

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-14

February 21, 2014

ALBERTA HEALTH SERVICES

Case File Number F6604

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Summary: A former employee of Alberta Health Services (the Public Body) complained that her former manager sent an email to all the staff in a particular program area of the Public Body, informing them that the individual had taken a job with a new employer. The email specified the name and city of the new employer, and stated that the individual would be away indefinitely. The individual complained that the Public Body did not have authority to disclose her personal information in the email.

The Public Body argued that the disclosure of the Complainant's information in the email was authorized under sections 40(1)(h) (disclosure necessary for the performance of the duties of a public body employee), 40(1)(x) (disclosure for the purpose of managing or administering personnel of the Government of Alberta or the public body) and 40(1)(bb.1) (disclosure of business contact information).

The Adjudicator found that section 40(1)(h) authorized the disclosure of some of the information in the email, and section 40(1)(x) authorized the disclosure of the remaining information.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, 72.

Authorities Cited: Service Alberta, *FOIP Guidelines and Practices Manual* (2009).

I. BACKGROUND

[para 1] A former employee of Alberta Health Services (the Public Body) complained that her former manager sent an email to all the staff in a particular program area of the Public Body, informing them that the individual had taken a job with a new employer. The Complainant states that she had requested a leave of absence from the Public Body and was denied. She then filed a grievance with her union on October 10, 2012. On October 15, 2012, the Complainant started a new position with a public-sector union. On October 19, 2012, the Complainant's former manager sent an email to a group of Public Body employees, stating that the Complainant had taken a new position at the union office in Edmonton "and may be away indefinitely." The email also stated that an ad for her former position would be posted shortly. The individual complained that the Public Body did not have authority to disclose her personal information in the email.

[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 for written inquiry.

II. INFORMATION AT ISSUE

[para 3] The information at issue is the Complainant's personal information disclosed by the Public Body in an email to staff in a particular program area.

III. ISSUES

[para 4] The Notice of Inquiry sent October 2, 2013 lists the issues as follows:

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

IV. DISCUSSION OF ISSUES

Is the information at issue personal information of the Complainant?

[para 5] The FOIP Act defines personal information as follows:

1) *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;*

[para 6] The above is not an exhaustive list. The information at issue is about the Complainant's employment, and is her personal information under section 1(n).

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

[para 7] A public body may disclose personal information in accordance with section 40 of the Act. The Public Body has cited sections 40(1)(h), (x) and (bb.1) as authority for the disclosure. Section 40(4) is also relevant to this inquiry:

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

...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

...

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

...

(bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure

(i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and

(ii) does not reveal other personal information about the individual or personal information about another individual

...

(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.

Submissions of the Public Body

[para 8] The Public Body states that

The Manager felt it was necessary to disclose the fact that the Complainant was no longer with the department to all Central Zone department staff because the Complainant had handled administrative matters for the Zone and all recipients of the email needed to know that she was no longer the contact for such matters.

[para 9] It further states that the manager used the phrase “away indefinitely” because the Complainant’s grievance had not yet been concluded and the manager felt it was still possible that the Complainant would return to her position with the Public Body at some point.

[para 10] The Public Body states that normally there would not be a need to disclose the new employer of a departing employee; however, the Public Body provided the following reasons in support of disclosure in this case:

1. The Complainant had been a long serving [union] shop steward for AHS in the region. Many staff have dealt directly with her on union related issues, some potentially ongoing. It was felt that it was necessary to advise that she could now be reached at the [union] Edmonton office. If the Complainant had gone to completely, unrelated employment, there would [likely] not have been this same need.
2. It was also felt that department staff needed to be aware of the fact that the Complainant was now employed with the [union] in the event that the Complainant made contact with department staff in the future. The [union] often has an adversarial relationship with the department, so it would be important for department staff to keep this role in mind when interacting with the Complainant in the future.

[para 11] The Public Body argues that the disclosure was authorized under section 40(1)(h), which authorizes disclosure to public body employees where the information is necessary for the employees to perform their jobs.

[para 12] The Public Body also argues that the disclosure was authorized by section 40(1)(x), which permits disclosure for the purpose of managing or administering personnel of the public body. It cites Service Alberta’s *FOIP Guidelines and Practices Manual*, which defines “management and administration of personnel” as follows (at pages 286-7):

Management of personnel refers to aspects of the management of human resources of a public body that relate to the duties and responsibilities of employees (*IPC Investigation Report 2001-IR-006*). This includes staffing requirements, job classification or compensation, recruitment and selection, salary, benefits, hours and conditions of work, leave management, performance review, training and development, occupational health and safety, and separation and layoff.

...

Administration of personnel comprises all aspects of a public body’s internal management, other than management of personnel, necessary to support the delivery of

programs and services. Administration includes business planning, financial, materiel, contracts, property, information and risk management (*IPC Investigation Report 2001-IR-006*).

[para 13] The Public Body states:

The email in this case dealt with staff (i.e. –informing the department of the Complainant’s departure and posting of the position) and leave management (that the Complainant may return).

