ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2018-59

October 9, 2018

UNIVERSITY OF ALBERTA

Case File Number 001881

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Summary: The Complainant complained that the University of Alberta (the Public Body) contravened the *Freedom of Information and Protection of Privacy Act* (the Act or the FOIP Act) when it disclosed his personal information to the Residential Tenancy Dispute Resolution Service (RTDRS). The Public Body had applied to the RTDRS to terminate the Complainant's lease; with its application it provided several documents relating to the Complainant's medical leave, as well as his PhD candidacy exam. The Complainant argued that these documents were not related to the matter before the RTDRS and should not have been provided for the hearing.

The Adjudicator found that the RTDRS is a quasi-judicial body and the Public Body's disclosure was for the purpose of the hearing before the RTDRS. Therefore, the Public Body had authority to disclose the Complainant's personal information under section 40(1)(v) of the Act (for use in a proceeding before a court or quasi-judicial body to which the Public Body is a party).

The Adjudicator also determined that the Public Body did not disclose beyond the extent necessary under section 40(4). While some of the personal information disclosed by the Public Body to the RTDRS may not have been used by the RTDRS, it is not reasonable to assess the Public Body's disclosure under section 40(4) on this basis, in hindsight. In this case, the information disclosed by the Public Body had a logical connection to the matter before the RTDRS such that it was reasonable to conclude that it may be relevant for the decision, and was disclosed in good faith.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 40, and 72, *Residential Tenancies Act*, R.S.A. 2000, c. R-17.1, ss. 54.2, 54.6.

Authorities Cited: AB: Orders 99-025, F2006-004, F2008-029, F2012-05, F2015-01.

Cases Cited: *Minister of National Revenue* v. *Coopers & Lybrand* (1978) 1978 CanLII 13 (SCC), 92 D.L.R. (3d) 1 SCC.

I. BACKGROUND

[para 1] The Complainant was a resident on the campus of the University of Alberta (the Public Body), and a student on medical leave. The Complainant was involved in a hearing before the Residential Tenancy Dispute Resolution Service (RTDRS).

[para 2] On October 16, 2015, this Office received a complaint from the Complainant that the Public Body had contravened the *Freedom of Information and Protection of Privacy Act* when it disclosed documents containing his personal information to the RTDRS. The Complainant specified eight documents, including a note from his family doctor, an application for medical leave and related correspondence, correspondence regarding the Complainant's PhD candidacy, including his candidacy exam results, and course transcripts. The Complainant states that these documents were read aloud at the RTDRS hearing, and that they are not relevant to the matter at issue in that hearing.

[para 3] Mediation was authorized but did not resolve the issues between the parties and on September 1, 2016, the Complainant requested an inquiry. I received submissions from both parties.

II. ISSUES

[para 4] The Notice of Inquiry dated June 6, 2018 states the issue in this inquiry as follows:

> Did the Public Body disclose the Complainant's personal information? If yes, did it have authority to do so under section 40(1) and 40(4) of the Act?

III. DISCUSSION OF ISSUES

Did the Public Body disclose the Complainant's personal information?

[para 5] 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 6] The information disclosed by the Public Body, described at paragraph 2 above, is the Complainant's personal information. It was disclosed by the Public Body to the RTDRS.

Was the disclosure of the Complainant' personal information authorized under section 40(1)?

[para 7] The Public Body states that the Complainant was a living on campus as a student, and that the lease required the Complainant to be a full time student unless he was on approved medical leave.

[para 8] The Public Body's Residential Services Office (RSO) issued termination notices to the Complainant, on the basis that he contravened this rule in the lease. The Graduate Studies Association (GSA), acting on behalf of the Complainant, provided evidence to the Residential Services Office showing that the Complainant was on medical leave. The RSO rescinded its eviction notice.

[para 9] The Public Body states that the Complainant's medical leave expired on May 1, 2015. On May 27, 2015, the RSO applied to the RTDRS to terminate the Complainant's lease. The RSO submitted to the RTDRS the documents previously provided to it by the GSA. The Complainant also submitted documents to the RTDRS.

[para 10] The Public Body states that it had authority to disclose the Complainant's personal information to the RTDRS under section 40(1)(v) of the Act, which permits disclosure for legal proceedings. Section 40(4) is also relevant to the Public Body's disclosure of personal information. These provisions state:

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

…

(v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,

…

(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 11] The Public Body argues that the RTDRS is a quasi-judicial body for the purposes of section 40(1)(v).

[para 12] In Order F2006-004, former Commissioner Work stated that three criteria must be met for section 40(1)(v) to apply:

(i) there must be a proceeding before a court or quasi-judicial body;

(ii) the Government of Alberta or a public body must be a party to that proceeding; and

(iii) the personal information must be used in that proceeding.

