

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2013-44**

October 31, 2013

**ALBERTA JUSTICE AND SOLICITOR GENERAL**

Case File Number F6269

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

**Summary:** The Applicant requested records from Alberta Justice and Solicitor General (the Public Body) pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body responded by requesting additional information from the Applicant. Instead of providing the additional information to the Public Body, the Applicant submitted a Request for Review to the Office of the Information and Privacy Commissioner (this Office). Having not received a response from the Applicant directly, and being unaware the Applicant had submitted a Request for Review, on July 9, 2012 the Public Body declared the Applicant access request abandoned pursuant to section 8 of the Act.

The Adjudicator found that the Public Body met its section 10 duty to assist. Though the Public Body declined to process the request, this was because the Applicant had not provided the information the Public Body had requested from her that was necessary for it to do so.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 7, 8, 10, 65, and 72.

**I. BACKGROUND**

[para 1] On May 30, 2012, the Applicant made an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) to Alberta Justice and Solicitor General (the Public Body). She requested records as follows:

All departments under the Ministry of Justice in Alberta with information/correspondence pertaining to [the Applicant and another named individual].

Include the name of the writer of any information of all departments under the Minister of Justice and Solicitor General. For review.

[para 2] The Public Body responded to the Applicant by way of a letter dated June 1, 2012. The letter explained that the Public Body required more information as to the location of the requested records from the Applicant in order to process her request. Specifically, the Public Body asked the Applicant to identify in which program areas within the Public Body she believed there would be records. It provided the Applicant with examples of the program areas in which she might be interested, and referred her to a directory of personal information banks held by the Public Body.

[para 3] The Public Body also cited section 7 of the Act which states:

*7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.*

*(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.*

*(3) In a request, the applicant may ask*

*(a) for a copy of the record, or*

*(b) to examine the record.*

[para 4] The Public Body advised that it would not process the Applicant's request until the additional information it requested had been provided. It gave the Applicant 30 days within which to clarify her request and stated that if she had not contacted them within that timeframe, her request would be considered closed.

[para 5] In addition, the Public Body advised the Applicant that under section 65 of the Act, she could ask the Office of the Information and Privacy Commissioner (this Office) to review the Public Body's response.

[para 6] On June 22, 2012, this Office received a Request for Review from the Applicant. On June 27, 2012, this Office wrote to the Public Body and advised the Public Body that the Applicant had submitted a Request for Review. This letter was not received by the Public Body's FOIP office until July 12, 2012. Three days earlier, on July 9, 2012, the Public Body wrote to the Applicant stating that it had not received any further information from the Applicant and that it considered the Applicant's request abandoned.

[para 7] The Commissioner assigned a portfolio officer to mediate and attempt to resolve the issues between the parties but this was unsuccessful and the Applicant requested an inquiry on August 15, 2012. Subsequently, the Commissioner asked the Public Body to re-open its file and conduct a search for records responsive to the

Applicant's request based on the additional information the Applicant had provided in her Request for Review. The Public Body attempted to do this but some correspondence received from the Applicant caused it to stop and to advise the Commissioner that it would not be proceeding with the access request. The Commissioner then referred this matter to inquiry.

[para 8] I received initial submissions from the Public Body. The Applicant provided no submissions, but I have also reviewed the Request for Review and Request for Inquiry before preparing this order.

## II. ISSUES

[para 9] The Notice of Inquiry dated July 29, 2013 lists the issue in this inquiry as follows:

### **Issue A:**

**Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)? Specifically, did the Public Body fail its duty to assist because it declined to process the Applicant's request for information when she did not provide additional information as the Public Body requested?**

[para 10] The Public Body raised the issue as to whether it properly declared the Applicant's request abandoned after she did not respond to the Public Body's request for further information. It took the position that it was proper for it to do so. However, since this declaration was made after the Applicant's Request for Review, it cannot be an issue in this inquiry, which is relative to the Request for Review. Therefore I will make no findings in this regard.

[para 11] I might add by way of observation that a declaration of abandonment is not an appropriate response to a Request for Review of a Public Body's decision to require further information. I acknowledge that the communication to the Public Body by this office that a Request for Review had been received was delayed beyond what would have happened in the normal course, and for this reason, the Public Body did not know about the Request for Review when it made its declaration under section 8. However, it seems to me that since it did ultimately learn of it, it might have acknowledged this state of affairs and argued simply that it had needed the information to process the request, rather than maintaining that it had properly declared the request abandoned (which, given its timing, cannot be an issue in the inquiry).

## III. DISCUSSION OF ISSUES

**A. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)? Specifically, did the Public Body fail its duty to assist because it declined to process the Applicant's**

**request for information when she did not provide additional information as the Public Body requested?**

[para 12] In its submissions, the Public Body correctly points out that the response at issue in this inquiry is its June 1, 2012 response to the Applicant's May 30, 2012 access request. I will not be dealing with the Public Body's second attempt to respond to the Applicant's access request at this Office's request.

[para 13] Section 10(1) of the Act states:

*10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

[para 14] As I explained in the background section of this Order, when the Public Body received the Applicant's request, it wrote to her stating that it required more information in order to process her request. The Public Body cited section 7 of the Act (cited above).

[para 15] The letter gave the Applicant 30 days in which to respond to the Public Body's request for additional information.

[para 16] The Public Body wrote to the Applicant on June 1, 2012 explaining that it needed more information from her in order to begin processing her request.

[para 17] The information the Public Body sought was a clarification from the Applicant as to where the records she requested might be found. The Applicant's access request (quoted above) provided no background information to the Public Body. It also encompassed every department within Alberta Justice and Solicitor General, which is a large ministry with many departments and possible repositories of records. Given the massive scope of the Applicant's request, I believe that the Public Body was not given sufficient detail to enable it to identify the records the Applicant was seeking, and that processing the request was not feasible.

[para 18] Therefore, I find that the information requested by the Public Body in its June 1, 2012 letter was necessary to process the Applicant's request.

[para 19] As the Public Body responded to the Applicant's request in a timely manner, and requested information which it required in order to process the Applicant's access request, I find that the Public Body met its duty to assist the Applicant as required by section 10 of the Act.

**V. ORDER**

[para 20] I make this Order under section 72 of the Act.

[para 21] I find that the Public Body met its duty to assist as required by section 10 of the Act.

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Keri H. Ridley  
Adjudicator