

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2014-21

May 30, 2014

#### ALBERTA HUMAN SERVICES

Case File Number F6164

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

**Summary:** The Complainant complained that a service provider contracted by Alberta Human Services (the “Public Body”) collected, used and disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the “Act”). His complaint was that the service provider and therefore the Public Body had improperly collected, used and disclosed his information in arranging referrals for assessments and rehabilitation services to assist him in relation to a medical condition.

The Adjudicator found that the service provider had the authority to collect the Complainant’s personal information under section 33(c) of the Act, as the information related directly to and was necessary for an operating program or activity of the Public Body.

The Adjudicator found that the service provider and therefore the Public Body had the authority to disclose the Complainant’s personal information under section 40(1)(c) of the Act, on the basis that the disclosure was for a use consistent with the purpose for which the information had been collected. He also found that the Complainant’s personal information had been disclosed only to the extent necessary to carry out an authorized purpose in a reasonable manner, in accordance with section 40(4).

The Adjudicator further found that the service provider of the Public Body had not improperly used the Complainant’s personal information. The Adjudicator accordingly

concluded that the Public Body had not collected, used or disclosed the Complainant's personal information in contravention of Part 2 of the Act.

**Statute Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(n), 33, 33(c), 34(1), 34(1)(b), 35, 35(a), 39, 39(1)(a), 39(4), 40, 40(1)(c), 40(1)(d), 40(1)(i), 40(4), 41, 41(a), 41(b) and 72.

**Orders Cited: AB:** Orders F2006-019 and F2007-019.

## **I. BACKGROUND**

[para 1] In correspondence dated March 20, 2012, the Complainant complained that a particular society (the "Service Provider") contracted by Alberta Human Services (the "Public Body") collected, used and disclosed his personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Service Provider assists individuals with a particular type of medical condition through education and referrals to community resources for assessment and rehabilitation, but it does not provide assessment or rehabilitation services itself. The Complainant had learned about the Service Provider in the course of receiving services from Alberta Works, which is part of the Public Body.

[para 2] The Public Body indicates that, when the events giving rise to the Complainant's complaint occurred, there was a Memorandum of Agreement for Services, dated April 30, 2008, between it and the Service Provider, a copy of which it submitted in this inquiry. The Public Body acknowledges that it is responsible for the collection, use and disclosure of the Complainant's personal information by the Service Provider, as the Service Provider was contracted by the Public Body. Accordingly, when I refer in this Order to the Service Provider, its Service Coordinator or another of its staff members who initially dealt with the Complainant, I should be taken to be referring indirectly to the Public Body.

[para 3] Mediation of the Complainant's complaint was authorized by the Commissioner but was not successful. The Complainant then requested an inquiry in correspondence dated August 23, 2012. A written inquiry was set down.

## **II. INFORMATION THAT IS THE SUBJECT OF THE COMPLAINT**

[para 4] I refer to the information that is the subject of the Complainant's complaint at various points in this Order. In those instances where the Complainant sufficiently notes or describes the information, I find that the information is his "personal information", as defined in section 1(n) of the Act. Section 1(n) reads, in part, as follows.

*1(n) "personal information" means recorded information about an identifiable individual, including*

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

*(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,*

...

*(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*

...

[para 5] The information to which I refer in this Order appears in various documents prepared by the Service Provider, which were submitted by the Complainant. These documents contain the Complainant's name, home address, home telephone number, national or ethnic origin, age, sex, marital status or family status, an identifying number assigned to him (being his personal health number), information about his health and health care history, information about his educational and employment history, opinions about him (such as regarding the symptoms of his medical condition), and other recorded information about him.

### **III. ISSUES**

[para 6] The Notice of Inquiry, dated July 8, 2013, set out the following issues, although I have placed them in a different sequence for the purpose of discussion in this Order:

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

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

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

#### IV. DISCUSSION OF ISSUES

[para 7] In inquiries involving the alleged unauthorized collection, use or disclosure of personal information, the initial burden of proof normally rests with the complainant, in that the complainant has to have some knowledge, and adduce some evidence, regarding what personal information of his or hers was collected, used or disclosed, and the manner in which that personal information was collected, used or disclosed; the public body then has the burden to show that its collection, use or disclosure of the personal information was in accordance with the Act (Order F2006-019 at para. 51; Order F2007-019 at paras. 8 and 9).

