

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2002-017

August 7, 2003

MOUNT ROYAL COLLEGE

Review Number 2324

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

Summary: The Applicant requested that Mount Royal College (“MRC”) provide 10 years of employment-related records in CD ROM format. The Applicant also made a fee waiver request under section 93(4)(a) [previously section 87(4)(a)] of the *Freedom of Information Act and Protection of Privacy Act* (the “Act”).

There were two categories of records. The first category was the retrieved e-mail and related documents records (e-mails) and the second category consisted of raw computer logs (computer logs). MRC advised the Applicant that it could not provide the records in a CD ROM format and provided the Applicant with a fee estimate for providing paper copies of the records. MRC denied the Applicant’s fee waiver request.

The Adjudicator found that MRC was not required to create any record, electronic or paper from the computer logs. Doing so would unreasonably interfere with MRC’s operations. The Adjudicator found that MRC was required to create an electronic record from the e-mails. However, MRC was unable to electronically sever the e-mails before providing access to them in electronic format. Therefore, MRC is only required to provide the e-mails in paper format.

The Adjudicator also found that as there was no evidence to support a fee waiver for the paper production of the e-mail records, the request for a fee waiver for these records was denied.

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s 6(1), 6(2), s 10(2), [previously section 9(2)] and section 93(4)(a) [previously section 87(4)(a)].

Order Cited: AB: Order 96-002.

I. BACKGROUND

[para 1] The Applicant submitted a request for 10 years of employment-related records to be provided in a CD ROM format, under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the “Act”). Mount Royal College (the “Public Body”) advised the Applicant that it could not provide the records in a CD ROM format and provided the Applicant with a fee estimate of \$1,414.00 for providing paper copies of the records. The Applicant requested a fee waiver which the Public Body denied. The Applicant requested that the Office of the Information and Privacy Commissioner review the denial of the Public Body to provide the records in a CD ROM format and the denial of a fee waiver. The Applicant claimed that the fee estimate was “financially unaffordable”. The matter proceeded to written inquiry.

[para 2] The Applicant provided his initial inquiry submission on CD ROM. Citing administrative and technological restrictions, I denied the Applicant’s request to accept his written submission on CD ROM. I returned the Applicant’s CD ROM submission and asked for a written submission to be provided to me and to the Public Body. The Applicant complied with my request.

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

II. RECORDS AT ISSUE

[para 4] The records consist of 10 years of the Applicant’s personal employment-related records. These records were divided into two categories by the Public Body. The first category consists of e-mail records and related documents, which I refer to as the “e-mails”. The second category of records consists of raw computer logs, which I refer to as the “computer logs”.

III. ISSUES

[para 5] There are two issues for this inquiry:

A. Is the Public Body able to create an electronic record for the Applicant, as set out in section 10(2) [previously section 9(2)] of the Act?

B. If the Public Body is not able to create an electronic record for the Applicant, is the Applicant entitled to a fee waiver under section 93(4)(a) [previously section 87(4)(a)] of the Act for the estimated cost of creating a paper record?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Is the Public Body able to create an electronic record for the Applicant, as set out in section 10(2) [previously section 9(2)] of the Act?

[para 6] Prior to discussion regarding the application of section 10(2) [previously section 9(2)] of the Act to this particular set of circumstances, it is important to note that there exists a right for an applicant to access information, as provided by section 6(1) of the Act.

[para 7] Section 6(1) of the Act reads:

6 (1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[para 8] Section 6(1), while providing the applicant with a right to access any records under the custody and control of the public body, is subject to limitations as to how far this right extends. The Public Body argued that section 10(2) [previously section 9(2)] of the Act is such an applicable limitation.

[para 9] Section 10(2) [previously section 9(2)] of the Act reads:

10(2) The head of a public body must 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 the record would not unreasonably interfere with the operations of the public body.*

[para 10] The Applicant argued that because the Public Body's records are electronic, it follows that the Public Body should be equipped to produce electronic format records. The Applicant did not substantiate or support this argument by referencing a specific section of the Act or an Order made under the Act.

[para 11] The Applicant also argued that in the 21st century production of digital copies should be available. The Applicant believes the Public Body has a duty and should have the capability to create in electronic format the records sought.

[para 12] A search by the Public Body revealed that the Applicant's name could potentially appear on thousands of computer logs found on 70 servers. The Public Body estimated that it would take in excess of 700 hours to process the computer logs into a readable format and would result in the printing of an estimated 4,099 pages.

[para 13] The Public Body provided, in a technically detailed affidavit of its IT Security (ITS) Coordinator ("the Coordinator"), supportive arguments that it is currently not technologically equipped to create records in the electronic format contemplated by the Applicant. The Public Body argued that the application of section 10(2)(b) [previously section 9(2)(b)] of the Act supports not placing a duty on a public body to create data in the electronic digital format requested.

[para 14] The computer processing required by the Public Body to produce the computer logs in the electronic format requested by the Applicant would dramatically impact the resource performance of the data centre of the Public Body as well as negatively impacting, by service degradation, the overall operation of the Public Body. The Public Body explained that computer logs, in particular, are designed for trouble shooting, not for performing global searches. The system could not easily and unobtrusively perform global searches for personal information over the 10 years of data the Applicant seeks.

