ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-16

June 4, 2015

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7624

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Summary: The Public Body refused to process an access request, saying it would not do so until the Applicant resubmitted it deleting language that was insulting and offensive to government employees. The Applicant declined to do this.

The Commissioner decided the offensive parts of the request constituted an abuse of the FOIP office's process, and directed the Public Body to disregard these parts of the communication, but to process the parts that did genuinely constitute a request for information. She also imposed the condition that any additional communications from the Applicant to the Public Body that contained similar material could be disregarded in their entirety.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 7, 10, 55 and 72.

Orders Cited: N.S.: *Nova Scotia (Department of Community Services) (Re)* [2009] N.S.F.I.P.P.A.R. No. 11.; **ON:** Order MO-1519.

Tribunal Cases Cited: *Bakhtiyari v. British Columbia Institute of Technology* [2007] BCHRT 320; *Nourhaghighi v. Toronto Catholic School Board* [2009] HRTO 1519; *Heilman v. First Canada (No. 3)* [2011] BCHRT 260.

I. BACKGROUND

[para 1] This inquiry arises from a communication by the Applicant to the Director/Deputy Chief, Operations and Protection Services Section, Sheriffs and Security Operations Branch, Justice and Solicitor General (the D/DC). (In consequence of certain of his earlier dealings with Service Alberta, the Applicant had been directed, by a Court Order dated December 20, 2011, effective until December, 2013, to direct any correspondence to the Government of Alberta to that office. The Court Order also stipulated that any communications were not to be "obscene, intimidating or threatening".)

[para 2] The communication included three FOIP "Request to Access Information" forms and a letter. The forms are dated January and February, 2013, and the letter is dated June 5, 2013. On the forms, the fields indicating the public body to whom the request was being made were filled in as: "Service Alberta/ Various"; "AMVIC/Director of FTA"; and "legal services hired employees [which was taken by the Director/Deputy Chief to refer to Alberta Justice and Solicitor General]". With regard to which records were being asked for, the first form simply named seven individuals; the second one was for "All in possession by [four named individuals]"; the final one stated "See letter".

[para 3] The letter, addressed to the D/DC, contained a list of 12 individuals and made statements about some of them, including accusations of various types of misconduct by these persons in their dealings with the Applicant. The letter used insulting and derogatory language with reference to some of the individuals. It stated the Applicant was asking for "every detail of" the firing of two of these persons and the resignation of a third.

[para 4] The letter expressed the Applicant's belief that the D/DC had been "assigned as [the Applicant's] personal assistant" in investigating and gathering evidence about the matters he discusses in the letter. As well, it purported to give instructions to the D/DC as to how he was to proceed in obtaining information from these individuals, in terms such as the following: "… I require you to arrive at their offices unannounced and detain the accused while you go through every tiny piece of information you can find". It concluded by stating the Applicant's objective of seeking "restitution, punishment, and criminal charges".

[para 5] On receipt of the communication, the D/DC forwarded the documents to the Director of FOIP and Records Management at Alberta Justice and Solicitor General (the FOIP Coordinator). The FOIP Coordinator spoke with the D/DC, who explained, in the Public Body's words, "that he had reviewed the material provided by the Applicant and decided not to pursue any issues in regard to the orders provided by the Court Order".

[para 6] The FOIP Coordinator replied to all three requests on July 2, 2013. His reply stated that the language used by the Applicant "is inappropriate and offensive", that the package of material the Applicant had submitted was being returned, and that if the Applicant wished to resubmit his requests, he would have to do so "in accordance with the Court Order".

[para 7] Further correspondence ensued, consisting of letters by the Applicant addressing both the D/DC and the FOIP Coordinator in the body of the letter, and responses by the FOIP Coordinator. The final letter, from the FOIP Coordinator, reiterated his refusal to deal with the requests in their existing form on the basis that they contain "unacceptable" language.

II. RECORDS AT ISSUE

[para 8] There are no records at issue in this inquiry as it relates to the Public Body's fulfillment, or otherwise, of its duty to assist.

III. ISSUES

[para 9] The issue stated in the Notice of Inquiry is:

> **Did the Public Body properly respond to the Applicant's access requests when it said that:**
>
> - **The language he used in his access requests was inappropriate and offensive,**
> - **No further action would be taken on his access requests, and**
> - **He could resubmit his access requests, but would have to do so in accordance with the Court Order.**
>
> **In this case, the Commissioner will consider whether the Public Body complied with Part 1, Division 1 of the Act.**

[para 10] This issue relates to the response of the Public Body, since that is the only body that responded to the request.