Is there a proceeding before a court or quasi-judicial body?

[para 13] In Order F2006-004, former Commissioner Work cited Order 99-025, which addressed relevant factors for determining whether a body is acting in a judicial or quasi-judicial capacity. Order 99-025 cited the Supreme Court of Canada in *Minister of National Revenue v. Coopers & Lybrand* (1978) 1978 CanLII 13 (SCC), 92 D.L.R. (3d) 1 SCC; this case was also cited in the Public Body's submission. In that case, the Supreme Court listed non-exhaustive factors to consider:

(1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?

(2) Does the decision or order directly or indirectly affect the rights and obligations of persons?

(3) Is the adversary process involved?

(4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

[para 14] The Public Body argues that these factors point to the RTDRS being a quasi-judicial body.

[para 15] The authority of the RTDRS is laid out in the *Residential Tenancies Act* (RTA). Section 54.6(2)(b) of that Act requires that the RTDRS conduct all proceedings and decide all applications to it in accordance with the rules of practice and procedure and the code of conduct established pursuant to the regulations. The Public Body has provided excerpts from the RTDRS Rules of Practice and Procedure (Rules). Those Rules clearly indicate that a hearing will be held by the RTDRS in the event of an application such as the one made by the Public Body.

[para 16] The decision will directly or indirectly affect the rights and obligations of persons, insofar as the decision was whether the Public Body (as landlord) could terminate the tenancy, requiring the Complainant to vacate the rental.

[para 17] The hearing is an adversarial process in which each party has an opportunity to participate and present evidence in support of their position.

[para 18] The RTDRS also applies substantive rules to individual cases. Where a landlord has a dispute with a tenant, or vice versa, and has a right under the RTA to apply to a court for a remedy, the landlord or tenant may apply to the RTDRS rather than the court for the remedy (section 54.2). The role of the RTDRS is to make a determination as to each application before it.

[para 19] For these reasons, I find that the RTDRS is a quasi-judicial body for the purposes of section 40(1)(v) of the Act.

Was the Government of Alberta or a public body a party to that proceeding?

[para 20] The University of Alberta is the landlord of the premises leased by the Complainant. Therefore, the Public Body was a party to the RTDRS hearing.

Was the personal information used in that proceeding?

[para 21] Section 40(1)(v) states that the personal information is disclosed *for use in a proceeding*. In other words, the purpose of the disclosure must be to use the personal information in the proceeding whether the personal information was *in fact* used. It would be overly narrow to interpret this provision as applying only where personal information *was used*. Such an interpretation would result in that provision applying (or not) only in retrospect. It would also not be in line with the wording of the provision, which specifies that disclosure is authorized if it is done with a particular purpose in mind.

[para 22] In this case, the Public Body made an application to terminate the Complainant's tenancy on various grounds, including the ground that the Complainant was no longer a full-time student or on medical leave. The Public Body states that the documents the Complainant has objected to being disclosed were the documents that had been provided by the GSA as evidence of the Complainant's earlier medical leave. The Public Body states that these documents "had enough of a line of connection so as to not raise any flags with Residential Services" (at para. 28). It states also (at para. 9):

> The University employee who acted on behalf of Residential Services in filing the application to the RTDRS stated that it was difficult to know what evidence was necessary to provide to the RTDRS in order to establish [the Complainant's] student status. Therefore, Residential Services included as evidence the complete package of records sent on behalf of [the Complainant] to Residential Services. Residential Services noted that the package provided context about difficulties encountered by [the Complainant] in maintaining his full-time student status in the time period prior to the application for eviction. It also showed that Residential Services' records indicated that [the Complainant's] medical leave was expired at the time of the application to the RTDRS.

[para 23] I accept that the purpose of the Public Body's disclosure of the Complainant's personal information was for use in RTDRS hearing and therefore the Public Body had authority under section 40(1)(v) to disclose the personal information.

Was the Public Body's disclosure only to the extent necessary as required by section 40(4)?

[para 24] Section 40(4) states that a public body may disclose personal information only to the extent necessary for the purpose for which it was disclosed. The Complainant argues that information disclosed by the Public Body for the hearing was not relevant to his tenancy.

[para 25] In Order F2008-029, the Director of Adjudication considered the meaning of the term "necessary" in section 41(b). In that case, the public body disclosed a police report containing an individual's personal information to a third party organization, pursuant to an information-sharing agreement, for the purpose of enabling the organization to provide assistance to victims of domestic violence. The Director of Adjudication stated (at para. 51):

> In the context of section 41(b), I find that "necessary" does not mean "indispensable" – in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

[para 26] This analysis has also been applied to the standard of what is necessary under section 40(4) (see Order F2015-01, at paras. 25-26).

