

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER F2003-008**

July 16, 2003

**GRANT MacEWAN COLLEGE**

Review Number 2467

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant applied to Grant MacEwan College (the “Public Body”) for access under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to any employment references about the Applicant, given by the Public Body or two named individuals of the Public Body. Other than the information the Applicant had previously faxed to the Public Body, the Public Body did not have any employment reference information. The Commissioner found that the Public Body met its duty to the Applicant under section 10(1) of the Act, the Public Body conducted an adequate search for responsive records, and the Public Body did not have a duty to the Applicant under section 35(a) of the Act.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1), 35(a).

**I. BACKGROUND**

[para 1] The Applicant applied to Grant MacEwan College (the “Public Body”) for access under the *Freedom of Information and Protection of Privacy Act* (the “Act”), as follows:

- Reasons for termination of Employment
- References given by Grant MacEwan College or Agents [two named individuals of the Public Body] about [the Applicant] since 1995 to present
- All verbal references given and dates

[para 2] The Public Body responded that it did not have any employment reference information, and that one of the named individuals was no longer employed by the Public Body.

[para 3] The Applicant requested a review by this Office, and the matter was ultimately set down for a written inquiry with my delegated Adjudicator, who accepted the Applicant's submission *in camera*. When it became evident that the Adjudicator might have a conflict with this case, I accepted the Applicant's submission *in camera* and heard the inquiry.

## II. RECORDS AT ISSUE

[para 4] The records are not directly at issue in this inquiry.

## III. ISSUES

[para 5] The Notice of Inquiry sets out the following issues:

- A. Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?
- B. Did the Public Body conduct an adequate search for responsive records?
- C. Did the Public Body have a duty to the Applicant under section 35(a) of the Act?

## IV. DISCUSSION OF THE ISSUES

### **ISSUE A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?**

[para 6] Section 10(1) of the Act 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 7] The Public Body argues that it has discharged its duty in assisting the Applicant by making every reasonable effort to produce the records responsive to the Applicant's access request. It did not refuse access to any of the responsive records. It provided every record it found.

[para 8] The Applicant's submission sets out a number of questions and matters that I have no jurisdiction to consider under the Act.

[para 9] I find that the Public Body met its duty to the Applicant, as provided by section 10(1) of the Act.

**ISSUE B: Did the Public Body conduct an adequate search for responsive records?**

[para 10] The Applicant faxed the Applicant's information to the Public Body in February 2002, prior to making the access request in May 2002.

[para 11] The Public Body says it conducted two searches. The initial search involved looking through paper-based records as well as electronic and microfiche files. Most of the records provided to the Applicant after that search were the records the Applicant had faxed in February 2002.

[para 12] After receiving notice of a review by this Office, the Public Body says it conducted a second search that included interviewing managers in each area. A search through an April 2001 records management audit of records, which listed files for a number of former employees, showed no file for the Applicant on that listing. No further records were found.

[para 13] The Public Body says that the date range of the Applicant's access request covers a time period in which the Public Body did not have a formal records management program. That is why the Public Body could not find its own copy of a 1996 reference letter that one of the individuals the Applicant named in the access request, who was a former employee of the Public Body, allegedly put on the Applicant's file. The Applicant had provided a copy of that letter to the Public Body in February 2002. The Public Body assumes that its copy of that letter was destroyed when that employee left employment with the Public Body in December 1996.

[para 14] The Public Body says that the second individual the Applicant named in the access request, a current employee of the Public Body, was not contacted in 2002 to give a reference for the Applicant's employment, nor could that employee recall providing reference information in the past.

[para 15] Given the Public Body's explanations, I find that the Public Body conducted an adequate search for responsive records.

**ISSUE C: Did the Public Body have a duty to the Applicant under section 35(a) of the Act?**

[para 16] Section 35(a) of the Act reads:

*35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*

*(a) make every reasonable effort to ensure that the information is accurate and complete...*

[para 17] The Public Body argues that it has a duty under section 35(a), and that the records produced are accurate and complete in terms of its human resource policies and procedures. The Applicant is particularly concerned about an alleged employment reference that the Public Body's former employee gave in 2002.

[para 18] The former employee of the Public Body ceased to be an employee in December 1996. Section 35(a) does not apply to the Public Body for an alleged employment reference that the former employee gave in 2002.

[para 19] There is also no evidence that the Public Body's current employee gave any reference concerning the Applicant. Section 35(a) does not apply here either.

[para 20] A further issue for the Applicant is the Applicant's dismissal from employment with the Public Body in 1996. However, the Act came into force for the Public Body in September 1999. Section 35(a) is in Part 2 of the Act, and applies to the Public Body only from September 1999. Section 35(a) does not apply to the Applicant's dismissal in 1996.

[para 21] I find that the Public Body did not have a duty to the Applicant under section 35(a) of the Act.

## **V. ORDER**

[para 22] I have found that the Public Body met its duty to the Applicant, as provided by section 10(1) of the Act; the Public Body conducted an adequate search for responsive records; and the Public Body did not have a duty to the Applicant under section 35(a) of the Act.

[para 23] Given my findings, there is no order to issue to the Public Body.

Frank Work, Q.C.  
Information and Privacy Commissioner