# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER F2011-020

December 22, 2011

## ALBERTA SENIORS

Case File Number F5253

**Office URL:** www.oipc.ab.ca

**Summary:** The Applicant made a request to Alberta Seniors and Community Supports (now Alberta Seniors) for information relating to complaints at adult residential care facilities, group homes, and other licensed facilities for the developmentally disabled. He specified that he was seeking information about the nature, type, and description of the founded cases, as well as the location of the incidents. He noted that in most instances the description of the incidents he was looking for would be in the complaint itself.

The Public Body provided the Applicant with a spread sheet from its database that contained the names of agencies and facilities, categorizations of complaints, the date, and the outcome of the complaint. The Public Body referred the Applicant to summaries posted on its website for the descriptions of the complaints.

The Applicant was unable to link the information from the Public Body's website to the data in the spreadsheet. The Public Body did not search for any other responsive records. The Applicant requested review of the Public Body's response to him.

The Adjudicator found that the Public Body has not met its duty to assist the Applicant as it had adopted an unreasonably restrictive interpretation of the Applicant's access request. In essence, the Public Body excluded clearly responsive records from the scope of the Applicant's access request, and, for that reason, failed to search for them or include them in its response.

The Adjudicator also found that the Public Body had not considered whether it was possible to create a new record from the information in the database and the summaries on its website as required by section 10(2).

In addition, the Adjudicator found that the Public Body had not established that section 20 applied to the names of agencies and facilities it had withheld under this provision.

The Adjudicator ordered the Public Body to conduct a new search for responsive records and to provide a new response to the Applicant. She ordered the Public Body to decide whether it had a duty under section 10(2) to create a record for the Applicant from its electronic records. She also ordered the Public Body to disclose the information it had withheld under section 20.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.1, 6, 10, 20, 72; *Protection of Persons in Care Act* R.S.A. 2000 c. P-29 s. 8; *Protection of Persons in Care Act* S.A. 2009 c. P.29.1.s. 8

**Authorities Cited: AB:** Orders F2004-026, F2005-009; F2007-029, F2011-016, F2011-R-001

## I. BACKGROUND

[para 1] On November 3, 2009, Alberta Seniors and Community Supports, (the Public Body), received a request from the Applicant for:

> … information since January 2007 until the present regarding the *Protection of Persons in Care Act*
>
> > The total complaints by facility under the Act at adult residential care facilities, group homes, or other licenced facilities for the developmentally disabled, including the Michener Centre in Red Deer
> >
> > The nature, type, and description (not including names or precise dates) of the founded cases, as well as the location of the incidents (in many / most instances the description of the incident would be in the original complaint form)
> >
> > The follow up actions, and any consequences of the findings in founded cases, without names…

[para 2] The Public Body suggested to the Applicant that he review the summaries of cases published on its website. According to the Public Body, the Applicant then told the Public Body that the information on the website lacked the specific information he had requested, as it did not provide the name of the institution, the name of the residence, the type of residence, and the number of residents in the facility.

[para 3] The Public Body then provided to the Applicant some samples of reports it could create for him.

[para 4] The Applicant requested that the Public Body provide another column to the sample report that would contain a brief description of the founded cases. The Public Body referred the Applicant back to its website for the descriptions.

[para 5] The Applicant emailed the Public Body and expressed the view that the information in the sample reports could be linked with the summaries appearing on the website.

[para 6] On December 15, 2009, the Public Body responded to the Applicant's access request. The Public Body provided reports containing the following three classifications of complaints: "physical", "emotional", and "sexual." The Public Body did not provide the particulars of the complaints, other than to provide these classifications and to indicate whether the complaint had been made by a client or an employee. The sample reports also provided dates, the name of the facility at which the complaints arose, the name of the agency responsible for the facility, and whether the complaint had been "dismissed" or "upheld". In cases where investigations were ongoing, the Public Body severed the name of the agency and the facility under section 20 of the FOIP Act. The Public Body did not provide any further records and stated that the Applicant could request that the Commissioner review its response.

[para 7] The Applicant then requested that the Commissioner review the Public Body's response. In his request, he stated:

> This letter is to seek a review of a response from the Seniors and Community Supports on file 2009-G-0169. Please note that the response has not included any details of what occurred in each case.
>
> My request asked for some description of what occurred in the "founded" cases. Short summaries of what has occurred, in cases determined to be founded, should be provided, in order to provide context to the type of abuse.
>
> In addition, there are a number of cases blacked out under s. 20 because the file is still open. I see no reason why the names of the institutions and the dates cannot be provided, despite the lack of an outcome. In addition, I see no reason why the details can't be provided in full. The government agency provides these details whether the case is concluded to be founded or not. The disclosure of an investigation and the allegation to the public shouldn't interfere with internal investigations under the Act. Also, there is no indication of police involvement, as cited under s. 20(1). These investigations are carried out by the Department. Therefore the department is not relying on a valid statutory reason for exemption.

