

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ADJUDICATION ORDER #8

April 14, 2015

CORPORATE HUMAN RESOURCES

Case File Number F5333

Note: The Office of the Information and Privacy Commissioner has removed the Complainant's name from this unofficial version of the Order.

THE HONOURABLE MADAM JUSTICE
SHEILA J. GRECKOL



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COURT OF QUEEN'S BENCH OF ALBERTA

Court of Queen's Bench of Alberta

R. v Alberta Corporate Human Resources (CHR)

Registry: Edmonton

Between:

In the matter of a Complaint by R. against Alberta Corporate Human
Resources (CHR) and Alberta Justice

And an Application for Review of the decision of the Adjudicator under s. 75(1) of the
Freedom of Information and Protection of Privacy Act RSA 2000, c F - 25

Memorandum of Decision
Honourable Justice S.J. Greckol

I. Introduction

[1] R. was employed as a legal assistant with Alberta Justice and Solicitor General (JAG). She suffered two shoulder injuries while at work. After the second injury in January of 2008, Alberta Corporate Human Resources (CHR) hired LifeMark Occupational Services (LifeMark) to perform a Functional Capacity Evaluation (FCE) to assess R.'s ability to perform her job as a legal assistant.

[2] R. filed a complaint under the *Freedom of Information and Protection of Privacy Act* (FOIP) Act alleging that CHR and JAG had improperly disclosed her medical information, without her consent, to a third party, LifeMark.

[3] An Adjudicator from the Office of the Information and Privacy Commissioner (OIPC) considered the complaint and, on September 28, 2012, issued Order F2012 - 23, requiring CHR to stop disclosing R.'s personal information in contravention of the *FOIPP Act*. The CHR was directed to notify the Adjudicator of its compliance with the Order. In response, on November 19, 2012, the Public Service Commissioner, for CHR, issued a letter to R. , copied to OIPC, stating:

In compliance with the Order as noted ...we acknowledge the Order and will not further disclose your personal financial information to LifeMark Occupational Services/LifeMark Health Services.

By way of this letter, we are notifying the Office of the Information and Privacy Commissioner that we have complied with the Order.

[4] R. then filed an application to the Privacy Commissioner for a review of the CHR's response to OIPC Order #F2012 - 23. She was concerned because the CHR response did not say CHR had complied with the OIPC Order that directed CHR to "...stop disclosing the Complainant's personal information in contravention of Part 2 of the Act." Instead, the CHR response stated CHR had complied with the Order not to disclose "personal financial information", raising the question of inadequate compliance and the question of whether financial information had been disclosed and if so, to whom.

[5] The Privacy Commissioner could not hear the Review due to a conflict of interest, hence this adjudication by a member of the Court of Queen's Bench under s 75 (1) of the *FOIP Act*.

[6] By letter of January 12th, 2015, I asked the parties to provide written submissions. The CHR did so, while R. relied upon her application for Review. I also directed the CHR to provide the "records in issue". According to the procedures set down by OIPC, which I have adopted as Adjudicator on this Review, the "records in issue" are records or information that a public body has withheld from an applicant who requests access to the information.

[7] The "records in issue" that I requested and that were provided, include R.'s personal information that was the subject of Order R 2012 - 23; R.'s medical information that was the subject of her complaint; and R.'s financial information that may have been disclosed as was suggested by the CHR response to the Order.

[8] The CHR also provided an affidavit from Ms. Nancy Peters, sworn February 13, 2015. Ms. Peters is an employee with CHR, Labour and Employment Practice Division, Health Management Unit. She is responsible to coordinate FCEs through external medical assessors to clarify employees' medical fitness for work and their accommodation. She was involved in R.'s case and the impugned disclosure to LifeMark that was the subject of Order F2012 - 23. She confirms in her affidavit that, aside from that disclosure, neither she nor anyone else in the Unit or at CHR have disclosed any of R.'s personal information.

II. Submissions

A. The CHR Submission

The CHR has complied with OIPC Order F2012 - 23

[9] The CHR submits that Order F2012 - 23 required CHR to stop disclosing R.'s personal information in contravention of Part 2 of the *FOIPP Act*; and to notify her in writing

that it has done so. The CHR notes that the Order specifically says "it is sufficient for the notification to indicate the Organization's acknowledgement of ..." the Order. CHR says that in compliance with Order #F2012-23, it stopped disclosing R.'s personal information in contravention of Part 2. It has not made any further disclosures of her personal information with certain permissible exceptions. CHR refers to the affidavit of Nancy Peters, sworn February 13th, 2015, which outlines the permissible exceptions, at para 5:

- disclosure of information to legal counsel and FOIP professionals for the purpose of responding to the FOIP Act complaint and requests to the OPIC.
- follow up related to R.'s functional capacity assessment that did not involve disclosure of financial information or improper medical information; and
- disclosure of R.'s name and closely related information in order to schedule a medical appointment.