[para 11] As noted above, two other public bodies (Service Alberta and AMVIC) were named in the requests, but did not themselves respond. They were invited to participate in this inquiry as affected parties, to enable them to contribute their views and provide information as to any involvement they may have had in the matters at issue.

[para 12] These other two parties provided information in their submissions to the effect the FOIP Coordinator discussed the requests with them when he received them, that they indicated to him they supported his approach, and that they would have followed the same course of action had the requests been forwarded to them.

[para 13] However, neither the Public Body, nor these Affected Parties, have explained why the FOIP Coordinator did not forward these other request forms to the bodies to which they were directed when he received them, rather than responding himself. Similarly, no explanation has been provided to me as to why the D/DC forwarded all three of the requests to the FOIP Coordinator at Justice and Solicitor General, when two of them were directed to other bodies ("Service Alberta/ Various"; "AMVIC/Director of FTA".)

[para 14] The former of these questions is especially pertinent in view of the fact the other two request forms do not refer to any attachments, and in themselves contain no offensive or derogatory language. I note the Affected Parties argue that "the cover letter cannot be separated from the rest of the communication", on the basis that the cover letter referenced all three forms. They say that the Applicant's communication "when reviewed in full" is inappropriate and offensive, and on this account they state their support for the manner in which the FOIP Coordinator responded (presumably including to the requests directed to them).

[para 15] The letter, after setting out in the first paragraph some of the Applicant's grievances about what he refers to as "gross bureaucratic misconduct", states: "Accordingly, see attached FOIP requests". However, only one of the three requests (the one directed to the Public Body) references the letter (in the field setting out what records are being requested). The other two have their own independent content in that field.

[para 16] Possibly, the FOIP Coordinator (and Service Alberta and AMVIC if they had a chance to review the entire communication) thought the requests and the letter formed a whole because the letter contains a list of the same people as are, in combination, listed in the other two requests. However, the letter does not explain what particular information, if any, the Applicant wants relative to most of the people named in the list it contains. The only specific information the letter asks for is information about the termination of two individuals, who are also listed in the AMVIC request (as well as information about the resignation of a third person, not listed in the AMVIC request form). However, the list of individuals in the AMVIC request is prefaced by the words "All in possession of: …". Information about someone's termination would not all be in their own possession, so the information requested in the letter does not match the information requested from AMVIC, and the former cannot be said to shed any useful light on the latter.

[para 17] I also note that in his August 2, 2013 letter to the D/DC, the Applicant says his purpose in setting out "all pertinent facts and information" (by which he presumably means the contents of the letter) was to "provide insight to help you better understand the seriousness of my request and my ultimate purpose and goal".

[para 18] I acknowledge the other two access requests are insufficiently clear in themselves to precipitate a search. As noted, one sets out a list of names without saying anything about information, and the other asks for "All [information] in possession of", without specifying what the information is to be about (possibly the Applicant means information in relation to himself, but he does not say this). Both requests would require further clarification to make them meaningful and to enable searches.

[para 19] However, the letter would be of no assistance in this regard. It refers in very unspecific ways to events involving public body employees, but does not particularize what information is being sought relating to, or in the possession of, the people listed in the other two requests. Given that extensive further clarification would be required for the other two requests, it would, in my view, be reasonable to forward the other two request forms to AMVIC and Service Alberta without attaching the letter.

[para 20] In any event, whether it was appropriate to attach the letter or not, there is no explanation as to why the FOIP Coordinator responded to all the requests rather than forwarding them to the other public bodies. As noted, the Affected Parties say they communicated their support to the FOIP Coordinator for his way of responding at the time, and would themselves have done the same thing. Conceivably, there was a discussion amongst the public bodies in which they agreed that the FOIP Coordinator would act on their behalf as their agent. However, none of the parties indicated this in their submissions. For the other two requests, there has not, to my knowledge, been any response by the bodies that have the responsibility to respond under the Act.

[para 21] I will therefore proceed in this inquiry by considering the Public Body's response only to the request that was directed to the Public Body, in which the attached letter is referenced and of which it clearly forms a part.

[para 22] With respect to the other two request forms, if they were forwarded without attaching the letter (which would be appropriate in my view given they do not refer to it), no issue as to propriety of language would arise.