[para 8] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry. The parties exchanged submissions.

[para 9] On March 24, 2011, I asked the Public Body the following questions regarding its initial submissions:

> **Why was the response to the Applicant limited to only the "summary of complaints" records?**

**Does the Public Body have records in its custody or control containing detailed information about the nature and type of incidents it has investigated?**

**With reference to Order F2007-029, what steps have been taken to locate records responsive to the Applicant's access request?**

[para 10] In order to clarify the issues between the parties further, I sent a letter to the parties on October 20, 2011. This letter states the following:

> In relation to the issue of whether the Public Body has met its duty under section 10 of the *Freedom of Information and Protection of Privacy Act*, I have the following questions for the parties:
>
> The affidavit of the Public Body's FOIP Unit Manager states:
>
> > I indicated to the Applicant that the Public Body could provide him with a report identifying the number of residents in each facility licensed and funded by PDD. I also provided the Applicant with a sample report that the Public Body could create for each PDD Community Board in Alberta over the time period of his request. The sample report was based on the Reports provided by [an employee]. Attached as Exhibit "D" to my Affidavit is a copy of the sample report provided to the Applicant.
> >
> > The Applicant agreed that the cases included in the Reports could be compared with the case summaries on the Protection of Persons in Care website to obtain a summary of each case. Attached as Exhibit "E" to my affidavit is a sample case summary from the Protection for Persons in Care website.
> >
> > The Applicant indicated he was good with receiving the two types of reports. I understood that the Applicant was satisfied that information in these reports was sufficient to respond to his request.
>
> In his submissions, the Applicant argues:
>
> > Although the additional records consist of Case Summaries with details from each complaint, the location of the incidents is not included, nor are any identifying file numbers which would allow the Canadian Press to match those summaries to the "Summary of Complaints" table which was previously provided by the Public Body in order to determine the location of each complaint.
>
> Having reviewed exhibits D and G, and the summaries, it appears to me that there is insufficient data to enable the Applicant to match the reports with the summaries in order to obtain information about the location of incidents. However, his agreement to accept the two kinds of reports from the Public Body appears contingent on the FOIP Manager's suggestion that he would be able match the information in the reports to the summaries on the website.
>
> **Question: Is it possible to match the summaries with the location information in the reports with the information made available to the Applicant? If so, how?**
>
> The FOIP Unit Manager also states in her affidavit:
>
> > Other than the case summaries on the Protection for Persons in Care website, the Public Body does not have records which contain a brief description of the complaints and investigations requested by the Applicant. The Public Body has a massive volume of records documenting 369 complaints and investigations.

It would unreasonably interfere with the operations of the Public Body to create a brief description of each case, when no such records currently exist.

**Questions:**

**Is it possible to create an electronic record that would link the summaries that appear on the website with the dates and location of incidents that appear in the reports? If not, why not?**

**Did the Applicant limit his request for access to reports produced from an electronic database?**

**Would the reports generated by the Public Body and photocopies of the descriptions of the incidents, the findings, and the file numbers from the original complaint forms satisfy the access request? Why or why not?**

**Would it be possible to create photocopies of the descriptions of incidents from the complaint form, the findings, and the file numbers from records of the investigations to satisfy the access request? If not, why not?**

[para 11] Both parties provided submissions addressing these questions and exchanged their responses with one another.

## II. INFORMATION IN ISSUE

[para 12] The Applicant is concerned that the Public Body has not included all responsive records in its response to him. In addition, the Public Body's decision to apply section 20 so as to withhold the names of agencies and facilities from the spreadsheets where investigations are active is in issue.

## III. ISSUES

**Issue A: Did the Public Body meet its obligations under section 10 of the *Freedom of Information and Protection of Privacy Act*?**

**Issue B: Did the Public Body properly apply section 20 to withhold information from the records?**

## IV. DISCUSSION OF ISSUES

**Issue A: Did the Public Body meet its obligations under section 10 of the *Freedom of Information and Protection of Privacy Act*?**

[para 13] Section 10 of the FOIP 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.*
>
> *(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 14] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order F2007-029, the Commissioner noted:

> In general, evidence as to the adequacy of a search should cover the following points:
>
> • 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 – for example: 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: keyword searches, records retention and disposition schedules, etc.
> • Who did the search
> • Why the Public Body believes no more responsive records exist than what has been found or produced

[para 15] In addition, section 10(2) imposes a duty on a public body to create a record from an electronic record if it can do so with the technology available to it and if doing so would not unreasonably interfere with its operations.