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

[para 8] Under Part 2 of the Act, a public body may collect an individual's personal information in accordance with one or more of the purposes or circumstances set out in section 33. Section 33 reads, in part, as follows:

*33 No personal information may be collected by or for a public body unless*

*...*

*(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 9] The Public Body explains that the Service Provider is one of the agencies with which it had contracted to perform services as part of a particular provincial initiative (the "Initiative"). I find the Initiative to be an operating program or activity of the Public Body. The objective of the program or activity is to make referrals for appropriate health and community-based services to assist individuals who have a particular medical condition, along with their families.

[para 10] The Public Body elaborates by explaining that agencies, such as the Service Provider, carry out the Initiative through Service Coordinators who: provide information about the medical condition in question and the services available; assess an individual's community support needs to enable them to live, work and participate in their community; develop service plans and service agreements as needed; make referrals, where appropriate, for community supports and independent living skills development; and assist individuals and their families in identifying, applying for and coordinating benefits and services. All of the foregoing types of assistance are contemplated by the Memorandum of Agreement for Services between the Public Body and the Service Provider.

[para 11] An "Initial Contact" form dated October 6, 2008 and an "Intake Form" dated January 6, 2009 indicate that the Service Provider collected certain information about the Complainant, such as his contact information, date of birth, wife's name, the date of onset and cause of his medical condition, and other information about his health and health care

history. I find that the collection of this personal information of the Complainant by the Service Provider, on behalf of the Public Body, was authorized under section 33(c). Given the types of assistance offered by the Service Provider as described above, the information related directly to and was necessary for the Public Body's operating program or activity, being the provincial Initiative.

[para 12] The Complainant argues that he only wanted assistance in finding employment, and not any of the assessment and rehabilitation referrals that are discussed later in this Order. He accordingly suggests that some of his personal information that was collected, particularly information about his health and health care history, did not relate directly to or was not necessary for the program or activity being carried out by the Public Body.

[para 13] However, even if the Complainant sought employment-related services only, it was still part of the Public Body's program or activity to consider arranging referrals, assessment or rehabilitation in order to determine what type of employment best suited the Complainant. I therefore find that the collection of all of the personal information of the Complainant that was collected by the Service Provider on behalf of the Public Body, including the information about his health and health care history, was authorized by section 33(c).

[para 14] Having found that the Complainant's personal information was collected for an authorized purpose, I now turn to the manner in which the Complainant's personal information was collected. Section 34(1) of the Act reads in part as follows:

*34(1) A public body must collect personal information directly from the individual the information is about unless*

...

*(b) the information may be disclosed to the public body under Division 2 of this Part,*

...

[para 15] The Complainant writes that the Service Provider collected "wrong information about me from unknown people". However, he does not specify what information, and while he indicates that the sources of collection are not known to him, he does not suggest what those sources may be or say why he believes that unknown persons provided his personal information to the Service Provider.

[para 16] Moreover, the aforementioned Initial Contact form and Intake form suggest that the Service Provider collected most, if not all, of the Complainant's personal information directly from him. The Initial Contact form indicates that the Complainant presented at the premises of the Service Provider after seeing a brochure at Alberta Works, and provided information himself to the staff member of the Service Provider who initially dealt with him.

[para 17] With the possible exception noted below, none of the other records before me suggest that any of the Complainant's personal information was collected from third parties. While a consent form contemplated the collection of the Complainant's personal information from certain agencies and individuals, I do not see that any information was actually collected from them by the Service Provider. The assistance provided to the Complainant by the Service Provider appears only to have been two referrals, as discussed later in this Order, and those referrals do not appear to have led to the collection of any of the Complainant's personal information from the agency and individual to which he was referred. Further, while the Service Provider wrote to the Complainant's family doctor to arrange one of the referrals, I have no evidence that the family doctor provided any information back to the Service Provider.

[para 18] As the Complainant has not sufficiently noted or described the personal information of his that he believes to have been collected from third parties rather than directly from him, and he does not otherwise explain why he believes that his personal information was collected from other sources, I find that the Service Provider, and therefore the Public Body, did not contravene section 34(1).

[para 19] Having said this, the Service Provider may have obtained some of the Complainant's personal information from Alberta Works, which is the unit of the Public Body with which the Complainant dealt before dealing with the Service Provider. The Initial Contact form includes the name and telephone number of a staff member of Alberta Works, and it is therefore possible that the Service Coordinator for the Service Provider contacted Alberta Works to obtain certain information about the Complainant. This might have included, for instance, a hospital report prepared in the Complainant's home country and a record of his legal name change, which the Service Coordinator for the Service Provider indicated to be attached to a particular referral he was making. If the Service Provider did not collect these two documents directly from the Complainant, I presume that they were obtained from Alberta Works, as it had been dealing with the Complainant just prior.

