ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-77

October 13, 2017

ALBERTA OCCUPATIONAL HEALTH AND SAFETY COUNCIL

Case File Numbers 000424 and 001744

Office URL: www.oipc.ab.ca

Summary: Personal information of the Complainants, including their full names, was contained in Occupational Health and Safety Council (OHSC) decisions that were posted on the Ministry of Labour website. The information appeared in results generated by search engines. The Complainants brought complaints that this disclosure of their personal information was in contravention of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). They wanted the information to be made inaccessible to search engines. One of the Complainants also asked that his full name be removed from the decisions and initials substituted.

The Adjudicator held that the OHSC has authority to include the full name of complainants, as participants in its process, in its posted decisions, other than in cases of sensitive information that could harm the interests of complainants, which she found not to be a factor in the present case.

The OHSC had already taken steps to have the information made inaccessible to major search engines, but the Complainants presented material suggesting the information was still accessible through some such search engine providers. The Adjudicator asked the OHSC to take any further steps available to it that it had not already taken relative to major search engine providers.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17, 17(5), 17(5)(a), 17(5)(f), 38, 40, 40(1), 40(1)(b), 40(1)(c), 40(1)d), 40(1)(v), 40(4), 72; Freedom of Information and Protection of Privacy Regulation, Alta. Reg. 186/2008, s. 7.

Court Cases Cited: *A.T. v. Globe 24h.com*, 2017 FC 114**.**

I. BACKGROUND

[para 1] The Complainant and his mother have both (separately) been involved in proceedings before the Occupational Health and Safety Council (OHSC or "the Public Body"). Their personal information is contained in decisions of the Public Body, which were posted on the Ministry of Labour website, and appeared in results generated by search engines. The Complainant, speaking both on his own behalf and that of his mother, complained that he does not want their personal information in these decisions to appear in search engine results, and believes the information has been disclosed in contravention of the FOIP Act.

[para 2] During the course of the proceeding before this office, the OHSC took steps to make all of its decisions inaccessible to search engines, by implementing technical controls that it says "help prevent appeal decision documents containing personal information from being indexed". As well, it says that:

> … search engine links to OHS Council decision documents have been broken and will not provide direct access to the decisions. Major Internet Search Engine Providers have been contacted to remove references to the OHS Council decision documents.

[para 3] However, the Complainant maintained his request that these matters be dealt with at inquiry, on the basis that the names as associated with OHSC decisions can still be found on the internet by performing a "deep Google" search.

[para 4] As well, the Complainant wants his name to be removed from the website decisions and initials or the word 'complainant' substituted, a step which he described in his initial complaint as something he was seeking "in the alternative" to having his and his mother's names removed from search engines. (In his submissions, the Complainant makes the same request for use of initials with respect to his mother; however, he did not do so in submitting his mother's initial complaint or in requesting an inquiry on her behalf. Therefore, this issue cannot be determined in this inquiry with respect to the Complainant's mother.)

II. ISSUES

[para 5] The issues stated in each of the Notices of Inquiry were:

> **Issue A:** Did the Public Body have authority to disclose the Complainant's personal information under sections 40(1) and 40(4) of the FOIP Act?

Issue B: Did the Public Body meet its duty to protect the Complainant's personal information, as required by section 38 of the FOIP Act?

[para 6] The first issue was framed to address the Public Body's practice of posting its decisions on its website using the full names of the involved parties. (As just noted, although this issue was also included in the Notice of Inquiry for Case File Number 001744, this was done in error, as it was raised only in the Complainant's own complaint, and not in the complaint he made on behalf of his mother.)

[para 7] The second issue focuses on a public body's duty to protect personal information under section 38, and relates to the fact information from the website may be more broadly distributed through search engine indexing.

III. DISCUSSION OF ISSUES

Issue A: Did the Public Body have authority to disclose the Complainant's personal information under sections 40(1) and 40(4) of the FOIP Act?