*Has the Public Body met its duty to the Applicant within the terms of section 10(1)?*

[para 16] In answer to my question as to why it had limited its response to the summaries or reports, the Public Body stated the following:

> Given that the Applicant did not find that the website gave him all of the information he was seeking the FOIP Manager subsequently contacted [a Director] again. [She] advised that it was possible, with some effort, for the PPIC Branch to create and provide six custom reports (one for each PDD region) from the Protection for Persons in Care (PPIC) Database (the "Database"). The Database contains a record of all reports of abuse involving persons with developmental disabilities that fall under the jurisdiction of the PPIC and includes fields for the following information: Agency name, Facility name, PPC File Number, Date Investigation Opened, Date Investigation Closed, Type of Person Involved, Type of Abuses, Outcomes
>
> As part of its duty to assist the Applicant, the FOIP Manager created a mock report (see Appendix D of FOIP Manager's May 2010 Affidavit) of the above information so that it could be shared with the Applicant to see if it indeed would meet his needs. The FOIP Manager also advised that ASCS would also create and provide him with another custom report containing the names and addresses of all the facilities, and the number of residents in each facility, per his request (ultimately, Appendix G of May 10, 2010 affidavit).
>
> After a brief period and having, assumedly, reviewed the mock report provided to him and after reviewing the website, the Applicant subsequently requested that another column be added to the mock report to provide "a brief description of the founded cases as to what occurred". Given

> the limitation of the fields in the PPIC database (it was never constructed to accommodate such additional fields) the Manager advised the Applicant that another column could not be added to the database report to provide more information of the founded cases. The Manager, however, referred the Applicant to the web link previously provided. On that website, Case Summaries (see Exhibit E of May 2010 Affidavit) were available to the public which seemed to provide the additional information the Applicant sought. [my emphasis]
>
> The Applicant then advised of his own accord that the cases mentioned in the mock report could be compared with the on-line records (i.e. The Case Summaries) if he wished to have a summary of what occurred. The descriptions he saw on line seemed to be quite complete. [my emphasis]

[para 17] The March 7, 2011 affidavit of the FOIP Unit Manager who processed the Applicant's request states:

> I received the Applicant's access request on November 3, 2009. The same day I contacted [a Director] to determine whether a report could be created from the Database that would include all the data elements requested by the Applicant for the time period in question. [She] email[ed] me 6 Persons with Developmental Disabilities ("PDD") Complaints Reports, one for each PDD Community Board. When I looked at the Applicant's access request and the information contained in the Reports, I believed the Reports contained all of the information the Applicant was requesting.
>
> I considered whether records contained in the Protection for Persons in Care investigation files for the founded cases would also be responsive to the Applicant's request.
>
> As stated in paragraph 7 of the May Affidavit, between November 9, 2009 and November 16, 2009, the Applicant and I engaged in email correspondence regarding records responsive to his request. Attached as Exhibit "B" to this Supplemental Affidavit is a copy of this email correspondence.
>
> When I engaged in this email correspondence with the Applicant, I believed that anonymous case summary reports for all founded cases during the time period specified in his request were publicly available on the Public Body's website. I therefore believed that, as stated in the Applicant's email dated November 16, 2009 at 3:55 pm, he could compare the cases in the Reports to the on-line case summaries if he wished to have a summary of what occurred in each founded case.
>
> In the email dated November 16, 2009 at 2:08 pm , the Applicant indicated that he was looking for a "brief description of the founded cases as to what occurred." This statement confirmed to me that the Applicant was not requesting access to copies of records contained in the Protection for Persons in Care investigations files in the founded cases, but rather brief descriptions as to what occurred in each case. [my emphasis]
>
> When I swore the May Affidavit, it was still my understanding that the anonymous summary reports for all founded cases were publicly available on the Public Body's website.

[para 18] The email statement made by the Applicant, to which the Public Body refers as confirming that he was not requesting information contained in the investigation files, is the following:

> Is it possible to have a column with a brief description of the founded cases as to what occurred?

[para 19] The evidence of the FOIP Unit Manager establishes that she determined that the Applicant's request was limited to brief summaries or descriptions in electronic form based on this email. However, I do not interpret the Applicant's email as limiting the scope of his access request to only descriptions in electronic form or to descriptions located on the Public Body's website that cannot be linked to the other statistical information he requested. The Applicant's original access request states that in most cases, he expected that the information he sought would be contained on the original complaint form, as the complaint itself would amount to a description of the conduct or circumstances giving rise to the complaint. His access request clearly states that he required the information in the records to identify the location and the outcome of specific complaints. I do not interpret any of his emails as abandoning this requirement or as expressing any intent to narrow the scope of his access request. Rather, the email above can be interpreted as asking whether the information he had requested was available in electronic form and could be added to the data he had already received. Alternatively, it could mean that it would be useful for him to have summaries of complaints added to the data he would receive. On either interpretation, the Applicant's request for an additional column does not establish, or imply, that he had abandoned portions of his access request. Moreover, asking whether information is available in electronic form is not the same as stating that records in paper form would not be responsive to the access request.

