided to those individuals.

The Adjudicator found that the affidavit had been filed with the Provincial Court of Alberta prior to it having been copied and provided to other individuals. Therefore the information in the affidavit is excluded from the scope of the FOIP Act and the Adjudicator did not have jurisdiction under the Act to review the Public Body's disclosure of that information.

**Statutes Cited: AB:** *Child, Youth, and Family Enhancement Act* R.S.A. 2000, c. C-12 s. 126(1), *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 72.

**Authorities Cited: AB:** Orders F2004-030, F2007-007.

## **I. BACKGROUND**

[para 1] An individual made a complaint that the Southwest Alberta CFSA (the Public Body) disclosed her personal information at a meeting preliminary to a guardianship hearing, in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). The Complainant states that the meeting was attended by several individuals who were not being considered for guardianship and that an affidavit of a Public Body caseworker, containing the Complainant's personal information, was provided to those individuals.

[para 2] The Complainant requested a review from this office. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful; the Complainant requested an inquiry and the matter was set down.

## **II. INFORMATION AT ISSUE**

[para 3] The information at issue is the information disclosed by the Public Body in an affidavit sworn by a Public Body caseworker that included personal information about the Complainant.

## **III. ISSUES**

[para 4] The Notice of Inquiry issued November 21, 2012 provides the sole issue at inquiry as follows:

- 1. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**

[para 5] After reviewing the affidavit provided to me by the Complainant, I asked the parties to comment on the application of section 4(1)(a) to the information at issue. As a result of the responses, I have added the following issue:

- 2. Is the information excluded from the application of the Act by section 4(1)(a)?**

## **IV. DISCUSSION OF ISSUES**

- 1. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**

[para 6] The affidavit disclosed by the caseworker contains information about the Complainant, her partner and her children, information about their domestic situation, and the caseworker's opinion regarding the Complainant, her partner and the placement of the children. The affidavit also contains personal information of other third parties, some of whom were present at the meeting.

[para 7] The only disclosure at issue in this inquiry is the disclosure of the Complainant's personal information.

[para 8] The Public Body states that the FOIP Act permits disclosure in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure (section 40(1)(f)), and that it had authority to disclose the Complainant's personal information pursuant to section 126(1)(a) of the *Child, Youth and Family Enhancement Act* (CYFEA).

[para 9] In its initial submission, the Public Body states that a hearing was to be held in June 2011 with respect to an application made by the Public Body for a custody order and temporary guardianship order. It states that a meeting was held on the same day as the hearing, to discuss possible kinship care arrangements. The Public Body stated that the meeting was attended by a grandparent of one of the Complainant's children, and this grandparent is a guardian of one of the children (the guardian grandparent). The Public Body states that "it was necessary for the parties involved to meet to discuss planning for the children prior to going before the judge to determine whether it was necessary for the Public Body to proceed with its applications [regarding guardianship]."

[para 10] The Public Body also acknowledges that a number of other individuals were present at the meeting. It states that its legal agent recalls that the following individuals were present at the meeting: the Complainant and her partner, the guardian grandparent as well as her spouse and her legal counsel, and the Public Body caseworker. In addition to these individuals, the Public Body states that there were 7 family members in attendance at the meeting; it could not identify each individual attendee. It states that "it is not uncommon for parties of such an application to have additional family members present at these types of proceedings to provide support for the individual or to be considered as a possible option for kinship care of the child or children that are involved. The Public Body would not oppose their presence."

[para 11] The Complainant states that she had been invited into the meeting after it had been going on for more than a half hour; it is clear from the Complainant's submissions that it was not she who had invited the additional attendees.

[para 12] The Public Body states that its "legal agent recalls that a copy of the Public Body's application, including the Affidavit, was provided to [the guardian grandparent and her] legal counsel and the Complainant." The Public Body initially did not address the allegation from the Complainant that additional copies of the affidavit were made by the caseworker and distributed to the remaining attendees at the meeting (though it did so in response to my later questions).

[para 13] The copy of the affidavit provided to me by the Applicant contains a stamp that indicates the affidavit was filed in the Provincial Court of Alberta on June 2, 2011, which is the day prior to the guardianship hearing and the meeting. By letter dated April 19, 2013, I asked the Public Body the following questions:

Is this a copy of the same affidavit provided to the guardian grandparent (and possibly other individuals) by the Public Body on June 3, 2011 as alleged by the

Complainant? In other words, were the affidavits provided to individuals on June 3, 2011 by the Public Body copies of the *filed affidavit*?

I require direct evidence regarding from where the distributed copies of the affidavit came and whether these were copies of the *filed* affidavit - in other words, did the distributed copies of the affidavit have the stamp indicating that the affidavit had been filed? I note that while the Public Body has indicated that its legal agent distributed copies, the Complainant indicates that the caseworker also distributed copies. If copies of the affidavit were distributed by multiple Public Body employees, please also address whether every copy of the affidavit was the same. Direct evidence from *each* relevant Public Body employee is preferred. If this is not possible, please explain why.

