ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2019-41

November 20, 2019

PEACE RIVER SCHOOL DIVISION NO. 10

Case File Number 001153

Office URL: www.oipc.ab.ca

Summary: While employed by Peace River School Division No. 10 (the Public Body), the Complainant made five complaints about their colleagues under the *Teaching Profession Act*, RSA 2000, c T-2. The Alberta Teachers' Association (ATA) investigated and resolved these complaints (the ATA Complaints). The Complainant then filed a human rights complaint against the Public Body. To respond to the human rights complaint, the Public Body obtained four letters prepared by the ATA, describing the outcome of the investigations under the *Teaching Profession Act*. The Public Body submitted the letters to the Alberta Human Rights Commission in support of its position that some of the claims in the human rights complaint were barred by estoppel. The Complainant subsequently filed two further human rights complaints against the Public Body. In these complaints, the Complainant raised the issue of the ATA Complaints. The Public Body referred to the four ATA letters it collected in its responses to the second and third human rights complaints.

The Complainant alleged that the four letters contained their personal information and complained to this office that the Public Body indirectly collected, used, and disclosed their personal information contrary to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). An inquiry was held to resolve the issues.

The Adjudicator found that the Public Body complied with the Act.

The Adjudicator found that addressing the human rights complaints is an activity of the Public Body under s. 33(c), and that the Public Body had authority to collect personal

information under s. 33(c). The Public Body had authority to indirectly collect personal information under s. 34(1)(j) as a matter of provision of legal services to a public body. The Adjudicator rejected the Public Body's argument that authority to indirectly collect personal information under s. 34(1)(j) implies authority to collect personal information under s. 33(c). Unless a public body has authority to collect personal information under s. 33, it cannot indirectly collect personal information under s. 34.

The Adjudicator found that the Public Body used and disclosed the personal information for the purpose for which it was collected under ss. 39(1)(a) and 40(1)(c) when it responded to the first human rights complaint. The Adjudicator found that using the information to respond to the second and third human rights complaints was also a use for the same purpose of collection. In the alternative, the use of the information to address the second and third human rights complaints was a use consistent with the purposes for which it was collected under the second parts of ss. 39(1)(a) and 40(1)(c), and s. 41.

The Adjudicator also found that the Public Body had authority to disclose personal information under s. 40(1)(v), for use in a proceeding before a quasi-judicial body. The complaint process under the *Alberta Human Rights Act*, RSA 2000, c. A-25.5, includes the possibility of appearing before a human rights tribunal. There was no basis to limit the purpose of the disclosure to the portion of the human rights complaint process that occurs before the tribunal stage.

Statutes Cited: AB:

Alberta Human Rights Act, R.S.A. 2000, c. A-25.5, ss. 22(1), 27(1)(a), 32.

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, ss. 1(n). 27(1)(b), 33(c), 34(1)(j), 39(1)(a), 39(1)(b), 39(4), 40(1)(c), 40(1)(d), 40(1)(v), 40(4), 41, 72.

School Act, R.S.A. 2000, c. S-3, ss. 45(1), 92(1).

Authorities Cited: AB: Orders 96-017, 98-001, F2008-024, F2008-029, F2017-61, F2018-36, F2018-38/F2018-D-01, F2018-59, F2019-05.

Cases Cited: *Angle v. Minister of National Revenue*, [1975] 2 SCR 248

Reference Materials Cited:

Activity. 2004. In *Canadian Oxford Dictionary*, (2nd ed.). Don Mills, ON: Oxford University Press.

Activity. 2004. In *Black's Law Dictionary*, (8th ed.). St. Paul, MN: West, a Thomson business.

I. BACKGROUND

[para 1] On June 12, 2015, the Complainant filed a complaint against Peace River School Division No. 10 (the Public Body). The Complainant alleged that the Public Body collected, used, and disclosed the Complainant's personal information contrary to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the *Act*). The actions taken by the Public Body, described below, are not disputed.

[para 2] The Complainant worked as a substitute teacher for the Public Body. In the course of their employment, they filed five complaints against five different colleagues. Each complaint was made pursuant to the *Teaching Profession Act*, RSA 2000, c T-2 (the *Teaching Profession Act*), and was investigated by the Alberta Teachers' Association (the ATA). The outcome of each complaint was provided by letter from the ATA to the colleagues complained of.

[para 3] After commencing the ATA Complaints, the Complainant filed a complaint against the Public Body under the *Alberta Human Rights Act*, RSA 2000 c A-25.5, (the AHRA). In order to respond to the human rights complaint, the Public Body asked the colleagues who were complained about in the ATA complaints for copies of the letters detailing the outcome of those complaints. The Public Body obtained four of them.

[para 4] The Public Body took the position that several of the allegations in the human rights complaint arose from the same set of facts that had been raised in the ATA complaints. The Public Body submitted the letters to the Alberta Human Rights Commission (AHRC) in order to respond to the human rights complaint and to argue that the Complainant was estopped from raising several particular issues in that complaint, on the grounds that those issues had already been dealt with through the ATA process.

