

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2011-016

November 14, 2011

ALBERTA HEALTH SERVICES

Case File Number F5308

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant asked Alberta Health Services (the “Public Body”) for information relating to redevelopment of the Alberta Hospital Edmonton site or buildings. The Public Body responded that its search failed to retrieve any records relating to the subject of the request. The Applicant requested a review.

The Adjudicator found that the Public Body did not meet its duty to assist the Applicant under section 10(1) of the Act, as it did not conduct an adequate search for responsive records. Among other things, it did not account for all records within the time period set out in the access request, took an overly restrictive view of what the Applicant was seeking, and ignored a clarification that he provided. The Adjudicator ordered the Public Body to perform its duty to assist by conducting an adequate search for records.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1), 72, 72(3)(a) and 72(4).

Orders Cited: **AB:** Orders 97-020, 98-003, 98-012, 2000-020, 2001-016, F2002-011, F2004-024, F2005-019, F2007-029, F2009-001 and F2010-001.

Other Source Cited: *Merriam-Webster online dictionary*, retrieved November 7, 2011 from <http://www.merriam-webster.com/dictionary>.

I. BACKGROUND

[para 1] In a form dated February 18, 2010, the Applicant asked Alberta Health Services (the “Public Body”) for information under the *Freedom of Information and Protection of Privacy Act* (the “Act”). He requested the following information relating to redevelopment of Alberta Hospital Edmonton (“AHE”):

Any applications, reports or communications by or to the Alberta Health Services or its predecessor bodies (e.g., Capital Health Authority, Alberta Mental Health Board) relating to redevelopment of the Alberta Hospital Edmonton site or buildings at location referred to as Alberta Plan 8620880 Block 1, Title # 092 118 889 +20, excluding publicly-available documents & information.

The time period set out in the access request was January 1, 2008 to January 31, 2010.

[para 2] By letter dated March 8, 2010, the Public Body advised the Applicant that its search had failed to retrieve any records relating to the subject of the request.

[para 3] In correspondence received by this Office on March 18, 2010, the Applicant asked the Commissioner to review the Public Body’s failure to locate any records responsive to his access request. Mediation was authorized but was not successful. The Applicant then requested an inquiry, in a form dated June 10, 2010. The matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 4] As this inquiry addresses the adequacy of the Public Body’s search for responsive records, rather than its refusal to grant access to information, there are no records at issue.

III. ISSUE

[para 5] The Notice of Inquiry, dated March 21, 2011, set out the issue of whether the Public Body met its duty to assist the Applicant under section 10(1) of the Act. The Notice specified that the issue was restricted to whether the Public Body conducted an adequate search for responsive records.

IV. DISCUSSION

Did the Public Body meet its duty to assist the Applicant under section 10(1) of the Act?

[para 6] Section 10(1) of the Act reads as follows:

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] A public body's duty to assist an applicant under section 10(1) includes the obligation to conduct an adequate search for records responsive to an access request (Order 2001-016 at para. 13; Order F2007-029 at para. 50). A public body has the burden of proving that it conducted an adequate search, as it is in the best position to provide evidence of the adequacy of its search and to explain the steps that it has taken to assist an applicant within the meaning of section 10(1) (Order F2005-019 at para. 7; Order F2007-029 at para. 46). An adequate search has two components in that every reasonable effort must be made to search for the actual records requested, and an applicant must be informed in a timely fashion about what has been done to search for them (Order 98-012 at para. 13; Order F2007-029 at para. 50).

[para 8] The standard for conducting an adequate search for records is not perfection, but what is reasonable (Order 2000-020 at para. 17). The decision as to whether an adequate search was conducted must be based on the facts relating to how a public body conducted a search in the particular case (Order 98-003 at para. 37). In general, evidence as to the adequacy of a search should cover the following points: who conducted the search; the specific steps taken by the public body to identify and locate records responsive to the applicant's access request; the scope of the search conducted (e.g., physical sites, program areas, specific databases, off-site storage areas, etc.); the steps taken to identify and locate all possible repositories of records relevant to the access request (e.g., keyword searches, records retention and disposition schedules, etc.); and why the public body believes that no more responsive records exist than the ones that have been found or produced (Order F2007-029 at para. 66; Order F2009-001 at para. 15).

