

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2014-24**

June 13, 2014

**COUNTY OF THORHILD NO. 7**

Case File Number F6435

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

**Summary:** The Applicant made a request for access under the Freedom of Information and Protection of Privacy Act (the FOIP Act) for copies of cheques relating to the termination of the former County manager.

The Public Body identified a deposit slip as responsive but withheld this record in its entirety. The Public Body did not tell the Applicant that the record it had identified as responsive was not a cheque, and it did not clarify whether there was other information in its custody or control that would satisfy the access request.

The Adjudicator determined that the Public Body did not meet its duty to assist the Applicant at the time it responded to her access request, as it did not take measures to clarify an access request that could be interpreted in more than one way. However, as the Public Body provided the amount of the former County manager's severance in its submissions, and as this amount was the information the Applicant was seeking when she made the access request, the Adjudicator found that the Public Body had now met its duty to the Applicant.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 10, 17, 72; *Municipal Government Act*, R.S.A. c. M-26, s. 217; Supplementary Accounting Principles and Standards Regulation A.R. 313/2000

**Authorities Cited: AB:** Orders F2004-026, F2013-18

## **I. BACKGROUND**

[para 1] The Applicant made a request for a “copy of all cheques written to [a former County manager] relating to his termination for 2011/2012.”

[para 2] The County of Thorhild No. 7 (the Public Body) responded to the Applicant’s access request on August 22, 2012. The Public Body stated:

I am writing about your request of July 10, 2012 for access under the *Freedom of Information and Protection of Privacy Act* dealing with “Copy of all cheques written to [the former County manager] relating to his termination 2011/2012.”

After considering all relevant factors, including representations received from the third party whose interest could be affected by the disclosure of the records, we are refusing access to the requested records. We believe that disclosing the details of the net amounts of the severance paid to [the former County manager] would not provide additional information on the amount paid by the County as severance but would only serve to demonstrate the amount of tax and / or other withholdings from the severance, and as such constitutes an unreasonable invasion of his personal privacy under section 17(1) of the Act as this information does not fall within the category of information contemplated by section 17(2)(e) of the Act or section 217(3) of the *Municipal Government Act*. Rather, we feel the gross amounts paid to [the former County manager], which are already publicly available as part of the 2011 Audited Financial Statements of the County of Thorhild, are appropriately captured by this category. Furthermore, we can find no reason why disclosing the details of the net amounts of these payments would be desirable for the purpose of subjecting the activities of a public body to public scrutiny; consequently, section 17(5)(a) would not apply give that the amounts of the gross payments have become public knowledge.

[para 3] The Applicant requested review by the Commissioner of the Public Body’s response to her access request.

[para 4] The Commissioner authorized mediation to resolve the dispute; however, the Applicant requested that the matter proceed to inquiry prior to the conclusion of mediation.

[para 5] The parties exchanged submissions. Once I reviewed the submissions of the parties, I decided that I had questions for the Public Body regarding the records it had determined to be responsive to the Applicant’s access request.

[para 6] The Public Body provided answers to my questions, and the Applicant and the former County manager were given the opportunity to comment on its answers. The Applicant provided rebuttal comments.

## **II. INFORMATION AT ISSUE**

[para 7] The Public Body has supplied two statements of deposits made to the former County manager’s account for the inquiry.

### III. ISSUES

**Issue A: Did the Public Body meet its obligations required by section 10(1) of the FOIP Act (duty to assist applicants)?**

**Issue B: Does section 17 of the FOIP Act (Disclosure harmful to personal privacy) require the Public Body to withhold information from the records?**

### IV. DISCUSSION OF ISSUES

**Issue A: Did the Public Body meet its obligations under section 10(1) of the FOIP Act (duty to assist applicants)?**

[para 8] The Applicant argues that the Public Body has not met its obligations to her. She states:

No effort was ever made by the public body to supply me with a copy of the 2011 audited financial statement. The County has an obligation to provide the 2011 audited financial statement and [cannot] assume I have it. Creating the record would not unreasonably interfere with the operations of the public body. To this date I still have not been given the 2011 audited financial statement.

According to section E of the public body inquiry submission (audited financial statement) the amount of \$220,924.00 does not differentiate his salary from the severance payment and therefore would not provide the information I requested.

[para 9] In its initial submissions, the Public Body argued:

Upon receiving the request for the information from the Applicant dated July 10, 2012, the FOIP Coordinator requested the responsive records from the Payroll and Personnel Manager. These records were identified as the closest records that were responsive to the Applicant's request as all payment related payroll and severance payments are processed through the Payroll and Personnel Manager, not by cheques processed through the Accounts Payable Clerk.

[para 10] In response to my questions as to why it considered a direct deposit slip to be responsive to the access request and whether it had taken steps to clarify the Applicant's access request, the Public Body stated:

In retrospect, the Public Body could have made it clearer to the Applicant that the payments were not made by cheque, but by direct deposit. This was, by no means, a deliberate attempt to mislead the Applicant in any way or cause undue confusion. It was simply an assumption that it would be reasonable to consider direct deposit payments to be the equivalent of cheques. Therefore, the Public Body did not consider it necessary to correspond with the Applicant about what kinds of information would be responsive to her access request. Going forward, the Public Body will ensure that similar assumptions are not made during the process of responding to future requests for information.

