ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDERS F2013-32 & F2013-33

October 2, 2013

CITY OF EDMONTON

Case File Number F4660R/F4665R

Office URL: www.oipc.ab.ca

Summary: The Complainant (also referred to as the Applicant) complained that the City of Edmonton (the Public Body) disclosed her personal information when it showed her neighbour a copy of building plans for the Complainant's new house and provided her neighbor a copy of the plans. The Complainant also complained that the Public Body had not performed an adequate search for records responsive to an access request that she made.

This Office issued Orders F2009-019 and F2009-020 which found that the Complainant's building plans were her personal information and that Subdivision Development Appeal Board (SDAB) was not a separate public body. She ordered the Public Body to search SDAB for responsive records. The Public Body applied for judicial review. As a result of the judicial review, the Court ordered this Office to reconsider its finding that building plans were personal information and that SDAB was not a separate public body.

The Adjudicator found that building plans were not personal information. Therefore, the Public Body had not contravened Part 2 of the Act when it disclosed the Complainant's building plans to her neighbor. The Adjudicator also found that SDAB was a public body and that the Public Body was not required to search for records in SDAB's custody and control in order to satisfy the Public Body's duty under section 10(1) of the *Freedom of Information and Protect of Privacy Act* (the Act). However, the Adjudicator found that the Public Body failed meet its duty under section 10(1) of the Act when it did not either clarify the Applicant's request, or search for records responsive to the Applicant's request in departments other than the Planning and Development department.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 2, 10, 15, 17, and 72.; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1.

Authorities Cited: AB: Orders F2004-026, F2007-029, F2008-009, F2008-020, F2009-019, F2009-020, F2011-020, F2012-07, and F2013-07.

Cases Cited: *Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226.

I. BACKGROUND

[para 1] The Applicant was building a house in the City of Edmonton. As part of that process, her builder applied for the required permits with the City of Edmonton. Following the builder's application, the Applicant received a copy of a neighborhood newsletter which contained her name, her address, her builder's name, her building plans, and the history of the process she had gone through to get approval for her building plans. Pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act or the *FOIP* Act), the Applicant made an access request to the City of Edmonton (the Public Body) for:

> Any documentation, including all correspondence such as emails and letters, related to (1) the application for the development permit, (2) the development permit (3) the as-built application, and (4) the more recent stop work order for the property / house to be built at [the Applicant's address].
>
> Any documentation that references my name or my husband's name, or [the builder's name] or makes reference to "the owner/owners" of [the Applicant's address] or the municipal address…
>
> Specific records pertaining to how decisions were arrived at with respect to the as-built application and the stop work order for our development.
>
> Any letters of support and complaints referencing my name, my husband's name, our house or our property. We understand that the names and other personal information would have to be severed from these records.

[para 2] The Public Body has a form for applicants to use when they are making an access request. That form has a section which asks, "To which Department are you making your request?". The Applicant indicated the department was "Planning and Development".

[para 3] The Public Body processed the Applicant's request but the Applicant felt that all of the records in the possession of the Public Body had not been provided to her. As well, she felt that the Public Body had disclosed her personal information contrary to the Act. As a result, the Applicant requested that the Office of the Information and Privacy

Commissioner ("this Office") review the Public Body's response to her access request and whether the Public Body had improperly disclosed her personal information.

[para 4] An inquiry was held and on January 28, 2010, Orders F2009-019 and F2009-020 were issued. The Public Body applied for judicial review of the Adjudicator's order and on April 6, 2011, Justice Moen of the Court of Queen's Bench issued a decision and directed this Office to reconsider parts of its Orders (see *Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226).

[para 5] On August 12, 2011, this Office issued Notices of Reconsideration to the parties. Submissions were received by both the Applicant and the Public Body.

II. ISSUES

[para 6] The Notice of Reconsiderations dated August 12, 2011 states the issues and sub issues for reconsideration as follows:

> **Issue A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act? In this case, the Commissioner will also consider whether the Public Body conducted an adequate search for responsive records.**
>
> **i. Is the Subdivision and Development Appeal Board a "public body" under the Act?**
>
> **Issue B: Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act?**
>
> **i. Was the Complainant's "personal information" disclosed when the construction drawings were shown to the neighbor?**
>
> **ii. If the Complainant's person information was disclosed in the construction drawings, was the disclosure contrary to Part 2 of the Act?**

III. DISCUSSION OF ISSUES

Issue A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act? In this case, the Commissioner will also consider whether the Public Body conducted an adequate search for responsive records.

i. Is the Subdivision and Development Appeal Board a "public body" under the Act?