[para 9] What is required of a public body in order to meet its obligation of informing an applicant about its search for responsive records likewise depends on the circumstances of the particular case (Order F2009-001 at para. 19). While it may not be necessary in every case for a public body to give an applicant all of the information about its search, as described in the preceding paragraph, it should provide greater detail when an applicant specifically raises questions or concerns (Order F2009-001 at para. 26).

[para 10] In their submissions, the parties refer to five affidavits previously provided to this Office by the Public Body. These affidavits, and a sixth one included by the Public Body with its rebuttal submissions, are sworn by officers or employees who were involved in the search for records responsive to the Applicant's access request. The Applicant argues that the affidavits and submissions of the Public Body do not satisfactorily respond to his concerns about the lack of responsive records.

[para 11] The Applicant's concerns centre on his position that the Public Body did not search or account for various records that fell within the scope of his access request, for instance in view of the time period that he set out and the description of the information

that he requested. He is not concerned about those who conducted the search and the specific steps taken, except to the extent that the Public Body misinterpreted his access request and therefore overlooked records or possible repositories of records. In its submissions and affidavits, the Public Body has indicated to the Applicant why it believes that no responsive records exist, but again this indication rests on what the Applicant believes to be a misreading of what he requested. Finally, the Applicant is not concerned about whether or not he was informed in a timely fashion about what the Public Body did to search for responsive records; he is concerned that the Public Body did not adequately search for what he actually requested, in the first place.

[para 12] Given that the Applicant's concerns about the adequacy of the Public Body's search for records relate to the foregoing, I will review his concerns under the headings that follow. I will note, in parentheses, where my discussion corresponds to each of nine main points that the Applicant makes in his initial submissions, and to which the Public Body responds in its rebuttal submissions.

1. Publicly available documents and information

[para 13] The Applicant argues that the Public Body did not adequately search for records responsive to his access request because it made no reference to a number of public documents that were material (his eighth main point). However, his access request specifically excluded publicly available documents and information, so such records fall outside its scope.

[para 14] Having said this, the Applicant also points to publicly available information as evidence to show that there must be other records relevant to his access request (his ninth main point). For instance, he says that, as late as mid-September 2009, the Public Body's website indicated that plans for redevelopment of AHE were still underway. Given his understanding that redevelopment would be occurring, the Applicant was surprised to learn, by way of an announcement in August 2009 from the then-President and Chief Executive Officer of the Public Body (the "CEO"), that the Public Body had decided to reverse those plans. In terms of the Public Body's search for responsive records, the Applicant finds it inconceivable that such a momentous decision could have been made without any consultation, meeting, study or evaluation between January 1, 2008 and January 31, 2010, or without at least records referring to past reports.

[para 15] I will resume discussion of the Applicant's concern in this regard when I discuss, later in this Order, his view that his access request was also for information relating to the decision *not to redevelop* AHE.

2. The time period associated with the requested records

[para 16] On his access request form, the Applicant wrote "January 1, 2008 to January 31, 2010" in the space regarding the "time period of the records". He submits that the Public Body failed to account for certain records at the time of its search, even though they fell within this time period.

[para 17] The Applicant notes a report entitled *Alberta Hospital Edmonton Redevelopment: Functional Program* (his first main point). He submits that, because the report dealt with the subject matter of his access request and was drawn to the attention of the CEO by way of an e-mail on December 21, 2009, the document falls within the scope of his access request. The Public Body disagrees, based on the fact that the Report is dated June 2006 whereas the Applicant's access request was for records dating from January 2008.

[para 18] The Applicant also submits that the Public Body overlooked records that he calls *The Stantec Report* (his third main point). These records consist of documentation for re-zoning the AHE site in order to proceed with development of a Food Services Depot, and a related environmental assessment report, as set out in an affidavit of the Public Body to which the Applicant refers. The Public Body responds that *The Stantec Report* was completed in 2006 and therefore falls outside the time period set out in the access request.