[para 15] The Public Body argued that in order to produce the computer logs, 70 servers would require extensive analysis; 191,975,251,968 bytes of data would have to be copied onto other servers or examined in the existing servers (these existing servers would have to be slowed down to allow for the examination); 227,847,957 pages of log files would have to be produced; 54,102 lines in the log files would be expected to have matching data; 4,099 pages of information would have to be produced for the final report and on the basis of an average of 10 minutes a copy. This last task would be followed by the uncompressing and parsing of each log file, and it was estimated to need at least 710 hours to complete the task.

[para 16] The Public Body's summation is that although the electronic records are in its custody and control, the creation of either an electronic or paper record from the computer logs would be very costly and unreasonably interfere with the Public Body's operations.

[para 17] The technically detailed Affidavit evidence of the Coordinator and the *in camera* evidence provided by the Public Body, in a clear itemized analysis, evidenced how the conversion of the computer logs into the electronic format requested by the Applicant would unreasonably interfere with the operations of the Public Body.

[para 18] I find that under section 10(2)(b) [previously section 9(2)(b)] of the Act, the Public Body is not required to create any record, electronic or paper, from the computer logs, as doing so, using its current technology, would unreasonably interfere with the operations of the Public Body.

[para 19] The e-mails are in an electronic form and the Applicant seeks to have them copied to a CD ROM. This can be achieved by the Public Body using its normal computer hardware, software and technical expertise. Doing so would not unreasonably interfere with the Public Body's operations and therefore, under section 10(2) [previously section 9(2)] of the Act, the Public Body is required to create the record from the records in electronic form (the e-mails).

[para 20] However, the issue does not end with the application of section 10(2) [previously section 9(2)] of the Act. The e-mails are subject to exceptions under the Act. The Public Body's evidence is that it is unable to electronically sever the e-mails before providing access to them on a CD ROM. The issue of being capable to electronically sever brings into play section 6(2) of the Act, which reads:

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[para 21] Section 6(2) does not allow access to information that is excepted under the Act. At present the Public Body does not have the ability to electronically sever the e-mails electronically. The Public Body cannot reasonably sever the excepted information before it gives the Applicant access to the e-mails on a CD ROM.

[para 22] The Public Body is currently only capable of severing paper records. The Public Body states that the software and technical expertise required to sever electronically would cost the Public Body in excess of \$50,000.00. As the information cannot be reasonably severed in the format the Applicant seeks, the Applicant cannot get access to the records (the e-mails) in electronic form. Therefore, the Applicant can only get access to those electronic records if they are printed as paper records.

[para 23] My decision does not mean that public bodies that currently have the capability to electronically sever records would be exempt from doing so. I anticipate that in the near future the capability to electronically sever will eventually be part of the normal capabilities of most if not all public bodies and therefore electronic severing will no longer be an issue.

ISSUE B: If the Public Body is not able to create an electronic record for the Applicant, is the Applicant entitled to a fee waiver under section 93(4)(a) [previously section 87(4)(a)] of the Act for the estimated cost of creating a paper record?

[para 24] As I have already found that the Public Body is not required to create any record, electronic or paper, from the computer logs, there is no need to consider a fee waiver related to those records.

[para 25] The Applicant, if he desires, has the option of requesting paper copies of the e-mails as itemized in the fee estimate, numbering some 1,557 records, and costing \$389.25.

[para 26] The Applicant put forward two arguments regarding the estimated costs of the Public Body:

1. *Initial request was for digital copy with an estimated cost of \$40.*
2. *Financially unaffordable*

[para 27] Section 93(4)(a) [previously section 87(4)(a)] of the Act is the section that addresses the excusing of fees. Section 93(4)(a) [previously section 87(4)(a)] of the Act reads:

93(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or...

[para 28] In its submission, the Public Body presented a detailed review of the events, calculations and the circumstances leading to the provision of the fee estimate. In response to the first argument of the Applicant I have found nothing by way of evidence to support the assertion that the Public Body provided the Applicant, with a \$40.00 fee estimate. Further, the Public Body specifically denies ever, verbally or in writing, providing the Applicant with a \$40.00 fee estimate. I have given reasonable consideration and weight to the arguments of the Applicant and Public Body regarding the alleged \$40.00 fee estimate and, having done so, dismiss this argument of the Applicant. Therefore, I do not excuse the Applicant from paying the fee on the basis that, for any other reason, it is fair to excuse payment.

[para 29] The Public Body argued that the Applicant did not provide any evidence that he cannot afford to pay or a reason as to why it would be fair to excuse the fees, as required under section 93(4)(a) [previously section 87(4)(a)] of the Act.

[para 30] The Applicant also has not provided me with any evidence as to his inability to pay. Order 96-002 held that it is the applicant that is in the best position to provide evidence why he or she cannot pay. As the Applicant has not met the burden of providing evidence regarding the inability to pay, I do not excuse the Applicant from paying the fee on the basis that the Applicant cannot afford to pay.

V. ORDER

[para 31] I make this Order under section 72 [previously section 68] of the Act.

[para 32] I find, pursuant to section 10(2) [previously section 9(2)] of the Act, that the Public Body is not required to create any record, electronic or paper, from the computer logs.

[para 33] I find, pursuant to section 10(2) [previously section 9(2)] of the Act, that the Public Body is required to create an electronic record from the e-mails. However, because the e-mails cannot reasonably be severed by the Public Body as provided in section 6(2) of the Act, the Applicant cannot get access to the e-mails in electronic form. I find that the Applicant can only get access to the e-mails in paper form.

[para 34] I find that the Applicant is not entitled to a fee waiver under section 93(4)(a) [previously section 87(4)(a)] of the Act, should he request the paper format for the e-mails.

Dave Bell
Adjudicator