



**OFFICE OF THE INFORMATION
& PRIVACY COMMISSIONER
for
Prince Edward Island**

Order No. PP-21-001

Re: Health PEI

March 9, 2021

Maria MacDonald, Adjudicator

Summary: An employee worked in one area of the public body, but in their off hours, complained about the service in another area of the public body. The employee alleges that their employer disclosed this off-duty information to their manager (within the public body), contrary to the *FOIPP Act*.

The adjudicator found that the public body was authorized under clauses 37(1)(g) and (v) of the *FOIPP Act* to disclose the information to manage employees, specifically to address complaints about the Complainant. The adjudicator also found that the public body was authorized to use this information for the same purpose under clause 36(1)(c) of the *FOIPP Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, cap. F-15.01, clause 36(1)(c) and subsection 37(1)

I. BACKGROUND

[1] An individual (the “Complainant”) is a health care professional employed at a hospital of Health PEI (the “Public Body”). When they were off duty, the Complainant visited a relative who was a patient in another hospital also operated by the Public Body. The

Complainant had a negative opinion about the quality of medical care the other hospital was giving their relative. The Complainant assisted in the patient's health care, and advocated for their relative to be transferred to another hospital in what the Complainant describes as an assertive, but respectful manner. In the following days, the Complainant spoke to a director at the other hospital, (where their relative was a patient) about their concerns about the patient's medical care.

- [2] Employees of the other hospital took issue with the professionalism of the Complainant, including how the Complainant treated employees at the other hospital, which they interpreted as verbally abusive and threatening. The employees of the other hospital were also concerned about the Complainant's failure to follow protocols for infection prevention and control, and failure to follow protocols for the medical procedures the Complainant performed on their relative. The employees at the other hospital recorded their concerns in incident reports for their mutual employer, which is the Public Body.
- [3] When the Complainant returned to work, they were called into their manager's office to discuss the incident reports. At this meeting, the Complainant learned that the Complainant's manager knew that the Complainant had verbally complained to the director at the other hospital about the patient's care. The Complaint is:

...

As a result of these negative and false allegations, I was called into my manager's office once I return to work in January. It was then that I was told that there have been several (false) complaints written about me. I indicated to my manager, at this time, that I had concerns about my [relative]'s care at [the other hospital]. I advised him that I found it necessary to call out a verbal complaint to the Director [title and name]. He indicated to me that he was aware of this because she told him so.

I feel that my rights to privacy have been violated. I feel that, as a member of the public, I should be able to call out a complaint in regards to my [relative]'s care without it landing on my manager's desk.

I also feel that my manager thinks I am accountable to [them] 24/7. The [professional regulatory body] disagrees. I have been advised that I am accountable as a [profession] to the [professional regulatory body] for my conduct at all times while using knowledge gained through my practice /training as a [profession]. They do indicate, however, that I am not accountable to my manager for anything that occurs outside of the [area in which the Complainant is employed].

- [4] It is not relevant to this review whether the incident reports are accurate, or whether the Complainant's concerns about the quality of care of their relative are well-founded.
- [5] The Public Body acknowledges that the director at the other hospital disclosed to the Complainant's manager that the Complainant had talked to them about their concerns about the quality of medical care. The Public Body advises that they disclosed, and used, this information for the purpose of managing their employee, which is authorized under the *Freedom of Information and Protection of Privacy Act*, (the "FOIPP Act").
- [6] Former Commissioner Karen Rose delegated the authority to complete the inquiry to me, including the power to issue an order.

II. INFORMATION AT ISSUE

- [7] At issue is the information that the Complainant had phoned a director of the other hospital to discuss concerns about the care their relative received. The particulars of those concerns are not at issue.

III. ISSUES

- [8] The issues in this review are:
 - a) Whether the Public Body is authorized to disclose personal information to the Complainant's manager pursuant to clause 37(1)(g) [for performance of the recipient's duties], or clause 37(1)(v) [to manage employees] of the *FOIPP Act*; and
 - b) Whether the Public Body is authorized to use personal information to manage employees, pursuant to clause 36(1)(c) of the *FOIPP Act*.