[para 5] The Complainant then filed two further human rights complaints against the Public Body, raising the issue of the ATA complaints in each of them. The Public Body did not provide the letters to the AHRC in these subsequent complaints, but did reference the letters in its submissions in its responses.

[para 6] A Senior Information and Privacy Manager was assigned to investigate and try to settle this matter, but it remained unresolved. On August 5, 2016, the Complainant filed a Request for Inquiry to resolve the outstanding issues.

II. INFORMATION AT ISSUE

[para 7] This matter concerns information contained in four letters that the Respondent submitted to the AHRC. All four letters contain similar information. Each one is addressed to a colleague against whom the Complainant filed a complaint that was then investigated by ATA. Each letter describes of the results of the ATA investigation into those complaints.

[para 8] The letters are not enumerated but each one bears a specific date, including a different specific day of the month, on which it was sent. To specify which letter is being referred to when one is referred to individually, it will be referred to within by the day of the month on which it was sent, e.g. the letter sent on the 16th.

III. PRELIMINARY MATTER – SUBMISSIONS OF THE PARTIES

[para 9] Both parties provided initial submissions and rebuttals in writing. In its submissions, the Public Body provided an affidavit sworn by its Secretary Treasurer, attesting to direct knowledge of the matters spoken to therein. The affidavit attests to the collection, manner of collection, uses, and disclosure of the information at issue as described above. The affidavit also attests to the purposes of the collection, use, and disclosure.

[para 10] The Complainant provided an unsworn statement that included Exhibits A through E.

[para 11] At the request of the Complainant, the Adjudicator previously delegated to address this matter agreed that Exhibit E to the Complainant's unsworn statement could be provided *in camera*.

[para 12] I have reviewed Exhibit E to the Complainant's unsworn statement. It relates to a separate matter between the Complainant and a different entity than the Public Body. The contents of Exhibit E are not relevant to the issues in this inquiry, and I do not consider Exhibit E further.

IV. ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with section 33 of the Act?

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with section 34 of the Act?

Issue C: Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with section 39 of the Act?

Issue D: 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?

V. DISCUSSION OF ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with section 33 of the Act?

[para 13] There is no dispute that the Public Body collected the Complainant's personal information. The Public Body agrees that the records contain some personal information about the Complainant, including her name and some of her educational and employment history.

[para 14] "Personal Information" is defined in s. 1(n) of the *Act*, reproduced below.

> *(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 15] I have reviewed the letters containing the information at issue. Each one contains the Complainant's name.

[para 16] Each individual letter discloses the nature of the complaint made to the ATA. The level of detail in each letter allows anyone reading it to identify specific issues and concerns that the Complainant was dealing with in regard to each individual. Reviewed together, the letters also provide insight into the Complainant's feelings about how the Complainant was treated by co-workers while employed by the Public Body, steps taken to address related concerns, and the outcome of the investigations undertaken by the ATA. The letter sent on the 16th also discloses some of the circumstances under which the Complainant's employment with the Public Body ended. This information is part of the Complainant's employment history.

[para 17] The letter of the 16th briefly refers to the Complainant's professional training, in the last paragraph on the first page. The letter of the 24th refers to training that the Complainant did not have, in the first paragraph on the second page. This information is information about the Complainant's educational history.

[para 18] The information collected by the Public Body was the Complainant's personal information.

[para 19] Since the Public Body has collected the Complainant's personal information, I now consider whether it did so in compliance with s. 33 of the Act.

[para 20] Section 33 is reproduced below:

> *33 No personal information may be collected by or for a public body unless*
>
> > *(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,*
> >
> > *(b) that information is collected for the purposes of law enforcement, or*
> >
> > *(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

[para 21] The Public Body relies on s. 33(c) for authority to collect the information. The Public Body argues that participation in the human rights complaint is the "operating program or activity" that the information relates directly to, and is necessary for. The Public Body further argues that the scope of s. 33(c) is informed by s. 34(1)(j). Section 34(1)(j) reads as follows:

> *34(1) A public body must collect personal information directly from the individual the information is about unless*
>
> > *(j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,*

[para 22] The Public Body asserts that since s. 34(1)(j) specifies that personal information may be collected indirectly for use in the provision of legal services, s. 34(1)(j) entails that collection of personal information for use in the provision of legal services must be permitted under s. 33. In support of its position, the Public Body cites Order 98-001. (When Order 98-001 was issued the sections of the Act that are now ss. 33(c) and 34(1)(j) were numbered 32(c) and 33(1)(f), respectively. The wording of the sections remains the same.) In Order 98-001, the former Commissioner found at para. 86-89,

> In my view, section 33(1)(f) is a complete answer to the Applicant's contention. Section 33(1)(f) reads:

> *38(1) A public body must collect personal information directly from the individual the information is about unless*
>
> …
>
> *(f) the information is collected for use in the provision of legal services to the Government of Alberta or a public body.*

Section 33(1)(f) also implies that the authority to collect personal information, as set out under section 32, has been met. I believe that the authority to collect the personal information is contained in section 32(c), which reads:

> *32 No personal information may be collected by or for a public body unless*
>
> …
>
> *(c) that information relates directly to and is necessary for an operating program or activity of the public body.*

The Public Body's "operating program" or "activity" is that of getting and giving legal advice. The legal advice given in this case would be incomplete, meaningless, or both, without the references to the personal information.

