

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-32

August 8, 2014

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7097

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Justice and Solicitor General (the Public Body) for information related to him from the Red Deer Crown Prosecution office, including emails from listed email addresses. The Public Body states that this request was later narrowed to include only information related to a particular traffic violation.

The Public Body responded to the Applicant and told him that responsive records were excluded from the Act under section 4(1)(k) (incomplete prosecution), and that he could make a new access request once the related prosecution had been completed.

The Applicant requested a review of the Public Body's response from this office. He argued that his request was not only for information related to the particular traffic violation and that he ought to have been provided with additional records he regarded as responsive.

The Adjudicator accepted the Public Body's evidence that the Applicant's request was properly narrowed, and agreed that, at the time of the Applicant's request, the responsive records were excluded from the scope of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 10, 40, 56, 72; *Public Inquiries Act*, R.S.A. 2000 c. P-39.

Authorities Cited: AB: Order 97-006.

I. BACKGROUND

[para 1] An individual made a request to Alberta Justice and Solicitor General (the Public Body) dated March 21, 2013, for access to:

... any information and documentation in relation to myself from the Red Deer Crown Prosecution office and also, please be advised that I wish that all of the below email inboxes please be screened for any emails and/or any and all information in relation to myself, [name] and that such be relayed to me.

[para 2] The request included a list of 25 Government of Alberta employee email addresses that the Applicant requested be searched.

[para 3] The Public Body states that the Applicant later narrowed the request to include only records related to a traffic violation issued to him on July 6, 2012. The Public Body responded to the Applicant's request by letter dated April 29, 2014. The Public Body informed the Applicant that the requested records relate to an ongoing prosecution and are therefore excluded from the scope of the Act under section 4(1)(k). It also advised the Applicant to submit a new access request once the matter had been concluded.

[para 4] The Applicant requested a review from this office. The Commissioner authorized a portfolio officer to investigate and to try to settle the matter. This was not successful, so the matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 5] No records were provided to the Applicant on the basis that all the records he sought, as clarified, fall within section 4(1)(k) of the Act (incomplete prosecution). As such, there are no records directly at issue at the present time.

III. ISSUES

[para 6] The issues as set out in the Notice of Inquiry, dated April 11, 2014, are as follows:

- 1. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?**
- 2. Are the records excluded from the application of the Act by section 4(1)(k) (incomplete prosecution)?**

IV. DISCUSSION OF ISSUES

- 1. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?**

[para 7] A public body's obligation to respond to an applicant's access request is set out in section 10, which states in part:

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 8] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the Applicant (see Order 97-006, at para. 7).

[para 9] The issue regarding the Public Body's duty to assist the Applicant relates to whether the Public Body properly narrowed the Applicant's request. The Public Body states that after receiving the Applicant's request, it contacted him via telephone to clarify the scope of the request. It states that during the conversation, the Applicant clarified that he was seeking records related to a particular traffic violation that had occurred on July 6, 2012.

[para 10] The Applicant's request for review and request for inquiry state that he believes the Public Body ought to provide him with records he believes to be responsive to his request that relate to matters other than those relating to court proceedings that have not yet been completed.

[para 11] In its initial submission, the Public Body provided me with a copy of a letter dated April 11, 2013, that it sent to the Applicant, in which the Public Body stated its understanding that the Applicant's request was for records (including emails from the email accounts listed by the Applicant) related to the traffic violation. It states that the Applicant did not respond to this letter.

[para 12] Although he had an opportunity to do so in his rebuttal submission, the Applicant did not deny that he had received the letter from the Public Body indicating that his access request had been narrowed, or comment on why he did not reply to the Public Body if he disagreed with the letter's contents.

[para 13] The letter from the Public Body supports its position that the Applicant's request had been narrowed to include only information (including emails) relating to a traffic violation. As the Applicant has not provided any arguments or evidence to oppose this position, I find that the Applicant's request had been narrowed as described. As such, the Public Body was not required to search for records other than those relating to the traffic violation, and did not fail to fulfill its duty to assist the Applicant.

2. Are the records excluded from the application of the Act by section 4(1)(k) (incomplete prosecution)?

[para 14] Section 4(1)(k) of the Act states:

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

(k) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;

[para 15] I have found that the Applicant narrowed his request to include only information relating to a traffic violation. The Public Body states that the traffic violation is a matter that was before the court at the time of the Applicant's request. By letter dated June 9, 2014, I asked the Public Body to provide evidence to support its claim that the relevant court proceedings had not been completed at the time of the Applicant's request. By letter dated June 16, 2014, the Public Body provided a printout from JOIN (Justice Online Information Network) that showed that the matter had been adjourned for trial on January 9, 2013 and had been scheduled for the next appearance on July 17, 2013. This printout also shows that the matter had concluded on July 17, 2013.

[para 16] Given this evidence, I agree that at the time the Applicant made his request (March 21, 2013) the records related to a prosecution that had not been completed. As such, responsive records were excluded from the scope of the FOIP Act.

[para 17] I note that the Applicant objected to the provision by the Public Body of the printout from the JOIN database to this inquiry. He states (in his rebuttal submission) that:

... the Public Body did not have my permission and/or consent to commence any queries and/or inquiries in relation to me, in any way, shape or/and form, including within any record keeping systems, and furthermore, it should be noted that I believe that the Public Body may have breached my privacy as a result of searching my name under records keeping systems that are not public record as within the meaning of courthouse policies and provincial privacy legislation, and thereafter, printing out and disseminating information.

[para 18] The Applicant requested this inquiry into the Public Body's response to his access request. In order to determine if the records responsive to the request were excluded from the scope of the Act under section 4, as claimed by the Public Body, I requested evidence from the Public Body regarding the timeline of the prosecution related to the traffic violation. Section 56 of the Act, and the *Public Inquiries Act*, empower me to require evidence from the Public Body. Section 40(1)(z) of the Act permits the Public Body to disclose personal information to an officer of the Legislature if the information is necessary for the performance of the officer's duties. This provision applies to the Public Body's disclosure of the Applicant's personal information to me in this inquiry as I am an authorized delegate of the Commissioner, who is defined in the Act as an "officer of the Legislature" (section 1(m)). In other words, I have authority to require evidence from the Public Body, and the Public Body has authority to disclose personal information in the course of this inquiry. My accepting the printout from the JOIN database does not, as alleged by the Applicant, bring the processes of this Office

into disrepute, nor does it constitute a breach of his privacy by the Public Body (or this Office).

[para 19] As the proceedings related to the traffic violation appear to be complete, the Applicant may wish to make a new access request to the Public Body.

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 the Applicant under section 10(1) of the Act.

[para 22] I find that, at the time of the Applicant's request, the requested records were excluded from the scope of the FOIP Act under section 4(1)(k).

Amanda Swanek
Adjudicator