

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-19

June 23, 2015

ALBERTA HEALTH

Case File Number F7425

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to Alberta Health (the Public Body) for records relating to her application and interview for a position with the Public Body. The Public Body provided some records, withholding information under sections 17, 19, 24 and 26 of the Act. The Applicant objected to the Public Body's application of sections 19 and 26 to withhold information in the records. The Public Body subsequently decided not to apply section 26 and the sole issue in the inquiry was the Public Body's application of section 19 to the scores assigned to the Applicant's interview responses, as well as comments on the first page of the interview evaluation form.

The Adjudicator determined that while the information at issue fell within the definition of evaluation or opinion, the information was not provided in confidence; therefore section 19 does not apply.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 19, 72.

Authorities Cited: AB: 97-002, 98-021, 2000-029, F2002-008.

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to Alberta Health (the Public Body) for records relating to her application and interview for a position with the Public Body. The Public Body provided some records, withholding information under sections 17, 19, 24 and 26 of the Act. In her request for inquiry, the Applicant objected to the Public Body's application of sections 19 and 26 to withhold information in the records.

[para 2] After the Applicant requested an inquiry into the Public Body's response, the Public Body provided some records to the Applicant that it had initially withheld, and also decided not to apply section 26 to information in the records. The remaining issue for the inquiry is the Public Body's application of section 19 to some information in the records.

II. RECORDS AT ISSUE

[para 3] The records at issue consist of the withheld portions of information on pages 20, 22, 24, and 26 of the records provided in response to the Applicant's request.

III. ISSUE

[para 4] The issue as set out in the Notice of Inquiry is as follows:

Did the Public Body properly apply section 19 of the Act (confidential evaluations) to the information in the records?

IV. DISCUSSION OF ISSUE

Did the Public Body properly apply section 19 of the Act (confidential evaluations) to the information in the records?

[para 5] The Public Body applied section 19(1) to information on pages 20, 22, 24 and 26 of the records at issue. This provision states:

19(1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

[para 6] In order for section 19(1) to apply, the information:

- a. must be evaluative or opinion material;
- b. must be compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for:
 - i. employment; or
 - ii. for the awarding of contracts or other benefits by a public body; and

c. must be provided explicitly, or implicitly in confidence (Orders 2000-029, F2002-008).

[para 7] The Public Body describes the records at issue as interview evaluation sheets set out in a standard form, and scoring metrics. It states that “[t]he scoring metrics and techniques for determining employment suitability will be used for future interviews.” (Initial submission, para. 9)

[para 8] The interview questions and recorded responses of the Applicant were provided to her. Only the score of each part of the interview on pages 22, 24 and 26 were withheld, as well as the boxes marked “Candidate’s Rating Recap” and “Candidate’s Assessment Summary” on page 20. As this information relates to the Applicant’s suitability for a position, it is her personal information.

[para 9] The Public Body argues that:

[t]he disclosure of the interview panel’s interpretation or the interview panel’s scoring of responses could reasonably be expected to interfere or restrict future open and frank discussions as part of the evaluation process of an interview panel in performing an assessment of the Applicant’s pre-employment requirements. All material was collected for the sole purpose of determining the Applicant’s suitability and eligibility or qualifications for employment and given the sensitive nature of the records the Respondent believes the information provided by the interview panel was provided implicitly in confidence.

Retaining and protecting the interview panel discussion and comparable tools within the assessment process allows and preserves the candid and frank discussions required in determining suitability for employment. (Initial submission, paras. 14-15)

[para 10] In Order 98-021, former Commissioner Clark cited the Concise Oxford Dictionary definition of “evaluative” as the adjective of “evaluate”, meaning “to assess, appraise, to find or state the number of.” He also cited the definition of “opinion” as “a belief or assessment based on grounds short of proof; a view held as probable.” In Order 97-002, former Commissioner Clark found that the belief that a person would be a suitable job candidate is an opinion.

[para 11] The information withheld on pages 22, 24 and 26 are the scores for three different sub-sections of the interview assessment. The withheld information on page 20 includes a table of the sub-section scores as well as the total score (the Rating Recap), and a comments section (the Assessment Summary) that relates to other suitability factors.

[para 12] The scores fall within the definition of “evaluative” used in past Orders of this Office, insofar as they represent a numerical assessment of the Applicant’s responses to the interview questions. The additional comments on page 20 include a conclusion regarding the Applicant’s suitability, and could be interpreted as an opinion of the Applicant. Therefore, the first two parts of the above-cited test are met.

[para 13] However, I do not accept the Public Body’s argument that the scores were compiled and provided in confidence, nor do I accept that argument with respect to the comments on page 20. There is no indication on the records that the scoring or comments on page 20 were provided

in confidence and the Public Body has not provided any evidence that there was an expectation of confidence, either implicit or explicit. The Public Body is concerned with protecting candid and frank discussions; however, the scores and/or the result of reference checks do not reveal the discussions that led to the determination of the scores or the content of the references (although they might indicate whether some or all of those discussions were positive or negative). The comments on page 20 also do not reveal how or why the conclusion was reached (i.e. the factors or discussions that led to the conclusion).

[para 14] The scores provided on each sub-section of the interview form are the decisions resulting from the evaluation and/or discussion of the Applicant's interview answers; scoring for interviews is done presumably to compare candidates in an objective manner as possible. The interview panel members might expect that their discussion of the Applicant's responses would be kept confidential but I do not know that their decision (the scores) were expected to be kept confidential. Additionally, since multiple people were on the panel, the scores on the interview forms do not reveal the score that may have been assigned by any individual panel member. Lastly, it is not clear how the disclosure of the decision would prevent or interfere with open and frank discussions of future interviewees, by public body employees tasked with determining the suitability of those candidates. Similarly, I do not accept that an interviewer would not record the conclusion of other suitability factors (provided on page 20) on the basis that the record could be disclosed.

[para 15] For these reasons, I find that the information was not provided explicitly or implicitly in confidence and section 19 does not apply to the information at issue.

V. ORDER

[para 16] I make this Order under section 72 of the Act.

[para 17] I find that section 19 does not apply to the records at issue and order the Public Body to disclose to the Applicant the information withheld under that provision.

[para 18] 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