[para 8] In preparing my letter to the parties of July 10, 2017, I noted that the Complainant had initially asked that the Public Body be required to take steps to make decisions on the Public Body's website inaccessible to search engines, or, *in the alternative*, that it be required to remove his full name from decisions posted on its website and substitute initials; I noted further that the Public Body had agreed to pursue the former of the two alternatives which the Complainant suggested. I had considered that in view of this, it might not be reasonable to require the Public Body to also address the other alternative the Complainant had suggested – of removing his full name.

[para 9] However, I have noted that in its submission, the Public Body has made representations regarding its authority under the FOIP Act for its practice of posting the full names of parties on its website. The Complainant has had an opportunity to respond to these submissions, and has done so by putting forward the reasons he believes that maintaining his full name could be harmful to him. I will therefore consider and rule upon these submissions (and the first issue, which these submissions address) in this inquiry.

[para 10] The Public Body argues that it has authority to disclose the personal information of participants in its inquiry proceedings, including their full names, by reference to section 40 of the FOIP Act. Its arguments are as follow:

Section 40(1)(d)

[para 11] First, it argues that the Complainant consented to publication of his name by voluntarily participating in its proceedings. Authority for disclosure by reference to consent is found in section 40(1)(d) of the Act, which allows disclosure "if the individual

the information is about has identified the information, and consented, in the prescribed manner[1], to the disclosure". The Public Body says:

> Section V(g) of OHS Council Rules of Procedure states: "All parties, by filing documents in the appeal, accept that these filed documents, evidence, hearings and Council decision[s] and orders are a matter of public records and may be publicly accessed, including on the internet. The Appeal Record and Council decisions are posted on the Council's website.
>
> Section V(g) of the Rules of Procedure refers to both the "internet" and "website", which suggests that each word was chosen and used to convey a different meaning. Arguably the Complainant read the Rules of Procedure prior to submitting his Notice of Appeal, and by signing and submitting the Notice of Appeal, he consented to his information being disclosed on the internet.
>
> Section Vll(h) of the Rules of Procedure state that in addition to sending the Public Body's decision to the parties involved, a copy of the decision is posted on the Council's public website.
>
> Prior to completing the Notice of Appeals form, individuals are advised to read the Rules of Procedure of the Public Body posted on the Public Body's website.
>
> The OHS Council publishes its decisions on its website as per its *Rules of Procedure (Section V(g)).* That is, that all parties, by filing documents in the appeal, accept that these filed documents, evidence, hearings and Council decisions and orders are a matter of public record and may be publicly accessed, including on the *internet.*
>
> …
>
> The complainant consented to have this information published on the internet by way of filing with the Public Body.

[para 12] Given the steps taken to make participants in proceedings aware of the practices of the OHSC of disclosing decisions that contain personal information, and on the assumption that filed documents are signed, it is arguable that filing documents in an OHSC appeal constitutes identifying information and consenting in the prescribed manner to the disclosures described in the Rules of Procedure. Given my reasoning below, I do not need to decide whether filing complaint documents constitutes "consenting in the prescribed manner". However, I do agree, at a minimum, that the participants' personal information is not provided 'in confidence' (this is a factor relevant to the discussion that follows beginning at para 37 below respecting whether disclosure of the Complainant's personal information is an unreasonable invasion of his privacy).

[1] The regulations under the FOIP Act, section 7, provide that consent can consist of a written signature, can be given electronically where certain conditions have been met, or can be oral where certain conditions have been met.

Section 40(1)(c)

[para 13] The Public Body also argues that the information was disclosed for a purpose consistent with the purpose for which it was collected or compiled, and therefore that the disclosure was authorized by section 40(1)(c) of the FOIP Act.[2] It says:

> Further, maintaining the information on the Public Body's website is consistent with the purpose for which it was collected i.e. for the purpose of the OHS Council tribunal process and resulting decision.