[para 20] The Public Body also states that the Applicant submitted a new access request in which he stated:

> This letter is to apply under the Albert Freedom of Information and Protection of Privacy Act for the following information since November 2009 to the present.
>
> a) the total complaints by facility under the PPCA at adult residential care facilities, group homes or other licenced facilities for the developmentally disabled, including the Michener Centre in Red Deer;
> b) the nature type and description of the founded cases as well as the location of the incidents;
> c) The follow up actions, and any consequences of the findings in founded cases.
>
> …
>
> Please note that an identical request was made up to November 2009 and documents have been received. The applicant has appealed and been granted a review under inquiry F5253 on the response to the original application.
>
> However, a large amount of time has passed as the review process unfolds.
>
> This request is to seek an update on the information in the form the public agency was willing to provide in the past.
>
> This letter is not to indicate that the applicant is satisfied with the past response, but recognizes simply that the applicant will want to have updated data in the form the public body was willing to provide during this interim period while the review process unfolds. This letter does not waive the right to ask in future for a more complete version of the information, upon receipt of the outcome of the review.

[para 21] The Public Body then states:

> Given that the Applicant has taken this matter to inquiry and is clearly dissatisfied with ACSC's response to his original request, on or about January 31, 2011, the Ministry FOIP Unit contacted the Applicant to clarify the scope of the new request and determine what additional records would satisfy the Applicant. The Applicant indicated that he just wanted an updated report like the one previously provided to him and said the release of any additional records would be contingent upon the decision made at inquiry. The Applicant advised that he preferred to correspond via email as opposed to verbally discussing and clarifying an expanded scope of the request with the ASCS FOIP Unit. In the end, the Applicant advised that he would withdraw the new request and that he would wait for the processing of his current request until after the inquiry and the Commissioner had made his ruling.
>
> This should demonstrate the difficulty ASCS has encountered trying to assist this Applicant. Given that the Applicant prefers not to verbally discuss and participate in the clarification process with the ASCS FOIP Unit, ASCS's ability to provide the records containing the information the Applicant wants is severely impaired. Also, the Applicant chose to use the inquiry process as a way of clarifying the scope of his request rather than contacting and discussing this with ASCS directly.

[para 22] The Public Body indicates that any difficulties it has experienced interpreting the Applicant's access request are due to the Applicant's preference for email communication over telephonic communication. It is unclear to me why a preference for email over telephonic communication should act as an impediment to clarification, or why the Applicant's clear and explicit access request required clarification at all. The request states that the Applicant would like the same kinds of information he either requested or received previously, but for the new time period of November 2009 to the present. If the intent of the Public Body's argument is to suggest that the Applicant cannot be assisted because of his preference for email or the vagueness of his access requests, then I reject this argument.

[para 23] In F2004-026, the Commissioner noted that public bodies may, in some circumstances, have to clarify access requests in order to meet the duty to assist. He said:

> Finally, in its oral submission, the Applicant argued that the Public Body failed in its duty to assist by failing to clarify with the Applicant what it meant by "implementation" in the context of its original request. The Public Body suggested it did not do this because it assumed that it already understood the request. It explained that it thought it would not be reasonable for the Applicant to ask for the numbers of records that would be involved on the other understanding (that the request included all records in 2003 created by the Public Body relative to Bill 27 after the Bill's passage - which the Public Body described as "11 cubic feet of records"). While I have some sympathy with the Public Body's point, I have also been advised by the parties that the Applicant has since clarified this aspect of the request, which suggests that clarification was possible, and that there is indeed some further information relative to this aspect that is being sought. Thus I agree that the Public Body should have asked for clarification as to the part of the request that was ambiguous in its wording, rather than relying on its assumption, and that its failure to take this step was a failure to assist the Applicant.

[para 24] It appears from the Public Body's submissions that the FOIP Unit Manager was unclear as to what the Applicant meant by information about "the nature, type, and description of founded cases" in his access request, although the Applicant expressly stated that he expected that the original complaint, with names and precise

dates removed, would satisfy this aspect of the request. However, it was reasonable for the FOIP Unit Manager to seek clarification, given her view that the access request was ambiguous.

[para 25] I also accept that the FOIP Manager emailed and telephoned the Applicant for the purpose of clarifying the Applicant's access request. However, I find that questions asked by the FOIP Manager did not have the effect of clarifying the access request. The FOIP Manager did not ask the Applicant whether he was prepared to forego the requirement that he receive information regarding "complaints by facility," or information from the original complaint forms, and she did not correct his mistaken view that he would be able to link the summaries in the reports she would provide.