[para 7] The issue of whether the Subdivision and Development Appeal Board (SDAB) is a public body does not appear to have been an issue that was squarely before the

Adjudicator who conducted the initial inquiry. However, the issue was put before the Court at judicial review. The Court stated:

> To determine if the SDAB is a public body, I must have regard to the definition sections of *FOIPP* and of the *MGA*.
>
> Under s. 1(p) of *FOIPP* a "public body" is defined as including:
>
> (vii) a local public body.
>
> A "local public body" is defined under s. 1(j) as including:
>
> (iii) a local government body.
>
> A local government body is defined under s. 1(i) as including:
>
> (i) a municipality as defined in the *Municipal Government Act*,
>
> ...
>
> (xii) any board, committee, commission, panel, agency or corporation that is created or owned by a [municipality] and all the members or officers of which are appointed or chosen by that body,
>
> A "local government body" therefore includes the City of Edmonton and any board that is created by the City of Edmonton.
>
> The SDAB is a board created by the City pursuant to mandatory requirements set out in 627(1)(a) of the *MGA*:
>
> 627(1) A council must by bylaw,
>
> (a) establish a subdivision and development appeal board ... [my emphasis]
>
> The *Subdivision and Development Appeal Board Bylaw*, City of Edmonton Bylaw 11136, section 4, established the SDAB for the City of Edmonton.
>
> Therefore, by virtue of the definitions in *FOIPP*, the SDAB is a "local government body" and as a "local government body" is a "public body". It is not a department of the City of Edmonton. As the Privacy Commissioner must be correct in his interpretation of the statute he erred when he found that the SDAB was a department of the City of Edmonton.
>
> (*Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226 at para 34-41)

[para 8] I agree with the Court's analysis and conclusion and find that the Subdivision Development Appeal Board is a public body on its own and is not a department of the City of Edmonton.

[para 9] Section 10(1) of the Act states:

> *10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 10] Although this section does not make mention of the records for which a public body is required to search, several orders from this Office have established that a public body needs to search for the records that are in its custody and control. In Order F2007-029, the former Commissioner explained a public body's duty to assist as follows:

> …to meet the duty to assist an Applicant, a Public Body must inform the Applicant of all records in its custody or under its control that are responsive to the request, whether access will be granted to those records and when access will be given. If the Public Body intends to sever information from records, it must notify the Applicant not only of the provision of the Act on which it relies, but also the reasons for refusal, the name of a contact person, and notice of the right to request review. Further, this response must be full, complete, and accurate.
>
> (Order F2007-029 at para 49)

[para 11] I have some information before me that indicates the Public Body was aware that the SDAB likely had records in its custody and control that were arguably responsive to the Applicant's request. To quote the Public Body's submission from the original inquiry (as quoted in Orders F2009-019 and F2009-020):

> One of the records that the Complainant indicated was missing from Planning and Development file was actually submitted to the Subdivision Development Appeal Board. This record was not part of the Planning and Development file and so was not responsive to the Complainant's FOIP request, however, it was available to anyone reviewing the SDAB Case file.
>
> (Orders F2009-019 and F2009-020 at para13)

[para 12] I do not have enough information to establish that any such records in the custody and control of the SDAB could be said to also be in the custody and control of the Public Body. This is significant because previous orders issued by this Office have determined that to meet its obligations under section 10 of the Act, a public body must search all records in its custody and control.

[para 13] As a result, I find that the Public Body is not required to search for records in the custody and control of the SDAB.

