

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-019

September 18, 2006

ALBERTA CHILDREN'S SERVICES

Review Number 3012

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

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* to Alberta Children's Services for access to her child welfare file from the date of her birth in 1948 to the date of her adoption in 1952. Alberta Children's Services did not locate any responsive records to the request.

The Applicant requested a review of the response by Alberta Children's Services on the basis of her belief that Alberta Children's Services had not conducted an adequate search.

The Adjudicator reviewed the search conducted by Alberta Children's Services, as well as the manner and timing of the communication of the results. The Adjudicator found that Alberta Children's Services had conducted an adequate search and met its obligations under section 10(1) of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 10(1), 72.

Authorities Cited: **AB:** Orders 96-022, 98-003.

I. BACKGROUND

[para 1] On May 19, 2004, the Applicant made a request to Alberta Children's Services (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act") for a copy of the Applicant's entire child welfare file from 1948 to 1952.

[para 2] On June 2, 2004, the Public Body informed the Applicant that it did not locate any responsive records to her request.

[para 3] On June 7, 2004, the Applicant requested a review of the Public Body's failure to locate responsive records. Mediation was authorized, but was unsuccessful in resolving the issue. The matter was set down for a written inquiry. The Public Body submitted an initial submission. The Applicant did not make a submission.

II. RECORDS AT ISSUE

[para 4] The records in this inquiry consist of the Applicant's child welfare file. The Public Body states that these records no longer exist.

III. ISSUE

[para 5] Did the Public Body conduct an adequate search for responsive records and thereby meet its duty to the Applicant as provided by section 10(1) of the Act?

IV. DISCUSSION

[para 6] Section 10(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 7] In Order 96-022, the Commissioner said that a public body has the burden of proving that it has fulfilled its duty under section 10(1). The Commissioner said that a public body must show that it has conducted an adequate search. The public body must show that: (a) it made every reasonable effort to search for the records requested; and (b) that it informed the applicant in a timely fashion about what has been done.

[para 8] In Order 98-003, the Commissioner said that a decision concerning an adequate search must be based on the facts relating to how a public body conducted a search in the particular case. There is no specific test for the adequacy of the search, as this is a question of fact to be determined in every case. The standard for the search is not perfection but rather what is "reasonable" in the circumstances.

[para 9] The Applicant did not make a written submission. However, in her request for a review to this Office she states that she does not agree that the Public Body

conducted an adequate search and believes further records exist. She states that it is not fair that she is being denied access to her personal information.

[para 10] The Public Body states that it conducted an adequate search in response to the Applicant's access request. The Public Body states that its search consisted of a search of the electronic data system, the Child Welfare Information System (CWIS) and a search of the Public Body's record services area using biographical information of the Applicant.

[para 11] In support, the Public Body also submitted two statutory declarations to this Office which provided some information regarding the record retention practices prior to 1960. The Public Body states that it believes that the records were likely destroyed as there was no requirement in the 1940s and 1950s to keep the files of children following adoption.

[para 12] I understand the Applicant's frustration in being unable to obtain a copy of her child welfare file. I also agree with the Applicant that this type of information should have been kept by the Public Body. However, the issue before me in this inquiry is not whether the Public Body should have practiced better record retention in prior years. The issue before me is whether the Public Body conducted an adequate search for the records.

[para 13] I have reviewed the arguments and evidence before me, including the statutory declarations of the Public Body. I find that the Public Body conducted an adequate search and met its obligations under section 10(1) of the Act. I find that the Public Body made every reasonable effort to search for the records requested and that it informed the Applicant in a timely fashion about what was done.

V. ORDER

[para 14] I make the following Order under section 72 of the Act.

[para 15] I find that the Public Body conducted an adequate search for the responsive records as required by section 10(1) of the Act.

Dave Bell
Adjudicator