

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-18

June 10, 2015

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F6827

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint to this office under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) that Alberta Justice and Attorney General (the Public Body) collected and disclosed his personal information without authority to do so.

The Complainant states that the St. Paul Grazing Reserve Association (Grazing Reserve) sent an email containing his personal information to the County of St. Paul (the County). This email was later provided to Alberta Environment and Sustainable Resource Development (Environment) in the course of a legal proceeding before the Environmental Appeals Board (the Board). The email was also provided to the Public Body, which was representing Environment in the proceeding; the Public Body subsequently included a copy of the email in a later submission to the Board. The email contained information regarding an unresolved bill for a grazing fee charged to the Complainant.

The Adjudicator found that the information in the email was information about the Complainant's agricultural operation, and not about him as an individual. Therefore, the FOIP Act does not govern the disclosure of that information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 72, *Public Lands Act*, R.S.A. 2000, c. P-40, s. 105.

Authorities Cited: AB: Orders F2006-030, F2008-020, F2008-028, F2010-009, F2010-030.

I. BACKGROUND

[para 1] The Complainant made a complaint to this office under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) that Alberta Justice and Attorney General (the Public Body) collected and disclosed his personal information without authority to do so.

[para 2] The Complainant states that the St. Paul Grazing Reserve Association (Grazing Reserve) sent an email containing his personal information to the County of St. Paul (the County). This email was later provided to Alberta Environment and Sustainable Resource Development (Environment) in the course of a legal proceeding before the Environmental Appeals Board (the Board). The email was also provided to the Public Body, which was representing Environment in the proceeding; the Public Body subsequently included a copy of the email in a later submission to the Board. The Organization was not a party to the proceeding.

[para 3] The email contained information regarding an unresolved bill for a grazing fee charged to the Complainant.

II. ISSUES

[para 4] The Notice of Inquiry, dated October 29, 2014, stated the issues for the inquiry as follows:

1. Did the Public Body collect information relating to the Complainant?

If yes, was the information the Complainant's personal information as that term is defined within section 1(n) of the Act? If yes,

- a) Was the Public Body authorized to collect the personal information under section 33 of the Act?
- b) Was the Public Body authorized to collect the personal information indirectly under section 34(1) of the Act?

2. Did the Public Body disclose information relating to the Complainant?

If yes, was the information the Complainant's personal information as that term is defined within section 1(n) of the Act? If yes,

- a) Was the Public Body authorized to disclose the personal information under section 40(1) and 40(4) of the Act?

3. Did the Public Body have a duty to make every reasonable effort to ensure the information was accurate and complete as required by section 35 of the Act, and if so, did it fulfill this duty?

III. DISCUSSION OF ISSUES

Was the information the Complainant's personal information as that term is defined within section 1(n) of the Act?

[para 5] Section 1(n) of the FOIP Act defines personal information under the Act:

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 Public Body argued that the information contained in the email was not personal information of the Complainant as defined in the FOIP Act; rather, the Public Body argued, the information was about the Complainant as a business (specifically, as an agricultural operation).

[para 7] Regarding the argument that the information at issue is information about a business, the Complainant states "[t]he exact definition of business, is like most else in the philosophy of business, is a matter of debate and complexity of meanings." (Submission dated January 8, 2015). He also asserts that the information meets the definition in section 1(n) of the Act because it refers to an identifiable individual. By letter dated April 10, 2015, I asked the Complainant to address the following question:

Is the information at issue personal information about you as an individual, or is it information about your business? Please provide evidence, if possible. If the information is about your business, is the information subject to the rules regarding the collection, use and disclosure of personal information under the FOIP Act?

[para 8] In response to this letter, the Complainant stated that he would not provide any further information to the inquiry.

[para 9] The *Public Lands Act* refers to the administration of grazing leases by grazing associations. Section 105 of that Act states:

When a grazing lease is held by a grazing association, the land contained in the lease shall be used for the benefit of its members who are operating farms in the vicinity, if they qualify for grazing privileges under the bylaws of the association.

[para 10] This provision seems to support the claim that persons to whom grazing allotments are granted are operating a business – farms – and that membership information (including payment for the membership) is information about that business, rather than personal information about an individual.