Therefore, I find that the Public Body had the authority to collect the personal information under section 32(c) of the *Act*, and was not required to collect the personal information directly from the individual, as provided by section 33(1)(f).

[para 23] I note that in Order 98-001, paragraph 86 incorrectly quotes s. 33(1)(f) as s. 38(1)(f).

[para 24] I do not agree with the Public Body's interpretation of the Act.

[para 25] Section 33 clearly prohibits all collection, direct and indirect, subject only to the exceptions in ss. 33(a),(b), and (c). Unless one of those sections apply, a public body may not conduct collection of any kind.

[para 26] Section 34(1) directs public bodies to collect information directly from the individual that the information is about, subject only to the exceptions in subsections 34(1)(a) through (o). Unless one of those subsections apply, a public body cannot collect information other than directly from the individual the information is about.

[para 27] Read together, s. 33 prescribes circumstances when information may be collected at all, and s. 34(1) only prescribes circumstances when information may be collected other than directly from the individual the information is about, once authority to collect is present. If a public body is not collecting information pursuant to s. 33, indirectly collecting information as described in ss. 34(1)(a) through (o) is prohibited.

[para 28] What the Public Body has argued is the reverse proposition. The Public Body would have it that if s. 34(1)(j) allows indirect collection, then authority under s. 33(c) is necessarily present. This interpretation of the *Act* cannot be correct, since it would mean that s. 34(1)(j) grants a public body an unlimited license to indirectly collect personal information for use in the provision of legal services, whenever it so desired. The prohibition in s. 33 that states that a public body cannot collect information at all unless one of ss. 33(a),(b), or (c) allow it, clearly indicates that public bodies were not meant to have such authority to collect personal information.

[para 29] Regarding Order 98-001, I do not read it as supporting any interpretation of the Act other than the one laid out above.

[para 30] Order 98-001 dealt with a particular set of facts that supports the former Commissioner's finding that s. 34(1)(j) implies that the authority under s. 33(c) has been met. In brief, Alberta Justice had obtained a legal opinion about the prospect of successfully appealing a decision from the Court of Queen's Bench against the Crown in Right of Alberta. The legal opinion became the subject of an access request, which Alberta Justice granted. A complaint was then made against Alberta Justice, alleging, among other things, that Alberta Justice had collected the complainant's personal information that appeared in the legal opinion, contrary to s. 32(c) of the *Act*, which is now s. 33(c).

[para 31] The facts at play in Order 98-001 leave no doubt that when the personal information in the legal opinion was collected, Alberta Justice collected it for the purpose of providing legal services to the Government of Alberta. A major function of Alberta Justice is to provide legal services to the Government of Alberta: this is an operating program or activity in which it engages. The Commissioner found the same in Order 98-001, at para. 88, stating, "The Public Body's "operating program" or "activity" is that of getting and giving legal advice." This is a statement regarding the operation of Alberta Justice. It is not a statement about the interpretation of the Act or the interaction between ss. 33(c) and 34(1)(j).

[para 32] It is the particular fact that the "operating program or activity" and "providing legal services to the Government of Alberta" were one and the same in the circumstances in Order 98-001 that led to the conclusion that 34(1)(j) implies that authority under 33(c) has been met. If providing legal services to the Government of Alberta *is* an activity of the public body, it follows that when a public body provided legal services to the Government of Alberta under s. 34(1)(j), it was also engaged in an activity of the public body under s. 33(c).

[para 33] In cases where authority under 33(c) is not implied, a public body will have to show that the information collected relates directly to and is necessary for an operating program or activity of the public body under s. 33(c). Once authority to collect is established, then it must show that indirect collection complied with s. 34(1)(j).

[para 34] The Public Body asserts that addressing the human rights complaints is the "operating program or activity" that the information relates directly to, and is necessary for. The Public Body, however, has not elaborated on how addressing the complaints is a program, and as a result, I hesitate to conclude that it is. I find, however, that addressing litigation is an activity itself.

[para 35] The term "activity" is a general and broad term. The *Canadian Oxford Dictionary* defines "activity" as "the condition of being active or moving about. The exertion of energy; vigorous action. a particular occupation or pursuit."[1]

[para 36] *Black's Law Dictionary* defines "activity" as, "the collective acts of one or of two or more people engaged in a common enterprise."[2]

[para 37] Addressing a human rights complaint fits into both definitions of "activity" above; as a pursuit, and as the collective acts engaged in a common enterprise.

