

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-33

November 4, 2015

OUT-OF-COUNTRY HEALTH SERVICES APPEAL PANEL

Case File Number F7920

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to the Out-of-Country Health Services Appeal Panel (“the Public Body”) for a decision it made regarding a third party. The Public Body replied, stating it could not locate any responsive records.

The Adjudicator found that the Public Body performed an adequate search for responsive records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.10, 12, and 72.

Authorities Cited: AB: Orders F2007-029, F2013-46

I. BACKGROUND

[para 1] On January 9, 2012, the Applicant made an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”) for a copy of a decision made by the Out-of-Country Health Services Appeal Panel (“the Public Body”) regarding a named third party.

[para 2] Initially, the Public Body applied section 12(2) of the Act and refused to confirm or deny the existence of responsive records. On October 31, 2013, I ordered the Public Body to respond to the Applicant access request without relying on section 12(2) of the Act (see Order F2013-46). The Public Body did so and advised that it was unable to locate any records that were responsive to the Applicant’s request.

[para 3] On February 14, 2014, the Applicant asked the Office of the Information and Privacy Commissioner (“this Office”) to review the Public Body’s response to her access request. The Commissioner authorized mediation but that was unsuccessful and on October 22, 2014, the Applicant requested an inquiry which was accepted. I received submissions from both parties, including *in camera* submissions from the Public Body.

II. RECORDS AT ISSUE

[para 4] The issue in this inquiry is if the Public Body performed an adequate search for responsive records; therefore no records are directly at issue.

III. ISSUE

[para 5] The Notice of Inquiry dated May 22, 2015 sets out the issue in this inquiry as follows:

Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUE

Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

[para 6] The Applicant believes, based on news reports, that the third party filed an appeal with the Public Body and that by operation of the *Out-of-Country Health Services Regulation*, the Public Body was obligated to make a decision. Therefore, the Applicant submits that there ought to be responsive records in the custody or control of the Public Body.

[para 7] 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 8] The Public Body must establish that it made every reasonable effort to assist an applicant and this includes conducting an adequate search for responsive records. In Order F2007-029 the former Commissioner stated that the Public Body ought to provide the following evidence as proof of an adequate search:

- 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

(Order F2007-029 at para 66)

[para 9] By way of affidavit evidence, the Public Body advised that the former Administrator for the Public Body undertook a search for records responsive to the Applicant's request and found none. As a result of this inquiry, the current Administrator searched for responsive records again and was unable to find any. She specified the repositories she searched and the keywords she used. No responsive records were found and it was her conclusion that the third party did not file an appeal with the Public Body. In its *in camera* submissions, the Public Body provided another reason why it did not believe that there was an appeal to the Public Body. I cannot provide the specifics of this because it would reveal information in responsive records currently being withheld from the Applicant by a Public Body in a related file; however, it provides additional support for the Public Body's conclusion that no records exist.

[para 10] Based on the evidence provided to me, I find that the Public Body performed an adequate search for responsive records.

V. ORDER

[para 11] I make this Order under section 72 of the Act.

[para 12] I find that the Public Body met its duty under section 10(1) of the Act.

Keri H. Ridley
Adjudicator