[para 26] The Applicant's statement that he would be able to link the summaries to the data he would receive, indicates that the ability to match the summaries to the data in the reports was a prerequisite for the information to be responsive; however, the FOIP Manager did not take any steps to ensure that the Applicant would be able to link the summaries with the data in the reports. Moreover, she did not search for the complaints that he had specifically requested, and would better serve his purpose, given that this information would have a file number assigned to it and could therefore be matched to the data that had been provided to the Applicant.

[para 27] At no point in the email exchange did the Applicant state that he no longer sought information from the original complaint forms. I am therefore unable to agree with the Public Body that these emails establish that the Applicant abandoned that portion of his access request.

[para 28] In answer to my question as to whether the Applicant would be able to match the data he received in the spreadsheets with the summaries appearing on the website, the FOIP Unit Manager stated that he would not. However, she points to the Applicant's emails to her as supporting the Public Body's position that the Applicant was satisfied that the information he had received, and been referred to, answered his access request.

[para 29] I accept that the Applicant's emails do express the mistaken view that he would be able to match the data he would receive from the Public Body with the summaries the Public Body publishes on its website; however, this misunderstanding does not support a finding that the Applicant abandoned the portion of his access request that requested descriptions of complaints in conjunction with specified data relating to the complaint. It is unclear whether the mock reports created that impression, or whether the Applicant made an error. Regardless, as discussed above, I find that the statement that he would be able to match the data with the summaries on the website, supports a finding that it was a requirement of his access request that he be able to match information about the details of a complaint with the location of the complaint and that this aspect of the access request has not been met.

[para 30] I note that despite the clear requirement in the Applicant's access request that he be able to link descriptions of complaints with outcomes and other data, the Public Body took no steps to confirm whether the information it provided in response to the access request was complete, in the sense that it would fulfill the requirements of the access request.

[para 31] The Public Body concedes that it has in its custody or control detailed information about the nature and type of incidents it has investigated. It states:

> The Director's Decisions do contain detailed information outlining the allegation, the background, the actions taken, the decision, and copies of correspondence to involved parties summarizing the complaint and the conclusion (or "decision" pertaining to the investigation. It is odd that the Applicant would presume to argue that the release of the information in the Director's Decisions such as the summaries would not identify or harm anyone when they have not even seen such a record. [my emphasis]
>
> ASCS submits that it processed the request, in good faith, and provided what it thought were the records the Applicant was seeking. Further while it considered providing the entire file, and even the Director's Decision portion, it did not do so as the FOIP Act permits an Applicant to request a "record". A summary excerpted from information in a record is contained in a Director's Decision; however, that is not in and of itself a record, it is information. Further, is ASCS' position that to pull out such summaries from such records and add them to, or create, another record is not the intent of the FOIP Act. If the Applicant wanted those records he could have, and still could, request them under another FOIP request.
>
> …
>
> ASCS does not agree that the Director's Decisions are a "responsive record" in terms of this request given the Applicant's repeated request for a "summary". Based on the arguments above, ASCS does not feel it failed in its duty to assist he Applicant (in fact it created two custom reports), nor has it failed to appropriately consider all responsive records.

[para 32] Although the Public Body states that it is "odd" that the Applicant would argue that disclosing information from the Director's Decisions would not disclose personal information, I find that it is not odd at all, given that the Applicant's access request states specifically that he is not seeking personal information of third parties and does not want names or precise dates for that reason. In my view, it is reasonable for the Applicant to expect that the Public Body would comply with its duty under section 6 of the FOIP Act and sever personally identifying information from any responsive records and disclose the remainder of the information that is not subject to an exception to disclosure.

[para 33] It is not entirely clear from the Public Body's submissions why it did not include the records it refers to as the "Director's Decisions" in its response to the Applicant. The basis for this omission appears to be its belief that it does not have a duty to include the Director's Decisions or the summaries they contain. From its arguments, I infer that the Public Body is of the view that the Director's Decisions, or portions of them, are not records, or alternatively, that it was incumbent on the Applicant to refer to "summary documents appearing in files referred to by the Public Body as "Director's

Decisions" before the Public Body's duties under section 10(1) of the FOIP Act would be engaged.

[para 34] In relation to the Public Body's argument that a summary appearing in the "Director's Decisions file" is not a record, I note that section 1(q) of the FOIP Act defines the term "record" for the purposes of the Act. It states:

> *1 In this Act,*
>
> *(q) "record" means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records…*

Essentially, a record is a "record of information in any form". If a summary from the Director's Decisions file consists of recorded information, then it is a record under the FOIP Act. If the intent of the Public Body's argument is to suggest that summaries contained in Director's Decisions files are not records, and are therefore not subject to the right of access, I find that this argument is without merit.