[para 14] However, I do note that section 15 of the Act allows a public body to transfer an access request to another public body where a record is in the custody and control of the other public body. Section 15(1) of the Act states:

> *15(1) Within 15 days after a request for access to a record is*

> *received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if*
>
> > *(a) the record was produced by or for the other public body,*
> >
> > *(b) the other public body was the first to obtain the record, or*
> >
> > *(c) the record is in the custody or under the control of the other public body.*

[para 15] This section does not require a public body to transfer the request. Therefore, it imposes no absolute duty on the Public Body to transfer the request. That being said, a public body must exercise its discretion in a reasonable manner. If the Public Body knew that SDAB had records responsive to the Applicant's request in its custody and control, it would have been reasonable to transfer the request. Not doing so would have, arguably, been an unreasonable exercise of its discretion.

[para 16] In this case, the Public Body's submissions indicate that it knew that a record that the Applicant thought should have been provided to her was in the custody and control of SDAB. The Public Body says the record was not responsive because it was not in the Planning and Development file. The Public Body's interpretation of the Applicant's access request as being only for records in Planning and Development may be the reason it did not transfer the request to SDAB.

[para 17] In my view, however, the Applicant's request was at a minimum unclear as to whether, by naming Planning and Development as the location where she thought the records could be found, she meant to limit her request to records found within only that single department of the City. If the Public Body was aware that a record or records that otherwise met the Applicant's description of the records she was seeking existed, but were located in a different public body rather than in Planning and Development, in my view, it had a duty to clarify the scope of her request relative to this question (see orders F2004-026 at para 30, F2011-020 at para 23, and F2013-07 at para 12). As it appears the Applicant would have indicated she was seeking the record regardless of its location, this would then give rise to a duty in the Public Body to properly exercise its discretion under section 15 as to whether to transfer the request to the public body that did have custody and control, and as well, to meet its duty under section 10 to assist the Applicant, whether by itself transferring the request, or, at a minimum, by telling her of the other location at which the record(s) could be accessed.

[para 18] The same point would apply if there are any other program areas within the Public Body besides Planning and Development, where responsive records might exist. While for the reasons just given I do not agree with the original Adjudicator's comments regarding SDAB, I do agree with and adopt her reasoning with regard to the Public Body's duty to search any of its departments where responsive records exist, rather than just in the department the Applicant named as the one where she thought they might exist. As the original Adjudicator noted, the request was made to the City of Edmonton,

not to its Planning and Development department. At a minimum, the Public Body should have clarified this aspect of the Applicant's request with her. I find that in order to comply with section 10(1) of the Act, the Public Body should have searched for all records in its custody and control, and should either have itself assessed whether responsive records might exist in other City departments, or asked the Applicant to clarify whether she wanted records from only the Planning and Development departments or all City departments.

[para 19] The remainder of the original Adjudicator's findings regarding the adequacy of the Public Body's search (found in paragraphs 21-23 and 27-32 of the original Order) do not appear to have been an issue in the Judicial Review of the original Order and were not specifically discussed in the parties' submissions provided to me for this reconsideration. However, I agree with the original Adjudicator's findings regarding the deficiency of the Public Body's search found in paragraphs 21-23 and 27-32 of the original Order, with the exception of her assertion that the SDAB is a department of the Public Body and that the Public Body is required to search the SDAB for responsive records.

[para 20] For the reasons above, I find that the Public Body failed to assist the Applicant, contrary to section 10(1) of the Act.

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

i. Was the Complainant's "personal information" disclosed when the construction drawings were shown to the neighbor?

[para 21] The Adjudicator who issued the original Order found that the Public Body disclosed the Applicant's personal information contrary to Part 2 of the Act when it showed a copy of the Applicant's building plans to her neighbour and when it provided a copy of the Applicant's building plans to her neighbour in response to the neighbour's access request. In coming to this conclusion, the Adjudicator first found that the Applicant's building plans were "personal information" as defined by the Act.

[para 22] Specifically, the Adjudicator stated:

> In Order P2007-004, the Adjudicator considered whether information about a place occupied by an individual is personal information about the individual under section 1(k) of the *Personal Information and Protection Act*, which, like the FOIP Act, defines "personal information" as "information about an identifiable individual". She concluded that it can be, provided the information about the residence conveys something about the individual:
>
> > The conclusion I draw from the cases is that information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements.

