

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2007-006**

August 16, 2007

**CITY OF EDMONTON**

Case File Number 3727

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

**Summary:** The Applicant made a request to the City of Edmonton (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to files relating to a condominium conversion, a noise control plan, and a business license. The Applicant requested review of the Public Body's response on the basis that the Public Body had failed to provide all the records relating to the access request and that the documents that had been provided were incomplete or inaccurate. The Applicant also requested review of the Public Body's decision not to provide a copy of a certificate of title.

The Adjudicator found that the Public Body had conducted an adequate search for responsive records and had met its duty to assist the Applicant under section 10 of the Act. The Adjudicator found that the certificate of title was exempt from the Act under section 4(1)(l)(v).

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1)(l)(v), 10(1), 35, 72

**Authorities Cited:** **AB:** Orders 96-022, 98-003 2000-022

## **I. BACKGROUND**

[para 1] On April 25, 2006, the Applicant made an access request to the Public Body under the Act for specific documents relating to a condominium conversion, a noise control plan, a business license for a nightclub, and documentation of a Heritage Planner's observance of a particular city bylaw.

[para 2] The Public Body conducted a search of its records. On May 16, 2006, the Public Body wrote the Applicant and advised that it was providing access to copies of permits, licenses and reports described in the access request.

[para 3] On June 14, 2006, the Applicant requested review by this office of the Public Body's response on the basis that the Public Body had failed to provide all the records relating to the access request and that the records that had been provided were incomplete or inaccurate. Mediation was authorized, but did not resolve the issue.

[para 4] Both parties provided initial written submissions. The Public Body provided a written rebuttal but the applicant did not.

[para 5] The Public Body did not provide a certificate of title to the Applicant on the basis that it is a record made from information in a Land Titles Office and is exempt from the Act.

[para 6] The Public Body argues that it has provided all responsive records that existed at the time of the Applicant's access request, but is unable to alter documents or provide documents that have never existed or no longer exist.

## **II. RECORDS AT ISSUE**

[para 7] The Applicant argues that the following documents were not provided:

1. A certificate of title
2. A reply from the Public Body to a November 3, 2000 letter
3. A reply from the Public Body to a December 6, 2000 letter
4. A reply from the Public Body to a December 14, 2000 letter
5. A reply from the Public Body to a January 9, 2001 letter
6. A reply from the Public Body to a January 10, 2001 letter
7. A letter referred to in the December 14, 2000 letter
8. A proforma
9. A survey conducted after 1996
10. Copy of City of Edmonton property tax notice showing that taxes and levies have been paid for the year prior to the application
11. Copy of full service agreement for the condominium conversion project
12. List of similar projects that the general contractor of the condominium conversion project had completed
13. Construction cost projections by 3 independent contractors

14. Copy of occupancy permit
15. Information regarding plan implementation
16. A letter that had been attached to a January 9, 2001 City Council record

[para 8] The Applicant argues that the following documents are incomplete or contain inaccurate information:

1. A line on a form is blank where a municipal historical designation should be
2. An application for a condominium conversion does not contain the name, address or telephone number of the registered owner
3. It is not documented whether a party was acting as an agent if the party were acting as an agent
4. A September 9, 1998 letter is missing letterhead, a signature, the name of the author and pages other than the first page
5. A document dated December 14, 2000 does not indicate the author, or contain letterhead, a date, or pages other than the first page
6. Questions or answers referred to in minutes of a January 30, 2001 City Council meeting are not recorded
7. A statutory declaration is missing 2 of 3 dates
8. The date in a document is partially obscured
9. A letter contains inaccurate information regarding the date of an historic building's designation

### III. ISSUES

[para 9] There are three issues in this review:

**Issue A : Did the Public Body conduct an adequate search for responsive records?**

**Issue B: Did the Public Body meet its duty under section 10(1) of the Act in relation to the Applicant?**

**Issue C: Is the certificate of title excluded from the application of the Act under section 4(1)(l)(v)?**

### IV. DISCUSSION OF ISSUES

#### A. General

[para 10] Section 4 of the Act states in part:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

- (l) a record made from information*
- (v) in a Land Titles Office,*

Section 10(1) of the Act states:

*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.*

Section 35 of the Act states:

*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, and*

*(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by*

*(i) the individual,*

*(ii) the public body, and*

*(iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.*

**B. Inquiry Issue: Did the Public Body conduct an adequate search for responsive records?**

[para 11] The Applicant takes the position in his written submissions that the Public Body has not performed an adequate search of records, as it has not provided certain records he believes it should have in its possession. The Applicant notes that he was not provided with some documents that may have been attached originally to the records he received from the Public Body. In addition, he speculates that the Public Body wrote letters in reply in every case to individuals who wrote to the Public Body. He is critical of the search performed by the Public Body, as he believes the Public Body ought to have obtained and maintained certain records. Finally, he notes that the records he did receive are incomplete and contain inaccuracies.

