

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-85**

December 15, 2017

**KEYANO COLLEGE**

Case File Number 000676

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

**Summary:** The Complainant complained that his personal information was disclosed by an employee of Keyano College (the Public Body) when the employee phoned his residence and spoke first to his ex-wife and then to his cleaning lady about an employment issue he was having.

The Adjudicator found that the personal information disclosed by the Public Body's employee was not authorized by section 40(1) of the Act.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act* R.S.A. 2000. c. F-25, ss. 1, 17, 40, and 72.

**I. BACKGROUND**

[para 1] The Complainant was an employee of Keyano College (the Public Body) but was on temporary leave. In early December of 2014, the Public Body sent a letter attached to an email to the Complainant advising him that they needed certain information by December 19, 2014 or his position would be considered abandoned. According to the Public Body, it had not had a response from the Complainant by December 18, 2014 and so an employee of the Public Body attempted to phone the Complainant.

[para 2] According to the Complainant, the Complainant's ex-wife answered the phone call and was advised by the employee that the Complainant was on medical leave and needed to respond to a letter by the following day or his position would be considered abandoned. Similar information was provided to his cleaning lady by the same employee in the second phone call she made to the Complainant that day.

[para 3] According to the Public Body, the employee phoned and asked to speak to the Complainant. The woman that answered the phone advised the employee that the Complainant was not available. The employee identified herself and advised the woman that she needed to speak to the Complainant about an important employment matter. She advised the woman that an email had been sent to the Complainant and the Public Body needed confirmation of receipt of the email and that the Complainant needed to respond to an email by the following day. The woman advised the employee that the Complainant had received the email and already responded. The employee searched for the Complainant's email but could not find it. She then phoned the Complainant again. Again, a woman answered. She asked if it was the same woman she spoke to earlier and was told it was. The employee then advised the woman that she could not locate the Complainant's email. The employee provided the woman with her contact information and asked that the Complainant be told that his email should be directed to the employee.

[para 4] On December 19, 2014, the Complainant emailed the employee about his privacy concerns. On March 10, 2015, the Complainant submitted a complaint to the Office of the Information and Privacy Commissioner (this Office). Mediation was authorized but was not successful in resolving the issues between the parties and on September 14, 2015, the Complainant requested an inquiry. I received initial submissions from both parties. After reviewing those submissions, I asked for further evidence and argument.

## **II. ISSUES**

[para 5] The Notice of Inquiry dated April 15, 2016 states the issue in this inquiry as follows:

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**

**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)?**

[para 6] As stated in the background section of this order, the Public Body and the Complainant have differing versions on what information was disclosed by the employee of the Public Body to his ex-wife and cleaning lady. I accept the version of events put

forward by the Public Body over those presented by the Complainant because the Complainant was not a party to the conversations between the Public Body's employee and his ex-wife and cleaning lady. I asked the Complainant to provide me with statements of his ex-wife or cleaning lady but he did not provide me with anything.

[para 7] As well, as part of its submissions, the Public Body provided me with an investigation it conducted which included questions that were answered by the Public Body's employee. The date of these answers was not noted but they did form part of the investigation report. Therefore, the Public Body's employee would have answered these questions, which involved the content of the conversations with the Complainant's ex-wife and cleaning lady, within 4 months of the conversations. In addition, I was provided with the hand-written notes that the Public Body's employee took at the time of the telephone calls with the Complainant's ex-wife. As such, I believe that her recollection of events would have been accurate, and I accept her version of events. Specifically, I find that in the telephone conversations with the Complainant's ex-wife (and possibly cleaning lady), the Public Body's employee disclosed where she worked (and, therefore where the Complainant worked) and that she needed to speak to him about an important employment matter. She also disclosed that there was an email sent to the Complainant and also that no email had been received from the Complainant in reply, as well as the date by which the Complainant had to respond.

[para 8] For the reasons below, whether the information was provided to the Complainant's ex-wife or the cleaning lady does not affect the outcome of my decision and so I will not making a finding on whether the second telephone conversation was between the Public Body's employee and the ex-wife, or the cleaning lady.

[para 9] Personal information is defined in section 1(n) of the Act 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,*
- (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] By stating where she worked and that there was an important employment matter she needed to speak to the Complainant about, the Public Body's employee disclosed the Complainant's employment history and therefore his personal information. In addition revealing that he had been sent an email but no response could be located, and the date by which he was required to respond was also the Complainant's personal information.