[para 27] Whether personal information was used or disclosed beyond the extent necessary for the stated purpose has been considered in past Orders of this Office. In Order F2015-01, an investigator at Human Services investigated a claimant under the Assured Income for the Severely Handicapped (AISH) program. The investigator contacted two third parties to obtain information about the claimant. In doing so, the investigator disclosed the claimant's personal information to clarify what information she was seeking. Those disclosures were found to have met the test for 'necessary' as set out in Order F2008-029 because "if the investigator was precluded from disclosing the Complainant's personal information as she did, she would have been less effective in conducting a thorough investigation" (at para. 35).

[para 28] In Order F2012-05, I considered whether the WCB used a claimant's personal information beyond what was necessary in conducting an investigation under the *Workers' Compensation Act* (WCA). In that case, the WCB investigator had collected the claimant's personal information in a letter from a third party. The letter included personal information that was not ultimately relevant to the claim. The claimant had argued that the WCB was not authorized to collect or use the personal information in the letter. I found that the WCA authorized the investigation and therefore it was not appropriate for me to base the WCB's authority to collect and use the information under the FOIP Act on the basis of whether I believed the information was relevant to the WCB's investigation. To do so would be to encroach upon the WCB's statutory function. I said (at para. 42):

> In my view, certainly so long as these bodies are gathering and evaluating evidence in good faith and the belief that it may be or is relevant, it is not my role to second-guess their performance of these duties.

[para 29] Regarding the extent of the Public Body's use of the information under section 39(4), I said (at para. 43):

> The case manager considered the information that had been presented to her by the claims investigator to enable her to make her determination and issue her decision, as she was entitled to do. There is nothing to suggest that she used the information for any extraneous or bad-faith purpose.

[para 30] These conclusions from Orders F2015-01 and F2012-05 apply in this case as well. I have found that the Public Body was authorized to disclose the Complainant's personal information for the RTDRS hearing. The Public Body argued that the information provided to it by the GSA and later included in the Public Body's application to the RTDRS all had "enough of a line of connection so as to not raise any flags with Residential Services" (at para. 28). It further argued (at paras. 31-32):

> Parties make their best efforts to determine which records may be relevant to the adjudicator, but ultimately it is the role of the adjudicator to determine which records are relevant and necessary.
>
> Furthermore, if evidence submitted in good faith was deemed not relevant by the hearing adjudicator and a party to the hearing could then use that assessment to make a privacy complaint, it would create a chilling effect on the quasi-judicial process, potentially limiting legal rights. If there is some line of connection to the issues at hand, then parties must be allowed a reasonable margin of error in attempting to determine what will and will not ultimately be considered relevant and necessary by an adjudicator.

[para 31] The documents at issue relate to the Complainant's full-time student status, which was the basis for an earlier termination notice. The Public Body's later application to the RTDRS to terminate the Complainant's lease was also based on his full-time student status (amongst other grounds). I agree that the documents, attached to the Public Body's application to the RTDRS, have a logical connection to the matter at issue in the hearing.

[para 32] Whether the Public Body's disclosure of all of those documents was necessary for the purposes of section 40(4) cannot be an assessment made with hindsight knowledge of what the RTDRS considered to be relevant to its decision. I agree with the Public Body that parties must have 'some reasonable margin of error' when deciding what material to submit to a decision-maker in a quasi-judicial proceeding. Public bodies must be permitted to make their

best case; what is ultimately considered to be relevant to the proceeding is a determination for the decision-maker.

[para 33] I do not mean to suggest that being a party to a court or quasi-judicial proceeding will give public bodies *carte blanche* with respect to disclosing personal information. In a situation where some or all of the personal information disclosed for a proceeding does not have a logical connection to the matters at hand, section 40(4) may not be met.

[para 34] In this case, there is a logical connection between the documents submitted by the Public Body and the matter before the RTDRS, such that it was reasonable for the Public Body to believe they may be relevant to the decision. Therefore, it is my view that the Public Body disclosed the Complainant's personal information in good faith. I find that the disclosure was not beyond what was necessary for the purpose of section 40(4). To find otherwise could unreasonably fetter a public body's ability to make its case in court or quasi-judicial proceedings.

IV. ORDER

[para 35] I make this Order under section 72 of the Act.

[para 36] I find that the Public Body disclosed the Complainant's personal information, and that it was authorized to do so under the Act.

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Amanda Swanek
Adjudicator