[para 38] To be clear, I do not suggest that a public body may collect personal information for *any* activity. The activity must be an activity "of the public body" per s. 33(c). The term "of the public body" in s. 33(c) implies that the activity has some relation to the public body and its functions. A public body could not collect information in respect of an activity so far removed from its mandate that the activity has no relationship to the purpose for which the public body exists.

[para 39] The activity in this case is addressing the human rights complaints. Human rights complaints arise under the AHRA, which binds the Public Body. By filing a complaint with the Alberta Human Rights Commission, the Complainant called upon the Public Body to answer the allegations. Given that the Public Body's interactions with the Complainant are the subject of the human rights complaints, and the Public Body has the responsibility to defend itself, there is a sufficient connection to the Public Body to conclude that participating in the human rights complaint is an activity "of the public body."

[para 40] There is recent precedent stating that s. 33(c) allows information collected in the course of an activity to be used for litigation arising directly from it. In Order F2019-05, s. 33(c) was interpreted to allow information collected in the course of managing an employment relationship to also be collected for use in litigation that was directly connected to that relationship. The Adjudicator wrote at paras. 57 - 59,

> Past Orders of this Office have found that managing personnel of a public body falls within the scope of section 33(c) of the Act (see Orders F2005-003 and F2013-31). The submission from AHRC includes various documents (such as a statement of claim, statement of defence, affidavits and court orders) that show the legal proceedings were related to the Complainant's termination.

[1] Activity. 2004. In *Canadian Oxford Dictionary*, (2nd ed.). Don Mills, ON: Oxford University Press
[2] Activity. 2004. In *Black's Law Dictionary*, (8th ed.). St. Paul, MN: West, a Thomson business

> The Alberta Court of Queen's Bench has considered the use of clients' personal information by a public body in the course of a civil proceeding to be a use as contemplated by section 39(1) of Alberta's Act. In *Alberta Child Welfare v. C.H.S.*, 2005 ABQB 695 (*Child Welfare*), the Court asked whether Alberta Children's Services was entitled to use personal information in its records to defend a lawsuit against it. The Court stated, with respect to consistent use under section 39(1)(a):
>
> > Where files are assembled as a part of a government activity, and litigation arises from that activity, the *use of the information to defend or prosecute* the litigation has a reasonable and direct connection to the purpose for which the information was collected (at para. 24, my emphasis).
>
> In my view, a similar statement can be made about the collection of personal information. Legal proceedings arose from the manner in which JSG managed (and terminated) an employment relationship with the Complainant. A public body can collect personal information as necessary to manage an employment relationship under section 33(c). This extends to legal proceedings directly connected to the management of that relationship.

[para 41] I agree with the conclusion reached by the Adjudicator in Order F2019-05 and consider that it is supportive of the conclusion that a public body may collect personal information in order to address litigation arising from activities of the public body.

[para 42] I note that in this case the Public Body did not collect personal information as a matter of managing the employment relationship between the Public Body and the Complainant. The letters containing the personal information arose because the Complainant asserted their rights under the *Teaching Profession Act*, and the ATA, not the Public Body, handled the complaints. Further, the Public Body does not appear to have had a copy of them when the Complainant made the human rights complaint, as evidenced by the fact that it had to seek the letters from five different individuals. The Public Body only collected the information to address complaints brought against it. I do not think the difference between the facts in this case and those in Order F2019-05 distinguishes them. Addressing litigation is an activity for which a public body may collect personal information, just the same as managing an employment relationship.

[para 43] The Complainant argues that collection was not authorized since it was unrelated to the delivery of the Public Body's core business or service. The Complainant does not elaborate on what the core business or service of the Public Body is in their view.

[para 44] I reject the Complainant's argument that the Public Body did not have authority under s. 33(c) because it was not engaged in its "core activities." The authority provided under s. 33(c) is not limited to core activities. Many activities may be outside of the core activities of a public body, but still be related to a public body and its functions sufficiently to be considered "of the public body."

[para 45] Under s. 33(c), the information collected must also relate directly to and be necessary for the activity of the Public Body; as I will explain below, the information in this case is.

[para 46] The Public Body collected the letters to use in the human rights complaint process, and specifically to argue that the Complainant is estopped from raising certain issues in the human rights complaint. The thrust of the Public Body's estoppel argument was that the matters raised in the human rights complaint had already been dealt with when the Complainant made complaints against their colleagues to the ATA.

[para 47] The Public Body has not set out the precise nature of its estoppel argument. I note, though, that estoppel is generally based on the principle that an issue has already been litigated with finality, and therefore cannot be litigated again. I note also that it is not my role to assess the quality or prospect of success of whatever particular estoppel argument the Public Body may make. My role here is to assess whether collection of the information at issue complied with s. 33(c). At most, I must consider whether the personal information is reasonably relevant to a question of estoppel.