[para 20] Both Alberta Works as a unit of the Public Body, and the Service Provider as a contractor of the Public Body, are parts of the Public Body, meaning that there was arguably no collection and disclosure of the Complainant's personal information as between those two parts. Further, I have no evidence that the initial collection of any of the Complainant's personal information by Alberta Works was not collected directly from him.

[para 21] If the transfer of information between Alberta Works and the Service Provider is properly characterized as a collection of the Complainant's personal information by the Service Provider, I find that it was authorized under section 34(1)(b), which permits the collection of personal information, from a source other than the individual the information is about, if the information may be disclosed under Division 2 of Part 2 of the Act. That Division includes section 40(1)(i), which permits a disclosure of personal information to an employee of a public body, and therefore a collection by that employee, if the disclosure is necessary for the delivery of a common or integrated

program or service and for the performance of the duties of the employee to whom the information is disclosed.

[para 22] First, under section 1(e) of the Act, an “employee”, in relation to a public body, includes a person who performs a service for the public body under a contract, such as the Service Provider in this case. Second, I find that the Public Body and the Service Provider were delivering a common or integrated program or service in the form of providing assistance to the Complainant, in view of his medical condition and in the context of the provincial Initiative. Third, the disclosure of the Complainant’s personal information, being that appearing in the aforementioned hospital report and record of legal name change if obtained from Alberta Works, was necessary for the performance of the duties of the Service Provider as the Public Body’s employee, which duties were to arrange the particular referrals for assessment and rehabilitation.

[para 23] Because the Service Provider, and therefore the Public Body, collected the Complainant’s personal information for an authorized purpose under section 33 and in an authorized manner under section 34(1), I conclude that the Public Body did not collect the the Complainant’s personal information in contravention of Part 2 of the Act.

**B. Did the Public Body disclose the Complainant’s personal information in contravention of Part 2 of the Act?**

[para 24] Under Part 2 of the Act, a public body may disclose an individual’s personal information in accordance with one or more of the purposes or circumstances set out in section 40. Section 40 reads, in part, as follows:

*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,*

*(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to 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.*

The Public Body submits that it had the authority to disclose the Complainant’s personal information under sections 40(1)(c) and 40(1)(d), and that it also complied with section 40(4).

## 1. Disclosure for a use consistent with the purpose of collection

[para 25] Under section 40(1)(c) of the Act, a public body, and therefore a service provider acting for it, may disclose an individual's personal information for the purpose for which the information was collected or compiled or for a use consistent with that purpose. In turn, section 41 reads as follows:

*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.*

[para 26] On January 9, 2009, the Service Coordinator for the Service Provider wrote to the Division of Physical Medicine and Rehabilitation at the Foothills Medical Centre. He asked whether the Complainant was on the waitlist to see a particular individual. The correspondence indicates that the Service Coordinator understood from the Complainant that the Complainant had been referred a few months earlier by his family doctor. On January 13, 2009, the Service Coordinator wrote to the Complainant's family doctor to request a referral to the particular individual in case one had not been made, apologizing if the referral had indeed already been made.

[para 27] On January 13, 2009, the Service Coordinator for the Service Provider also made a referral to CAR, being Calgary Health Region North Community Accessible Rehabilitation. In doing so, he disclosed the Complainant's personal information, including his name, telephone number, address, personal health number, date of birth, diagnosis, date of onset of his medical condition, relevant medical history, and treatment and rehabilitation goals.

[para 28] The Complainant argues that the disclosures of his personal information to CAR, the individual at the Foothills Medical Centre and his family doctor were improper. The Public Body responds that they were authorized under section 40(1)(c), on the basis that the disclosures were for a purpose consistent with the purpose of collection. I find that they were indeed authorized under that section, bearing in mind the requirements of section 41.

[para 29] The Service Coordinator's inquiry into the status of the apparently earlier referral to the individual at the Foothills Medical Centre, his request to the Complainant's family doctor for another referral and his own referral to CAR were all for the purpose of arranging assessment and rehabilitation services for the Complainant. As noted earlier in this Order, this was part of an operating program or activity of the Public Body, and the arrangement of assessment and rehabilitation services for the Complainant was the



purpose for initially collecting his personal information. Disclosure of the Complainant's personal information in order to arrange those assessment and rehabilitation services had a reasonable and direct connection, as required by section 41(a), to the collection of his personal information in order to assist him in view of his medical condition.

