



## Disclosure of Personal Information to Unions: Before a First Agreement

### CONTENTS

Introduction	1
The facts in the case and the issue to be determined	1
Disclosure of personal information under the FOIP Act	2
The decisions of the Board and the court	2
Lessons learned from the decisions	3
Applying the FOIP Act to disclosure of employee personal information to unions	4
Effect of the decisions on other collective bargaining legislation	5

### INTRODUCTION

Employees in many public bodies are represented by exclusive bargaining agents. In 2002 the Alberta Labour Relations Board (the “Board”) issued a series of decisions that considered the issue of whether the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) is a barrier to disclosing employee personal information to a bargaining agent. This Bulletin will discuss the effect of this series of decisions.

The series of decisions involved Economic Development Edmonton and the United Food and Commercial Workers Union, Local No. 401. The complete citations can be found at the end of this Bulletin.

Please note that the question of whether jurisdiction on privacy matters in unionized workplaces rests with privacy commissioners or labour relations boards is rapidly evolving. This Bulletin does not attempt to address this broader issue. It is limited to the facts in these decisions, where a union had been certified but the first collective agreement had not yet been reached.

### THE FACTS IN THE CASE AND THE ISSUE TO BE DETERMINED

In January 2001, the United Food and Commercial Workers Union (UFCW) (the “Union”) was certified by secret ballot as the exclusive bargaining agent for a group of employees at the Shaw Conference Centre. Collective bargaining for a first collective agreement commenced but was unsuccessful and the Union went on strike. During collective bargaining, the Union had made a number of requests to Economic Development Edmonton (the “Employer”) for a list of employees in the bargaining unit, together with their home addresses and home telephone numbers. The Union said that the information was necessary for the purpose of keeping union members informed and to seek their input on

collective bargaining issues. The Employer refused to provide the requested information without the employees' consent.

The Employer took the position that the FOIP Act prohibited it from disclosing the personal information of employees without each of them consenting to the disclosure. The Union alleged that the Employer's refusal to provide the requested employee information constituted an unfair labour practice and asked the Alberta Labour Relations Board to direct the Employer to provide this information.

## DISCLOSURE OF PERSONAL INFORMATION UNDER THE FOIP ACT

The FOIP Act permits the disclosure of personal information only in accordance with **section 40**. "Personal information," as defined in **section 1(n)(i)** of the Act, means recorded information about an identifiable individual including the individual's name, home or business address or home or business telephone number. The information sought by the Union, namely, the names, home addresses and home telephone numbers of employees in the bargaining unit would be personal information under the Act.

Under **section 40(1)** of the Act, the relevant provisions for disclosing the above personal information would be

- (a) in accordance with **Part 1** (in response to an access request under the Act);
- (b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under **section 17**;
- (c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- (d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure;
- (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada;

- (f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure;
- (g) for the purpose of complying with an order issued or made by a court, person or body having jurisdiction to compel the production of information; or
- (o) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry.

## THE DECISIONS OF THE BOARD AND THE COURT

On May 17, 2002 the Board declared that the Union was entitled to the information and that the FOIP Act was not a barrier to the Employer providing the information. It directed the Employer to provide the Union with the requested information and directed the Union to only use the information to fulfill its role as exclusive bargaining agent for those employees.

The Board reasoned that because the Union was the exclusive bargaining agent for all the employees in the bargaining unit, the refusal to provide employee information hindered the Union in its ability to keep employees informed and in seeking their input. This breached the representational rights of the Union, especially because the Union had applied for a strike vote. In its decision, the Board stated that "the Union's ability to engage in rational and informed discussion is undermined if it is not able to easily communicate with the employees in the bargaining unit."

The Board found that

- disclosure of the requested employee information was not an unreasonable invasion of personal privacy (**section 40(1)(b)**) in concert with **section 17(2)(c)**, since the *Labour Relations Code* authorized and/or required the disclosure;
- disclosure of the requested employee information was permitted by **section 40(1)(c)** since the personal information in question was collected and used by the Employer to administer the employment relationship which now included the Union as the exclusive bargaining agent;

- disclosure of the requested employee information was authorized or required by the *Labour Relations Code* (**section 40(1)(e)**);
- the Board had the jurisdiction to compel production of the personal information under **section 40(1)(g)**; and
- **section 40(1)(o)** (disclosure to the bargaining agent with the individual's written authorization) was not the only way that personal information could be disclosed to the Union.

The Employer provided the Union with the names of employees, their home addresses and home telephone numbers as of April 1, 2002, in compliance with the Board's directive. The Union then asked for updated information on employees hired between April 1 and May 3, 2002. When the Employer refused to disclose the updated information, the Union applied to the Board for a further directive. The Board heard evidence that some employees preferred that the Union not be given their personal information, particularly their home addresses and phone numbers.

In its June 4, 2002 decision, the Board found that once the Union was certified, it represented all employees in the bargaining unit. It found that the privacy interests of employees were protected because the information provided to the Union was not to be made public and could only be used to fulfill its role as exclusive bargaining agent. The Board directed the Employer to provide the Union with the names, home addresses and home telephone numbers of employees hired between April 1 and May 2, 2002.

On June 15, 2002, Mr. Justice Brian R. Burrows of the Court of Queen's Bench denied an application to stay the Board's June 4, 2002 Order, pending judicial review. Mr. Justice Burrows held that the FOIP Act permitted disclosure under **sections 40(1)(e), (f), (g) and (o)** (with written authorization). He found that the provision of information to the Union would be within the purpose of the Employer properly administering the employment relationship. In denying the application for a stay, he stated that the public interest in settling the dispute was greater than the public interest in not disclosing the information. Disclosure of the personal information would facilitate appropriate communication which is an essential element in the resolution of disputes.

Finally, on July 2, 2002, the Board gave its ruling on the unfair labour practice complaint. With respect to the issue of disclosure of employee information, the Board stated that it had already ruled that the FOIP Act didn't prevent the Employer from providing the Union with the names, home addresses and home telephone numbers of employees in the bargaining unit. It declined to find that the Employer had committed an unfair labour practice. However, the Board stated that since the law had now been clarified, it expected the Employer, in future, to comply with its obligations under the *Labour Relations Code*.

## LESSONS LEARNED FROM THE DECISIONS

Disclosure of employee personal information to a union under **section 40(1)(o)** is not the only way in which disclosure of employee information may be permitted. Under the *Labour Relations Code*, once a trade union is certified, it represents all employees in the bargaining unit, even those who may have voted against the certification. It also has exclusive authority to bargain collectively on behalf of the employees in the unit for which it is certified.

The FOIP Act is not meant to hinder the operation of other legislation. It does not prevent the disclosure of certain employee personal information to a union. However, the disclosure of employee personal information to a union is limited to what is needed to carry out the union's obligations under the *Labour Relations Code* or similar labour relations legislation.

The *Labour Relations Code* places obligations on unions to carry out certain activities in a legislated way. In order to comply with the *Labour Relations Code* or other similar legislation, the union may require the home contact information of employees (e.g. for mail in ballots for certification, strike or ratification votes or perhaps to notify employees about changes to a pension or other benefit plan).

**Sections 40(1)(e) or (f)** of the FOIP Act may apply to permit disclosure of employee personal information where the legislation places an obligation on a union to carry out a certain activity in a certain way. However, the concept of permitting disclosure of personal information so that another organization (such as a union) can meet its statutory obligations under an

enactment is an expansion of the usual interpretation for **sections 40(1)(e)** or **(f)** and *must be narrowly and carefully applied*.

In the case in question, the disclosure of the requested employee personal information was considered to be very important because collective bargaining had been unsuccessful and there was an unresolved dispute between the parties. The need of the union to receive the information to facilitate communication and thereby help settle the dispute outweighed any interest in not disclosing the information to protect employees' privacy.

**Sections 40(1)(e)** and **(f)** of the FOIP Act do not permit the disclosure of personal information to a union for purposes that are not related to the Union's statutory obligations. Those provisions would not permit disclosure of employee personal information to contact employees for the purposes of organizing a barbecue or for other unrelated purposes. In its Order, the Board ensured the protection of the employee personal information disclosed to the Union by directing that the information was not to be made public and was only to be used to fulfill the Union's role as exclusive bargaining agent.

In order to reinforce this limitation, public bodies should consider disclosing employee personal information to unions together with a covering letter specifying the purposes for which the personal information is being disclosed. Unions are subject to Alberta's *Personal Information Protection Act* (PIPA) when collecting personal information. Unions can collect personal information if disclosed by a public body as authorized by an enactment of Alberta, including the FOIP Act. Once the union collects the information, PIPA will apply to the use and disclosure by the union.

**Section 40(1)(g)** may also permit an employer to disclose employee personal information but only if the Board has issued an order compelling such disclosure. However, *it is important to note that this finding of the Board cannot be generalized to other situations where there is no Board order*.

## APPLYING THE FOIP ACT TO DISCLOSURE OF EMPLOYEE PERSONAL INFORMATION TO UNIONS

Applying the lessons learned from the series of decisions to **section 40** of the FOIP Act, public bodies with employees represented by a bargaining agent may disclose employee personal information to the bargaining agent under the following circumstances:

- if the disclosure is for the purpose for which the information was collected or for a consistent purpose (i.e. administering the employment relationship) (**section 40(1)(c)**);
- if the disclosure is to a representative of a bargaining agent authorized in writing by the individual the information is about to make an inquiry (**section 40(1)(o)**);
- if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure (**section 40(1)(d)**);
- if the disclosure is for the purpose of complying with a collective agreement made under an enactment of Alberta or Canada (e.g. *Labour Relations Code, Public Service Employee Relations Act, Police Officers Collective Bargaining Act, Post-secondary Learning Act*) (**section 40(1)(e)**); or
- if the disclosure is for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure (**section 40(1)(f)**).

### Disclosure for the purpose of resolving grievances

Disclosure of personal information for the purpose of resolving a grievance is probably contemplated by **section 40(1)(e)** of the FOIP Act (disclosure for the purpose of complying with a collective agreement made under an enactment of Alberta or Canada).

Once a collective agreement is in place, the trade union assumes all rights of the employee under the terms of the collective agreement. Under the *Labour Relations Code*, for example, no trade union can deny an employee or former employee who is or was in the

bargaining unit the right to be fairly represented by the trade union with respect to the employee's or former employee's rights under the collective agreement.

The grievance procedure is usually outlined in a collective agreement and if there is none, section 136 of the *Labour Relations Code* (as well as similar provisions in other legislation) mandates a model dispute resolution procedure. A grievance procedure is, therefore, probably contained in the concept of an "enactment of Alberta." Employees covered by a collective agreement should expect that personal information necessary to resolve a grievance would be shared by employer representatives of a public body, union representatives and arbitration boards until the grievance is concluded.

## EFFECT OF THE DECISIONS ON OTHER COLLECTIVE BARGAINING LEGISLATION

Many types of collective agreements exist between public bodies and unions, containing different terms and conditions of employment. Collective bargaining may be governed by legislation other than the *Labour Relations Code* (e.g. *Public Service Employee Relations Act*, *Police Officers Collective Bargaining Act*, *Post-secondary Learning Act*, etc.). A public body that has employees represented by one or more bargaining agents will need to analyze what

disclosures of employee personal information are authorized or required by the particular collective agreement that is in place between the employer and the union and also what disclosures of personal information are authorized or required by the legislation that governs the collective bargaining process and the resolution of grievances.

## CITATIONS

*UFCW Local 401 v. Economic Development Edmonton et al.* [2002] Alta. L.R.B.R. 161 – Board's May 17, 2002 decision.

*UFCW Local 401 v. Economic Development Edmonton et al.* [2002] Alta. L.R.B.R. 186 – Board's June 4, 2002 decision.

*Economic Development Edmonton v. UFCW Local 401.* [2002] Alta. L.R.B.R. 193 – Court of Queen's Bench stay decision.

*UFCW Local 401 v. Economic Development Edmonton et al.* [2002] Alta. L.R.B.R. LD-044 and *UFCW Local 401 v. Economic Development Edmonton et al.* [2002] Alta. L.R.B.R. 313 – Board's decisions with respect to the original unfair labour practice complaints.

### Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to November 30, 2003.

### Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

### Further Information

Access and Privacy Service Alberta  
3<sup>rd</sup> Fl., 10155 – 102 Street  
Edmonton, Alberta T5J 4L4  
Phone: 780-427-5848  
Website: foip.alberta.ca