[para 11] Previous orders from this office have found that disclosure of an individual's name is not an unreasonable invasion of privacy within the terms of section 17 where the associated information reveals only that an individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension (Order F2008-028, para. 54). Such information may have a personal dimension if there is associated information suggesting that an individual performing work-related or business responsibilities was acting improperly, there are allegations that the work-related act of an individual was wrongful, or disclosure of information is likely to have an adverse effect on the individual (see Orders F2006-030 at paras. 12, 13, and 16; F2008-020 at para. 28).

[para 12] In Orders F2010-009 and F2010-30, the adjudicators considered whether information about farming operations, including information about livestock, insurance grain yield, management, financial aid and other financial information, was personal information under the FOIP Act. In both cases, the information about farming operations included the names of individuals who owned or managed the operations. In Order F2010-009, the Adjudicator stated (at paras. 15 and 16):

On my review of all of the alleged disclosures by the Public Body, as just set out, I find that the Public Body did not disclose the Complainant's personal information. Under section 1(n), "personal information" is recorded information about an identifiable individual, which means a human being (Order 96-019 at para.67) acting in his or her natural capacity (Order F2002-006 at para.92). The Public Body cites the following passage:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make it clear. The types of information enumerated under...the Act as "personal information" when read in their entirety, lend further support to [the] conclusion that the term "personal information" relates only to natural persons. [Order F2002-006 at para.92, citing Ontario Order P-16 (1988) at p.19.]

The above makes a distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual's business,

whether it happens to be a sole proprietorship, partnership, unincorporated association, corporation or any other type of entity. Even where an individual is the only person connected to a business, so that it might be argued that information about the business is also information about the individual, it has been concluded that there is no “personal information” within the definition set out in the Act (Order F2002-006 at paras. 90 and 93).

[para 13] The Adjudicator concluded in that case that the information about the complainant’s farming operation was not personal information about the complainant.

[para 14] In this case, the Public Body’s claim that the information about the Complainant’s past membership with the Grazing Reserve is about the Complainant’s agricultural business is supported by section 105 of the *Public Lands Act*, cited above. Although the Complainant’s name appears in the email, it does so because he is a representative of the business. In other words, there is no personal dimension to the information in the email that it is personal information. I say this despite the fact that the records relate to alleged non-payment of membership dues, which could conceivably be taken as saying something negative about the Complainant as an individual. I conclude that this does not add a personal dimension to the information because the Complainant’s membership in the Grazing Reserve was in a commercial or business capacity and not a personal capacity. In other words, if membership fees were owed, they were owed by the Complainant as an organization, and not as an individual.

[para 15] Further, I agree with the analysis in Order F2010-009, that there is an important distinction between information about an identifiable individual in his or her natural or personal capacity and information about that individual’s business, whether it happens to be a sole proprietorship, corporation or otherwise. I find that, on the balance of probabilities, the information in the email (the information about membership fees owed or paid by his agricultural business) is not about the Complainant as an individual; rather, it is *about* an organization that is owned by the Complainant. Therefore, the FOIP Act does not govern the collection, use or disclosure of that information.

[para 16] Given this conclusion, I do not need to consider the remaining issues set out in the Notice of Inquiry.

[para 17] That said, I will address an alternate argument made by the Public Body. The Public Body seems to argue in parts of its submissions that if the information at issue about the Complainant were his personal information, it did not disclose that information. It states that the email concerning the outstanding membership fees was received by the Public Body but not disclosed by it. However, in its February 24, 2015 submissions, it states that the email was included in the Public Body’s August 9, 2013 Preliminary Motions Submission made to the Board. In this part of its submission, the Public Body argues that the email had already been circulated to the parties that received the Public Body’s submission to the Board. It may be the case that the Public Body is arguing that because it disseminated the email *only* to parties that had already received the email from another source, this dissemination would not be a disclosure under the FOIP Act (assuming the email had contained personal information).

[para 18] If this is indeed the Public Body's argument, I believe it is misconceived. As the information at issue is not the Complainant's personal information, and therefore the FOIP Act does not apply, I did not clarify with the Public Body its interpretation of the Act on this issue. However, Part 2 of the FOIP Act does not make a distinction between a disclosure made to a party that already has the information, and a disclosure made to a party that does not have the information (although it may be a factor regarding whether the disclosure was authorized).

IV. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] I find that the information collected and disclosed by the Public Body is not the Complainant's personal information. Therefore, the Act does not apply to the Public Body's collection or disclosure of the information at issue.

Amanda Swanek
Adjudicator