[para 11] Section 10(1) of the FOIP Act requires public bodies to assist applicants. It 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 12] In Order F2004-026, former Commissioner Work held that the duty to assist includes a duty to clarify an access request when the access request is ambiguous. 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. [my emphasis]

[para 13] In Order F2013-18, I found that a public body had failed to take steps to clarify an ambiguous access request, and as a result, has conducted an inadequate search for responsive records.

[para 14] I find, from my review of the evidence and arguments of the parties, that the Public Body did not pay the former County manager severance by cheque, but by direct deposit. In addition, I conclude that the Applicant’s access request was ambiguous in view of this circumstance: she specified that she was seeking copies of cheques, but the Public Body did not pay the former County manager by cheque and so, strictly speaking, there were no records that were responsive to the access request. Ambiguity arises because it is unclear whether the Applicant was seeking the kind of information that an employment cheque stub might contain, (such as the amount of termination pay paid to the former County manager), in which case information that might satisfy her request could possibly be in the custody or control of the Public Body, or whether the Applicant was only interested in obtaining copies of cheques, in which case, the Public Body did not have records responsive to the access request in its custody or control.

[para 15] The question, then, is whether the Public Body should have requested clarification but did not, and if so, whether this omission amounts to a failure to assist the Applicant in the circumstances of this case. This determination will rest on what the Applicant intended by her access request, and the extent to which the Public Body has taken steps to provide her with that information.

[para 16] As discussed above, the Applicant made an access request for copies of *cheques* issued in 2011 or 2012 relating to the former County manager’s termination. However, the Public Body paid the former County manager’s termination amount by direct deposit and did not issue a cheque for this amount. In its initial submissions, the Public Body explained that it decided that the *deposit slip* documenting this transaction

was “close” to what the Applicant had requested. The Public Body identified this record as responsive to the Applicant’s access request, but decided to withhold the entire deposit slip from the Applicant under section 17 of the FOIP Act. The Public Body’s response letter of August 22, 2012 does not state that the record it had decided to withhold was a net deposit slip, and not a cheque copy. The letter does not inquire whether other kinds of records containing similar information would be satisfactory, and if so, what would constitute similar information.

[para 17] The submissions of the Applicant indicate that her purpose in making the access request was to obtain information regarding the amount of severance paid to the former town manager. Had the Public Body taken the step of clarifying what kinds of information would satisfy the request, it might have learned what kinds of records would be responsive. It would not have found the deposit slips to be responsive, as these records do not reveal anything about the amount of severance paid to the town manager by the Public Body.

[para 18] In its initial submissions, the Public Body attached a copy of a document entitled “Notes to Consolidated Financial Statements Year Ended December 31, 2011” (referred to hereinafter as “the financial disclosure document”). The Supplementary Accounting Principles and Standards Regulation AR 313/2000 requires the financial records of municipalities to include notes containing the salaries and benefits of various officials. The financial disclosure document was created under the authority of this Regulation.

[para 19] Section 217(3) of the *Municipal Government Act* requires the chief administrative officer of a municipality to make information available regarding the salaries of certain officials. It states:

*217(3) Despite Division 2 of Part 1 of the Freedom of Information and Protection of Privacy Act, the chief administrative officer must provide information on the salaries of councillors, the chief administrative officer and designated officers of the municipality.*

The Public Body indicates that it satisfied this statutory reporting requirement for the year 2011 by making the financial disclosure document available to the public. It states that the financial disclosure document is available on its website and in the foyer of its office.

[para 20] The Applicant takes issue with the fact that the Public Body did not provide her with the financial disclosure document until she made her initial submissions. She also takes issue with the fact that the chart of Benefits and Allowances in this document groups salary and severance together and she is concerned that there is no way to distinguish salary from severance.

[para 21] I note that Note 4 of the financial disclosure document states:

Included in salary is a severance amount of \$129,715 and wages in lieu of notice, vacation payout and sick days payout totaling \$39,708.

I find that one can determine from the financial disclosure document that the amount of severance paid to the former County manager was \$129,715.

[para 22] I find that the Public Body did not meet its duty to assist the Applicant as it did not take steps to clarify her access request. Had it clarified the kinds of records that would be responsive, it would not have identified records as responsive that she is not seeking, or failed to search for records that are responsive. The Public Body also failed in its duty to assist her by not informing her that it did not have records meeting the exact specifications of her access request. However, I see no benefit in ordering the Public Body to take such measures now. First, it has made an undertaking that it will take measures to clarify ambiguous access requests in the future. Second, the Public Body has now provided the financial disclosure document to the Applicant in its submissions, and this document contains the amount of the former town manager's severance. I conclude from my review of the Applicant's submissions that the amount of the severance paid was the information she was seeking when she made her access request, although she did not specifically request the financial disclosure document. As the amount of the former town manager's severance was the information the Applicant sought when she made her access request, the Public Body met its duty to her once it provided her with the financial disclosure document in its submission. As the Applicant now has the information that she was seeking, nothing would be accomplished by ordering the Public Body to search for, and produce, that which it has already provided.

**Issue B: Does section 17 of the FOIP Act (Disclosure harmful to personal privacy) require the Public Body to withhold information from the records?**

[para 23] I found above that the deposit slip identified by the Public Body as a record at issue, is nonresponsive to the Applicant's request. As the Applicant did not request this record, and as it does not contain or reveal the information she is seeking, I need not consider whether the Public Body properly applied section 17 to this record.

**V. ORDER**

[para 24] I make this Order under section 72 of the Act.

[para 25] I confirm that the Public Body has now met its duties to the Applicant under the Act.

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Teresa Cunningham  
Adjudicator