IV. ANALYSIS

- [9] The Public Body acknowledges that the information at issue was disclosed by the director at the other hospital to the Complainant's manager. They do not agree that all of the Complainant's views are the Complainant's personal information, but concedes that the disclosure may have included some personal information of the Complainant.

a) Subsection 37(1) of the FOIPP Act – authorization to disclose without consent

[10] The Public Body acknowledges that they disclosed the information at issue to the Complainant’s manager, but claims that they were authorized to disclose this information to the Complainant’s manager in these circumstances.

[11] The *FOIPP Act* authorizes a public body to disclose personal information, without consent, under several circumstances listed at subsection 37(1) of the *FOIPP Act*. The Public Body relies on clause 37(1)(g) [the information is necessary for the performance of the recipient employee’s duties], and clause 37(1)(v) [to manage employees of a public body] for authority to disclose the Complainant’s personal information. These provisions state:

37. Disclosure of personal information

(1) A public body may disclose personal information only

...

(g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member;

....

(v) for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body;

...

[12] In this instance, these two provisions overlap because the information was disclosed to an employee of the Public Body whose duties include managing employees.

[13] The Public Body advises that they disclosed the information at issue to establish the context for the concerns in the incident reports. The Public Body states:

We have determined that information disclosed by the [director at the other hospital] to the [Complainant’s manager] was focused on the Complainant’s conduct while visiting [the Complainant’s relative at the other hospital]. The Complainant’s concerns regarding the care provided by [the other hospital] to [the Complainant’s relative] were merely disclosed in the course of detailing what had transpired at [the other hospital]. They were disclosed for the purpose of establishing the context that gave rise to the [Director at the other hospital]’s concerns about the Complainant’s unprofessional conduct as a [profession] in [their] capacity as a visitor of [the patient].

- [14] The purpose of the meeting between the Complainant and the Complainant's manager was not because the Complainant had made a verbal complaint. The subject of the meeting was the complaints and incident reports regarding the Complainant's conduct at the other hospital. The substance of the complaints about the Complainant included allegations of failure to comply with health and safety protocols, and intimidating and aggressive behavior towards employees of the Public body. The Public Body is responsible, as an employer, to address these concerns.
- [15] One would expect the director to give the Complainant's manager a complete description of the incidents. The director had information in the incident reports, but was not present in the hospital at the time of the incidents described in the incident reports. The Complainant's concerns, about the quality of the medical care that their relative was receiving, is an important part of the circumstances of the incident reports. As set out in the complaint, the Complainant told their manager that they spoke to the director at the other facility to express their concerns about the health care their relative received. This corroborates that this fact was relevant in the discussion between the manager and Complainant.
- [16] I am satisfied that it was reasonable for the director of the other facility to tell the Complainant's manager the Complainant's perspective, and that the director learned of the Complainant's perspective through a conversation with the Complainant. I am also satisfied that the information provided to the Complainant's manager was necessary for the Complainant's manager to perform their duty to examine and address the serious allegations about the Complainant set out in the incident reports.
- [17] I find that the Public Body was authorized to disclose the Complainant's personal information to the Complainant's manager pursuant to clauses 37(1)(g) and 37(1)(v) of the *FOIPP Act*.

b) Clause 36(1)(c) of the FOIPP Act – authorization to use personal information

- [18] The Public Body also provides their position that they were authorized to use the personal information pursuant to clause 36(1)(c) of the *FOIPP Act*, which states:

36. Use of personal information
(1) A public body may use personal information only

...
(c) for a purpose for which that information may be disclosed to that public body under section 37, 39 or 40.

[19] I have found that the Public Body was authorized to disclose the personal information at issue, to the Complainant's manager, for the purpose of managing their employees. The Complainant did not appear to have any concerns about the use of their personal information, and there is no allegation that the Public Body used this information for any other purpose.

[20] I am satisfied that the Public Body was authorized to use the Complainant's personal information to manage employees pursuant to clause 36(1)(c) of the *FOIPP Act*.

V. SUMMARY OF FINDINGS

[21] I find that the Public Body was authorized to disclose the Complainant's personal information to the Complainant's manager for the purpose of managing employees pursuant to clauses 37(1)(g) and 37(1)(v) of the *FOIPP Act*.

[22] I find that the Public Body was authorized to use the personal information at issue to manage employees pursuant to clause 36(1)(c) of the *FOIPP Act*.

VI. RECOMMENDATIONS or ORDERS

[23] In consideration of these findings, I make no orders or recommendations.

SGD MARIA MACDONALD

Maria MacDonald
Adjudicator