[para 14] Section 40(1)(c) provides:

> *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, … .*

[para 15] Section 41 provides:

> *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 16] In order to fall under section 41, the publication of the names of complainants in a public body's decisions must be reasonably and directly connected to the purpose for collecting the names, and must be necessary for performing the public body's statutory duties or operating its program of making quasi-judicial decisions

[para 17] In setting out its reasons for disclosing "the names of complainants, organizations the complaints are made against, and details of the complaints" by including this information in its decisions and on its website, the Public Body argues that it is bound to follow the "open court" principle in its proceedings in order to achieve the greatest possible transparency for its quasi-judicial processes. It says:

> The Public Body finds that the open court principle applies equally in an administrative tribunal context where the tribunal is involved in quasi-judicial functions. The fact that the open court principle is recognized under the *Charter* only strengthens its application

[2] The OHSC points out that the *collection* of the information is authorized under section 37 of the *Occupational Health and Safety Act.*

> to the quasi-judicial functions of administrative tribunals. These constitutional values transcend both judicial and quasi-judicial proceedings.
>
> Generally, witnesses and parties are identified in judicial and quasi-judicial proceedings. This conveys the solemnity and significance of the adjudicative process in determining the truth and contributes to the transparency and accountability of proceedings.
>
> In the open court principle, transparency, among other things, advances public confidence in the courts and tribunals. Disclosure to the public has a reasonable and direct connection to the original reasons for collecting the information and it is necessary for the operating activity of the Public Body. In addition, the disclosure of the Public Body decision is consistent with ensuring transparency of the decisions and informing the public about its decisions. Value is placed on the presumption that courts and tribunals be open and that their proceedings are uncensored.
>
> The Public Body interprets and applies its enabling legislation and administrative law in every appeal it receives. The broad and unfettered circulation of decisions serves an indispensable role in communicating to prospective parties how the Public Body does its work and has interpreted and applied the legislation. The outcome must be fair and substantively proper, and it must also be **seen** to be fair and proper.

[para 18] Part of the Public Body's purpose is to inform the public about its processes and outcomes. I agree with the Public Body that publishing the names of complainants in the OHSC process is reasonably and directly connected to its purpose for collecting the names.[3] I also agree it is necessary for the Public Body to adhere to the "open court" principle in order to properly perform its statutory functions – that is, for it to be as transparent as reasonably possible, including in issuing its decisions.

[para 19] It might be argued that the name of a complainant who raises a safety issue or who claims they were wrongly disciplined or terminated because they raised a safety issue would not enhance the transparency of the process because *who* brings the complaint is not relevant to the way the matter unfolds – in other words, that the names of OHSC complainants are not an essential element of transparency in its decisions. However, I do not believe this would be a sound generalization. The fact complainants are identifiable to others may well be an important element in the process, both at the time of the hearing, or ultimately when the decision is made publicly available. To illustrate, a complainant who will later be identified as having given particular evidence may be more truthful knowing this is so, or, an unidentified bias on the part of a decision maker, or additional pertinent evidence that could give rise to an appeal, may come to light only where the identity of a party becomes known to others.

[para 20] Thus, in my view, generally speaking, it is necessary for the Public Body to disclose all information pertinent to its decisions, including personal information.

[3] Indeed, as I will discuss further below at para 34, it could be said that one of the reasons for collecting the personal information is in order to publish it – in other words, that the purpose for disclosure (to inform the public about matters with which it deals) is the *same as* one of the purposes for collection.

[para 21] However, there may be situations in which personal information has some element of sensitivity that makes it necessary to balance the benefits of transparency against a risk of harm or adverse effect to the party whose information it is. This may be routinely the case for particular types of decisions that a public body makes, or, information may be sensitive in particular cases. The Complainant in the present case has not presented any persuasive argument that information of complainants under the OHSC processes (or of other participants) would routinely be sensitive, and therefore that the tribunal should not routinely disclose the names of complainants in its process. (He asserts at several points throughout his submissions that other participants in OHSC proceedings may be negatively affected, including relative to their employment, and that this could have a chilling effect on complaints, but he provides no evidence to support this, nor any explanation why it would be so.) Rather, the Complainant's primary argument is that the Public Body should change its practice retroactively in his particular case, for reasons that relate to him specifically.