[para 35] It may be that the Public Body takes the position that the Applicant requested information rather than records, and that it has no duty to assist him for that reason. It is true that the Applicant refers to "information" rather than "records containing information" in his access request. However, context, such as the Applicant's reference to the original complaints containing the information he seeks, establishes that the Applicant is requesting recorded information, including information recorded on paper. In other words, the Applicant requested records containing the information he refers to in his access request.

[para 36] In the case before me, the Public Body was wrong to interpret the Applicant's request as one for information rather than records and consequently, to consider records contained in its Director's Decisions files to be outside the scope of the request. It is clear that the Applicant is seeking records containing the information he describes in the access request, and that Director's Decisions files contain records responsive to the access request. Again, the access request states that the Applicant is seeking:

> The nature, type, and description (not including names or precise dates) of the founded cases, as well as the location of the incidents (in many/ most instances the description of the incidents (in many / most instances the description of the incident would be in the original complaint form).
>
> The follow up actions, and any consequences of the findings in founded cases, without names…

One would reasonably expect that information responsive to the Applicant's access request would be located in files documenting the action and decision of the Director in relation to a complaint.

[para 37] In Order F2011-016, the Adjudicator considered previous orders of this office commenting on the duties of public bodies to interpret access requests reasonably. He said:

> 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 38] In that order, the Adjudicator found that Alberta Health Services had taken too restrictive an approach in its interpretation of the kinds of information requested by the Applicant. As a result, the Public Body had failed to meet its duty to assist the Applicant.

> 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 39] I agree with the reasoning of the Adjudicator in Order F2011-016. If a public body interprets a request for records too restrictively, or wrongly, the Public Body runs the risk of unilaterally narrowing the scope of the access request and failing in its duty to assist the Applicant, by failing to search for records falling within the scope of the access request.

[para 40] I find that the Public Body has narrowed the Applicant's access request so as to exclude records from its scope that a reasonable interpretation of the Applicant's access request would include. Moreover, it was wrong to interpret the Applicant's access request as a request for information, rather than records, and to exclude the records requested by the Applicant from its search for that reason. Records such as the summaries contained in the Director's Decisions files to which the Public Body refers, and the original complaints, are clearly responsive to the Applicant's access request as they contain the kinds of information specified in the access request. There is therefore no reason for the Applicant to make a new access request for the same information, as the Public Body argues he should. I will therefore order the Public Body to include these records in its new search and response to the Applicant.

[para 41] The Applicant stated in his submissions that the description of the incident in the original complaint forms would satisfy his access request. However, the Public

Body has not documented any steps it has taken to locate records containing information of this kind.

[para 42] For the reasons above, I find that the Public Body has not conducted an adequate search for the kinds of records requested by the Applicant. I therefore find that the Public Body has failed to respond to the Applicant openly, accurately, and completely within the terms of section 10(1).

*Has the Public Body met its duty to the Applicant within the terms of section 10(2)?*

[para 43] The Applicant stated in his submissions that his access request would be satisfied if it were possible for the Public Body to link the information in the summaries it has posted on its website with the data he was provided in the reports. In addition, he emailed the Public Body to ask if it would be possible to include this information as an additional column in the spreadsheets he received. In response to my question as to whether it would be possible to link the summaries that appear on the Public Body's website with the dates and location of incidents that appear in the reports, the Public Body responded:

> As such an electronic record does not exist currently the Public Body would have to create such a record manually.

It is not entirely clear what the Public Body means by "manually" in this answer. As the summaries from the Public Body's website appear in electronic form, and its evidence establishes that the spreadsheets it provided to the Applicant were created from its electronic database, it remains possible that a new electronic record meeting the requirements of the Applicant's access request could be created if the Public Body has maintained the information necessary to link the summaries with the data contained in the spreadsheets.

[para 44] As discussed in Order F2011-R-001, section 10(2), quoted above, makes it mandatory for a public body to create a record from a record that is in electronic form, using its normal hardware and software and technical expertise, if doing so would not interfere with its operations and would assist the Applicant. If what the Public Body means by "manually" is the manipulation of electronic data by a person, creating a new record "manually" from records in electronic form would appear to be contemplated, and required, by this provision. However, the Public Body's evidence is ambiguous in this regard. I will therefore order the Public Body to decide whether it is possible to create a new record from its electronic records that would serve to link the summaries appearing on its website with the data it has already provided, within the terms of section 10(2) of the FOIP Act.

*Conclusion*

[para 45] To summarize, I find that the Public Body has not met its duty to assist the Applicant in two ways. First, the Public Body took an overly restrictive view of the

Applicant's access request and also interpreted it incorrectly. As a result, it failed to search for or locate potentially responsive records, as required by section 10(1). Second, the Public Body has not considered whether section 10(2) requires it to create a record from an electronic record to satisfy the Applicant's access request.