[para 23] I acknowledge this might be seen as permitting the Applicant to achieve part of his objective while displaying an inappropriate attitude. I am not prepared to say this is a valid concern, but if it were, practicality should govern. Since there is a reasonable justification for forwarding the other requests without the letter (that they did not reference it), and since this would accomplish the same purpose as requiring the Applicant to resubmit his request without the impugned language, it seems to me it would be reasonable to resolve the issues about these other requests in this way.

[para 24] If the other public bodies (Service Alberta and AMVIC) require clarification in order to process the requests, and similar issues regarding the propriety of language arise, these issues could be dealt with in accordance with the principles set out in the next part of this order. (I will return to this subject below.)

[para 25] Further with regard to the issues in this inquiry, I have noted that the Applicant's submissions include statements about particular remedies he believes I can grant, for instance, that I order the RCMP to investigate, or that I direct mediation according to procedures under the *Fair Trading Act*. I have no jurisdiction to direct the RCMP as to what investigations it is to undertake, nor do I have any powers relating to the *Fair Trading Act*. My jurisdiction in this inquiry is limited to deciding whether the Public Body fulfilled its duties to the Applicant when it responded to his access request.

IV. DISCUSSION OF ISSUES

[para 26] I begin by noting that the Affected Parties, as well as the Public Body in its final rebuttal, have provided considerable evidence of the Applicant's use of bad language in his earlier dealings with government, which they say "establish the Applicant's pattern of inappropriate and offensive behavior toward Government of Alberta (GoA) employees and their family members".

[para 27] I do not regard this evidence as relevant to the present issue. The Public Body says its goal was to have the Applicant resubmit his request without the use of unacceptable language – in other words, it wants the Applicant's conduct in this regard to improve. If the Public Body's response was truly forward-looking in this way, there is no reason to raise what happened in the past.

[para 28] On a similar note, I also decline to consider any similar language as contained in communications between the Applicant and the Public Body subsequent to the Public Body's initial response, since the issue as stated in the Notice of Inquiry is whether the Public Body's initial response itself was appropriate.

[para 29] My focus in this inquiry relates to the contents of the letter of June 5, 2013. I agree that some of the language in the letter attached to the FOIP request is offensive, in that it targets several individuals in a derogatory way and contains an offensive sexual allusion with reference to a particular person. The question I must decide is how these aspects of the request bear on whether the Public Body responded to it appropriately.

[para 30] There are a number of ways to approach this question.

Was the communication "not a FOIP request" by virtue of its offensive content?

[para 31] One way to consider this question is to ask whether the language used deprived the letter of its character as an access request. The argument that it does is stated in the Affected Parties' initial submissions at various points, for example, at page 3 bullet 2, where it says "… the June 5, 2013 communication does not constitute a FOIP request within the meaning of the FOIP Act". Similarly, the Public Body says that "a public body is not required to accept any communication as an access request merely because it meets this minimum standard [of being in writing and providing sufficient detail to enable a search]".

[para 32] I presume what the Affected Parties and Public Body mean is that section 7 of the FOIP Act, which sets out how an access request is to be made, imports a minimum standard of propriety or decorum that must be met before the duty to respond is triggered.

[para 33] I do not reject this argument in the abstract. I can imagine a communication, containing somewhere within it a request for information, that used language so offensive that uncovering what information the Applicant wants would be an unduly disturbing or distasteful task. In such a case, it could be reasonable to refuse to deal with it as a FOIP request.

[para 34] I do not believe this is such a case, however. The Public Body says itself that the FOIP Coordinator "by manner of training and expertise, has the ability to review this material, but other staff do not and should not have to be subject to such language". This suggests that while the FOIP Coordinator regarded the material as offensive, he was not so disturbed by it that he could not get beyond the offensive parts to the parts actually requesting information.

[para 35] I have also noted that statements of what information the Applicant wants constitute only a very small proportion of the letter – only the middle paragraph on the second page of two-and-a-half pages asks for particular information. However, the presence of superfluous material is very common in FOIP requests; as long as a request for information is reasonably discernable, the presence of such extraneous content does not normally deprive a request of its status as an access request.

A respectful workplace

[para 36] A second way to deal with the issue in this case is to ask whether, when a public body is deciding how to fulfill its duty under section 10 to assist an applicant, it may take into account that assisting him could create a workplace environment that is not appropriately respectful and free from harassment.