[para 22] The primary reason the Complainant gives for maintaining his request that the Public Body remove his name from its decisions and substitute initials (or the word 'complainant') is that he has received threats and regards his life be in danger.[4] Relative to section 40(1)(c), the Complainant's argument may be understood as one that it is not "necessary" for the Public Body to disclose his personal information which poses a threat to his and his family's safety, in order for it to perform its statutory duties and run its adjudicative program within the terms of section 41(b).[5]

[para 23] In making this argument, the Complainant points out that in *A.T. v. Globe 24h.com*, 2017 FC 114, Justice Mosley accepted the fact threats had been made to the Complainant and his family as a reason for using only his initials in the Court's written decision. In *Globe24h.com*, the Complainant had complained to the federal Privacy Commissioner that a website hosted and operated from Romania was re-publishing decisions of Canadian courts and tribunals containing personal information, including personal information about him, for the purpose of demanding fees from aggrieved persons to take the content down. When that case was brought before the Federal Court of Canada, Mr. Justice Mosley agreed to use the Complainant's initials rather than his name to protect his identity. Justice Mosley noted that the Complainant "had advised [the Federal Court] at the hearing that he and his family in Romania have received verbal threats for pursuing the complaint" and that "publication of this decision would again expose his personal information to public attention". The Court said that using initials "strikes an appropriate balance between the open court principle and the need to protect the applicant's and his family's personal safety".

[para 24] I agree that in circumstances in which a person's life could be put in danger by posting their name in a way that would become accessible on the internet, the posting would not properly be regarded as "necessary" within the terms of section 41(b);

[4] The Complainant makes similar arguments with respect to the presence of his mother's name in one of the OHSC decisions, but, as already noted, this point was not raised in her complaint or request for inquiry.
[5] Section 40(1)(b) is a provision that supplements section 40(1)(c).

consequently, in such circumstances, the "consistent purpose" ground under section 40(1)(c) could not be relied upon.

[para 25] However, this case deals with OHSC decisions, not with decisions respecting a complaint brought against *Globe24h.com.* I do not see how the fact the Complainant has made OHSC complaints could give rise to any threat to the Complainant's personal safety or that of his family in the same way the circumstances in the *Globe 24h.com* case did. The respondents to the OHSC complaints have presumably not threatened the Complainant's safety.

[para 26] Nor has the Complainant explained how posting his full name on the OHSC website could have created a new threat from *Globe24h.com* or how it could have perpetuated the existing threat. Possibly the OHSC's postings make it somewhat easier for someone who knows the Complainant's name to locate him (by providing some general information about where he lived or worked at the time of the complaints). However, that information has been available on the website since the OHSC complaints were decided. The Complainant has not said how *now* substituting initials for names in the Public Body's decisions about him that are posted on its website could alleviate the threat to his or his family's safety that arose in the *Globe24h.com* case. The Public Body has taken steps to make the information inaccessible to search engines, going forward. Once the website information is not available to search engines[6], this information can, practically speaking, be accessed only by someone who knows it is on the website to begin with. (While information that was posted earlier can, as the Complainant has pointed out, still be accessed from sources other than major search engines, this is unaffected by masking the names in the information as it now exists on the Public Body's website.) Further, the Complainant did not suggest that the decisions provide any contact information, nor any current location information.

[para 27] Therefore, for OHSC decisions, it is appropriate to "strike the balance" between the open court principle and the Complainant's interests in a different way than was done in the *Globe 24h.com* case.