[10] The CHR submits that R. has not provided any evidence or specific allegations of any improper disclosure beyond the disclosure addressed by Order F2012 - 23.

[11] The CHR submits that by letter of November 19, 2012, it notified R. that it "acknowledged" the Order and would not further disclose her financial information to LifeMark, and by the same letter, it notified OIPC that "... we have complied with the Order". By letter of November 20, 2012, the OIPC Registrar of Inquiries advised CHR and R. that the letter of compliance concluded the matter and no further action would be taken. The CHR submits that with OIPC's advice that the matter was concluded, OIPC has exhausted its jurisdiction; and could not take further steps unless R. launched a fresh complaint, relying on the decision of OIPC Order F2007 - 019 as authority for this position.

No Improper Disclosure of Financial Information

[12] CHR asserts that it has not made any further disclosure of R.'s financial information, beyond the specific disclosure addressed in Order F2012 - 23, as attested to in the affidavit of Nancy Peters, sworn February 13, 2015.

No Further Recipients of Financial Information

[13] CHR asserts also there were no further recipients of R.'s financial information beyond LifeMark, as identified in Order F2012 - 23.

The Review Should be Dismissed

[14] The CHR notes that R. has not made an access to information request relating to the disclosure of her personal information, and that such a request may have alleviated her concerns. CHR concludes with the argument that there is no factual or legal basis to warrant further inquiry and the complaint (Review application) ought to be dismissed.

B. R.'s Arguments

[15] R.'s application for review is based on the concern that the response of the CHR did not say that it had complied with the OIPC Order not to release of her "personal information", including the medical information that was the basis of her complaint. Rather, CHR confirmed it would not release her "personal financial information", raising the new problem of the release of financial information. R. seeks the disclosure of financial or

any other information released by CHR and identification of to whom it was released, as well as confirmation of compliance with Order F2012 - 23.

C. Analysis

[16] The Adjudicator wrote a detailed decision. The decision traces the background to the complaint. R. was employed as a legal assistant with JAG. She suffered an injury while at work in 2005, addressed through a claim with Worker's Compensation. She was accommodated into a modified position as a clerk/receptionist in September of 2006. In January of 2008,

R. made a further claim to Worker's Compensation concerning an injury to her right shoulder, said to be caused by lack of an ergonomic desk. About April of 2009, JAG sought an FCE to determine if R. could perform her job functions as a legal assistant. CHR collected her personal information for the evaluation and then provided it to LifeMark.

[17] The Adjudicator found that the CHR's collection of R.'s personal information did not contravene the *FOIP Act* as it was collected in accordance with the *Act* for the purpose of managing or administering personnel of the Government of Alberta, and arguably for the purpose of determining her eligibility for a work accommodation program.

[18] However, the Adjudicator concluded that the CHR did not have authority to disclose most of R.'s personal information, contained in three letters, for a purpose consistent with the permitted collection of the information. The letters discussed R.'s entitlement to Workers Compensation benefits, as well as details about her injuries, symptoms, prior visits to medical professionals, past treatments and prognosis.

[19] The Adjudicator wrote that the role of CHR is to advise and assist departments in their management of human resources matters. It is entitled to know certain information about individual employees as disclosed by the employing department, but CHR is then expected to use its knowledge and expertise to determine the extent to which the information may be known by others. Here, it was authorized to collect from JAG the detailed background relating to R.'s injuries and Workers Compensation claims, but it was incumbent upon CHR to determine what information was necessary for the FCE rather than simply to pass the information along because it had received it from JAG.

[20] The Adjudicator decided that information contained in two of the letters concerning R.'s entitlement to Workers Compensation benefits was not necessary for the purposes of completing an FCE.

[21] In conclusions, the Adjudicator held that "...CHR disclosed far more of the Complainant's personal information than was necessary to enable it to carry out, in a reasonable manner, the purposes for which the information was disclosed." The CHR disclosed R.'s personal information in contravention of Part 2 of the Act. The Adjudicator ordered CHR to "...stop disclosing the Complainant's personal information in contravention of Part 2 of the Act" and to "...notify me and the Complainant in writing ... that it has complied with the Order".