[para 37] In the present case, the Affected Parties have asserted that the Applicant's language is not only disrespectful and abusive, but also constitutes misogyny and sexual harassment, in so far as it targets a female public official, and makes degrading comments of a sexual nature. They state their concern that acceptance of the Applicant's communication as a FOIP request will set a bad precedent.

[para 38] This obligation to foster respectful workplaces has led to the imposition of obligations to speak and behave appropriately not only on staff, but also on clients. See *Nova Scotia (Department of Community Services) (Re)* [2009] N.S.F.I.P.P.A.R. No. 11., in which the Review Officer stated (at para 46): "I … consider it appropriate, on a case-by-case basis to limit interactions between public bodies, including the Review Office, and any applicant who behaves in a manner inconsistent with the Nova Scotia Government's *Respectful Workplace Policy.*" The policy states that it is the right of all employees to work in a harassment-free environment, and that harassment includes "derogatory (e.g. condescending, insulting, belittling) or vexatious (e.g. aggressive, angry, antagonistic) conduct or comments that are known or ought reasonably to be known to be offensive or unwelcome". The policy also states the Government of Nova Scotia's commitment is to provide a workplace free from offensive behavior, including such behavior by clients/customers.

[para 39] I accept that a respectful workplace is an extremely important principle. Requiring government workers to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments is not only unwarranted, but I agree with the Public Body's argument (at page 5 of its initial submission) that it could potentially "cause harm" by having a detrimental effect on their well-being.

[para 40] It is partly out of my concern for maintaining a respectful workplace for the involved employees that I have decided to deal with the Applicant's access request, as I will describe below, in terms of whether the parts of it containing offensive language constitute an abuse of the processes of the Public Body's FOIP office.

Abuse of process

[para 41] The statutory ability to control abuse of a public body's processes is set out in section 55 of the Act, which provides in part as follows:

> *55 If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if*
>
> …
>
> *(b) one or more of the requests are frivolous or vexatious.*

[para 42] A vexatious request includes one in which the Applicant's true motive is other than to gain access to information, which can include the motive of harassing the Public Body to whom it is made. In Ontario Order MO-1519 the Adjudicator said (at para 91) that the meaning of "abuse" in the legal context includes "proceedings whose purpose is not legitimate, but is rather designed to harass, or to accomplish some other objective unrelated to the process being used".

[para 43] In this case, the Public Body has not made a section 55 application, preferring to itself ask the Applicant to modify his request to remove the impugned language. It says it took this course so as to avoid thwarting his request altogether.

[para 44] Though the Public Body has not chosen this course, I believe I have jurisdiction to independently consider whether the request is an abuse of the Public Body's process.

[para 45] In Order MO-1519, an adjudicator of the Ontario Office of the Information and Privacy Commissioner considered whether she had the power to supervise the request stage of an access request. In the course of her discussion about this question she also considered whether the power existed to declare a request frivolous and vexatious in the absence of an express statutory power to do this. She said:

> In Order M-618, former Commissioner Tom Wright considered his jurisdiction to entertain a claim that the appellant's request in that case was frivolous or vexatious in the absence of legislative enactment. Order M-618 was decided prior to the amendment to the Act, which resulted in the inclusion of sections 4(1) and 20.1[1], but his comments continue to have relevance to the Commissioner's supervisory role generally. He stated:
>
> > The Legislature created the Office of the Information and Privacy Commissioner to administer the Act in ways that facilitate the purposes of the legislation. This mandate cannot require the Commissioner to act unreasonably in administering his own processes, or in supervising the processes of institutions. The Legislature must have intended that the Commissioner have the necessary authority to control his own processes, and to supervise the processes of institutions under the Act, so as to minimize or eliminate the potential for abuse.

[1] These provisions enable the declaration that a request for access is frivolous or vexatious.

> I have been referred to ample and persuasive legal authority for the proposition that, as an administrative tribunal exercising quasi-judicial functions, the Commissioner is "master of his own process". On this basis I believe that I have the necessary authority to control what I identify as abuse of that process which would frustrate the intent of the Legislature in creating both a freedom of information regime and an office for its administration.

Speaking to the question of whether his jurisdiction to control his own processes extends to an ability to supervise the processes of institutions faced with abuse of process at the request stage, former Commissioner Wright concluded:

> If I were to accept [the appellant's] submission that I am powerless to remedy the abuse which I have identified, and that I must mechanically require institutions and my office to be the subjects of that abuse, I would not be fulfilling the objectives of the legislation, but frustrating them. Notwithstanding the absence of express powers vested in the Commissioner for dealing with abuse of process, I am not prepared to serve as agent for [the appellant's] abuse by perpetuating meaningless exercises in the expenditure of government resources merely to satisfy [the appellant's] curiosity, or to permit him to test the system or render it dysfunctional. This would offend public policy and bring the administration of Ontario's freedom of information legislation into disrepute.