[para 28] As well, the Complainant argues that leaving his full name on the website provides a means by which former inmates at the correctional facility at which the Complainant was formerly employed would now have ability to "track him down". However, as just discussed, once the website information is not available to search engines, this information can be accessed only by someone who knows it is on the website; again, neither do the decisions provide any contact information, or any former location information more precise than that already known to prison inmates. As well, the Complainant's concern presupposes that there is some reason for former inmates to track him down, which has not been explained.

[6] To the extent this process remains incomplete with respect to the major search engines, I will ask the Public Body to complete it.

[para 29] The Complainant also states in several of his submissions that the appearance of his name about which he is complaining (that is, as it appears in the context of OHSC decisions) has some negative impact on his ability to "obtain and maintain employment" or "to find stable employment along with a cloud of suspicion and stigma hanging over our heads for approx. 3 years and a half". He did not explain how his name associated with his OHSC complaints could lead to this result, and the fact that he brought OHSC complaints is not obviously a reason why his employment would be affected negatively or give rise to "a cloud of suspicion". He did say, however, that he could demonstrate this if asked to do so. For this reason, I gave the Complainant a further opportunity to provide an explanation and/or evidence to show this had happened. The Complainant provided the following statement with respect to his own employment[7]:

> Further, I applied for or attended numerous interviews, and I never obtained the job. I even applied at the city of Calgary, as did my father. Upon inquiring as to why I have not obtained the job from the employers, I was always advised that this was as a result of negative Google information that appeared in results. Furthermore, when I had my own business, numerous clients who googled my name brought up concerns that my name appeared in google search engines, and declined to have further transactions or business with me as a result of the unauthorized indexing by the Alberta Occupational Health and Safety Council (the "Council").

In my view, this statement does not offer sufficient evidence on which to base a conclusion that the Complainant's employment was adversely affected by the postings. He offers no direct evidence from his clients, nor any explanation as to why a client or prospective client who saw the OHSC postings would regard them as 'negative', or be dissuaded from hiring him or from doing business with him. Therefore, I cannot treat the point the Complainant makes about this as a relevant consideration that would negate the desirability of adhering to the "open court" principle in his case.

[para 30] In view of the foregoing considerations, I find the reasons the Complainant has provided are insufficient for requiring the Public Body to deviate from the "open court principle" by removing his particular full name from its decisions posted on its website.

[para 31] In order to decide whether disclosure of full names of complainants is "necessary" for the Public Body to be as transparent as is reasonably possible, I have also considered whether there is something in the nature of the subject matters and personal

[7] The Complainant also provided information as to how the postings affected the employment prospects of his family members. However, these matters are not issues in the present inquiry. If they were, I would not regard the evidence as supportive of the claims that employment was adversely affected. The evidence relating to his mother's employment in particular, although more extensive than the evidence relative to the Complainant's own situation, is inconclusive: the Complainant suggests the OHSC postings *would have been* accessed at the same time other links relating to her were accessed, but does not demonstrate they were. Further, the letter she received from the organization that had retracted its employment offer provides an explanation for the retraction (an "internal business problem") that does not relate to the postings, and conflicts with the assertion she was advised that the postings were the reason for the retraction. There is no basis on which to conclude the explanation that was given, albeit vague, was untrue.

information with which the OHSC deals such that it should routinely anonymize the complainants in its process.

[para 32] The OHSC did not comment on this question. (As noted, the Complainant raised the suggestion that participants in other cases could be negatively affected in their employment, but he did not explain this assertion). Nonetheless, I considered whether any of the types of subject matters about which the OHSC makes its decisions reveal personal information that is self-evidently sufficiently sensitive that it would generally outweigh the "open court" principle. I understand that one of the OHSC's functions is to hear appeals relative to complaints by employees who have raised safety concerns they believe were not appropriately dealt with, or who believe they have been disciplined or terminated because they raised safety concerns. Publishing the names of employees as complainants reveals they have raised a safety issue their employer did not accept or remedy in some way, or that they have been disciplined or terminated. The prospect these facts could be published might have a chilling effect on potential complaints in some cases. On the other hand, complaints that can be shown to have some reasonable foundation would be less likely to have a negative effect on future employment, and would less likely be deterred in this way. Further, a complainant who could show that publication would be unfair or cause unwarranted harm in their particular case, could ask the OHSC not to publish their name for this reason.