[para 30] As required by section 41(b), the disclosures of the Complainant's personal information were also necessary for operating a legally authorized program of the Public Body, being the provincial Initiative. While I previously noted the Complainant's view that the referrals were not required in order for him to obtain the employment-related services that he was seeking, I find that they were so required. The Service Provider, acting on behalf of the Public Body, considered that assessment and rehabilitation were warranted in order to assist the Complainant in finding suitable work. The referrals formed part of the overall coordination of services in order to assist the Complainant.

[para 31] The Complainant submitted a document entitled "Calgary Service Coordination Progress Report #1", dated September 21, 2009, and another entitled "Calgary Service Coordination Discharge Report", dated November 24, 2009. He refers to these to question why the Service Provider disclosed his personal information to various other agencies and individuals when he did not consent to those disclosures and did not even receive services from the particular agencies and individuals.

[para 32] The two reports mention the referrals to CAR and to the individual at the Foothills Medical Centre, which I have already addressed. As for the other agencies mentioned in the reports, it would appear that referrals were only contemplated but not actually made. Both reports indicate, for example, that the Service Provider might possibly arrange "[s]upport links to immigrant agencies and [a particular rehabilitation centre] *if appropriate*" [my italics]. The Complainant's indication that he did not receive any services is consistent with a finding that referrals to these additional agencies were not made. I conclude that his personal information was not disclosed to the agencies and individuals mentioned in the two reports, apart from CAR and the individual at the Foothills Medical Centre.

[para 33] This includes the Calgary Catholic Immigration Society ("CCIS"). The Complainant complains that his personal information was improperly disclosed to CCIS – possibly due to the general reference to "immigrant agencies" in his progress and discharge reports – but I have insufficient evidence to show any such disclosure.

[para 34] Finally, the Complainant notes that he did not receive services from some of the agencies and individuals listed on a consent form – at least not subsequent to his dealings with the Service Provider – and believes that his personal information was therefore improperly disclosed to them. He specifically refers to the Centre for Newcomers and his former doctor in Halifax. Again, I have no evidence that disclosures to this agency or individual occurred, and the Complainant's indication that he did not receive services from them is consistent with a finding that such disclosures of the Complainant's personal information by the Service Provider did not occur.

[para 35] I conclude that the Service Provider, and therefore the Public Body, did not disclose some of the Complainant's personal information as alleged by him. With respect to the disclosures of his personal information to CAR, the individual at the Foothills Medical Centre and the Complainant's family doctor, I conclude that these were authorized under section 40(1)(c) of the Act, on the basis that the disclosures were for a purpose for which the Complainant's personal information was collected or compiled or for a use consistent with that purpose.

[para 36] Given the foregoing conclusion, it is not necessary for me to decide whether the Service Provider, and therefore the Public Body, also had the authority to disclose the Complainant's personal information on the basis of his consent under section 40(1)(d) of the Act. While there is a form entitled "Informed Consent to Collect and Disclose Personal Information" in the records before me, the Complainant disputes that his consent was valid.

## **2. Disclosure only to the extent necessary**

[para 37] Under section 40(4) of the Act, a public body, and therefore a service provider acting for it, may disclose personal information only to the extent necessary to enable the public body to carry out the purposes for which the information is disclosed in a reasonable manner. I find that the Service Provider, and therefore the Public Body, complied with this section.

[para 38] In inquiring about and arranging the referral to the individual at the Foothills Medical Centre, which included contacting the Complainant's family doctor for that purpose, the Service Provider disclosed only the fact that a referral was sought, the reason that the referral was being sought (which included a brief indication of the Complainant's medical condition and his desire to find employment), and the fact that the Complainant was being assisted by the Service Provider. In making the referral to CAR, the Service Provider disclosed a greater amount of information about the Complainant – including his contact information, personal health number and details about his health, health care history and personal background – but the disclosure was necessary to make a useful referral and obtain the assessment and rehabilitation services to assist the Complainant.

[para 39] As the disclosures of the Complainant's personal information were authorized under section 40(1)(c), on the basis of a purpose that was consistent with the purpose of collection – and the disclosures were only to the extent necessary and carried out in a reasonable manner in accordance with section 40(4) – I conclude that the Service Provider, and therefore the Public Body, did not disclose the Complainant's personal information in contravention of Part 2 of the Act.

