ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into Shredding of Royalty Calculation Information by a Public Body

March 16, 2001

Alberta Energy

Investigation #1495

The Concern

At page 95 of his 1997-98 Annual Report, the Auditor General for Alberta (the "AG") cited an apparent difficulty in the management of records at the Department of Energy. This difficulty was written into his recommendation regarding "natural gas and by-products subsystems' controls":

> ***Recommendation No. 21***: *It is recommended that the Department of Energy strengthen the processes and controls related to its natural gas and by-products subsystems.*

The AG expressed concern over the level of control and security of subsystems that are outside the Mineral Revenue Information System ("MRIS") but play an important role in the gas royalty business. These subsystems "handle important business components of gas royalty such as unit operating costs, royalty paid banks, and others." As an example from his audit findings relating to the lesser controls in these subsystems, the AG cited concerns over allowance calculations and documentation:

> *In calculating gas royalty, the Department deducts allowances for compressing, gathering, and processing its royalty share of gas and gas products. The allowance related to operating costs is called the Unit Operating Cost Rate (UOCR). In calculating the UOCR, the Department entered the same data twice for its annual calculation. As well, the rate was not accurately adjusted for the Gross Domestic Product as required by the Department's business rules. These UOCR errors resulted in a $25 million "over-allowance" to industry; this directly impacted gas royalty collection from industry. The Department intends to recover this over-allowance in the next year.* ***As well, the UOCR files were shredded instead of archived. Should questions arise regarding these UOCR amounts, the Department may need to reconstruct these records.***
> [Emphasis added]

The AG picked up the recommendation again in his 1998-99 Annual Report, at page 139, noting that he was:

> *...pleased to report that numerous improvements have been made. For example, in 1998-99 the UOCR was correctly calculated and the $25 million "over allowed" in previous years was collected from industry. As well, 1998-99 should be the last year for the manual calculation of these rates, as UOCR functionality is being moved into MRIS itself. In summary, I believe that the Department has adequately addressed the concerns that I raised in 1997-98.*

Any reference to public records being shredded attracts the concerned interest of the Information and Privacy Commissioner. As records of royalty transactions deal with large amounts of money being paid

to the public purse by companies, the Commissioner views the secure filing and maintenance of that information as vital to the interests of all Albertans as well as to the producers being charged the royalty fees. That view led to the opening of this investigation, and assigning it to the undersigned as Case #1495.

Background and Jurisdiction

Under current regulatory provisions (set to expire October 2001), some aspects of information about royalties paid or due are effectively excluded from the access provisions of the FOIP Act by the doctrine of paramountcy. Department officials have supported this carve-out from Part 1 of the FOIP Act by arguing that there is ultimate disclosure in the form of the Public Accounts, and that there is some assurance of accountability in the form of the AG's audit.

The Information and Privacy Commissioner has gone on record with his opinion that the paramountcy carve-out of royalty information from the access provisions of the FOIP Act is troubling and unnecessary. His view that royalties are rents paid on resources that belong to the people of Alberta, so making transparency of their administration important, was expressed to the all-party Select Review Committee of the Legislative Assembly in September 1998. He saw the principles of the Act requiring the right of access to information wherever a Minister has been empowered to grant relief in the amounts or timing of payment.

Energy officials expressed some initial surprise that the Commissioner would take an interest in this particular matter. The question of jurisdiction arises when the Commissioner investigates practices relating to information that is in any way held paramount to the FOIP Act. Section 49(1) of the *Mines and Minerals Act* ("MMA") and section 15(1) of the *Natural Gas Marketing Act* ("NGMA") are paramount to the FOIP Act according to section 5(2) of the FOIP Act, but that paramountcy only affects the rights of an applicant making an access request under Part 1 of the Act. MMA states:

> 49(1) Except as provided under the regulations, no person shall communicate or allow to be communicated any record, return or information obtained under this Act to a person not legally entitled to that information or allow any person not legally entitled to that record, return or information to have access to any record, return or information obtained under the Act.

NGMA states:

> 15(1) Except as provided under the regulations, a person who is or was employed or engaged in the administration or enforcement of this Act, shall not:
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> (a) communicate or allow to be communicated any record, return or other information obtained by the Commission under this Act to a person not legally entitled to that record, return or other information, or
> (b) allow any person not legally entitled to any record, return or other information obtained by the Commission under this Act to have access to it.

According to FOIP section 5(2):

5(2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

……

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

The FOIP Act regulations carve out paramountcy (until their programmed sunset at October 1, 2001) for some exploration and royalty-related information:

16(1) Section 49(1) of the *Mines and Minerals Act* prevails despite the *Freedom of Information and Protection of Privacy Act* with respect to any record, return or information obtained under the *Mines and Minerals Act* that would reveal geological work or geophysical work or allow any person to have access to any record, return or information obtained under the *Mines and Minerals Act* that would reveal geological work or geophysical work.

(2) Section 49(1) of the *Mines and Minerals Act* prevails despite the *Freedom of Information and Protection of Privacy Act* with respect to information that

(a) was obtained on a royalty return,

(b) appears on a royalty account, invoice or statement,

(c) was obtained for the purposes of determining or verifying royalty liability or collecting royalty, or

(d) was obtained for the purposes of determining, prescribing or verifying an amount, factor or other component that is used to calculate royalty.

…….