[para 11] Section 40 of the Act authorizes a public body to disclose an individual's personal information for limited purposes. The Public Body did not argue any particular part of section 40 applied to the information disclosed. Based on the facts and information before me, I believe that the only applicable subsection of section 40 is section 40(1)(b) of the Act which reads:

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

...

*(b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,*

[para 12] Section 17 of the Act deals with access to information and states that a public body must refuse access to a third party's personal information where that disclosure would be an unreasonable invasion of a third party's personal privacy. Section 17(1) of the Act states:

*17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[para 13] Section 17(2) of the Act sets out circumstances in which the disclosure of a third party's personal information would not be an unreasonable invasion of his or her personal privacy. Section 17(2) of the Act states:

*17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

*(a) the third party has, in the prescribed manner, consented to or requested the disclosure,*

*(b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,*

*(c) an Act of Alberta or Canada authorizes or requires the disclosure,*

*(d) repealed 2003 c21 s5,*

*(e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,*

*(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,*

*(g) the information is about a licence, permit or other similar discretionary benefit relating to*

*(i) a commercial or professional activity, that has been granted to the third party by a public body, or*

*(ii) real property, including a development permit or building permit, that has been granted to the third party by a public body, and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,*

*(h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body,*

*(i) the personal information is about an individual who has been dead for 25 years or more, or*

*(j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:*

*(i) enrolment in a school of an educational body or in a program offered by a post-secondary educational body,*

*(ii) repealed 2003 c21 s5,*

*(iii) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or*

*(iv) receipt of an honour or award granted by or through a public body.*

[para 14] None of these provisions apply to the information disclosed by the Public Body.

[para 15] Section 17(4) of the Act sets out when the disclosure of a third party's personal information is presumed to be an unreasonable invasion of his or her personal privacy. It states:

*17(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*

*(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*

*(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*

*(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,*

*(d) the personal information relates to employment or educational history,*

*(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,*

*(e.1) the personal information consists of an individual's bank account information or credit card information,*

*(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*

*(g) the personal information consists of the third party's name when*

*(i) it appears with other personal information about the third party, or*

*(ii) the disclosure of the name itself would reveal personal information about the third party,*

*or*

*(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.*

[para 16] As I found above, the personal information that was disclosed by the Public Body's employee was that the Complainant was employed by the Public Body and, that he was involved in an important employment issue, about which he had been contacted but to which no response could be located, and the date by which he was required to respond. Based this finding and taking sections 17(4)(d) and 17(4)(g)(i) of the Act into consideration, the disclosure of this information raises a presumption that the disclosure was unreasonable invasion of the Complainant's personal privacy.

[para 17] Although section 17(4) of the Act raises a presumption that the Complainant's personal privacy was unreasonably invaded, this presumption can be rebutted by taking into the consideration the factors listed in section 17(5) of the Act. Section 17(5) of the Act states:

*17(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

*(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

*(b) the disclosure is likely to promote public health and safety or the protection of the environment,*

*(c) the personal information is relevant to a fair determination of the applicant's rights,*

*(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*

*(e) the third party will be exposed unfairly to financial or other harm,*

*(f) the personal information has been supplied in confidence,*

*(g) the personal information is likely to be inaccurate or unreliable,*

*(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*

*(i) the personal information was originally provided by the applicant.*

[para 18] None of these factors weigh in favour of rebutting the presumption established by sections 17(4)(d) and 17(4)(g)(i) of the Act. Therefore, I find that the Public Body disclosure of the Complainant's personal information was contrary to section 40 of the Act.

[para 19] In coming to this finding, I note that although the matter was urgent, there were alternative methods by which it could have been brought to the Complainant's attention that the Public Body wished to contact him, such as asking when he would be home and calling back later or just calling back later, or leaving a voice mail asking that he call back. I acknowledge that the Public Body was trying to be helpful and trying to protect the Complainant's interests, but since alternative means to do this short of disclosing his personal information were available, and because I cannot make any assessment as to the objective urgency of conveying the information to the Complainant, and in the Complainant's view it was not important enough to warrant the disclosure, I must find that the Public Body unreasonably invaded the Complainant's personal privacy when it disclosed the information.

**V. ORDER**

[para 20] I make this Order under section 72 of the Act.

[para 21] I find that the Public Body disclosed the Complainant's personal information in contravention of section 40(1) of the Act and order that it ceases disclosing the Complainant's information contrary to the Act.

[para 22] 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.

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Keri H. Ridley  
Adjudicator