[para 33] I do not believe that the kind of personal information with which the OHSC deals warrants a determination that it is inherently sensitive, or that its routine publication would have an obviously deterrent effect, such that the "open court" principle should be overridden as a matter of course as it applies to OHSC processes. The foregoing is not to suggest the OHSC could not consider these questions and reach a different conclusion that causes it to change its present practice; it is only to say that there are no obvious considerations on which to base a conclusion that it must necessarily do so. It is also important to note that my comments with respect to the particular kinds of personal information with which the OHSC deals are not meant to have any bearing on how other kinds of personal information dealt with by other tribunals should be treated.

[para 34] Before leaving section 40(1)(c), I might add that I would have reached the same conclusion – that section 40(1) was met – by analyzing what the purpose of the Public Body was in *collecting* the information (which includes the purpose of informing the public about its decisions), whether this purpose is authorized as being *necessary* (which I would find to be the case for the reasons given in the foregoing paragraphs), and whether the purpose for disclosure was the same as this authorized purpose of collection (which I would find to be the case because the purpose of disclosure is also to inform the public). However, since the Public Body relied on the "consistent purpose" part of section 40(1)(c) rather than the "same purpose" part, I conducted my primary analysis relative to "consistent purpose".

Section 40(1)(v)

[para 35] Section 40(1)(v) permits disclosure for use in a quasi-judicial proceeding in which the Government of Alberta or the public body is a party. The Public Body also argues that "the information was collected for use in a proceeding before a quasi-judicial body, the OHS Council, to which the Public Body is a party".

[para 36] The cover letter for the submissions made on behalf of the OHSC by the Ministry of Labour possibly suggests that the author of the submission regarded the Labour Ministry, rather than the OHSC, as the Public Body in the present case. However, the Schedule to the FOIP Act lists the OHSC as a separate public body. My understanding is that the OHSC is a quasi-judicial decision maker and is the Public Body in this case. As the decision-maker, it would not be a 'party' in its own proceedings. Nor did the submission explain (if this is what was meant) how the Ministry of Labour could be said to be a party to the proceedings before the OHSC in which the Complainant was involved. Therefore, I will not make a finding on the basis of section 40(1)(v).

Section 40(1)(b)

[para 37] Finally, the Public Body argues that the information can be disclosed because its disclosure does not entail an unreasonable invasion of personal privacy. Section 40(1)(b) allows for disclosure of personal information where disclosure would not be an unreasonable invasion of privacy within the terms of section 17.

[para 38] In this regard, the Public Body points to a number of subsections of section 17 of the Act which are relevant for determining if disclosure of information would unreasonably invade privacy. It says:

> Section 17(5) of the FOIP Act provides that, in determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy under section 17(1) or (4), a public body must consider all relevant circumstances.
>
> Consideration of Section 17(5)(a) lends the disclosure of the decisions and the information contained within the decisions as desirable for the purpose of subjecting the activities of the Public Body to public scrutiny. Further, looking to Section 17(5)(g), the information was not supplied in confidence. The public interest in disclosure of the personal information does not outweigh any perceived invasion of privacy that may result from such disclosure.

[para 39] In deciding whether the disclosure of personal information entails an unreasonable invasion of privacy under section 17, it is necessary to balance the factors that weigh in favour of disclosing information against factors that weigh in favour of withholding it, as these factors are set out in the subsections of section 17.

[para 40] As already quoted above, in setting out its reasons for disclosing "the names of complainants, organizations the complaints are made against, and details of the complaints"

by including this information in its decisions and on its website, the Public Body argues that it is bound to follow the "open court" principle in its proceedings in order to achieve the greatest possible transparency for its quasi-judicial processes. I accept that this principle is a relevant consideration under section 17(5) of the Act that weighs strongly in favour of disclosure of personal information of participants in OHSC proceedings.