If the copies of the affidavit that were distributed by the Public Body were copies of the *filed* affidavit, can the Public Body provide comments on the applicability of section 4(1)(a)?

[para 14] The Public Body responded:

The Complainant has acknowledged that she received a copy of the *filed affidavit* in the court house on June 3, 2011. The Complainant provided the OIPC with a copy of the *filed affidavit* which the Public Body's Caseworker provided to her on that date and which is the document at issue. Therefore the distributed copies of the affidavit had the stamp indicating that the affidavit had been filed.

...

It is the Public Body's position that the filed affidavit was the only copy of the affidavit that was distributed and it was only provided to the Complainant and to [the] grandparent guardian.

[Name of] Caseworker, Human Services, is not available for comment in regard to the events surrounding this matter.

[para 15] I clearly have conflicting accounts regarding who exactly received a copy of the affidavit. The Public Body's legal agent recalls giving the affidavit to the Complainant and the guardian grandparent, as well as the grandparent's spouse and her legal representative. The Complainant states that the caseworker made additional copies of the affidavit for the other individuals present at the meeting. The caseworker is not available to comment on this statement.

[para 16] Because I have determined for the reasons provided below that the affidavit is excluded from the scope of the FOIP Act, I do not have to make a determination regarding which of the above accounts is more likely to be true and therefore regarding which of the disclosures, if any, was authorized by the CFYEA. However, there are several aspects of the Public Body's submission that are worthy of comment.

[para 17] The Public Body does not seem to be able to say for certain (or has not said for certain) that the affidavit shared with the guardian grandparent and/or other individuals is a copy of the filed affidavit.

[para 18] Also, the Public Body stated that “it is not uncommon for parties of such an application to have additional family members present” at guardianship proceedings and that it “would not oppose their presence.”

[para 19] The Public Body will often be working in difficult circumstances, with multiple parties who may not always be cooperative with each other. Further, the Public Body is often dealing with sensitive personal information. The CYFEA provides the Public Body with its authority to act in situations such as the one involving the Complainant. That legislation specifically addresses the sharing of information in various circumstances. If the Public Body is holding various private meetings and consultations in order to determine the best course of action in a hearing, or any other situation, the Public Body must consider its authority to share information under the CYFEA and the FOIP Act. Further, it should be able to clearly point to its legal authority, and it should know the role of each party with whom information is shared. In this case, while every disclosure by the Public Body in the meeting may have been authorized by the CYFEA, the evidence provided by the Public Body is not clear with respect to who received the information and why.

[para 20] Even if the affidavit was not distributed to all of the individuals in the room, the contents may have been discussed, which is also a disclosure of personal information. It is somewhat concerning that the Public Body “would not oppose the presence” of individuals who are not parties to a matter, instead of determining whether those individuals are authorized to be privy to the information being disclosed. It may be that the Public Body considered this issue at the time of the hearing but I have no information leading to that conclusion.

## **2. Is the information excluded from the application of the Act by section 4(1)(a)?**

[para 21] Section 4(1)(a) excludes certain information from the scope of the FOIP Act. It states:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

- (a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen’s Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;*

[para 22] Section 4(1)(a) applies to information taken or copied from a court file (Order F2004-030 at para. 20 and F2007-007 at para. 25). The copy of the affidavit I received from the Complainant is clearly stamped as having been filed with the court.

[para 23] The Public Body apparently cannot confirm with certainty that the affidavit provided to the guardian grandparent (and/or other individuals) was also a copy of the filed affidavit (as opposed to being a copy of an unfiled version). Rather, the Public Body asserts that since the Complainant has a filed copy of the affidavit, the other copies distributed by the Public Body were filed copies.

[para 24] I do not have any reason to believe that the affidavits provided to the guardian grandparent, her spouse, and legal representative (and possibly others) at the meeting that took place before the hearing were other than copies of the filed affidavit. Since the affidavit was filed the day before the hearing, and the Complainant's copy is a copy of the filed affidavit, it seems more likely than not that it was a copy of this document that was distributed. Therefore, I find on a balance of probabilities that the copies distributed by the Public Body at the meeting were copies of the filed affidavit.

[para 25] Therefore I find that the information in the affidavit is excluded from the scope of the Act by section 4(1)(a) and I do not have jurisdiction to review the Public Body's disclosure of that information.

## **V. ORDER**

[para 26] I make this Order under section 72 of the Act.

[para 27] I find that the information at issue is excluded from the scope of the Act by section 4(1)(a) and therefore I do not have jurisdiction to review the Public Body's disclosure of that information.

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Amanda Swanek  
Adjudicator