

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-28

July 14, 2014

ALBERTA HEALTH

Case File Number F6673

Office URL: www.oipc.ab.ca

Summary: A former employee of Alberta Health (the Public Body) complained that his supervisor had, in an email to all members of the Public Body's executive team, disclosed the fact that he would be away from the office for personal reasons. The individual complained that the Public Body contravened the *Freedom of Information and Protection of Privacy Act* (FOIP Act) when his supervisor told the executive team the reason for his absence. The Complainant also stated in his complaint that he believes the email had been forwarded beyond the original distribution list.

The Public Body stated the email was sent for the purpose of managing and administering personnel, under section 40(1)(x); however, it conceded that it was not authorized to disclose the nature of the Complainant's leave.

The Adjudicator found that the Public Body had disclosed more personal information than was necessary to meet its stated purpose, and had contravened section 40(4) of the Act.

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

I. BACKGROUND

[para 1] A former employee of Alberta Health (the Public Body) complained that his supervisor had, in an email to all members of the Public Body executive team, disclosed the fact that he would be away from the office for personal reasons. It also informed the recipients that another employee would be acting in the Complainant's role during that time. The individual complained that the Public Body contravened the *Freedom of Information and Protection of Privacy Act* (FOIP Act) when his supervisor told the executive team the reason for his absence.

[para 2] The Complainant also stated in his complaint that he believes the email had been forwarded beyond the original distribution list, and that emails received by the intended recipients are often opened and read by other individuals (specifically, assistants of each recipient.)

[para 3] 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. ISSUES

[para 4] The Notice of Inquiry sent February 5, 2014, provides the following issue for this inquiry:

Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act? In particular, was the disclosure authorized under section 40(1) and 40(4)?

III. DISCUSSION OF ISSUES

[para 5] With his request for inquiry, the Complainant requested that certain concerns be addressed, specifically:

1. That the Public Body was not able to determine the extent to which the email was forwarded by the original recipients;
2. That the Public Body has not treated the violation of the Complainant's privacy seriously. Specifically, the Complainant states that the individual who sent the email stated that she did not believe her actions contravened the Act;
3. That corrective action was not taken with respect to the disclosure; and
4. That the Public Body has not apologized for the disclosure.

[para 6] With respect to the first point, the Public Body has an obligation to disclose personal information only as permitted by the Act, and to make reasonable security

arrangements to protect personal information. However, the Public Body does not have an obligation under the FOIP Act to ascertain the extent that the Complainant's personal information was disclosed, even if it was disclosed in contravention of the Act, unless and until the Complainant makes an access request for this information. If he does, it must provide records that contain such information but it need not create any new records (subject to the duty under section 10(2)).

[para 7] Regarding the third and fourth points, the Public Body has provided evidence of the training of employees that it has undertaken; it further states that it offered an apology to the Complainant for the disclosure of his information.

[para 8] Regarding the second point, this Order will address whether the individual who sent the email contravened the Act.

Is the information at issue personal information of the Complainant?

[para 9] 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 10] The above is not an exhaustive list. The information at issue is about the Complainant, and is his personal information under section 1(n).

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

[para 11] A public body may disclose personal information in accordance with section 40 of the Act. The Public Body has cited section 40(1)(x) as authority for disclosure of personal information for the purpose of managing or administering personnel. Section 40(4) is also relevant to this inquiry:

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

...

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

...

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 12] The Public Body provides the following rationale for sending the email:

The Complainant was at one time [responsible] for providing ongoing advice and support to members of the [Public Body]'s Executive Team concerning human resource matters. As such when the Complainant was no longer performing that function it was essential that members of the [Public Body]'s Executive Team were made aware of this fact. This communication was sent to a limited number of individuals (see [the email]). [An HR employee and the Deputy Minister] were acting with the belief that this communication was consistent with the purpose of collection and use of the information that was included in [the email]. [The Deputy Minister] forwarded the email correspondence to the [Public Body]'s Executive Team, to inform them of the absence of another executive team member. (Initial submission, page 3)

[para 13] I agree that informing the Executive Team of the Complainant's absence is authorized under section 40(1)(x) of the Act; the Complainant does not appear to object to the disclosure of his leave, only to the disclosure of the reason for it.

[para 14] The Complainant states that the email is "completely inconsistent with normal practice. Indeed in the over several years I have worked for Alberta Health, the Deputy has rarely, if ever, communicated the absence of one of her direct reports. That action is invariably done by the Assistant of the individual who is absent. That has certainly always been the case with regard to my absences."