[para 46] I accept this reasoning, and I believe it applies equally to a circumstance in which the express power to declare a proceeding vexatious on the motion of a public body exists in the statute, but the Public Body has not made such an application, nor is it pursuing a remedy that such an application could afford. I believe it is open for me, despite the existence of section 55 and the absence of a section 55 application, to consider whether a request or some aspect of it is an abuse of process, in the sense that it would permit an applicant to use the processes of FOIP offices or this office to pursue some objective other than access to information, or would have some other negative consequence the Act is not designed to support.

[para 47] I have chosen this course because I believe the offensive content of the Applicant's communication needs to be addressed, but I do not accept the Public Body's argument that the Applicant's communication as a whole did not constitute an access request. However, this is a complex approach for an issue that can be addressed in a more straightforward fashion under the provision that is already in place for it. It also raises the problem that the parties have not directly addressed in their submissions the question of whether the request is "frivolous and vexatious" within the terms of the provision.

[para 48] Despite these concerns, it would be cumbersome and needlessly delay the process to add the issue of whether section 55 applies in this case.

[para 49] Furthermore, the key question underlying whether the process is being abused in this case is the Applicant's motive in wording his request as he did. While the Applicant has not had an opportunity to respond to the issue phrased expressly in terms of whether his choice of language constituted an 'abuse of process', he has had, and indeed has taken, the opportunity to make submissions about why he felt it necessary to provide what he refers to as "detailed explanations". For example, in the Applicant's

rebuttal submission, dated July 31, 2014, at page 3, he says these explanations are necessary to explain his rage and what he considers to be deliberate crimes. As well, I have before me a letter (dated August 2, 2013) in which the Applicant provided the following explanation to the FOIP Coordinator: "I was hopeful that … my inclusion of all pertinent facts and information would provide insight to help you better understand the seriousness of my request and my ultimate purpose and goal".

[para 50] These submissions by the Applicant about his purpose for his choice of language and level of "detail" meet my concern about giving him an opportunity to speak to his motives.

[para 51] There are many court and tribunal cases, particularly in the realm of human rights, in which the use of derogatory or vulgar language, or the making of unfounded accusations against government employees, has been held to constitute an abuse of process. (See, for example, *Bakhtiyari v. British Columbia Institute of Technology* [2007] BCHRT 320.) In such cases the persons using such language have been denied the exercise of what would otherwise be their rights, or have been denied remedies. In some of these cases, the decision-maker has required undertakings that the person conduct themselves appropriately, or has awarded costs against them. (See, for example, *Nourhaghighi v. Toronto Catholic School Board* [2009] HRTO 1519; *Heilman v. First Canada (No. 3)* [2011] BCHRT 260.)

[para 52] My conclusion in the present case is that despite the Applicant's explanations that the information he provided was necessary to help the FOIP Coordinator and others to understand his fear and anger, and to understand the seriousness of his request, the degree of offensiveness of some of the language was not necessary for this purpose.

[para 53] I find, therefore, that the motive for the inclusion of this particular language was other than to obtain information or to provide necessary background for obtaining it. The parts of the Applicant's request in which he makes belittling or severely insulting statements about individuals, appear to be motivated not by a desire to obtain information but by a desire to intimidate and deliberately offend. His ideas that he was not treated fairly or appropriately by government employees, even if this was important to inform what he was asking for, could have been stated without severe insult. Further the Applicant's refusal to remove the language when requested suggests that his motive is, in part, to assert some dominance or control over the process and other participants, and to resist others' exercise of authority, rather than simply to obtain information.

[para 54] In reaching this conclusion I have considered that some individuals might be accustomed to a mode of expression that contains unusually offensive language, and might not recognize the effect of their use of such language on others. As well, I understand some people have conditions in which the use of such language is difficult for them to control. I am not suggesting this is so in the Applicant's case, but even if it were, here, the communications are all in written form. The objectionable parts of the communications, and why they are of concern, have been pointed out to him repeatedly, yet he has persisted in refusing to accommodate these concerns.