[para 12] The Applicant does not indicate which provisions of the Act he believes that the Public Body has contravened or the remedy he is seeking. The Applicant was provided with the submissions of the Public Body and given the opportunity to provide a rebuttal but did not.

[para 13] In its written submissions, the Public Body argues that the Applicant was provided with all records in the Public Body's possession that are responsive to the Applicant's request. The Public Body also argues that it can only provide records as they exist and cannot revise documents in response to a request under the Act. The Public Body noted that records cannot be retrieved if they have been destroyed further to a records retention and disposition schedule, were not kept, were transitory, or were never created or collected. In any event, the Public Body argues that it has met its duty to assist the Applicant.

[para 14] The Public Body provided an affidavit confirming that it conducted two searches for records responsive to the Applicant's request. The searches included electronic records and records held by individuals as well as a search of the area in which the records were kept.

[para 15] The only obligation the Act places on a Public Body to keep and maintain complete and accurate information is in section 35. This provision applies to records containing personal information and which are used by the Public Body to make a decision regarding the individual about whom the personal information is collected. Section 35 does not apply to the records in the current case, as the records in issue do not contain the personal information of the Applicant. Therefore, the issue in this inquiry is not whether the Public Body should have kept complete and accurate records, but whether the Public Body conducted an adequate search for the records it did have in its possession. It is important to note that a Public Body is under no obligation to fill in omissions or create information.

[para 16] The former Commissioner decided in Order 98-003: "A decision concerning an adequate search must be based on the facts relating to how a public body conducted its search in the particular case."

[para 17] I find that the Applicant's arguments in relation to documents that he claims were not provided are speculative at best. Essentially, they turn on his belief that the Public Body ought to have done things in a certain way. These arguments do not provide a basis for me to conclude there were additional documents that were not supplied and that the Public Body did not perform an adequate search. The Public Body can only provide the records it has in its possession and as they exist.

[para 18] I find that the Public Body did conduct an adequate search of its records in the circumstances. The Public Body conducted two searches for documents responsive to the Applicant's request, including an area search and searches of different media in order to locate responsive records.

### **Inquiry Issue: Did the Public Body meet its duty to assist the Applicant?**

[para 19] In Order 96-022, the former Commissioner determined that a public body has the burden of proving that it has fulfilled its duty to an Applicant under section 10(1). The former Commissioner noted that a public body must show: "(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 20] I have already found that the Public Body conducted an adequate search. In addition, I also find that the Applicant was informed in a timely fashion about what had been done. The Public Body provided the Applicant with the documents in its possession that were responsive to his request on May 16, 2006, well within the 30 day statutory time limit imposed by section 11(1) of the Act. In addition, the Public Body also

provided the Applicant with a written explanation from a heritage planner explaining the records provided, and various representatives from the Public Body also contacted the Applicant to explain the records. Finally, the Public Body provided affidavit evidence documenting the steps taken to locate all records responsive to the Applicant's request.

[para 21] For these reasons, I find that the Public Body met its duty to assist the Applicant.

**Inquiry Issue: Is the certificate of title excluded from the application of the Act under section 4(1)(l)(v)?**

[para 22] This issue of the certificate of title was not listed as an issue of appeal originally. However, as both parties addressed this issue in their submissions, I have added it.

[para 23] The Applicant argues that the Public Body should provide him with a copy of a certificate of title. The Public Body argues that it is not required by the Act to provide him with a certificate of title, as records made from information in a Land Titles office are exempt under section 4(1)(l)(v).

[para 24] In Order 2000-022, the former Commissioner determined that under the Act, a record made from information in a Land Titles Office is a record made from information in a Land Titles Office that relates to the search, registration or filing functions of a Land Titles Office. A certificate of title is a record that is made from information in the Land Titles register and is therefore a record made from information in a Land Titles Office for the purposes of the Act. As a result, the certification of title requested by the Applicant is excluded from the application of the Act and I have no jurisdiction over this record.

[para 25] This decision does not preclude the Applicant from requesting a copy of the certificate of title from a Land Titles Office.

**V. ORDER**

[para 26] I make this Order under section 72 of the Act:

- The Public Body conducted an adequate search for responsive records and met its duty to make every reasonable effort to assist the Applicant, as required by section 10(1) of the Act.
- The records the Applicant requested are records made from information in a Land Titles Office, as provided by section 4(1)(l)(v) of the Act. Consequently, those records are excluded from the application of the Act by section 4(1)(l)(v) and I have no jurisdiction over those records. The Applicant cannot obtain access to a certificate of title under the Act.

Teresa Cunningham  
Adjudicator