[para 15] The Public Body agrees with the Complainant that the disclosure of the additional information regarding the nature of the Complainant's leave was not authorized. It states:

The [Public Body]'s employee that drafted the notice of absence that is identified in [the email] did so on the belief that the information was consistent with section

40 (Disclosure of Personal Information) of the *FOIP Act*. However, having reviewed the terminology of the notification of absence, the [Public Body] submits that the term “[...]” used in [the email] was overly descriptive of the Complainant’s absence and a more generic term could have been used to promote the privacy of the Complainant. (Initial submission, page 3)

[para 16] The Public Body’s purpose in sending the email was to inform the Executive Team that the Complainant would not be performing his work duties for the specified time, and that another employee would be acting in his role.

[para 17] The Public Body states that

The information from the persons who received the email identified [the email] confirmed that the disclosure occurred and the disclosure was limited to internal employees of the department. All persons who received [the email] are employees of the Respondent who have access to this type of information and [are or were] in senior position[s] within the [Public Body]. Furthermore they are persons who commonly manage highly sensitive information on a regular basis and clearly understand their obligation under the FOIP Act to avoid unauthorized disclosure of personal information. (Initial submission, page 2)

[para 18] The Complainant states that he believes the email was forwarded beyond the intended recipients, which “is not surprising given that no confidentiality was indicated in [the Deputy Minister]’s communication.” He also notes that

E-mail received by most of the recipients to [the Deputy Minister]’s communication is routinely opened and read by other individuals such as the recipients’ Assistants. That is particularly true when the communication has no indication of confidentiality.

[para 19] The Public Body’s statement that the disclosure of the reason for the Complainant’s leave was limited to employees of the department may not be of comfort to the Complainant, particularly when it is followed up with the following comment:

To confirm if further disclosure occurred beyond the employees of the [Public Body] is not feasible at this time given the [Public Body] and the Government of Alberta does not track or have archived logs to identify all e-mail traffic... coming into or going outside the [Public Body]’s systems.

[para 20] This highlights the importance of disclosing only such information as is necessary to fulfill the purpose of the disclosure, and to limit disclosure to those who need to know. The Complainant was a member of the Public Body’s executive team, and likely had many employees working under him. It seems at least possible that those employees were also told of the reason for the Complainant’s leave.

[para 21] I agree with the Public Body’s assessment that by disclosing the nature of the Complainant’s leave, the Public Body disclosed more information than was necessary to

meet its purpose of managing and administering personnel, contravening section 40(4) of the Act.

Training

[para 22] The Public Body has provided me with information about its current FOIP training program. It states:

... [T]he FOIP office has used this opportunity to work with each of the divisions including the [Public Body]'s Human Resource branch to reinforce the [Public Body]'s obligations under the *FOIP Act* as it relates to protection, use, and disclosure of personal information. This has been facilitated by conducting General Awareness sessions, divisional training, and conducting specific sessions for all new staff members (Exhibit "F")

Since the incident that has given rise to this Inquiry, corrective actions have been taken to avoid future privacy breaches within Alberta Health. We have spoken directly with all individual involved in this incident to provide feedback on the internal management of personal information as it relates to collection, use and disclosure. Regarding the state of FOIP training in Alberta Health, the Government of Alberta is committed to educating its employees on FOIP legislation.

The [Public Body]'s FOIP Office provides mandatory General Awareness sessions to the [Public Body]'s employees per year. These General Awareness Sessions provide the [Public Body]'s employees with a working understanding on the FOIP Act, their roles and responsibilities as Alberta Health employees, and best practices to follow (Training Stats Exhibit "G").

The [Public Body]'s FOIP Office has also holds specialized FOIP Training sessions that are tailored for the Human Resources branch, as identified in Exhibit "H", to inform them on Human Resources records management principles, how to manage personal information, and how to protect and secure sensitive information.

While the [Public Body] has taken steps to train its staff and set up processes to protect the privacy of the health and personal information in its custody or control on rare occasions disclosures occur that are not in compliance with *the Act*. In this case the [Public Body]'s current Deputy Minister and FOIP Coordinator have recognized that such a disclosure may have occurred and have extended an apology to the Complaint for any inconvenience or discomfort that this may have caused. (Initial submission, pages 3-4)

[para 23] I have reviewed the materials provided by the Public Body regarding its FOIP training; these consist of the course description for the mandatory training, as well as the powerpoint slides for the mandatory training and the Human Resources training. I note that the powerpoint slides focus mainly on the Public Body's obligations under Part 1 of the Act (access to information). However, there are slides that deal with the collection, use and disclosure of personal information, and the number of slides is not necessarily indicative that less or little time is spent discussing the Public Body's obligations under Part 2 of the Act. I am satisfied that I do not need to order the Public

Body to undertake further training for its staff, over and above its current training program.

IV. ORDER

[para 24] I make this Order under section 72 of the Act.

[para 25] I find that the Public Body was authorized to disclose some information about the Complainant under section 40(1)(x); but that it disclosed more information than was necessary to fulfill its purpose. I order the Public Body to stop disclosing the Complainant's personal information; however, I am satisfied that the Public Body has an adequate training program and so will not order the Public Body to conduct further training in addition to its current program.

[para 26] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator