

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-60

December 8, 2016

UNIVERSITY OF LETHBRIDGE

Case File Number 000146

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Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the University of Lethbridge (the Public Body) for access to records containing her personal information. After receiving responsive records, the Applicant specified that she was seeking a specific letter dated June 10, 1993, written by a former employee of the Public Body, whom the Applicant named.

The Public Body responded that it did not locate a copy of the requested letter. The Applicant requested a review of the Public Body's response.

The Adjudicator found that the Public Body had conducted an adequate search for records under section 10(1) of the Act.

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

Authorities Cited: AB: Orders 97-006, F2007-029.

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) dated July 2, 2013, to the University of Lethbridge (the Public Body) for access to records containing her personal information. After receiving

responsive records, the Applicant specified that she was seeking a specific letter dated June 10, 1993, written by a former employee of the Public Body, whom the Applicant named, Dr. H. T.

[para 2] The Public Body conducted a further search for the letter but did not locate a copy.

[para 3] The Applicant requested a review of the Public Body's response. An investigation was authorized but was not successful and an inquiry was requested by the Applicant.

II. RECORDS AT ISSUE

[para 4] As this inquiry addresses the adequacy of the Public Body's response under section 10 of the Act, there are no records directly at issue at the present time.

III. ISSUES

[para 5] The issue set out in the Notice of Inquiry dated April 19, 2016, is as follows:

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

[para 6] The Applicant is seeking a copy of a particular letter; therefore, the issue of the Public Body's search will focus on its search for that particular letter.

IV. DISCUSSION OF ISSUES

[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] In Order F2007-029, the Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

In general, evidence as to the adequacy of a search should cover the following points:

- 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 (at para. 66)

[para 10] In the *Notice of Inquiry*, the Public Body was asked to provide a sworn document describing the search conducted for responsive records.

[para 11] The Applicant provided a detailed account of the events leading up to the letter she is seeking, in order to provide the Public Body with possible search locations. The Applicant stated that a law firm had been involved in the matter leading to the letter, and argued that the Public Body should search its files to determine which law firm was involved and either request a copy of the letter from that firm, or tell the Applicant which firm was involved so that she can request a copy from that firm. The Applicant believes a law firm was involved because “the process of suspension was started and was suddenly stopped when I complained to third parties outside of the University of Lethbridge concerning my impending unlawful suspension” (letter attached to Request for Inquiry form).

[para 12] With its initial submission, the Public Body provided an affidavit sworn by the Vice-President (Finance & Administration) and designated Head of FOIP for the University of Lethbridge (the Head), regarding the Public Body’s search for the requested record.

[para 13] In her affidavit, the Head stated (at paras. 8-10):

It was only after the responsive records were sent to and reviewed by the Applicant that she clarified she was in fact looking for one specific record, namely a letter addressed to her from [Dr. H. T.] dated June 10, 1993. The Applicant indicated the letter in question was written to her by [Dr. H. T.], in his role as President, following resolution of a student discipline matter involving the Applicant. The Applicant confirmed that this letter had been hand-delivered to her by the University around the time it was written, but she could no longer locate her copy and hoped the University still had its copy, if one existed.

With this clarification a more focused search was conducted and, while this search resulted in a further 2-page document being located within boxed records that were cleared for destruction, pending final review by the University Archivist in accordance with the University's record retention policy and schedule, the June 10, 1993 letter was still not found. This further 2-page document was provided to the Applicant on August 1, 2013. Attached as Exhibit F is a copy of the letter of August 1, 2013 along with the additional 2 pages located upon the expanded search being conducted.

It is the University's belief, having regard for the thorough and comprehensive searches it has conducted and the queries it has undertaken, that the letter sought by the Applicant was disposed of in the University's usual course of business prior to receiving the Request from the Applicant.

[para 14] After further communications between the Public Body and the Applicant, the Public Body conducted further searches for the responsive record, as follows (at para. 11):

- The University's FOIP Office reviewed its files and does not have any record of having received any previous FOIP request in relation to the June 10, 1993 letter. Since there was no FOIP request received for this letter, any such request was likely sent to and acted on by the Registrar's Office, if such a request was in fact made. The Registrar's Office routinely acts on such requests for information, in relation to students and former students that are not part of the formal FOIP process. Again, the records search conducted by the Registrar's Office did not locate the June 10, 1993 letter in question.
- The Registrar's Office conducted a further search, specifically for the June 10, 1993 letter, which did not yield any responsive record. The appointment of new personnel in the positions of Registrar and Associate Registrar in the few years prior to the Request likely facilitated the clean-up of older cleared files, and any such record that existed previously would have been destroyed, in accordance with the University's record retention policy and schedule, by the time the Request was received on July 2, 2013.
- Although a 2-page document was subsequently located as a result of the more focused search by the University Archivist, the June 10, 1993 letter was still not found.

[para 15] Regarding the Applicant's request for the name of the law firm that may have been involved in the creation of the letter being sought, the Head's affidavit states (at para. 17):

[The acting FOIP coordinator] consulted with the University's Financial Services department and advised the Applicant on August 20, 1993 that the University does not have a way to connect a payment for legal services to a particular department/event without the invoice. Financial Services further advised that an invoice pertaining to a matter from the 1993/1994 fiscal year would have been destroyed in 2001, in accordance with the University's record retention policy and schedule. [The acting FOIP coordinator] also informed the Applicant that she is welcome to submit a request but [The acting FOIP coordinator] would expect that there would be no records.

[para 16] The Public Body provided a detailed list of the areas searched, and the search terms used (at para. 33). The areas searched included electronic and paper files of the following areas:

- University President's Office
- Office of the Provost & Vice-President (Academic)
- Office of the Associate Vice-President (Students)
- Registrar's Office
- Financial Services
- Housing Services
- Faculty of Arts & Science - Office of the Dean
- Faculty of Arts & Science - Office of the Associate Dean
- Faculty of Arts & Science - Office of the Assistant Dean
- Faculty of Arts and Science - Academic Scheduling and Student Records
- Arts & Science Co-op Office
- Faculty of Management • Office of the Dean
- Management Co-op Office
- Native Student Advising Office
- Scholarships and Student Finance Office
- Career and Employment Services
- Disabilities Resource Centre

- Counselling Services
- International Centre for Students
- Human Resources
- Dr. H. T.'s personal files at his personal residence
- University Archives

[para 17] The Public Body also asked Dr. H. T. to search his personal records for a copy of the letter. Dr. H. T. advised the Public Body that he did not have an electronic or paper copy of the letter.

[para 18] The Head's affidavit lists the following databases searched (at para. 35):

- All databases, current and archived, in the departments/offices identified above
- All shared drives, current and archived, in the departments/offices identified above
- Emails in the departments/offices identified above

[para 19] The Public Body also searched the databases used for the academic, administrative, financial and alumni relations operations, as well as the database used in the President's office from 1993 to 2007.

[para 20] Regarding who conducted the searches, the Head stated (at para. 43):

The searches were conducted by those personnel and staff of each of the noted departments/offices who would have access to the pertinent email accounts and would who be familiar with the different databases, shared drives and files (both paper and electronic) within their department/office. In the University Archives, the search was completed by the University Archivist. For the President's Office, separate searches were completed by both the Records Administrator and the Records Management Coordinator. Attached as Exhibit T is a copy of the completed Access Request Processing Summary for each department along with a University created spreadsheet tracking responses from the various departments.

[para 21] Regarding the keywords used in the search, the Head stated (at para. 37):

Since the Request was for all records pertaining to the Applicant, the keywords for the initial search were the Applicant's first and last name and her student number. When the Applicant later explained that she was looking for a specific letter from [Dr. H. T.] dated June 10, 1993, more focused searches were conducted by the University Archivist, the President's Office Records Administrator and the University Records Management Coordinator, those being the departments/offices that would be connected to that specific record. The following keywords were searched by those departments/offices: [Dr. H. T.], [I.J.], Ethical Behaviour Office, Ethical Behaviour Officer, [Dr. O.], [Dr. M.], Discipline Committee, and June 10, 1993. A keyword search using the first 5 letters of the Applicant's last name was also conducted.

[para 22] In her initial submission, the Applicant noted that Dr. H. T. told the Public Body, in an email to the Public Body (dated September 4, 2013 and attached as Exhibit D to the Public Body's initial submission), that the Public Body should search the Board of Governors records. The Applicant argued that the Public Body's affidavit relating to its search did not state that it searched the Board's records. The Applicant also argued that the Public Body's use of Dr. H.

T.'s name as a search term was too specific and would not have elicited records containing different iterations of that name.

[para 23] In this submission, the Applicant also made other requests not relating to the issue in this inquiry; for example, she asked me to order the Public Body to “comply with my additional FOIP request.” The Applicant also asked that the Public Body provide an index for records she had already received from the Public Body.

[para 24] The Public Body asked for an opportunity to provide an additional submission, to address “new” arguments raised by the Applicant. By letter dated September 16, 2016, I agreed to allow the Public Body and the Applicant to each provide an additional submission. I also asked the Public Body to address the two specific concerns of the Applicant, cited at paragraph 22 above.

[para 25] I also explained that this inquiry concerns only the Public Body’s search for a copy of the June 10, 1993 letter, as set out in the *Notice of Inquiry*. Any subsequent request made by the Applicant is not at issue; nor are subsequent requests for indexes to records already received by the Applicant from the Public Body.

[para 26] In its rebuttal submission the Public Body provided another sworn statement from the Head. Regarding the records of the Board of Governors, the Head stated:

All Board of Governors' files have been searched, as documented in our original submission. The Applicant is correct that the University did not state that the University searched the "Board of Governors" files. The Board of Governors at the University of Lethbridge do not have their own department or filing system. All Board of Governors files are maintained in one of two areas: the President's Office or University Archives. These files would include, but not be limited to, Board of Governors executive committee records; in camera records from Board of Governors meetings, as well as other in camera and open meetings of the Board of Governors various committees.

In the University of Lethbridge Classification system, our records management system, the Office of Primary Responsibility for active records pertaining to the Board of Governors, is the President's Office.

...

All documents from the Board of Governors are retained while they are active plus two additional years in the President's Office. If documents are semi active they are retained for an additional 3 years for a potential total retention time in the President's Office of the current year of the document plus an additional 5 years. Once that applicable period of time expires the documents are either scheduled for final destruction or provided to University Archives for archival selection.

Both the President's Office and University Archives were appropriately and diligently searched as a result of the original request from the Applicant. Both the President's Office and University Archives are noted in paragraphs 5 and 33 of the University of Lethbridge original submissions in this matter as having been searched for the record in issue. As such, all Board of Governors materials were captured in the search by the University of Lethbridge as possible departments where this record may be located and as suggested by the former President of the University of Lethbridge [...]. (At paras. 7-8, 10-11)

[para 27] Regarding the limitations of the use of names as search terms, the Head stated (at para. 12):

In response to the allegation in the Applicant's Submissions that the keyword search of [the former employee's name in the form "Dr. ..."] would not yield the appropriate results, combined with the corresponding request to perform a new keyword search of [the former employee's last name], the University has consulted with the University of Lethbridge Information Technology department. In speaking with [...], Manager, Information Management & Security at the University of Lethbridge, it has been confirmed that any search of [the former employee's name] would yield results containing [the last name] and would not be limited to only results containing Dr. [last name]. Searches can be limited to the exact match by putting the name (in this case Dr. [last name]) in quotations. As such a search of ["Dr. ..."] would only yield results of documents including [Dr. ...] and nothing else. A search of [Dr. ...] (no quotations) would yield results of anything containing [the last name] ([Dr. ..., first name/last name, title and last name] and so on). All appropriate keyword searches have been completed by the University of Lethbridge in relation to [Dr. ...] and any other individual who could have or may have been involved in this matter.

[para 28] The Public Body also noted that it searched for the letter using "varied and multiple phrases and dates" (at para. 13).

[para 29] In her rebuttal submission, the Applicant stated:

The Public Body has acknowledged completing searches using current classification systems. However, we need to know how the letter would have been classified in 1993 when it was actually written. The letter would have been stored based on storage and classification schedules in effect between 1993 and the present. We need to start in 1993 and determine where the letter would have been stored in 1993 and how the letter would have moved as the classification system was changed several times from 1993 to the present time. The Public Body has not produced a copy of the classification system which was in effect in 1993.

...

In paragraph 12 of the Public Body's rebuttal, when the search was performed using [Dr. H. T.'s] name, the search term ["H. T."] was never used. The search terms indicated all include the title "Dr." Previous documents produced by the Public Body demonstrate that [Dr. H. T.] typically signs his name without the title "Dr." Thus, a search of ["Dr. T"] would not produce documents signed with the name ["H. T."] because of the inclusion of the designation "Dr."

...

The Public Body has previously produced several documents from 1991 from the Board of Governors. It is not logical that a document from 1993 would have been destroyed because of its age when documents from prior years (such as 1991) remain intact and accessible and have been produced within this search for records. There is clearly evidence that records older than the record which I am seeking are still available. What is really needed is a copy of the classification system which was used by the Public Body in 1993. This would help locate the letter from 1993. The classification system from 1993 was never produced by the Public Body.

[para 30] I am satisfied with the Public Body's responses to the concerns raised by the Applicant in her submissions. I disagree that a change to its record classification system is relevant to the Public Body's search for records in this case. The search conducted by the Public Body was extensive and thorough; in this Order I have highlighted only the most important segments of the Public Body's description of its various searches and those highlights alone are sufficient. In other words, regardless of how the letter would have been classified by the Public Body at the time it was created, I am satisfied that the Public Body has searched every reasonable place that a copy of the letter might be found.

[para 31] That other records exist, which predate the letter, does not mean that the Public Body has a copy of the letter. I accept the Public Body's explanation that the age of the letter indicates that it would have been destroyed by the time of the Applicant's request. That other, older, records were not destroyed does not change this. Even if the Public Body *ought to have* retained a copy of the letter, the issue here is whether the Public Body *does* have a copy and whether it conducted an adequate search for that copy. I find that the Public Body did conduct an adequate search for a copy of the letter.

[para 32] I also accept the Public Body's submission that the various iterations of Dr. H. T.'s name used as a search term would have found the requested letter, if it existed in the Public Body's databases. The Public Body has said its searches included a search for the term ["Dr. H. T."] *without* quotation marks, which would yield records that included *only the surname* of the individual, in addition to records including the surname prefaced by the title "Dr."

[para 33] In her rebuttal submission, the Applicant argued that because of her particular circumstances, the Public Body ought to be held up to a higher standard in terms of conducting an adequate search for a copy of the letter. I disagree; the standard for conducting an adequate search for responsive records under the FOIP Act ought to be the same for any applicant in any circumstance. Further, the numerous searches conducted by the Public Body for a copy of the letter sought by the Applicant *did* go above and beyond what is required by the FOIP Act, in my view. I understand that this letter has significance for the Applicant and it is unfortunate that neither she nor the Public Body have retained a copy of it.

V. ORDER

[para 34] I make this Order under section 72 of the Act.

[para 35] I find that the Public Body conducted an adequate search for the record sought by the Applicant.

Amanda Swanek
Adjudicator