**C. Did the Public Body use the Complainant’s personal information in contravention of Part 2 of the Act?**

[para 40] Under Part 2 of the Act, a public body may use an individual’s personal information in accordance with one or more of the purposes or circumstances set out in section 39. Section 39 reads, in part, as follows:

*39(1) A public body may use personal information only*

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

...

*(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 41] The Complainant alleges that the Public Body improperly used his personal information. While he refers to his health information, he never indicates which information in particular, and he never clearly explains the manner in which he believes the Public Body used his information improperly. I note two exceptions below.

[para 42] As the Complainant provides little detail about the allegedly improper use of his personal information, I characterize his complaint as primarily being about the disclosure of his personal information. While the Service Provider used the Complainant’s personal information to determine what referrals to make and what services to seek on his behalf, the Complainant is really complaining about the fact that his information was then disclosed to certain third parties.

[para 43] In any event, a public body may both use and disclose an individual’s personal information for the purpose for which the information was collected or compiled or for a use consistent with that purpose. Therefore, my conclusion in the preceding part of this Order – which is that the Service Provider, and therefore the Public Body, disclosed the Complainant’s personal information for a purpose that was the same as or consistent with collection, as authorized by section 40(1)(c) – may be extended to the question of whether the Public Body used the Complainant’s personal information for a purpose that was the same as or consistent with collection, as authorized by section 39(1)(a). Given that the Complainant’s personal information was disclosed for a purpose consistent with collection (i.e., to make appropriate referrals for assessments and rehabilitation services), this same information would also have been used for a purpose consistent with collection (i.e., to decide what specific referrals to make).

[para 44] To the extent that the Complainant is complaining about the use of the same information the disclosure of which he is complaining about, I would also find that the use of this personal information was only to the extent necessary to enable the Service Provider, and therefore the Public Body, to carry out its purpose in a reasonable manner,

as required by section 39(4) – in keeping with my earlier conclusion regarding disclosure only to the necessary extent and in a reasonable manner under section 40(4).

[para 45] I now turn to the particular submission of the Complainant that clearly sets out a complaint about the use of his personal information. In making the referral to CAR for assessment and rehabilitation, the Service Coordinator for the Service Provider noted the Complainant’s immigration status and date of arrival in Canada. The Complainant says that these two indications are incorrect. At another point in his submissions, he says that particular health information, such as relating to his symptoms and possible need for surgery, is incorrect.

[para 46] Section 35(a) of the Act reads as follows:

*35 If an individual’s personal information will be used by a public body to make a decision that directly affects the individual, the public body must*

*(a) make every reasonable effort to ensure that the information is accurate and complete...*

[para 47] The fact that the Complainant arrived to Canada in a particular year or arrived with a particular immigration status had no bearing on any of the decisions on the part of the Service Provider, and therefore the Public Body, to refer him for particular services. He was referred for services due to his medical condition, his particular symptoms and his desire to find employment. While I accept that the information about his year of arrival to Canada and immigration status is inaccurate – as the Complainant is in the best position to know these facts – this information was not “used”, within the terms of section 35, to make any decision directly affecting him. The Public Body therefore did not contravene section 35(a) in this regard. (I note that the fact that the foregoing information was not used by the Service Provider does not mean that it could not be disclosed to CAR. I found, in the preceding part of this Order, that it was appropriate for the Service Provider to disclose information about the Complainant’s personal background when making the referral to CAR. The Act does not contain a provision governing the disclosure of inaccurate personal information.)

[para 48] As for the information about the Complainant’s symptoms and possible need for surgery, this relates to his medical condition. I therefore find that the information was used by the Service Provider, within the terms of section 35, to determine what referrals were appropriate in the Complainant’s circumstances. However, I have insufficient evidence to find that any of this information is inaccurate. The Complainant disagrees with particular characterizations of his medical condition and symptoms – as either observed by the Service Coordinator for the Service Provider or appearing in the earlier discussed report from the hospital in the Complainant’s home country – but I am not in a position to say that his views are correct while those of others are not.

[para 49] I conclude that the Service Provider, and therefore the Public Body, did not use the Complainant’s personal information in contravention of Part 2 of the Act.

## **V. ORDER**

[para 50] I make this Order under section 72 of the Act.

[para 51] I find that the Public Body did not collect, use or disclose the Complainant's personal information in contravention of Part 2 of the Act.

Wade Raaflaub  
Adjudicator