[para 41] However, as also already noted, the Complainant says that this is a case in which his name in the context of the decisions is highly sensitive, because he has received threats and regards his life be in danger. (This aspect of the Complainant's argument may be understood as one that the disclosure of his personal information is an unreasonable invasion of his personal privacy, and therefore does not meet the requirement for disclosure in section 40(1)(b).)

[para 42] I agree that in circumstances in which a person's life could be put in danger by posting their name in a way that would become accessible on the internet, the posting would properly be regarded as an unreasonable invasion of privacy, and thus section 40(1)(b) could not be relied on to support the disclosure.

[para 43] However, for the reasons set out in paragraphs 25 and 26 above, I do not accept that maintaining the Complainant's full name on the OHSC website has created or would create a new threat, nor how now substituting initials for names in the Public Body's decisions about him that are posted on its website could alleviate the former threat to his or his family's safety that arose in the *Globe 24h.com* case.

[para 44] I also take into account the factor listed under section 17(5)(f) – which relates to whether the information was supplied in confidence. As noted above, the OHSC made it clear in its website materials that disclosure of personal information would be the consequence of engaging its processes. Given the degree to which the Public Body makes its practices with regard to disclosing personal information available to participants, I do not believe the Complainant can be said to have filed the information in his complaints, including his name, with any expectation of confidentiality. This is another factor tending in favour of disclosure under section 17.

[para 45] I have already considered above whether the Complainant has demonstrated that the posting of his name has the potential to unfairly affect his job prospects (which might be a factor against disclosure if it could be demonstrated). Since, for the reasons given above, I do not believe the Complainant has demonstrated this, I will not apply it as a factor in this case.

[para 46] Accordingly, I find that the Complainant has not provided any convincing explanation as to why maintaining his full name, as associated with the details of his OHSC complaints, on the OHSC (Labour) website is an unreasonable invasion of his privacy within the terms of section 17. Therefore, I find that posting his full name associated is authorized under section 40(1)(b).

Section 40(4)

[para 47] I turn finally to the question under section 40(4) of the FOIP Act of whether the disclosure of the Complainant's personal information is done only to the extent necessary to meet the Public Body's purpose in a reasonable manner. In this case, the question of extent relates to the amount of information about the Complainant's name that is being disclosed – his full name rather than only his initials. As explained above, I find that it is necessary for the Public Body to be as transparent as reasonably possible in order to properly perform its duties. Disclosing the full name rather than only the initials where the information has no special sensitivity or reasonable likelihood of unfairness or unwarranted harm achieves this desired transparency, and fulfills the Public Body's purposes in a reasonable manner.

Issue B: Did the Public Body meet its duty to protect the Complainants' personal information, as required by section 38 of the FOIP Act?

[para 48] This issue was framed to address the fact that at the time of the complaint, information from the website could be more broadly distributed through search engine indexing.

[para 49] As already noted, the OHSC has now taken steps to make all of its decisions inaccessible to search engines, by implementing technical controls that it says "help prevent appeal decision documents containing personal information from being indexed". As well, it says that:

> … search engine links to OHS Council decision documents have been broken and will not provide direct access to the decisions. Major Internet Search Engine Providers have been contacted to remove references to the OHS Council decision documents.

[para 50] The Public Body said:

> We accept the Office of the Information and Privacy Commissioner's Office (OIPC) position that by allowing its decisions and content to be indexed and located via search engines using the complainant's name, the Public Body increases the exposure of the complainant's personal information beyond the purpose for which it was initially disclosed. Therefore, implementing technical controls to prevent the indexing as recommended by the OIPC will support the Labour website to be in compliance with Section 40(4) of the *Freedom of Information and Protection of Privacy Act* (FOIP), as mandated under Section 38 of the Act.