[para 48] The test for issue estoppel was set out in *Angle v. Minister of National Revenue*, [1975] 2 SCR 248 at p. 254:

> (1) that the same question has been decided;
>
> (2) that the judicial decision which is said to create the estoppel was final; and,
>
> (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[para 49] The content of the letters is relevant to considerations that may establish estoppel. Each letter documents that the Complainant made a complaint against a particular individual, the nature of the complaint, the issues raised, and the outcome of the complaint. The personal information about the Complainant in each letter speaks directly to the issues raised in the complaint and informs the reasons why each complaint was resolved the way it was. The letters and the personal information in them are directly relevant and necessary to examining whether estoppel applies to the human rights complaint.

[para 50] Accordingly, the letters relate directly to and are necessary for an activity of the Public Body. I find that the Public Body had authority to collect personal information under s. 33(c).

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with section 34 of the Act?

[para 51] The Public Body collected the information indirectly. It did not obtain the letters from the Complainant; rather, it obtained them from the individuals to whom they were addressed.

[para 52] The Public Body relies on s. 34(1)(j) for authority to collect information indirectly. Section 34(1)(j), is reproduced below:

> *34(1) A public body must collect personal information directly from the individual the information is about unless*
>
> …
>
> *(j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,*

[para 53] The term "legal services" as used in s. 34(1)(j) has not been the subject of much discussion in other privacy decisions.

[para 54] The Public Body relies on Order 96-017 where the term "legal services" was discussed in the context of s. 26(1)(b), which is now s. 27(1)(b). The Commissioner stated at para. 37,

> I intend to give "legal services" its ordinary dictionary meaning. As such, "legal services" would include any law-related service performed by a person licensed to practice law.

[para 55] Section 27(1)(b) uses "legal services" in the same context as s. 34(1)(j). Section 27(1)(b) states,

> *27(1) The head of a public body may refuse to disclose to an applicant*
>
> …
>
> *(b) information prepared by or for*
>
> *(i) the Minister of Justice and Solicitor General,*
>
> *(ii) an agent or lawyer of the Minister of Justice and Solicitor General, or*
>
> *(iii) an agent or lawyer of a public body,*
>
> *in relation to a matter involving the provision of legal services, or*
>
> [emphasis added]

[para 56] Numerous subsequent orders adopted the same interpretation. See, for example, Orders F2018-38/F2018-D-01, F2018-36, and F2017-61.

[para 57] I agree with the Commissioner in Order 96-017 that the definition of "legal services" adopted in that case identifies activities that constitute legal services. I also agree that where the services provided fall within the ambit of practicing law, and therefore can only be performed by a person licensed to practice law, that it is a clear indication that legal services are being provided. I add though, that given the breadth of law-related services performed by those not licensed to practice law in current times, I am not certain that "legal services" is necessarily restricted to those licensed to practice law. However, since the Public Body had legal counsel when it was addressing the human rights complaint, I do not need to decide whether s. 34(1)(j) captures circumstances where legal counsel is not involved.

[para 58] I now turn to considering whether the Public Body had authority to collect personal information indirectly.

[para 59] The information was collected for the purposes of addressing the human rights complaint. Responding to a complaint made under the AHRA is a law-related activity. Once collected, the personal information was provided to the Public Body's legal counsel, who would be licensed to practice law. I am satisfied that the Public Body's legal counsel was providing legal services to the Public Body when addressing the human rights complaint. There is no evidence that the Public Body collected the Complainant's personal information for any other reason than use in providing those services.

[para 60] I find that the Public Body did have authority to collect the Complainant's personal information indirectly pursuant to s. 34(1)(j).

Issue C: Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with section 39 of the Act?

[para 61] The Public Body relies on s. 39(1)(a) for authority to use the Complainant's personal information. Section 39(1)(a) has two parts, each that involves different considerations. The first part authorizes use "for the purpose for which the information was collected or compiled." The second part authorizes use "for a use consistent with" the purpose for which it was collected or compiled. Section 39 is reproduced below.

> *39(1) A public body may use personal information only*
>
> > *(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,*
> >
> > *(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or*
> >
> > *(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.*

[para 62] The Public Body relies on the first part of s. 39(1)(a) for authority to use the information to address the first human rights complaint. The Public Body argues that using the information to address the first human rights complaint is the purpose for which it was collected. The Public Body relies on the second part of s. 39(1)(a) for authority to use the information to address the second and third human rights complaints. The Public Body argues that using the information to address the second and third human rights complaints is a use consistent with the purpose for which it was collected. I address each use separately below.