[para 19] The Applicant says that he was contemplating records relating to *redevelopment* of AHE between January 1, 2008 and January 31, 2010. However, this is not a proper interpretation of the reference on the form that he completed. The time period was of the "records", not the "redevelopment". The "time period of the records" means the period in which the records were prepared or created.

[para 20] Having said this, a record prepared or created in the past can form part of a new record the date of which falls within the period specified in an access request. Among other things, the Applicant requested "communications" relating to redevelopment of AHE, in that he wanted to know what information had been provided to the CEO of the Public Body before or after making the decision to halt redevelopment. In this case, affidavits of officers and employees of the Public Body indicate that the Public Body located an e-mail dated December 21, 2009, which was sent to the CEO and attached a copy of the *AHE Redevelopment Function Program June 30-06 Executive Summary*. That e-mail was a record falling within the time period set out in the Applicant's access request, and the attached *Executive Summary* formed part of that e-mail communication, even though the *Executive Summary* itself is dated June 30, 2006. The Public Body should have accounted for both the e-mail message and the attachment when initially responding to the Applicant's access request.

[para 21] In an affidavit sworn June 20, 2011 and included with the Public Body's rebuttal submissions, its Information Access and Privacy Advisor says that the e-mail of December 21, 2009 was not considered responsive to the Applicant's access request because it contained no comments regarding redevelopment, and its only purpose was to forward information to the CEO. As just explained, the e-mail was nonetheless a communication relating to redevelopment of AHE and therefore fell within the scope of the access request.

[para 22] The Applicant is now in possession of a copy of the e-mail message of December 21, 2009 and the *Executive Summary* that formed an attachment to it. The

affidavit of the Information Access and Privacy Advisor indicates that these were provided to him in May 2010. There is therefore no point in my ordering the Public Body to search for the foregoing records.

[para 23] In the material before me, I do not see any communication between January 1, 2008 and January 31, 2010 that attached the full *Redevelopment: Functional Program* report, or *The Stantec Report*. However, given the fact that the Public Body did not properly account for the *Executive Summary*, it is very possible that it did not account for other communications that fell within the time period set out in the Applicant's access request, and that attached or enclosed the foregoing reports or other records relating to redevelopment of AHE. I therefore intend to order another search in this respect.

[para 24] Having said this, I noted earlier that the Applicant excluded publicly available documents and information from the scope of his access request. Therefore, if an attachment or enclosure to a communication that occurred between January 1, 2008 and January 31, 2010 is a publicly available document, the Public Body does not have to grant or consider granting access to that particular attachment or enclosure. However, it must nonetheless respond in respect of the communication that attached or enclosed the document by telling the Applicant whether access to the communication is granted or refused. The Public Body should also tell the Applicant that a copy of the attachment or enclosure is not being provided because it is publicly available and therefore non-responsive to his access request.

[para 25] The Public Body's Executive Director, Addiction and Mental Health, states in his affidavit that, while it did not occur to him at the time of the initial search for responsive records, "I now suppose we could find some documentation related to the rezoning of the AHE property that occurred with the City of Edmonton during this time frame to facilitate the construction of a new Food Services Depot at AHE". As the Public Body itself believes that it may have overlooked such records, which would be responsive to the Applicant's access request, it should search for them.

[para 26] Because the Public Body failed to account for particular information and may have overlooked other information, as discussed above, I find that it did not conduct an adequate search for records responsive to the Applicant's access request and therefore did not make every reasonable effort to assist the Applicant under section 10(1) of the Act.

3. Scope of the information requested by the Applicant

[para 27] The Applicant submits that the Public Body was too restrictive in its interpretation of the information that he requested and therefore overlooked responsive records. Previous Orders of this Office have said that a record is responsive if it is reasonably related to an applicant's access request and that, in determining responsiveness, a public body is determining what records are relevant to the request (Order 97-020 at para. 33; Order F2010-001 at para. 26). The Applicant argues that applicants should be given some latitude under the Act when framing their access requests, as they often have no way of knowing what information is actually available. I

note Orders of this Office saying that a broad rather than narrow view should be taken by a public body when determining what is responsive to an access request (Order F2004-024 at para. 12, citing Order F2002-011 at para. 18).