[para 51] The Complainant responded that his name and that of his mother associated with OHSC decisions can still be found by doing a "deep Google search", and he provided various print-outs, from computer searches he has performed, to illustrate his concerns.

[para 52] In its recent reply dated July 25, 2017 to my request for further information, the Public Body said:

> [The Complainant's] concern involves Deep Web searches, an area that the general public or the public body would not typically access. The public body cannot use a number of the Deep Web search tools as they are blacklisted and cannot be installed onto a Government of Alberta workstation. These deep web searching tools also hook into Tor/Onion. Tor/Onion connections are blocked by the Government of Alberta's firewall at the edge due to security risks.
>
> Deep web search tools do not flush content. They generally maintain the index indefinitely. The providers generally will not respond to a request to flush content.
>
> It is the Labour's position that we have taken all reasonable steps to meet the recommendations of the OIPC and the requests of the appellant. Please note:
> - the content is not available via popular search engine tools (Google, Yahoo, Bing); we have confirmed through our own searches that these providers have removed the content from their search engines;
> - these search engine providers honour the NOROBOTS, NOFOLLOW and NOINDEX flags that have been established on OHSC website;
> - the content is not easily crawled by any search engine provider (CAPTCHA); and
> - the content on OHSC's website has been moved to a new location, thus breaking any previously searched and indexed links.

[para 53] In his submissions following the Public Body's submission of July 25, 2017, the Complainant provides additional material which he says demonstrates that his and his mother's names can still be found in association with his OHSC matters. In particular, he refers to Bing and DuckDuckGo searches.

[para 54] Section 38 of the Act provides:

> *38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 55] The Public Body is required to make reasonable security arrangements for records in its custody and control. It agrees that historically its arrangements did not meet the requirements of the Act because it had not prevented information it had posted on its website from being accessed and indexed by search engines and used for purposes other than those for which it was collected, used and disclosed. The Public Body has now taken significant steps to make security arrangements which will prevent this.

[para 56] With respect to the Complainant's concerns about "deep web" or "deep Google" searches, even if the Public Body were to try to contact people or organizations who control the "deep web" where the information may still reside, it seems highly unlikely that this would be successful at all, and certainly, it would not be successful in any overall way. The complaint is only against the Public Body and not against "deep web" providers. It is simply impossible for the Public Body to make arrangements to prevent further distribution of the information on the deep web even though it originated from its website.

[para 57] However, the Complainant has provided some material that demonstrates his and his mother's name can still be found associated with the OHSC by way of the Bing and DuckDuckGo search engines. The Public Body has said it has contacted Bing, and says that the Complainant's information can no longer be accessed through Bing's website, but it appears from the materials the Complainant has supplied that this may not be the case.

[para 58] I will therefore ask the Public Body to meet its duty under section 38 by taking additional steps to ascertain whether this is so, and for any major search engine providers that can be readily contacted whose search tools continue to make the Complainant's personal information related to his OHSC matters accessible, to contact these providers, in the same way it says it has already done, to ask them to make the Complainant's personal information inaccessible via their search engines. It should also take any other steps reasonably available to it to achieve this result. The Public Body may wish to consult with the Complainant so he may make clear precisely which major search engines still make his and his mother's personal information accessible in a way that can be prevented by the Public Body's contacting them.

[para 59] Beyond this, I find the Public Body has now met the requirements of section 38, of making "reasonable" security arrangements to protect the Complainant's personal information.

IV. ORDER

[para 60] I make this Order under section 72 of the Act.

[para 61] I find the Public Body is authorized to continue to post the Complainant's full name in the context of OHSC cases on its website.

[para 62] I order the Public Body to take steps to determine whether the personal information of the Complainant and his mother is still accessible on the internet by way of major search engine providers, and if it is, to contact these providers and request that steps be taken to prevent this; the Public Body is also to take any other steps reasonably available to it to achieve this result.

[para 63] I order the Public Body to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order that it has complied with it.

Christina Gauk, Ph.D.
Adjudicator and Director of Adjudication