Use to address the first Human Rights Complaint

[para 63] The relationship between s. 39(1)(a) and s. 33(c) was discussed in Order F2008-024. In Order F2008-024 the public body asserted that it had authority to collect information under ss. 33(b) and (c), and that it had authority to use the information under s. 39(1)(a). The Commissioner held that whether authority under s. 39(1)(a) was present depended upon whether the use was consistent with the nature of the authority to collect under s. 33. The Commissioner stated at paras. 8-9,

> Under section 33 of the Act, a Public Body has the following authority to collect information
>
> > *33 No personal information may be collected by or for a public body unless*
> >
> > …
> >
> > *(b) that information is collected for the purposes of law enforcement, or*
> >
> > *(c) that information relates directly to and is necessary for an operating program or activity of the public body.*
>
> Under section 39(1)(a), a public body may use personal information for the purpose for which it was collected or compiled, or for a use consistent with that purpose. Thus section 39 is met where the personal information is used for the purposes of law enforcement, or as necessary for an operating activity or program of the public body. As well, under section 39(4), a public body must use the personal information only to the extent necessary to carry out its purpose in a reasonable manner.

[para 64] As already discussed, the Public Body collected the personal information in order to address the first human rights complaint by making its estoppel argument under s. 33(c). Since the use was for the purpose for which it was collected, the Public Body had authority to use the information in this manner under the first part of s. 39(1)(a).

[para 65] The Complainant argues that the Public Body did not have authority to use the information since it did not have permission from the Complainant or the ATA to do so.

[para 66] Whether or not the Public Body had permission from the Complainant or the ATA does not affect this determination. While s. 39(1)(b) would have permitted the Public Body to use the information with the Complainant's consent, authority to use the information under s. 39(1)(a) operates independently of s. 39(1)(b) which is an altogether separate ground of authority to use personal information. The Complainant's consent is not required to use information under s. 39(1)(a).

[para 67] I find that the Public Body had authority to use the information to address the first human rights complaint under the first part of s. 39(1)(a).

Use to address the second and third Human Rights Complaints

[para 68] I also find that the Public Body used the information for the same purpose for which it was collected when the Public Body referenced the letters when addressing the Complainant's second and third human rights complaints.

[para 69] The Public Body initially collected the personal information to respond to the first human rights complaint by making an estoppel argument to the AHRC. The subsequent uses of the information to address the second and third human rights complaints were to respond to the issue of the ATA complaints, raised by the Complainant. The Public Body describes, and the Complainant does not deny, that all of the human rights complaints arise from the same set of facts and interactions between them. While the precise way in which the Public Body used the personal information varied between the human rights complaints, the fundamental purpose for the use was the same. The Public Body used the information to respond to human rights complaints brought against it by the Complainant. All of the complaints were made by the same person, against the same public body, in the same forum, and arose from the same circumstances.

[para 70] I find that the Public Body had authority to use the information to address the second and third human rights complaints under the first part of s. 39(1)(a).

[para 71] Out of caution, despite the above finding, I will go on to consider whether the Public Body had authority under the second part of s. 39(1)(a) to use the information to address the second and third human rights complaints.

[para 72] The Public Body relies on the second part of s. 39(1)(a), use for a purpose consistent with the purpose for which it was collected, for authority to use the personal information to make the same estoppel argument in the second and third human rights complaints. Whether or not this use is for a consistent purpose is defined by s. 41, reproduced below:

> *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 73] The term "necessary" in s. 41(b) was considered by the Director of Adjudication in Order F2008-029. The Director of Adjudication stated at para. 51,

> [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 74] Stripping out reference to the specific facts in Order F2008-029, I note the following words of the Director of Adjudication,

- "necessary" does not mean "indispensable"

It is sufficient to meet the test under s. 41(b) when,

- disclosure permits a means by which the objectives of a duty may be achieved,
- without disclosure a public body would be less effective in taking measures that help to bring about desired goals

Application to this matter

[para 75] Under s. 41(a), the consistent purpose must have a reasonable and direct connection to the purpose for which it was collected. Given the closely related circumstances of the consistent uses described above, I find that there is a reasonable and direct connection. The requirements of s. 41(a) are met.

[para 76] In its submissions (reproduced below) the Public Body asserts that its consistent uses meet the criteria under s. 41(b) because the consistent purpose was necessary for operating a legally authorized program:

> 32. Further, use of the ATA Letters in response to the Human Rights Complaints:
>
> a. has a reasonable and direct connection to the purpose of collection; and
> b. was necessary for operating a legally authorized program of the Public Body.
>
> 33. The ATA Letters were used for the purpose for which they were collected — to establish that the issues of professional misconduct had already been determined through determination of the ATA Complaints.