(4) Section 15(1) of the *Natural Gas Marketing Act* prevails despite the *Freedom of Information and Protection of Privacy Act* with respect to information obtained under Part 4 of the *Natural Gas Marketing Act* for

(a) determining or verifying royalty liability or collecting royalty...

(5) In this section,

(e) "royalty return" means a report or other record obtained under the *Mines and Minerals Act* or under an agreement authorized by an order in council under section 9 of that Act that is used to determine or verify royalty liability or to collect royalty.

Because FOIP regulation section 16 states that MMA section 49(1) prevails over FOIP, the criteria in FOIP section 5(2) have been met. However, MMA section 49(1) deals only with access to the records, not with destruction. FOIP section 4(1) says that this Act applies to all records in the custody or under the control of a public body. MMA section 49(1) and NGMA section 15(1) do not remove the records from the public body's custody or control; nor do they say that these records are no longer subject to the Act (as happens through a FOIP section 4 exclusion). The Department of Energy is a public body and these UOCR records were in its custody and control. Therefore the FOIP Act is still operative with respect to records retention/destruction.

Under FOIP section 51(1)(a)(i), the Commissioner can investigate because the provisions regarding the destruction of records are set forth in the Records Management Regulation pursuant to the Government Organization Act (RMR section 10]. The Commissioner has the authority to conduct investigations to ensure compliance with rules relating to the destruction of records set out in any other enactment of Alberta.

The Commissioner's order-making powers arise if FOIP section 36 obligations concerning personal information are the subject of investigation. That is not the case here, though FOIP section 36 must still be respected to the extent that there is personal information on any of the records involved.

Information at Issue and Questions for the Investigation

The MRIS is the beating heart of Alberta's royalty revenue program. It is a database that processes volumetrics (production figures) posted at the Alberta Energy and Utilities Board and calculates the gas royalty revenue due from producers. In 1997-98, the Department of Energy worked from a program in SAS query language using the Powerbuilder database inquiry tool to develop extract reports for the calculation of the unit operating cost rates. These calculated rates were then manually entered back into the MRIS. Some summary data was then run onto an Excel spreadsheet.

The UOCR concept is to take a calculation on the final product, giving the producer the benefit of an allowance or credit for processing the Crown volume. The UOCR is established once a year. The process of setting the rates generates considerable volumes of computer printout reports. It was these intermediate printouts that were shredded after they had served their purpose in deriving the rates. These events prompted two questions for the investigation:

1. Did the Department compromise its role as steward of the royalty information through the shredding of computer reports?
2. Is the Department able to discharge its responsibility to provide access to information if challenged to do so under the FOIP Act?

Summary of Investigation Findings

[Note: These findings, corroborated in interviews with the auditors, were shared verbally with the Department in general terms in January 1999. They are now placed in an Investigation Report to provide closure on the matter for the Department and interested public.]

Despite what shredding was done at the Department, the data dump extract program was maintained and continued to be executable across the database. And the Excel spreadsheet was preserved. When challenged to reproduce the information for the purposes of audit, the Department was able to do so, reproducing the information in its entirety.

Contrary to the suggestion drawn from media speculations about the implications of the shredding, the papers shredded were not original input documents or in any other way irreplaceable. The Department indicates that these printouts were never contemplated for records retention, and so were not scheduled for regulated retention and controlled disposal and archiving. It appears that these printouts were regarded by the Department staff as transitory records, disposable at the workstation level once their purpose was passed.

The FOIP Act does contemplate that information will be held in disaggregated format within databases, ready to be brought together in report formats on call by system users or in response to an access request. FOIP section 9(2) places a standing obligation on the head of the public body, in this case the Minister of Energy, to create a record for an applicant if:

(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and

(b) creating that record would not unreasonably interfere with the operations of the public body.

Where a printout has been generated for reference and can always be regenerated if again needed, and where no consequential notations are drafted on that printout, it can make good management sense, and good information security practice, to securely dispose of the printout after its incidental use by the public body. In this matter the shredding of the printouts became an irritation to the audit function where auditors had serious questions about calculations leading to over-allowances to producers (which, if left unaddressed, would be under-royalties to the public). That is indication enough to suggest the shredding of these transitory documents was premature at least.

Recommendation and Closing Comments

This investigation was mandated to discover if an important information resource had been destroyed by virtue of the shredding activity done at Energy. The documents shredded were reproducible reports from a maintained database application. The printouts of the information about royalties were destroyed in the shredding, but the information remained intact and capable of again being reproduced in the same formats for the same or similar purposes.

The AG's remarks point to the importance of taking great care with records that describe how financial information is being posted and reported. Royalty data ranks among the most important public records held by the Government of Alberta, so vigilance here is especially required.

The investigation found that the shredding of the extract reports at Energy did not compromise the public body's role as steward of the information, and did not impact its ability to discharge its obligations under the FOIP Act. The inconvenience to auditors resulting from the requirement to reproduce the printouts was a matter between the Department and the AG's staff. But if the AG's staff deems this class of records important enough to be archived, then the Department should revisit its records retention schedules to list this class of records for regulated retention and controlled disposal/archiving.

The only recommendation from this report is that the Department continually review its records practices to insure the complete satisfaction of the AG in his needs for unimpeded access to vital information about the calculation, posting and reporting of royalty information. Subsequent AG reports indicate satisfaction with progress in that regard; there is no further action expected of the Department. This investigation is closed.

Submitted by:

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