[para 28] The Applicant requested any “applications, reports or communications... relating to redevelopment of the Alberta Hospital Edmonton site or buildings at location referred to as Alberta Plan 8620880 Block 1, Title # 092 118 889 +20...”. I will review the scope of the Applicant’s access request, in terms of the information that he actually requested, under the headings that follow.

a) *Information relating to redevelopment of the “AHE site or buildings”*

[para 29] The Applicant submits that information relating to the acquisition and redevelopment of Villa Caritas is responsive to his access request (his second main point). However, his request referred only to AHE along with the land description for that property. I understand that Villa Caritas is located elsewhere. While Villa Caritas might be characterized as having partly replaced the facilities at AHE, the Applicant’s access request referred to redevelopment of the AHE “site and buildings”. I therefore find that information about redevelopment of Villas Caritas falls outside the scope of the Applicant’s access request, subject to comments that I make below regarding information that bears on the Public Body’s decision not to redevelop AHE.

[para 30] The Applicant argues that, in responding to his access request, the Public Body failed to account for information that it located in response to an access request that he knows to have been made by a third party (his sixth main point). The Public Body responds that the information requested in the two access requests was not the same. The other access request was for “all documentation associated with the decision to open more community living spaces in Edmonton and Calgary, and to close a total of 290 acute care beds in both communities”. I agree that information regarding the opening of more community living spaces is not, in and of itself, information falling within the scope of the Applicant’s access request. However, this is again subject to comments that I make below regarding information that bears on the Public Body’s decision not to redevelop AHE.

b) *Information “relating to redevelopment”*

[para 31] The Applicant submits that the Public Body overlooked a document entitled *Capital Upgrade Projects* dated March 31, 2008 (his fourth main point). The Public Body responds that the Applicant requested information relating to “redevelopment” of AHE. It argues that “redevelopment” means “as per the City of Edmonton website, the process that deals with permit and licence approvals based on legislation from the *Municipal Government Act*, municipal bylaws and the Alberta Building Code”. The Public Body says that the *Capital Upgrade Projects* document did not analyze redevelopment opportunities.

[para 32] I find that the Public Body refers to an overly technical or legalistic meaning of “redevelopment”. This may have been due to the fact that the Applicant requested, among other things, “applications” relating to redevelopment, and also provided a legal land description. However, in addition to applications, he requested reports and communications. Moreover, he requested all of the foregoing insofar as it was “relating” to redevelopment of AHE. The overall context and wording of the Applicant’s access request indicate that he was not referring to redevelopment in the narrow sense suggested by the Public Body.

[para 33] The natural or plain meaning of “redevelopment”, and of “redevelop”, may be taken from a dictionary as follows:

Redevelopment: the act or process of redeveloping; especially: renovation of a blighted area <urban redevelopment>

Redevelop: to develop again; especially: redesign, rebuild

(Merriam-Webster online dictionary)

[para 34] In my view, the average person would understand the act of renovating, redesigning or rebuilding AHE to include capital projects such as those listed in *Capital Upgrade Projects*. That document contemplates, among other things, various equipment upgrades, flooring and roof replacement, creation of a child day care centre, installation of a patient visitor room, renovation of the courtyard, a bus stop relocation, nursing station modifications, and roadway resurfacing. I also note that the Public itself has used the terms “capital projects” and “redevelopment” to effectively amount to the same thing. On a copy of a web page submitted by the Applicant, the first listed project under the heading “Capital Projects Awaiting Funding” is “Alberta Hospital Edmonton Redevelopment”.