> 34. The ATA Letters had to be used to establish the Public Body's argument that the Complainant was estopped from raising issues of professional misconduct in Human Rights Complaint #1. The Complainant had raised issues of professional misconduct in each of the complaints before the Human Rights Commission, and the Public Body was required to use the ATA Letters, and at least the findings of the ATA Complaints, to provide a full argument to the Human Rights Commission on the issue of estoppel and to respond to the Complainant's submissions.
>
> …
>
> 57. As is set out above with respect to the authorized use of the ATA Letters, disclosure of the ATA Letters was also in accordance with section 41 of the Act. That is, the disclosure to the Human Rights Commission was directly connected to one of the purposes of collecting the ATA Letters — to establish for the Human Rights Commission that the Complainant was estopped from raising certain issues before the Human Rights Commission. The letters were necessary in order to prepare this response and defend the Public Body before the Human Rights Commission; a valid legally authorized program of the Public Body. The same can be said of the use of the information from the ATA Letters and the ATA Complaints by the Public Body in the subsequent Human Rights Complaints filed by the Complainant.

[para 77] The Public Body has not described how responding to a human rights complaint constitutes a legally authorized program. Without some elaboration, I am reluctant to conclude that it is.

[para 78] However, I take notice that under the *School Act*, R.S.A. 2000 c. S-3 (the *School Act*), the Public Body, as a school board, has statutory duties. Among them are the duties to provide students with an education, and to hire teachers in the course of doing so. The pertinent sections of the *School Act* are below:

> *45(1) A board shall ensure that each of its resident students is provided with an education program consistent with the requirements of this Act and the regulations.*
>
> *92(1) Unless otherwise authorized under this Act, a board shall employ as a teacher only an individual who holds a certificate of qualification as a teacher issued under this Act.*

[para 79] I note that section 45(1) of the *School Act* also requires a school board to provide9an "education program consistent with the requirements of this Act and the regulations." The education program mentioned in this section is a legally authorized program under s. 41(b) of the Act.

[para 80] I now consider whether the use of the personal information was necessary for the performance of the statutory duties and legally authorized program contained in the provisions above. Since the statutory duty is to provide the program, I will not differentiate between them further.

[para 81] The Complainant was a teacher with whom the Public Body entered into a contract, as it is required to do by the *School Act*, in order to meet its statutory duty to

provide its resident students an educational program. The complaints under the AHRA arose from that relationship and as a respondent in those complaints, the Public Body had the responsibility to address them. Doing so falls within the broad definition of "necessary" in s. 41(b). The personal information at issue was itself necessary to effectively address the complaints; first to make the estoppel argument, and then to respond when the ATA investigations were raised as issues.

[para 82] Since the Public Body's subsequent uses of the personal information comply with ss. 41(a) and (b), they are uses for a consistent purpose under the second part of s. 39(1)(a).

[para 83] I find the Public Body had authority to use the Complainant's personal information to address all of the human rights complaints under both the first and second parts of s. 39(1)(a).

[para 84] Lastly, I consider whether the Public Body has complied with section 39(4) of the Act, reproduced below.

> *(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.*

[para 85] The Public Body submitted the personal information to the AHRC only to address the human rights complaints, which is the purpose for which it was collected. The Public Body did not use the personal information further. Therefore, I find that the Public Body complied with s. 39(4).

Issue D: 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?

[para 86] The Complainant argues that the Public Body did not have authority to disclose personal information because it did not have the Complainant's permission or the ATA's permission to disclose it. The Complainant also refers to a separate matter under the *Personal Information Protection Act*, SA 2003, c P-6.5 (PIPA) and several of its provisions in support of their position. This matter is under the Act, and the application of PIPA in a separate matter does not inform this decision.

[para 87] Since the Complainant has not consented to disclosure, the Public Body did not have authority to disclose the Complainant's personal information under s. 40(1)(d), which permits disclosure when consent is given. If the Public Body had authority to disclose personal information, it must be found under another part of s. 40(1).

[para 88] The Public Body relies on ss. 40(1)(c) and (v) for authority to disclose the Complainant's personal information.

[para 89] Section 40(1)(c) is constructed the same as s. 39(1)(a). Its first part relates to disclosing information for the purpose for which it was collected. Its second part

relates to disclosing information for a use consistent with that purpose. Section 40(1)(c) states as follows:

> *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 90] Like s. 39(1)(a), s. 40(1)(c) is informed by s. 41. Section 41 states as follows:

> *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 91] In this case, the use of the personal information discussed in the analysis of Issue C encompasses its disclosure to the AHRC. Accordingly, for the same reasons discussed in Issue C, I find that the Public Body disclosed personal information for the purpose for which it was collected under the first part of s. 40(1)(c). For the same reasons as under Issue C, I find that when the Public Body used the information to address the second and third human rights complaints it disclosed personal information for a purpose consistent with the purpose for which it was collected under the second part of s. 40(1)(c).

[para 92] In light of the above finding, I do not need to consider whether the Public Body had authority to disclose personal information under s. 40(1)(v). However, again, out of caution, I will consider the Public Body's position.