> I agree with the reasoning of the Adjudicator in Order P2007-004. In my view, the drawings shown to the Applicant's neighbour on February 28, 2008, contain information about the Applicant's personal intentions. For example, the notes of the meeting indicate that two employees of the City went over drawings with the neighbour and that the neighbour's concerns were the removal of the common shrub, trees, proximity to the property line, and second storey hot tub. The notes indicate that the neighbour was shown the plans for the structure the Applicant intended to build, including plans to put a hot tub on the second storey. Consequently, the drawings referred to in the notes contain the personal information of the Applicant. While the Public Body notes that the neighbour was not provided with copies of the interior plans of the house, this does not change the fact that personal information about the Applicant was shown to and discussed with the neighbour, and therefore was disclosed to the neighbour.
>
> (Order F2009-019/2009-020 at para 41)

[para 23] On Judicial Review, the Court disagreed with the Adjudicator's conclusion. Specifically, the Court found that the Adjudicator incorrectly used the reasoning in a matter involving the interpretation of the definition of "personal information" in the *Personal Information Protection Act* ("PIPA") in interpreting the definition of "personal information" in the *FOIP* Act. The Court noted that the two Acts have different purposes and noted that the definition in *PIPA* is much broader than that found in the *FOIP* Act.

[para 24] Section 1(k) of *PIPA* defines "personal information" as follows:

> *1(k) "personal information" means information about an identifiable individual*

[para 25] Section 1(n) of the *FOIP* Act defines "personal information 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,*
> >
> > *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
> >
> > *(iii) the individual's age, sex, marital status or family status,*
> >
> > *(iv) an identifying number, symbol or other particular assigned to the individual,*
> >
> > *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
> >
> > *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*

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

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

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

[para 26] With regard to the differences between the definitions of "personal information" in *PIPA* and *FOIP* the Court stated:

> The *PIPA* definition has no list of examples of personal information to be considered, as there is in *FOIPP*. The Privacy Commissioner in ***Douglas Homes***, considering the definition of "personal information" in *PIPA*, found that (at para. 15)
>
> > ... information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, **personal intentions**, or compliance with legal requirements.
> >
> > (Emphasis added)
>
> **…**
>
> To put the definition of "personal information" in context, I note that the purpose of *PIPA* is:
>
> > 3. ...to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable.
>
> The purposes of *FOIPP* are set out in s. 2 of the Act:
>
> > 2. The purposes of this Act are
> >
> > (a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,
> >
> > (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,
> >
> > (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body,

(d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body, and

(e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

Thus, *FOIPP* involves broader issues of public accountability of public bodies and a balancing of private interests with public scrutiny of decisions that affect others, while *PIPA* involves the narrower sphere of private organizations' access and use of personal information. However, even in the context of *PIPA*, our Court of Appeal has recently stressed the importance of balancing privacy with the need for use of information (at para. 34):

> The statute recognizes two competing values: the right to protect information, and the need to use it. When Bill 44 was discussed in Committee, the Minister of Government Services stated:
>
> > When it comes to the reasonable standards in section 2, the bill sets the standard for compliance with the act, and that standard is the reasonableness standard. This standard is important because it ensures that the act is flexible for small and medium sized businesses. If businesses act reasonably, they have no problem with complying with the act. (*Hansard*, November 25, 2003)
>
> The statute does not give predominance to either of the two competing values, and any interpretation which holds that one must always prevail over the other is likely to be unreasonable.

Further, the Privacy Commissioner has noted the different purposes between *PIPA* and *FOIPP* in another decision - ***Manulife (Re)***, [2005] A.I.P.C.D. No. 52, OIPC File Reference P0197 (at para. 25):

> While I have been assisted by previous decisions under section 55 of the *FOIPP* Act, I have nonetheless been guided by *PIPA*'s legislative purposes and intent, which are different from those set out in the *FOIPP* Act. The *FOIPP* Act applies to Alberta public bodies, and was intended to foster open and transparent government. Through the *FOIPP* Act, individuals are granted a right of access to records in the custody or under the control of a public body. The ability to gain access can be a means of subjecting public bodies to public scrutiny. The access provisions of *PIPA* allow individuals to know what personal information of theirs is in the custody or under the control of an organization, and to ensure it is accurate and complete.