[para 46] This order does not preclude the Public Body from applying exceptions to disclosure in relation to any new information it locates as part of the new search.

**Issue B: Did the Public Body properly apply section 20 to withhold information from the records?**

[para 47] The Public Body withheld the names of agencies and facilities from the spreadsheets it provided to the Applicant under sections 20(1)(a) and (f), in situations where an investigation was ongoing. These provisions state:

> *20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to*
>
> *(a) harm a law enforcement matter…*
>
> …
>
> *(f) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation…*

[para 48] . Section 1(h) defines "law enforcement" for the purposes of the FOIP Act. It states:

> *(h) "law enforcement" means*
>
> *(i) policing, including criminal intelligence operations,*
>
> *(ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or*
>
> *(iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;*

Administrative proceedings and investigations, are law enforcement proceedings and investigations if they could result in a penalty or sanction.

[para 49] As I was not satisfied from the Public Body's submissions or evidence that the investigations that are referred to in the records could result in a penalty or sanction, within the terms of section 1(h), I asked the Public Body why it considered the investigations to which it applied section 20 to be "law enforcement investigations," as defined by section 1 of the FOIP Act.

[para 50] In response, the Public Body referred me to it previous submissions. It also pointed to Order F2005-009, a decision of the former Commissioner. In that order, the former Commissioner stated:

> The information contained in the Record was obtained pursuant to complaints made under the PPCI Act. Section 2(1) of the PPCI Act requires that any individual or service provider, as defined by section 1(i), must report abuse to designated bodies or individuals to investigate allegations of abuse as it is defined by section 1(a). Anyone who fails to comply with the mandatory reporting of abuse is guilty of an offence under the PPCI Act, section 2(5). Section 7 sets out the powers of the investigator, including the power to enter the agency investigated and to compel certain records. Section 8 requires the investigator to prepare a report for the appropriate Minister. The investigator may make recommendations to the Minister. Section 8(3) lists the possible recommendations that could include reviewing or altering funding to an agency, taking disciplinary action against an employee or service provider, dismissal of a complaint based on several itemized grounds, or any other recommendations deemed appropriate by the investigator. If the complaint could constitute an offence under the *Criminal Code* of Canada, the Minister or investigator must refer the complaint to a police service. The Minister can approve, reject or order further investigations with respect to the investigator's final report or may take any other action that that Minister considers appropriate in the circumstances. The Minister's decision is final and binding.

Because section 8(3) of the former *Protection of Persons in Care Act* R.S.A. 2000, c. P-29 stated that the recommendations made by an investigator could result in a review or altering of funding, or in disciplinary measures against an employee, the Commissioner determined that an investigation under the *Protection of Persons in Care Act* could result in a penalty or sanction within the terms of section 1(h) of the FOIP Act. However, the legislation that was before the former Commissioner has been repealed, and replaced by the *Protection of Persons in Care Act* S.A. 2009 c. P.29.1. Section 8 of the current legislation does not contain the same provisions that persuaded the former Commissioner that section 20 could apply to investigations conducted under the previous *Protection of Persons in Care Act*. The Public Body has not addressed the current legislation in its submissions or provided an explanation of its investigation process to satisfy me that it could result in a penalty or sanction.

[para 51] The present *Protection of Persons in Care Act* establishes that an investigator may make recommendations, and that those recommendations may be accepted or rejected by the Director. It is not clear to me whether those recommendations amount to a penalty or sanction. Despite my request for further submissions as to whether the investigations in question are law enforcement investigations, the Public Body made no further argument and provided no evidence to establish that the investigations to which it has applied section 20 could result in penalty or sanction. I am therefore unable to conclude that they are law enforcement investigations within the terms of section 1(h) of the FOIP Act.

[para 52] However, if I am wrong in this conclusion, I will consider whether disclosing the information the Public Body withheld would result interfere with an ongoing law enforcement investigation.

[para 53] In its initial submissions, the Public Body stated:

> The Public Body submits that these records pertain to active and ongoing law enforcement investigations. As such, the release of the location of the investigation and other details, including the PPC file number and date of commencement of the investigation, could harm not only an active PPC Act investigation, but also a potential police investigation in to the allegation of abuse.
>
> The Public Body also submits that the release of information about an allegation of abuse could result in the contamination of the information available from the alleged victim and/or the witnesses. Both the alleged victim and the witnesses could be reluctant to report allegations of abuse if the information they provided is not kept confidential. It should be noted that the Applicant is not required to keep any information released to him private and confidential.
>
> As a result, the Public Body is generally concerned about the release of information when an investigation is ongoing. The Public Body also undertook consultations with the Camrose Police Service and the Edmonton Police Service to determine whether disclosure of information regarding cases referred to them would harm a police matter. The Public Body therefore submits that it properly exercised discretion in applying section 20 to the responsive records.