[para 93] Section 40(1)(v) states as follows:

> *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*

[para 94] The Public Body is a party to all three human rights complaints; it is the Respondent named in them. As the Respondent, the Public Body provided its responses to the complaints to the AHRC, for the purposes of addressing them. The Public Body argues that the AHRC is a quasi-judicial body. However, for the following reasons, I do not find it necessary to consider whether the AHRC was acting in a quasi-judicial capacity when the Public Body disclosed personal information to it.

[para 95] The complaint process under the AHRA consists of two stages. The first is a gate-keeping function performed by the Director of the AHRC (the Director). The second is final disposition of a complaint on its merits before the Alberta Human Rights Tribunal (the AHRT).

[para 96] The Director's powers are set out in s. 22(1) of the AHRA.

> *22(1) Notwithstanding section 21, the director may at any time*
>
> > *(a) dismiss a complaint if the director considers that the complaint is without merit,*
> >
> > *(b) discontinue the proceedings if the director is of the opinion that the complainant has refused to accept a proposed settlement that is fair and reasonable, or*
> >
> > *(c) report to the Chief of the Commission and Tribunals that the parties are unable to settle the complaint.*

[para 97] If the complaint is not settled among the parties or, dismissed, or discontinued by the Director, it will be referred to the AHRT.

[para 98] Once the Director reports to the Chief of the Commission and Tribunals that the parties are unable to settle the complaint, a tribunal is appointed to deal with a complaint, per s. 27(1)(a) of the AHRA:

> *27(1) The Chief of the Commission and Tribunals shall appoint a human rights tribunal to deal with a complaint in the following circumstances:*
>
> > *(a) where the Chief of the Commission and Tribunals receives a report from the director that the parties are unable to settle the complaint*

[para 99] There is no doubt that the AHRT is a quasi-judicial body. The core quasi-judicial powers and duties of the AHRT are enumerated at s. 32 of the *AHRA*, reproduced below.

> *32(1) A human rights tribunal*
>
> > *(a) shall, if it finds that a complaint is without merit, order that the complaint be dismissed, and*
> >
> > *(b) may, if it finds that a complaint has merit in whole or in part, order the person against whom the finding was made to do any or all of the following:*
> >
> > > *(i) to cease the contravention complained of;*
> > >
> > > *(ii) to refrain in the future from committing the same or any similar contravention;*

> *(iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges that person was denied contrary to this Act;*
>
> *(iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;*
>
> *(v) to take any other action the tribunal considers proper to place the person dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act.*
>
> *(2) A human rights tribunal may make any order as to costs that it considers appropriate.*
>
> *(3) A human rights tribunal shall serve a copy of its decision, including the findings of fact on which the decision was based and the reasons for the decision, on the parties to the proceeding*

[para 100] In light of the above, I see no basis to limit the scope of the Public Body's purpose for disclosure (to respond to the human rights complaints) to the portion of the complaint process that occurs before referral to the AHRT. The Public Body's obligation to address the complaints continues as long as the complaint process goes on, which may include appearing before the AHRT. Accordingly, I find that disclosure was made for the purposes addressing the complaints at all stages of the complaint process, including appearing in a proceeding before the AHRT, should the complaints be referred there.

[para 101] In making this finding, I note that the authority to disclose information under s. 40(1)(v) is not contingent on the personal information actually being used by the quasi-judicial body. It is sufficient for the purposes of s. 40(1)(v) that the information merely be disclosed *for* use as described in Order F2018-59 where the Adjudicator stated at 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. [emphasis in the original].

[para 102] I also note the words of the Adjudicator in Order F2018-59 that interpreting the Act in a way that results in s. 40(1)(v) applying in retrospect is not in line with the wording of the provision that authorizes disclosure with a particular purpose in mind.

[para 103] It makes sense then, that when the Public Body disclosed the personal information to address the human rights complaint, it is considered to have disclosed it for use in the whole complaint process. Interpreting the Act otherwise, in such a way that parties to legal proceedings must adopt a wait-and-see approach when deciding if

personal information can be disclosed, undermines the wording of section 40(1)(v) that permits disclosure with a particular purpose in mind.

[para 104] Accordingly, I find that the Public Body was permitted to disclose the Complainant's personal information under s. 40(1)(v).

[para 105] Finally, I consider whether the Public Body complied with s. 40(4) when it disclosed the Complainant's personal information.

[para 106] Where disclosure under s. 40 is authorized, the scope of that authority is limited by s. 40(4), reproduced below.

> *(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 107] The Public Body disclosed personal information to the AHRC only to address the human rights complaints, in order to carry out the purposes in ss. 40(1)(c) and (v). It has not disclosed personal information beyond that extent. I find that the Public Body has complied with s. 40(4).

VI. ORDER

[para 108] I make this Order under section 72 of the Act.

[para 109] I find that the Public Body had authority under the Act to collect, use, and disclose the Complainant's personal information as it did.

_____

John Gabriele
Adjudicator