[para 14] The Public Body also states that the information about the Complainant’s new employer was disclosed for the purpose of managing and administering staff, “given the possible difference of views in the AHS/[union] relationship the email was informing staff of the change of roles and to some extent as part of risk management.”

[para 15] The Public Body states with respect to section 40(1)(bb.1), that “the information disclosed was of a type routinely disclosed in a business or professional context and it was limited to the name of the employer and location (so that staff would be able to reach the Complainant relative to her role with [the union].”

Submissions of the Complainant

[para 16] The Complainant argues that the employees to whom the email was sent are not members of the union for which she was a steward; rather, they are members of another union. Therefore, she did not represent any of those employees in union matters. She also states that the staff who reported to her were already aware of her departure, as were the supervisors of the email recipients. She states that arrangements were already in place for other clerical staff to cover her duties when she left.

[para 17] The Complainant states that “anyone with any union knowledge would know by that statement [that she would be away indefinitely] that I had filed a grievance.” She also stated that the manager did not have authority to disclose this information without her permission. Lastly, she states “[the manager] has no idea if I’m under protection and hiding.”

Discussion

Section 40(1)(bb.1)

[para 18] Regarding the Public Body’s arguments on the application of section 40(1)(bb.1), this provision applies only where the information is limited to an individual’s name, business title, telephone and fax numbers, and email address. As the email provided more information than that (for example, that the Complainant would be away indefinitely), section 40(1)(bb.1) does not authorize that part of the disclosure.

[para 19] The Complainant has raised concerns that the Public Body “has no idea if I am in the witness protection plan or if there is some hostile spouse out to get me, or ex boyfriend or someone after my family.” However, the Complainant has not indicated that these concerns

actually apply to her situation. The name and city of an individual's employer is not generally considered to be sensitive information, as supported by the inclusion of section 40(1)(bb.1) in the FOIP Act, which permits the disclosure of an individual's business contact information without consent. If the Complainant had reasons for ensuring that the name and location of her new employer were not to be disclosed to others, she presumably would have raised this concern with the Public Body or not have told her manager of her new place of employment. For the reasons given below, the Public Body had authority to disclose the Complainant's information in the email; the hypothetical circumstances raised by the Complainant here do not weaken the Public Body's authority to disclose that information.

Section 40(1)(h)

[para 20] I find that the Public Body was authorized under section 40(1)(h) to disclose some of the Complainant's information in the email. Specifically, this provision authorizes the disclosure of the fact that the Applicant would be leaving her position, and the indefinite term of her departure.

[para 21] Although the Complainant states that she had already informed the relevant individuals of her departure (for example, those who reported to her), it was reasonable for the Public Body to ensure that Public Body employees who interacted with the Complainant as part of their job duties were informed of her departure.

[para 22] With respect to the Complainant's assertion that the phrase "away indefinitely" means that the Complainant had filed a grievance, I do not agree. It is possible that someone might speculate that the Complainant had filed a grievance; however, I do not think that the phrase "away indefinitely" can be equated with a statement that the Complainant had filed a grievance. I accept the Public Body's explanation that the manager included this phrase because of the possibility that the Complainant might return (i.e. because it is factually accurate).

[para 23] I turn to the information about the Complainant's new place of employment. I accept that the Public Body had a valid reason for notifying certain employees that the Complainant would be working for an organization that may have competing interests with the Public Body; however, the disclosure of that information may not be *necessary* for those employees to perform their job duties within the terms of section 40(1)(h). In my view, the disclosure was a reminder to the employees of a specific aspect of the more general duty of all public body employees to not disclose information (personal or otherwise) that might adversely affect their employer. In reminding them, the Public Body was exercising its management function. Therefore I will consider whether the disclosure of this information was authorized under section 40(1)(x) (management and administration of personnel).

Section 40(1)(x)

[para 24] I accept the Public Body's explanation that the union often has an adversarial relationship with the Public Body, and that it would be important for Public Body employees to be aware of the Complainant's new role with the union in any future conversations. The Complainant states that this argument implies that she is a threat to the Public Body and she

states that there is no reason for the Public Body to mistrust her. It seems to me that the Public Body is concerned that because the email recipients had a working relationship with the Complainant, they may be more likely to discuss information with the Complainant that they perhaps would not normally discuss with a union representative. I do not think that the Public Body's argument necessarily indicates mistrust of the Complainant or its current employees; rather it may be based on the idea that individuals may speak more freely with those with whom they have discussed work-related matters in the past (even when it may not be appropriate to do so). This is supported by the fact that the Public Body disclosed the information only to employees who had a previous working relationship with the Complainant and who therefore may have spoken more freely (or less carefully) with the Complainant in the future had they not known of her new employment.

Section 40(4)

[para 25] I have accepted the Public Body's reasons for disclosing the various elements of the Complainant's personal information in the email. The Public Body limited the disclosure to those employees who had a working relationship with the Complainant. In my view, the Public Body did not disclose more information than was necessary to reasonably meet the purposes described by the Public Body. I therefore find that the Public Body did not contravene section 40(4) of the FOIP Act.

V. ORDER

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

[para 27] I find that the Public Body had authority to disclose the Complainant's personal information under the FOIP Act.

Amanda Swanek
Adjudicator