Further, principles of statutory interpretation provide that all the words be given meaning and that it is presumed that the legislature intended a purpose for each word: "In employing a statutory definition, we must ascribe meaning to each word that is found." per McClung JA in ***R. v. Crowchild***, [1987] A.J. No. 167 (CA). The Privacy Commissioner failed to consider these basic principles.

In particular, the Privacy Commissioner did not consider the meaning of "personal information" in light of the enumeration set out in s. 1(n) of *FOIPP*. The principles of *noscitur a sociis* and *ejusdem generis* may be applied to limit general terms, as noted by

the Supreme Court of Canada in ***National Bank of Greece (Canada) v. Katsikonouris***, [1990] 2 S.C.R. 1029 (at para. 93):

> As we know, in accordance with the rule of interpretation *noscitur a sociis* and its particular application, the *ejusdem generis* rule, the generality of a term can be limited by a series of more specific terms which precede or follow it. Professor Côté writes in this regard (*The Interpretation of Legislation in Canada* (1984), at p. 242):
>
> > *Noscitur a sociis* helpfully draws attention to the fact that a statute's context can indicate a meaning far more restrictive than that found in the dictionary.

Here, the general words ("personal information") are followed by the specific words particularized in the list (s. 1(n)(i) to (ix)). This suggests that the definition of personal information in *FOIPP* should be limited by the list that follows. While the enumeration is not exhaustive because the list is prefaced with the term "including", other unenumerated examples falling within the definition must be in the same type or nature as the enumerated list. Therefore, the Privacy Commissioner should have considered the context of the definition when interpreting the words "personal information" in s. 1.

Moreover, in ***Re Sheptycki***, Order No. P2007-002, [2007] A.I.P.C.D. No. 30, the Privacy Commissioner commented on the differences between the definitions of "personal information" in FOIPP and PIPA, noting that the FOIPP definition is more restrictive in that in excludes "information about an individual the opinions that individual expresses about someone else". He notes (at para. 21):

> Further more, it is not clear the two statutes treat subject matter that is sufficiently similar to import the principle. Even if they do, it would be wrong to try to force consistency upon these distinct definitions for the sake of the interpretive principle. I do not think it proper to adopt a definition from another, albeit related, statute, that legislates a meaning for a term that is contrary to common perception

(*Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226 at paras 57, 65-72)

[para 27] The Court then concluded, based on the definition of personal information found in *FOIP*, that the building plans were not the Complainant's personal information:

> Here, the documents before me and before the Privacy Commissioner show only the builder's name; they do not include Mah's name. The address of the proposed building is evident without the City showing it to the neighbour. There was no other information included in the list in s. 1(n) nor in the nature of the information included in 1(n) that could have covered the plans held by the City and for which Mah, through her builder, sought a building permit.
>
> Finally, it was incumbent on the Privacy Commissioner to consider the definition of "personal information" in the context of planning legislation (the *MGA*) and the requirement for notification to persons affected by proposed developments, i.e. the Commissioner ought to have given a more thorough analysis of s. 2(e) of *FOIPP* as it relates to planning matters.

> The Privacy Commissioner simply could not, on the facts and on the law, have concluded that the construction plans were personal information in the context of *FOIPP* and the *MGA*.
>
> (*Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226 at paras 73-75)

[para 28] The Court then went on to examine the second reason for deciding the Complainant's building plans were personal information given by the Adjudicator who issued the original order. Specifically, the Adjudicator found that given the wording of section 17(2)(g) of the Act, building permits must be considered personal information. Section 17(2)(g) of the Act states:

> *17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*
>
> *...*
>
> *(g) the information is about a licence, permit or other similar discretionary benefit relating to*
>
> *...*
>
> *(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body,*
>
> *and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,*

[para 29] The Court found:

> Section 17(2) was intended to ensure that if information about a building permit included information that fell within the definition of "personal information", limited to the third party's name and the nature of the permit, the release of that information would not be an unreasonable invasion of personal privacy. Exclusion from the presumption of "unreasonable invasion of personal privacy" does not necessarily mean inclusion in the definition of "personal information". For that the Commissioner was obliged to analyze the definition of "personal information" in *FOIPP*.
>
> (*Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226 at para 79)