[para 55] However, these comments do not apply to the entirety of the Applicant's request to the Public Body, and it is possible to segregate those with a genuine motive of access to information from the unnecessary parts. The latter consist of the parts of the request identified by the Public Body in its initial submission at page 5 as offensive in its view (which I have reviewed and agree is both inappropriate and not integral for achieving access). I have said above that I accept the Applicant has a genuine interest in obtaining information. While parts of the request can be disregarded, the parts which genuinely seek information and explain the circumstances to which the requested information relates so that it can be identified, should be processed.

[para 56] In view of this, I believe the best solution is to direct the Public Body to take into account only the parts of the Applicant's requests of the latter type. It is to disregard the impugned portions. Should the Public Body need to further disseminate the Applicant's request in the course of processing it, it is to produce copies of the request that remove this offending material. If the Applicant does not want the Public Body to proceed given these conditions, he may indicate this to me and to the Public Body within 15 days from the date of issuance of this Order.

[para 57] In reaching this resolution I recognize that I am not requiring the Applicant to resubmit the request without the impugned language, as the Public Body has said it required him to do. The Public Body may believe that unless this step is taken, directing it to respond to the non-offensive parts of the request entails condoning the Applicant's conduct. However, my goal is not to punish the Applicant for his inappropriate choice of language, it is to enable the process to proceed by curtailing its further negative effects.

[para 58] To make my point sufficiently strongly, however, I will impose the condition that, if, in the course of the Public Body's processing of this request, the Applicant provides any further correspondence that includes similarly derogatory language, the Public Body may disregard such correspondence in its entirety (even though it could similarly be redacted). The Applicant has demonstrated in his submissions to me that he is capable of making submissions that are respectful and do not offend, and I expect this of him in any future dealings with the Public Body. I will retain jurisdiction to make further decisions about any such responses from the Applicant, and the consequences arising therefrom to the processing of the request, should the Public Body bring them before me.

[para 59] The same point applies to the other Public Bodies who are the Affected Parties in this case in their future dealings with the access requests. It would be open to them to ask me to permit them to disregard the entirety of the request under section 55 if the Applicant responds to their clarification requests with material similar to the offending language in this case.

The Court Order

[para 60] There is some inconsistency in the submissions as to whether the Court Order has bearing on the outcome of this inquiry. The Affected Parties point out it was in effect at the time the request was made, and they argue that the language in the letter constitutes a violation of the Order. In view of this, they say that the FOIP Coordinator's decision to require the Applicant to remove the offensive language so as to make it "in accordance with the Court Order" was an appropriate response.

[para 61] The Affected Parties also dispute the Applicant's contention that when the D/DC reviewed the letter but passed it along to the FOIP Coordinator, this reflected a determination that the correspondence had not been offensive and vulgar. They also argue that anyone, not only the D/DC, has the ability to make a judgment as to whether the Order has been violated, and can apply to the Court for a finding of civil contempt. They point out that the FOIP Coordinator forbore doing this in favour of allowing the Applicant to resubmit his request.

[para 62] The Public Body takes the position that the Court Order is irrelevant to the propriety of its response. In its final rebuttal, it points out that the Order is directed only at the Applicant, and imposes no obligation on anyone else to take any particular action with respect to its potential breach.

[para 63] I agree it is arguable the Court Order was breached by some of the language used by the Applicant in the letter. However, I do not see that this has any direct bearing on the decision I must make. The Order requires that the Applicant's language in communicating with government employees is not to be obscene, but it does not direct that communications that do not meet this standard may be discounted. Rather, it sets out the process to be followed in the event of a breach, and the remedies the Court may provide. The remedies that arise from breach of the Court Order are beyond my jurisdiction.

V. ORDER

[para 64] I make this Order under section 72(3)(a) and 72(4) of the Act.

[para 65] I direct the Public Body to process the Applicant's access request, after severing from it the material it has listed as offensive in its initial submission at page 5.

[para 66] I impose the condition that any future communications the Applicant provides to the Public Body, including clarifications the Public Body requests from him as to what he is seeking, must, if they are to be taken into account by the Public Body, be free of material of this nature.

[para 67] I will retain jurisdiction to make further decisions about any such responses from the Applicant, and their consequences relative to the processing of the request, should the Public Body bring them before me.

[para 68] I order the Public Body to notify me and the Applicant in writing within 50 days of being given a copy of this Order, that it has complied with the Order.

Jill Clayton
Information and Privacy Commissioner