[22] In my view, the decision of the Adjudicator thoroughly addressed R.'s complaint. It was based on the relevant statutory provisions as applicable to the factual circumstances involved in the disclosure of R.'s private, personal information to a third party, LifeMark.

[23] The grounds for this Review launched by R. are set out in her letter of June 3, 2013. The concern is not with the substance of the Adjudicator's decision, but rather the response by the Public Service Commissioner on behalf of the CHR in his letter of November 19, 2012.

[24] The letter from the Public Service Commissioner for CHR, purporting to signify compliance with the Adjudicator's Order, is problematic in two ways.

[25] First, as R. submits, the letter does not confirm that CHR would not further disclose R.'s private personal information that was the subject of the complaint, rather, it confirms it will not further disclose her "personal financial information". That personal information that is the subject of Order 2012 – 23 includes details of her entitlement to WCB benefits and of her injuries, symptoms, prior visits to medical professionals, past treatments and prognosis.

[26] Second, the purported compliance letter, in confirming CHR will not further disclose R.'s "personal financial information", begs the question of what personal financial information was released and to whom it was released, the question raised by R. in her application for Review.

[27] The letter from CHR was poorly drafted in that it fell short of the required confirmation of compliance and in addition, it raised a further, confusing allusion to disclosure of financial information. Had care and thought been put into the letter, it is unlikely R. would have sought a Review, and a great deal of time and effort would have been spared.

[28] However, in my view, the CHR submission in this Review process rectifies the concerns raised by R. in her application for Review. The CHR acknowledges, at least tacitly, that it did release R.'s personal information. The CHR confirms compliance with Order 12012 – 13 through Ms. Peter's affidavit of February 13, 2015 and through its written submission.

[29] Ms. Peter's affidavit states that, apart from the disclosure that resulted in Order 2012 – 23, none of R.'s personal information has been disclosed but for permissible exceptions: information relative to these proceedings, an email exchange relative to the FCE; and information relative to the scheduling of a medical appointment. CHR confirms no financial information was released beyond that covered by the Order (presumably, the reference to WC benefits) to anyone other than LifeMark.

[30] As I requested, the CHR filed a package of materials as the "records in issue" containing all information disclosed by CHR. As noted, the "records in issue" are records or information that a public body has withheld from an applicant who requested access to the information. I have broadly construed this term to include the information sought by R. on this Review.

[31] While the CHR suggests that R. could have filed an access to information request to allay her concerns about what was released and to whom, the simpler approach would have been for CHR to have acknowledged the wrongful release of personal information and confirmed the letter sent by the Public Service Commissioner was in error or at least, misleading to refer to the disclosure of her personal financial information in the way that it did. A simple acknowledgement of release of R.'s personal information as determined by Order 2012 – 23 and confirmation of compliance would have ended the matter.

[32] The CHR did not take issue with my jurisdiction to address the concerns raised by R.'s application seeking a review of the CHR's response to the Order rather than a review of the Adjudicator's decision. In effect, R.'s application seeks enforcement of the Order, though it is broader in also seeking disclosure of what was released and to whom. In the process of determining whether an Inquiry should be ordered, I have reviewed the entire matter, considering the Record before the Adjudicator and the written submissions provided to me.

[33] The result of this Review process initiated by R. has been confirmation of compliance with the Order F2012 - 23 and clarification of what material was disclosed by CHR and to whom, including that the personal information was disclosed only to LifeMark. As well, there has now been clarification that no financial information was disclosed, other than that respecting Workers Compensation benefits received by R., already the subject of Order F2012 - 23.

[34] Considering the matter in its entirety, in my view, the concerns raised by R. have now been answered by the submission made by CHR, the affidavit of Ms. Peters, and the "records in issue" that have been filed. With this result, in accordance with my mandate under ss 69 and 70 of the *FOIP Act*, I conclude that R.'s application for a Review does not warrant an Inquiry.

[35] It is hoped that in the future, the CHR will respond to Adjudicative directives with greater care and clarity where there has been wrongful disclosure of private, personal information contrary to the *FOIP Act*.

Dated at the City of Edmonton, Alberta this 14th day of April, 2015.

S.J. Greckol
J.C.Q.B.A.

Appearances by Written Submissions