[para 35] Further, the Applicant notes that the document entitled *Capital Upgrade Projects* contains a three-year plan for capital upgrades “pending redevelopment” and a five year-plan for capital upgrades “under circumstances of no redevelopment support”. While the Public Body notes the same for the purpose of demonstrating a distinction between the capital upgrade projects being done and the redevelopment not being done, I find that much if not all of the information in *Capital Upgrade Projects* is information “relating to redevelopment of the Alberta Hospital Edmonton site or buildings”, as worded by the Applicant in his access request. The “Background” in *Capital Upgrade Projects* indicates that the options in the document are premised, at least in part, on the fact that a Master Development Plan was created for redevelopment of AHE in 1985, that approval for the Food Services Depot was received in 2007, but that 2008 Redevelopment remains to be approved. Even if I were to accept the Public Body’s technical distinction between “capital projects” and “redevelopment”, I would still say that information in the *Capital Upgrade Projects* document is information “relating” to redevelopment.

[para 36] The Applicant argues that the Public Body overlooked records that he calls the *Health Facilities Review Committee Report* (his fifth main point). These records consist of a cover letter dated July 9, 2009 from the Chair of the Committee, and an attached document that was prepared following the Committee's routine review of AHE in April 2009. The Applicant notes that the Committee's first repeat recommendation was: "For the safety and quality of patient care and treatment, continue efforts for redevelopment of the facility". The Public Body counters that, although there is a reference to redevelopment in the Committee's recommendations, the *Health Facilities Review Committee Report* is not a discussion of that subject.

[para 37] I find that information in the *Health Facilities Review Committee Report* is responsive to the Applicant's access request. In addition to the Committee's first repeat recommendation, there is information about upgrading camera surveillance, providing a "quiet room" in all buildings, enlarging and re-organizing medication rooms, eliminating four- and eight-room dorm units, replacing steam pipes, and addressing air quality problems. The fact that the *Health Facilities Review Committee Report* may contain other information that does not relate to redevelopment of AHE does not mean that the record is non-responsive.

[para 38] The Applicant is already in possession of the *Health Facilities Review Committee Report*. However, because the Public Body failed to account for responsive information contained in it when responding to the Applicant access request, it is again very possible that other responsive records were overlooked. The Public Body should bear in mind that a record may be responsive to the Applicant's access request even if only part of it consists of information relating to redevelopment of AHE.

c) *Information relating to the decision not to redevelop AHE*

[para 39] Officers and employees of the Public Body state in their affidavits that, to their knowledge, the only projects regarding redevelopment of AHE consisted of a re-zoning in order to proceed with development of a new Food Services Depot, a related environmental assessment report, and some requests for proposals to develop the Food Services Depot and replace the fire alarm system. In his affidavit, the Public Body's Network Planner explains that, between January 1, 2008 and January 31, 2010, the Capital Management area was not involved in any discussions or decisions related to any plans for redevelopment of AHE, or related to the change of use for AHE.

[para 40] I also note that the Public Body's Executive Director, Addiction and Mental Health, states as follows in his affidavit:

Due to the narrow request of the applicant in relation to the "redevelopment" of the AHE, and the fact that there have been no plans to redevelop AHE since the Report [Alberta Hospital Edmonton Redevelopment: Functional Program] was written, AHS has no responsive records for the time period in question, that is, between January 1, 2008 and January 31, 2010.

[para 41] In view of the foregoing, the Applicant submits that the Public Body failed to search for records relating to its decision *not to redevelop* the AHE site or buildings (his seventh main point). He notes that the Public Body located records in response to a third party's access request for "documentation associated with the decision not to redevelop 246 beds at Alberta Hospital Edmonton", and argues that his request for information "relating to redevelopment of the Alberta Hospital Edmonton site or buildings" was effectively, or implicitly, the same.

[para 42] The Public Body responds that the information in response to the other access request dealt with capital projects as opposed to redevelopment, a distinction that I rejected earlier. Further, this other access request, like the Applicant's access request, referred only to "redevelopment" and did not expressly mention "capital projects". I therefore fail to understand why the Public Body would consider information regarding capital projects to fall within the scope of one access request but not the other.