[para 30] The Court then addressed the Adjudicator's comments on phrase, "nature of the licence" as it appears in section 17(2)(g) of the Act. The Court stated:

> The Privacy Commissioner then considered whether the information released came within the exception in s. 17(2), by interpreting the phrase the "nature of the ... permit". He looked to the definition of "nature" in the *Canadian Oxford Dictionary*:

> ... "*nature", when it appears in the phrase, "the nature of" usually means "characteristically resembling or belonging to the class of*"
>
> and concluded that the phrase meant only the class or type of permit, that is, the City could not disclose the actual exterior drawings. This interpretation, the Privacy Commissioner held, was consistent with the purpose of s. 17(2)(g) to ensure that public bodies are accountable and transparent when they issue discretionary licenses and permits.
>
> This interpretation is unreasonable on its face. Limiting the word "nature" to class or type, in fact, contradicts the purpose of the section. If all the information that is available to neighbours is the fact that a building permit, as opposed to a development permit, was issued with some undisclosed variances, there is no transparency since persons affected by the development would not be able to obtain useful information about the specifics of the proposed development, such as the nature of the variances. As the City notes, the affected neighbours would be forced to appeal to the SDAB to see the proposed construction drawings, leading to more appeals.
>
> Further, the first definition of "nature" in the *Canadian Oxford Dictionary* (Don Mills: Oxford university Press, 1998) is "a thing's or person's innate or essential qualities or character (*not in their nature to be cruel; is the nature of iron to rust*)". The essential quality of a permit is much broader than merely the class or type of permit. The essential quality or "nature of the permit" must include enough information about the specifics of the development permit to permit affected persons to determine how it will affect them and whether they have a basis for appeal.
>
> (*Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226 at paras 80-82))

[para 31] Finally, the Court returned the decision as to whether building plans were personal information as defined by the Act to this Office, for it to reconsider in light of the Court's reasons.

[para 32] While I agree with the result of the Court's analysis, I find that the building plans at issue were not personal information as defined by the Act for reasons different from those expressed by the Court.

[para 33] I note that the list of what is "personal information" found in section 1(n) of the Act is not an exhaustive list. Several orders issued by this Office since the Act was enacted have found information not, and not even akin, to the items enumerated in section 1(n) of the Act to be personal information because it was information about an identifiable individual. For example pictures or video of an individual (F2008-020 at para 30), e-mail addresses (F2012-07 at para 8), and police badge numbers (F2008-009 at para 25), to name a few, have been found to be personal information. As well, the *FOIP* Act specifically lists a person's 'views or opinions' as their personal information, which may include their preferences and tastes. Although *PIPA* and *FOIP* have different purposes and the respective acts must be interpreted with this in mind, given that the definition of "personal information" in the *FOIP* Act is not exhaustive, in my view the definition of "personal information" in both acts is broad.

[para 34] Keeping these considerations in mind, in my view, while it is may be true that the building plans in this case reflect the Applicant's tastes or preferences to some minor degree, the particular external features of the building that are revealed in the plans in this case are sufficiently commonplace in my view that they do not reveal anything sufficiently personal about her to make the plans more 'about' her than they are 'about' the building. Accordingly, I find that the building plans are not personal information as defined by the Act.

ii. If the Complainant's person information was disclosed in the construction drawings, was the disclosure contrary to Part 2 of the Act?

[para 35] Given my finding that the Complainant's building plans were not her personal information, I do not need to consider if the plans were disclosed contrary to the Act.

IV. ORDER

[para 36] I make this Order under section 72 of the Act.

[para 37] Given the Court's decision in *Edmonton (City) v. Alberta (Information and Privacy Commissioner)* 2011 ABQB 226, with the exception of the findings below, Orders F2009-019 and F2009-020 remain in effect.

[para 38] I find that the Public Body does not have to search records in the custody and control of the Subdivision Development Appeal Board in order to satisfy its duty under section 10(1) of the Act.

[para 39] I find that the Public Body did not contravene Part 2 of the Act when it disclosed the Complainant's building plans.

_____

Keri H. Ridley
Adjudicator