

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-041

February 9, 2000

ALBERTA HUMAN RESOURCES AND EMPLOYMENT

Review Number 1669

I. BACKGROUND

[para. 1.] On April 21, 1999, Alberta Human Resources and Employment (the "Public Body") received the Applicant's access request under the *Freedom of Information and Protection of Privacy Act* (the "Act"). The request was dated the same day and asked for:

Access to the complete investigation records pertaining to an accident which occurred on November 5, 1976, including temperature readings and air pollution readings. The accident involved two named companies (employers).

[para. 2.] The Public Body numbered the request 99-P-00193.

[para. 3.] On August 20, 1999, the Public Body received a second request from the Applicant. That request was dated the same day and asked for:

Complete investigation records and results of the WCB Rehab counselors arrangement of a lighter job. Return to work March 21, 1977 to August 12, 1977. Results of Cadmium fumes exposure poisoning lung and blood absorption, Chelation process was employed at worker's own expense. Problem remains August 20, 1999.

[para. 4.] The Public Body numbered that request as 99-P-0553.

[para. 5.] By letters dated May 7, 1999, and September 7, 1999, the Public Body responded to the Applicant indicating:

No records are available pertaining to the accident in 1976 or follow up, as employer records are only held for 10 years then destroyed, with only a few selected files retained by the Provincial Archives. The Provincial Archives had selected 2 boxes to be retained and in consultation with their office, a search of the 2 boxes revealed no records relating to your request.

[para. 6.] By notice dated and received by this Office on July 15, 1999, the Applicant asked that the Information and Privacy Commissioner review the Public Body's decision that there were no records pertaining to the matter raised in the requests.

[para. 7.] Mediation was authorized but was not successful. The matter was set down for a written inquiry scheduled for December 21, 1999.

[para. 8.] Both the Applicant and the Public Body provided initial written submissions to this Office by the due date of November 15, 1999. These submissions were exchanged. The Applicant provided rebuttal comments, but the Public Body did not.

[para. 9.] On December 13, 1999, Information and Privacy Commissioner Robert C. Clark ("the Commissioner") signed the following delegation order pursuant to section 59 of the Act:

I, Robert C. Clark, Information and Privacy Commissioner of Alberta, delegate to Tom Thackeray, Office of the Information and Privacy Commissioner, my powers under the *Freedom of Information and Protection of Privacy Act* to conduct an inquiry and to issue an order, as set out under Part 4 of the *Freedom of Information and Protection of Privacy Act*, in respect of Review Number 1669.

II. RECORDS AT ISSUE

[para. 10.] The Applicant believes that the records, pertaining to an incident that occurred in 1976 at an industrial facility in Edmonton, exist. The Applicant believes that the facility would have had to file the reports with the Department of Labour, as it was then. However, as the issue concerns adequacy of the Public Body's search, the records themselves are not directly at issue.

III. ISSUE

[para. 11.] There is one issue in this inquiry: did the Public Body conduct an adequate search for records responsive to the Applicant's request, and thereby make every reasonable effort to assist the Applicant, as provided by section 9(1) of the Act?

IV. DISCUSSION OF THE ISSUE

[para. 12.] Section 9(1) of the Act reads:

9(1) The head of a Public Body must make every reasonable effort to assist applicants and respond to each applicant openly, accurately and completely.

[para. 13.] The Applicant believes that the Public Body should have records that respond to his request for information. The Applicant asserts that an incident occurred at the facility where the Applicant worked in 1976 and believes that a report should have been filed with the Public Body. The Applicant was not satisfied that the Public Body conducted a thorough search for the responsive records.

[para. 14.] Section 67 of the Act, which establishes which party bears the burden of proof, is silent on the issue of the adequacy of a search. In Order 96-022 and again in Order 98-012, the Commissioner indicated that the Public Body is in a better position to address the adequacy of its search; thus, the Public Body has the burden of proof in this inquiry.

[para. 15.] The Public Body, in its submission, did not take issue with the specificity of the Applicant's request for access to information (section 7(1)-(3)). I therefore find that the Public Body was provided with sufficient detail in the request to proceed with the search.

[para. 16.] In previous Orders 96-022, 98-003 and 98-012, the Commissioner adopted criteria for determining whether or not a Public Body has carried out a proper search. A proper search contains two components; the Public Body must make every reasonable effort to search for the actual record, and must inform the Applicant in a timely fashion of what it has done. In addition, the Commissioner stated that a decision concerning an adequate search must be based on the facts relating to how the Public Body conducted its search in the particular circumstances.

[para. 17.] In its submission, the Public Body provided a detailed chronology as to how it processed both of the Applicant's requests. The chronology began with the receipt of the request and detailed how the Public Body conducted its search both within the files of the Public Body and through another Public Body, the Provincial Archives. The chronology concludes, with evidence, that a thorough explanation was provided to the Applicant as to why there are no records responsive to his request.

[para. 18.] The Public Body's evidence is that it has exhausted its search efforts and that the records requested no longer exist.

[para. 19.] The Public Body indicated that it found that 83 boxes of employer files for the period 1972 to 1984 of which 81 were destroyed in 1995. Two boxes were sent to the Provincial Archives.

[para. 20.] In support of its position, the Public Body presented evidence that the records were destroyed in accordance with section 6 of the Public Records Regulation (AR 373/83). The Public Body submitted a copy of the "Public Records Transfer" form which verified the destruction of the employer files from 1972 to 1984. The "Destruction Certificate" certifies the destruction of the 81 boxes was in accordance with AR 373/83 and issued by virtue of section 21 of the *Public Works, Supply and Services Act*.

[para. 21.] The evidence further provided by the Public Body shows that the destruction date for these 81 boxes was January 1, 1995. The above mentioned documentation was submitted by the Public Body as part of its submission to this inquiry.

[para. 22.] The records that were destroyed were not broken down into specific employer files, so the Public Body was unable to confirm whether files relating to this specific incident were included in the 81 boxes that were destroyed.

[para. 23.] However, since the incident occurred in late 1976 and the boxes destroyed were employer files between 1972 and 1984, the Public Body believes that if the files existed, they would have been destroyed in 1995.

[para. 24.] Two boxes had been randomly selected from the original 83 boxes and sent to the Provincial Archives. The Public Body also submits that, after a review of the contents of the two boxes sent to the Provincial Archives, there were no files that related to the two specific employers cited in the access request.

[para. 25.] It is the Public Body's position that there are no records in response to the Applicant's request. Records that may have contained information were destroyed in accordance with the records management legislation at that time.

[para. 26.] Based on the evidence provided, I find that the Public Body conducted an adequate search for the records responsive to the Applicant's request, and that the records requested no longer exist. The records were destroyed in accordance with the records management legislation that existed at that time. As such, I find that the Public Body made every reasonable effort to assist and to respond openly, accurately and completely to the Applicant, as provided by section 9(1) of the Act.

V. ORDER

[para. 27.] I make the following order under section 68 of the Act.

[para. 28.] I find that the Public Body conducted an adequate search for records responsive to the Applicant's request, and thereby made every reasonable effort to assist the Applicant, and to respond openly, accurately and completely to the Applicant as provided by section 9(1) of the Act.

Tom Thackeray
Inquiry Officer