[para 43] In any event, on my review of the Applicant's access request, I find that he requested information not only regarding decisions to redevelop AHE, but also regarding decisions not to redevelop. Both consist of information "relating" to redevelopment. In restricting its search to records regarding actual plans for redevelopment, the Public Body interpreted the wording of the Applicant's access request, or at least his implicit intention, too narrowly.

[para 44] If I am wrong, and the Public Body was reasonable in its interpretation of the Applicant's initial access request, it nonetheless failed to conduct an adequate search for records, given a clarification that the Applicant subsequently provided. He says that he raised the scope of his access request with the Public Body's Information Access and Privacy Advisor, and asked whether it was too narrow in failing to explicitly ask for documents that led to a decision "not" to proceed with redevelopment. He says that he was advised that his request was appropriate, and was assured of the Public Body's understanding that it included a request for information relating to a decision not to proceed with redevelopment.

[para 45] In an affidavit sworn July 26, 2010, the Public Body's Information Access and Privacy Advisor recalls discussions that she had with the Applicant in order to identify the information in which he was interested. She says that the Applicant told her that there seemed to be many changes regarding redevelopment at AHE since the new CEO of the Public Body took his position in the summer of 2009, and that the Applicant was therefore interested in "any report that talks about the global issues as to why they would redevelop AHE" and "any broader plans re: retrofitting of existing buildings or tearing down existing buildings". Although the Applicant apparently provided the foregoing clarification, it does not mean that he did not also make the clarification that he recalls making. I also see no contradiction between the clarifications, as recalled by the Applicant and the Information Access and Privacy Advisor. The Advisor's recollection of the Applicant's reference to the changed approach to redevelopment, following the hiring of the new CEO, is consistent with him indicating that he was interested in

information about the CEO's decision not to proceed with redevelopment, as that was the decision that the CEO had, in fact, made.

[para 46] In its submissions, the Public Body writes that the Applicant indicated that he wished to "continue with the access request in its original form as received by the Public Body". If the Public Body means to be disputing that the Applicant clarified that he wanted to obtain records relating to a decision not to redevelop AHE, I still find that he did. The affidavit of the Information Access and Privacy Advisor states that, after she informed him that there had been only limited redevelopment initiatives of AHE that predated his access request, the Applicant made a comment to her about withdrawing his request. However, according to her, he "decided to proceed with the request as he felt that information pertaining to the redevelopment of AHE did exist". He did not say that he wished to proceed with his request in its "original form".

[para 47] Moreover, the fact that the Applicant wished to pursue his access request, despite the Public Body's indication that there had been limited plans to actually proceed with redevelopment, further convinces me that his discussion with the Information Access and Privacy Advisor was to the effect that he clarified that he was interested in records relating to the decision not to proceed with redevelopment. If the discussion was instead to the effect that he only wanted records relating to actual redevelopment, he would more likely have withdrawn his access request, as he had effectively just been told that there were few or no responsive records to the access request interpreted that way. On my consideration of the discussion as recounted by both parties, I conclude that the Applicant sufficiently conveyed to the Information Access and Privacy Advisor that he wished to pursue his access request because he wanted the Public Body to broaden its prior interpretation of what he was seeking.

[para 48] The Public Body's Executive Director, Addiction and Mental Health, states that when the CEO took his position, he realized that the development of stand-alone psychiatric facilities, as outlined in the 2006 report entitled *Alberta Hospital Edmonton Redevelopment: Functional Program*, was an outdated model in comparison to what was being done around the world. The recommendations in the report were therefore stopped and the Public Body decided not to go forward with the previous model. The Applicant challenges what he considers to be the underlying implication, which is that the decision not to proceed with redevelopment of AHE was a foregone conclusion and there was therefore no need for any record-generating activity in the months leading up to the announcement by the CEO, in August 2009, that redevelopment would not be proceeding.