The Public Body does not explain how disclosing the names of agencies and facilities as they appear in the spreadsheets could reasonably be expected to harm a law enforcement matter, or interfere with or harm an ongoing law enforcement matter. In addition, it is unclear why it refers to the "release of information about an allegation of abuse" as interfering with victims and witnesses, given that information regarding "allegations of abuse" was not contained in the spreadsheets, save the broad categorizations of complaints as either "physical", "emotional", or "sexual". Moreover, information about the categorizations of complaints was not withheld from the spreadsheets. The spreadsheets do not contain details of complaints, or names or other personally identifying information, so it is unclear how the names of facilities and agencies from the spreadsheets would result in disclosure of confidential personal information or interference with complainants or witnesses.

[para 54] As the Public Body's reasons for applying section 20 to the names of agencies and facilities were unclear to me, I asked it the following question:

> Section 20(1)(a) and (f) both require that the head of a public body consider whether disclosure of information would result in interference or harm to law enforcement. I appreciate that the Public Body has applied these provisions to matters that are ongoing; however, the Public Body has not explained why it considers that disclosing the information it severed from the records at issue would result in harm or interference to its ongoing investigations or to law enforcement. I therefore have the following question for the Public Body:
>
> **How would disclosing the information withheld from the records result in the harms contemplated by either section 20(1)(a) or (f)?**

[para 55] The Public Body provided the following response:

> Before applying section 20 to any information, ASCS determines if the complaint is indeed an active investigation (PPIC Branch provides information). If an investigation is ongoing or active, the information is severed. One of the challenges in conducting an investigation is getting the victim to come forward and one of their biggest concerns is being identified or labeled as "weak". This is an ongoing struggle for the enforcement of the PPIC Act as it is suspected that many instances of abuse go unreported if detailed and comprehensive summaries and reports are released which identify the persons involved. This is even more so in cases where some of the incidents occur in small facilities or communities and the persons involved can be readily identified.

[para 56] The Public Body withheld the names of agencies and facilities, rather than information such as the names of complainants or the details of complaints that would serve to identify complainants. As discussed above, the reports the Public Body provided to the Applicant do not contain details of complaints, the facts giving rise to complaints, or the identity of a complainant. While I accept that the above explanation provided by the Public Body supports withholding personally identifying information of complainants, the reports do not appear to contain personally identifying information. Instead, the Public Body withheld the names of agencies and facilities from records that do not appear to contain sufficient information to identify individuals even if the names of agencies and facilities were provided.

[para 57] While the Public Body did not make such an argument, I can speculate that its concern might have been that if the Applicant is given the name of a facility at which there is an ongoing investigation into a complaint, the Applicant might take some further steps to try to ascertain who the complaint concerns, perhaps by approaching staff or residents at the named facility and asking questions. The concern may be that should there be a possibility of identifying individuals involved in individual complaints by these means, that this could have a chilling effect on complainants coming forward or giving evidence.

[para 58] Earlier orders of this office have said that even though requested information does not name an individual, the individuals may become identifiable through the disclosure of information where others have information which could identify them when combined with the disclosed information.

[para 59] While I accept that this is so, that is not the case in the present circumstances. I cannot say that there is any likelihood that the naming of facilities where investigations are ongoing would serve to identify anyone. Thus I cannot hold that the disclosure would be likely to harm law enforcement by creating the possibility of a chilling effect such as that might follow from the identification of individuals involved in particular complaints.

[para 60] Furthermore, I cannot see that the chilling effect would be any less if individuals were identified after the case was closed as opposed to while it was still ongoing.

[para 61] There is also no evidence before me to establish that the investigations in question continue to be ongoing, even though over two years has passed since the Public Body prepared the reports. In my view, it is likely that at least some of the investigations have been concluded. The progress of concluded investigations could not be said to be impeded by disclosing the names of the agencies or facilities.

[para 62] For the reasons above, I find that the information the Public Body withheld from the reports does not support a finding that harm to law enforcement could reasonably be expected to result from its disclosure.

## V. ORDER

[para 63] I make this Order under section 72 of the Act.

[para 64] I order the Public Body to conduct a new search for responsive records that includes searching through the Director's Decisions files and complaint files.

[para 65] I order the Public Body to make a new response to the Applicant and to include the Director's Decisions files and complaint files in this response.

[para 66] I order the Public Body to consider whether it is possible to create a record from its database and the summaries on its website that meets the Applicant's needs, and, if so, to determine whether section 10(2) requires it to do so.

[para 67] I order the Public Body to disclose to the Applicant the information it withheld under section 20.

_____

Teresa Cunningham
Adjudicator