

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2002-013

January 13, 2003

ALBERTA TRANSPORTATION

Review Number 2244

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant asked the Commissioner to review the adequacy of Alberta Transportation's search for records. The Applicant also wanted the Commissioner to exercise his discretion under section 59(4) of the *Freedom of Information and Protection of Privacy Act* to disclose to the Minister of Justice and Attorney General information about alleged offences committed by Alberta Transportation. The Commissioner found that Alberta Transportation conducted an adequate search for records. The Commissioner also found that the Applicant did not provide evidence of an offence. Consequently, the Commissioner did not exercise his discretion to disclose information to the Minister of Justice and Attorney General.

Statutes Cited: *Crowsnest Pass Regulation*, Alta. Reg. 378/94; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1) [previously section 9(1)], 16 [previously section 15], 59(4) [previously section 57(4)], 72 [previously section 68].

Orders Cited: AB: Order 2001-033.

I. BACKGROUND

[para 1] The Applicant applied to Alberta Transportation (the "Public Body") for access under the *Freedom of Information and Protection of Privacy Act* (the "Act"), as follows:

Information about the CNP [Crowsnest Pass] municipal water system and provincial funding of those projects as detailed on the attached sheet.

...

Details of information requested:

1. All documentation as it relates to the project to search for a source of water in the Bellevue-Passburg area along with all the documentation relating to the funding for this project.
2. All documentation as it relates to the project to construct a water pipeline from Blairmore to Bellevue along with all the documentation as it relates to funding for this project.
3. All documentation as it relates as to how the leaks in the Bellevue system (as referred to in the minister's letter) has [sic] been resolved.

[para 2] The Public Body disclosed the records that it was able to find. The Applicant thought there should be more records and asked this Office to review the Public Body's search. Mediation resulted in the Public Body's conducting two additional searches. The Applicant was still not satisfied and requested an inquiry.

[para 3] On January 1, 2002, the revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, came into force. Most of the section numbers of the Act changed, but not the substance of the sections. In this Order, the previous section numbers appear in square brackets after the new section numbers.

II. RECORDS AT ISSUE

[para 4] Initially, there were two records at issue under section 16 [previously section 15]. The Public Body has since provided those records to the Applicant. Consequently, there are no longer any records directly at issue.

III. ISSUES

[para 5] As the Public Body disclosed the records to which it had applied section 16 [previously section 15], section 16 is no longer at issue.

[para 6] There are two remaining issues in this inquiry:

A. Did the Public Body conduct an adequate search for responsive records (section 10(1) [previously section 9(1)])?

B. Does section 59(4) [previously section 57(4)] apply and must the Commissioner disclose information to the Minister of Justice and Attorney General?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body conduct an adequate search for responsive records (section 10(1) [previously section 9(1)]?

[para 7] Section 10(1) [previously section 9(1)] reads:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 8] The Public Body says that it searched for records in the Lethbridge Regional Office, Calgary District Office and Edmonton Headquarters.

[para 9] The Regional Administrator coordinated the search for records and the following staff were consulted: Administrative Assistant, Records Technician in Lethbridge, Records Technician in Calgary, Administrative Coordinator, Grants Technologist, and Infrastructure Manager. The Public Body also says that it could not consult with the staff member involved in the particular project, because that person is now deceased.

[para 10] During mediation, the Public Body conducted two additional searches for records at the Portfolio Officer's request. The Public Body acknowledges that the records may not address all the issues the Applicant may have, but it has disclosed all the records it has.

[para 11] The standard under section 10(1) [previously section 9(1)] is reasonableness, not perfection. Particularly given the two additional searches, I find that the Public Body conducted an adequate search for responsive records, thereby meeting its duty under section 10(1) [previously section 9(1)].

ISSUE B: Does section 59(4) [previously section 57(4)] apply and must the Commissioner disclose information to the Minister of Justice and Attorney General?

[para 12] Section 59(4) [previously section 57(4)] reads:

59(4) The Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.

[para 13] The Applicant believes the Public Body ignored procedures under the Alberta Municipal Water/Wastewater Partnership Grant Procedures Manual

(the “AMWWP Grant Procedures Manual”) in providing funding for the Blairmore water pipeline project. For example, the Applicant alleges, among other things, that the Public Body exceeded the maximum allowable funding, which the Applicant says is a “misappropriation of public funds”, a violation of the AMWWP Grant Procedures Manual and the *Crowsnest Pass Regulation*, Alta. Reg. 378/94, and therefore an offence under section 59(4) [previously section 57(4)]. The Applicant’s submission is all about the numerous such offences he alleges the Public Body committed in violation of the AMWWP Grant Procedures Manual, justifying my intervention under section 59(4) [previously section 57(4)].

[para 14] The Applicant also alleges that an official of the Public Body or the Municipality of Crowsnest Pass misled the Minister of Transportation (he does not know who did so) on more than one occasion. For example, he says that someone misled the Minister to say that leaks in the Bellevue water system had been resolved, when that was not the case.

[para 15] The Applicant maintains that he should not have the burden of proof under section 59(4) [previously section 57(4)]. He says the burden of proof should be on the Public Body.

[para 16] Where the Act is silent on burden of proof, I will decide who has the burden based on who raised the issue and who is in the better position to prove the issue. The Applicant raised the issue. It is arguable as to who is in the better position to prove the issue. However, since the Applicant raised the issue, I find that the burden is on the Applicant to present evidence of an offence.

[para 17] In Order 2001-033, I said that section 59(4) [previously section 57(4)] does not operate on allegations, conjecture or assumptions. The Applicant has made only allegations about the Public Body’s procedures. There is no evidence of an offence. Furthermore, there is no evidence that someone misled the Minister, as well as no evidence as to who allegedly did so. As a result, I find that section 59(4) [previously section 57(4)] does not apply. Therefore, I will not exercise my discretion to disclose information to the Minister of Justice and Attorney General.

[para 18] My decision under section 59(4) [previously section 57(4)] should not be taken to mean that there could not have been problems with the Public Body’s procedures. The Applicant has focused on section 59(4) [previously section 57(4)] to make the Public Body accountable. But section 59(4) [previously section 57(4)] is not the only avenue to foster open and accountable government. There are lots of avenues for the public to raise issues such as these. If procedures were not followed, the Applicant can bring that matter to the attention of the Minister or the Auditor General. The Applicant does not need me to raise concerns about something that may not have been done properly. I am not here to try the issue of whether there was proper procedure in a process that is outside of the Act.

V. ORDER

[para 19] I make the following order under section 72 [previously section 68] of the Act.

[para 20] The Public Body conducted an adequate search for responsive records, thereby meeting its duty under section 10(1) [previously section 9(1)].

[para 21] Section 59(4) [previously section 57(4)] does not apply. Therefore, I will not exercise my discretion to disclose information to the Minister of Justice and Attorney General.

Frank Work, Q.C.
Information and Privacy Commissioner