[para 49] The Applicant reasonably raises the possibility that, even if the CEO concluded that the existing model to proceed with redevelopment of AHE was outdated, there may be records by which he was informed that the model was outdated. If the CEO reached his conclusion after comparing what was being done around the world, it is possible that there are records that drew his attention to what was being done around the world. Therefore, regardless of when and how the Public Body reached the decision not to proceed with redevelopment of AHE, I find that the Public Body did not adequately

search for records relating to that decision that were prepared or sent between January 1, 2008 and January 31, 2010. In the end, there may actually be no records within that time period that assisted the CEO or the Public Body in reaching the decision not to proceed with redevelopment, but the Public Body failed to search for them in the first place, given its inappropriately narrow interpretation of the Applicant's access request.

[para 50] In relation to Villa Caritas, the Applicant argues that the Public Body's decision to take over that facility was a vital part of the decision not to proceed with redevelopment of AHE. While I found above that information about Villa Caritas *per se* does not fall within the scope of the Applicant's access request, it is possible that some of that information is sufficiently related to the Public Body's decision not to proceed with redevelopment of AHE, in which case the Public Body should account for it. Similarly, the Public Body should account for information associated with the decision to open more community living spaces in Edmonton, to the extent that the information bears on the decision not to redevelop the AHE site or buildings.

d) *Summary regarding the scope of the Applicant's access request*

[para 51] Because the Public Body took an overly restrictive view of the information that the Applicant was seeking, in view of both the wording of his initial access request and the clarification subsequently provided by him, I find that the Public Body did not adequately search for responsive records and therefore did not meet its duty to assist the Applicant under section 10(1) of the Act. I intend to order it to conduct another search for responsive records, bearing in mind the scope of the information that the Applicant actually requested, as discussed above.

[para 52] On a final note, it seems to me very counter-productive for applicants and public bodies to spend so much time and resources disagreeing about the scope of an access request. Where agreement cannot be achieved, it is much more expedient for an applicant to submit another access request to the public body, in which he or she sets out the information that he or she believes to fall within the scope of the original access request. The public body would then be required to respond within 30 days (subject to a possible extension of the time limit), rather than the applicant having to wait until the conclusion of a review and/or inquiry by this Office.

[para 53] At the same time, part of a public body's duty to assist an applicant under section 10(1) includes, in my view, the obligation to advise an applicant of the foregoing option in situations where the parties disagree about the scope of an access request and cannot resolve the disagreement by way of discussion and clarification of the original request. A public body should tell applicants that they can, if they wish, make a new and separate access request. In suggesting this course of action, I do not mean to relieve public bodies of their obligation to properly interpret the scope of an access request in the first place. I mean for applicants to be aware that, instead of delaying resolution of an access request by way of a prolonged discussion or a request for review, they can make another access request, which has the potential to resolve the matter much more quickly.

V. ORDER

[para 54] I make this Order under section 72 of the Act.

[para 55] I find that the Public Body did not meet its duty to assist the Applicant under section 10(1) of the Act. Under section 72(3)(a), I order the Public Body to comply with its duty to respond to the Applicant openly, accurately and completely.

[para 56] Under section 72(4) of the Act, I specify that the Public Body must conduct an adequate search for records responsive to the Applicant's access request. In particular, I specify that the Public Body must do the following:

- search for communications between January 1, 2008 and January 31, 2010 that attached or enclosed records relating to redevelopment of AHE, even if those attached or enclosed records were prepared or created prior to January 1, 2008, or are publicly available documents;
- search for any additional records relating to the re-zoning of the AHE property to facilitate the construction of a new Food Services Depot;
- search for records relating to redevelopment of the AHE site or buildings, bearing in mind the meaning of "redevelopment" set out in this Order, and the fact that the Applicant asked for records "relating" to redevelopment;
- search for records relating to the decision not to proceed with redevelopment of the AHE site or buildings;
- search for records bearing in mind that a record may be responsive even if only part of it consists of information relating to redevelopment of AHE;
- inform the Applicant in a timely fashion about what has been done to search for the foregoing records;
- respond to the Applicant by telling him whether access to each located responsive record is granted or refused; and
- where a responsive record attaches or encloses a publicly available document, which document would be non-responsive to the Applicant's access request by virtue of his express exclusion, advise the Applicant of the name of the document and the fact that it is publicly available.

[para 57] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator