ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-11

January 27, 2017

SERVICE ALBERTA

Case File Number 004353

Office URL: www.oipc.ab.ca

Summary: On May 5, 2016, the Wildrose Party (the Applicant) made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Service Alberta (the Public Body) for the entire dataset of the Quest database "in an open data format such as CSV or Excel". The Applicant explained that the Quest database is a database of information regarding people who have been suspended or banned from access to Government of Alberta systems.

The Public Body asked questions about the Applicant's access request and then ceased communications with the Applicant on June 6, 2016 and did not respond to its access request.

On November 21, 2016, the Applicant requested review by the Commissioner of the Public Body's failure to respond to its access request within 30 days, as required by section 11 of the FOIP Act (time limit for responding).

At the inquiry, the Public Body argued that it was not under a duty to respond to the Applicant, as the Applicant had not made an access request under the FOIP Act.

The Adjudicator found that the Applicant had made a clear access request under the FOIP Act and that the Public Body had failed to meet its duty under section 11. She also found that section 10(2) of the FOIP Act requires a public body to create a searchable copy of the data in a database if doing so can be done using a public body's normal computer

hardware, software and technical expertise, and doing so would not unreasonably interfere with a public body's operations. The Adjudicator ordered the Public Body to comply with its duty to assist the Applicant under section 10(2) by consulting with its technical experts to determine whether it can create a copy of the data in the Quest database in open data format without the names of individuals, as the Applicant had requested.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 7, 10, 11, 72

Authorities Cited: AB: Orders F2007-017, F2011-R-001

I. BACKGROUND

[para 1] On May 5, 2016, the Wild Rose Party (the Applicant), made a request for the following:

> I request the entire dataset of the Quest database. This is a dataset of persons who have been suspended or banned from access to GoA systems.
>
> I also request all records related to this request to be provided electronically, including the final record and correspondence. I request that the final record be provided in an open data format such as CSV or Excel.

[para 2] On May 5, 2016, the Public Body asked what was meant by the term "entire dataset".

> The Applicant replied on the same day: We mean that we would like full access to the data in the particular database. A complete copy.

On June 3, 2016, the Applicant requested a status update in relation to the access request.

[para 3] On June 3, 2016, the Public Body requested clarification from the Applicant as to the information it was requesting. It asked:

> To speed up the clarification I thought I would send you [an] email. Are you requesting a list of names or people who are banned or suspended from access to GOA systems?

[para 4] The Applicant responded on June 6, 2016:

> We are agreeable to excluding names of individuals.

[para 5] On the same day, the Public Body replied:

> Thanks [name]. Should have an answer for you re FOIPable or not this wk. Txs.

[para 6] The Public Body did not communicate further with the Applicant, and on November 21, 2016, the Applicant requested review of the Public Body's failure to respond to his access request.

II. ISSUE

Issue A: Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 7] Section 11 imposes a duty on a public body to respond to an access request within 30 days of receiving the request. It states:

> *11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*
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> *(a) that time limit is extended under section 14, or*
>
> *(b) the request has been transferred under section 15 to another public body.*
>
> *(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.*

[para 8] The Public Body acknowledges that it did not respond to the Applicant's access request within the time limit imposed by section 11. However, it argues that it is not required by the Act to respond to the Applicant. It states:

> The Public Body respectfully submits that the Applicant's request was not an access request under Part 1 of the FOIP Act as the Applicant failed to meet section 7(2) of the FOIP Act. Filling out a Request to Access Information form, indicating the request is for a copy of general information and submitting the $25 initial fee do not themselves conclusively constitute a FOIP request.
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> An applicant must provide enough detail to enable a public body to identify the record requested. In this case, the Applicant did not provide enough detail to enable the Public Body to search, and respond to a specific request, and thus a FOIP request was not opened.
>
> The Applicant submits that:
>
> *"[they] have not received a file number or acknowledgement letter. [They] have received no response since June 6 2016"*
>
> The Applicant is correct that they were not provided with an acknowledgment letter or a request file number. As the request did not constitute an access to information request under Part 1 of the FOIP Act, the access to information request was not opened, a request file number was not assigned and the initial fee is currently maintained by the Public Body in the Wildrose "credit".
>
> […]
>
> The Public Body's understanding is that the Applicant's request is for "the entire dataset of the Quest database" which the Applicant clarified as meaning "full access to the data" within the Quest database. The Applicant submits that "[they] dispute SA's interpretation of [their] request

that [they] are asking for data, not records. A record is recorded information in any form as per 1 (q) of the Act."

Section 1 (q) (Definitions) of the FOIP Act defines records as follows:

> *"record"means* a *record* of *information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.*

The Applicant has not requested specific records that could be generated from the database but rather a copy of the database itself. The Public Body submits that this request is not an access request under Part 1 of the FOIP Act.

It was the Public Body's understanding, and that the Applicant also understood, that no request under Part 1 of the FOIP Act had actually been made at the time.

The Public Body generally communicates on a weekly, and at times on a daily basis, with the Applicant and his team on a significant number of FOIP requests. The Public Body regularly assists the Applicant with respect to accessing information. Some of these assistive measures include:

• Answering questions before or after processing the Applicant's requests;
• Providing information for re-releases on general access requests from other Applicants;
• Arranging meetings between the Applicant, the Public Body's program areas and FOIP Services to better understand those programs;
• Clarifying requests to help reduce or eliminate additional fees being incurred by the Applicant; and
• Sending all communication and records release packages by email, if possible.

Despite the ongoing and collaborative communication pattern, and despite our understanding which the Public Body believed it shared with the Applicant that a request under Part 1 of the FOIP Act had not yet been made, the Public Body acknowledges that a breakdown in communication between the two parties occurred.

The Public Body apologizes that communication with the Applicant was not made clearer and ongoing communication was not done in a more timely manner to assist the Applicant in making an official request under Part 1 of the FOIP Act.

The Public Body submits that the untimely assistance was unintentional, as evidenced by the ongoing communication and processing of the Applicant's other FOIP requests for the Public Body and its client ministries.

Requesting access to information is not new for the Applicant as the Applicant and his team are familiar with the FOIP request process and regularly provides enough detail to the Public Body to identify, search and provide the requested information. That said section 7(2) of the FOIP Act is the responsibility of the Applicant; the onus is on the Applicant to provide enough detail to enable a public body to identify the record.

As the Applicant did not meet section 7(2) of the FOIP Act, the Public Body submits that timelines for responding as set out in section 11 of the FOIP Act were not triggered as the Applicant's request is not an access to information request under Part 1 of the FOIP Act.

In the Applicant's "Request for Review/Complaint Form", the Applicant submits that

"they learned about the Quest Database via [their] request, 2016-G-0027 [and] the description provided for Quest is "dataset of persons who have been suspended or banned from access to GOA systems." Clearly this information exists in record form in the Quest database/application and should be provided to us."

Since notification of the Office of the Information and Privacy Commissioner (OIPC) Review and subsequent Inquiry #004353, the Public Body has confirmed that there are no standard reports used or generated by the Public Body in relation to the QUEST database. In other words, QUEST reporting is not generated by the Government of Alberta (GoA).

However, it is noted that if an individual were to submit a request asking whether they were personally the subject of a QUEST database entry, records may be produced from the QUEST database. This, however, would require a special IT service request to complete this function.

The Applicant's request is for access to all data, not specific information regarding a named individual. Generating records for a general access to information request, through a special IT service application, when standard reporting is not generated or required by the Public Body, is outside the spirit of the FOIP Act and the Public Body's duty to assist.

The Public Body submits that at the time of the Applicant's original request and as a result of past communications with the Applicant, the request was not and remains not an access request under Part 1 of the FOIP Act. As such, section 11 of the FOIP Act does not apply to this matter.

5. Closing and Order Sought

The Public Body respectfully asks that the OIPC find that section 11 of the FOIP Act does not apply to this matter as section 7(2) of the FOIP Act was not met.

In addition, the Public Body acknowledges the breakdown in communication between both parties and commits to clearer communication regarding clarification and section 7 with the Applicant in a more timely manner.

[para 9] The Public Body argues that the Applicant has not made an access request under the FOIP Act, as it has requested "a copy of a database itself" rather than "specific records that could be generated from the database". It also says that he has asked for "all data" rather than specific information regarding a named individual, and asserts that a request for information generated "through a special IT service application" when such a report is not routinely generated or required for the Public Body's own purposes, is outside the spirit of the FOIP Act and of its duty to assist an applicant. The Public Body also argues that the Applicant failed to make an access request that was clear enough to engage the Public Body's duties under the FOIP Act. I am unable to accept these arguments for the reasons that follow.

[para 10] Section 1(q) of the FOIP Act defines the term "record" where that term is used in the FOIP Act. It states:

1 In this Act,

(q) "record" means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other

> *information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records […]*

[para 11] In its submissions, the Public Body argues that a database is excluded from the foregoing definition. Possibly, the Public Body holds the view that it was being asked for the mechanism or software that produces records in addition to the data with which the Quest database had been populated. However, the Applicant asked for the dataset from the database (in an open data format) not for the Quest program or software.

[para 12] As the data in a database is recorded information, section 6 of the FOIP creates a right in an applicant to request a copy of it.

[para 13] Previous orders of this office have held that creating a record from one that is in electronic form under section 10(2) of the FOIP Act may involve manipulating data elements to create a record in a form satisfactory to an applicant.

[para 14] Section 10(2) of the FOIP Act is part of the duty to assist. It states:

> *10(2) The head of a public body must create a record for an applicant if*
>
> *(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*
>
> *(b) creating the record would not unreasonably interfere with the operations of the public body.*

[para 15] In Order F2011-R-001 I considered what it means to create a record within the terms of section 10(2) and said:

> […] I believe the better interpretation of the phrase "create a record" in the context of section 10(2) is that it does not relate to or limit the duty of a public body under section 13 to produce copies of records that it has decided to disclose. Rather, it creates a separate duty to assist applicants, when the terms of the provision are met, by manipulating data existing in electronic form so as to produce it in a form more usable or more economical for the applicant – for example, where a small data element is being sought from a larger database, or where unresponsive parts of documents could be removed electronically to reduce the size of the document that contains responsive data. *However, even where this cannot be done because the limitations in section 10(2) do apply, this does not obviate the duty of the public body to provide copies of as much of the database or document as it is necessary to provide, in order to satisfy the request, subject to the "reasonableness" limitation and the payment of fees.* [my emphasis]"

[para 16] In Order F2007-017, former Commissioner Work found that the former Capital Health Authority was in breach of section 10(2) when it refused to provide copies of a database in a format satisfactory to the Applicant. He said:

> The Applicant also states that the Public Body failed in its duty to assist by initially refusing to provide the database information to the Applicant on the basis that the electronic information could not be exported into MS Excel or MS Access.
>
> Section 10(2) states that a public body must create a record for an applicant if the record can be created from a record that is in electronic form using its normal computer hardware and software and technical expertise and creating the record would not unreasonably interfere with the operations of the public body. Section 10(2) reads:
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> > *10(2) The head of a public body must create a record for an applicant if*
> >
> > > *(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*
> > >
> > > *(b) creating the record would not unreasonably interfere with the operations of the public body.*
>
> I find that the Public Body's initial refusal to create the electronic database records for the Applicant was in breach of section 10(2). The Public Body had the ability to create, and eventually did create, those records. There is no evidence before me that the Public Body used resources over and above its normal computer software and hardware and its technical expertise in order to create those records. There is also no evidence that the Public Body's creation of those records unreasonably interfered with its operations.
>
> .

[para 17] I conclude from the foregoing that data in a database is a record, and that the duty to create a record from one that is in electronic form under section 10(2) may involve creating it in a format suitable for the Applicant provided this can be done with a public body's usual software, hardware, and technical expertise.

[para 18] From the Applicant's access request and subsequent correspondence to the Public Body, I understand the Applicant to request that the Public Body create a record from the Quest database by manipulating the data in the Quest database so that he may receive a copy of the database without names and in an open data format. This is a request the Applicant is entitled to make under section 6 of the FOIP Act, and the record is one that the Public Body is under a duty to create provided it can do so with its normal computer hardware, software, and technical expertise, and creating the record would not interfere with its operations.

[para 19] In saying this I have noted the Applicant asks for the data to be provided "in an open data format such as CSV or Excel". It is not clear to me whether this can be done within the limitations just expressed, but even if it cannot, as noted in the case cited at para 16 above, this does not obviate the duty of the Public Body to provide the requested data in a format that can be created within these limitations.

[para 20] The Public Body also argues that the Applicant's access request was not sufficiently clear to engage its duty to respond to the Applicant under section 11. Section 7 of the FOIP Act describes how to make an access request. It states:

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.

(3) In a request, the applicant may ask

(a) for a copy of the record, or

(b) to examine the record.

[para 21] I find that the Applicant's request was sufficiently clear to engage the Public Body's duties under sections 10(2) and 11. A request for a copy of data in a database with the names removed and in an open data format is one that can be made under the FOIP Act. There is no ambiguity in this request. The Applicant's request for data is a request for recorded information. "Recorded information" is a "record" within the terms of section 1(q) of the FOIP Act.

[para 22] Further, contrary to the Public Body's suggestion, an applicant is not restricted to reports the Public Body itself generates from a database.

[para 23] It remains to be discovered whether the Public Body can create the record with the names removed, in one of the formats the Applicant referred to, using its normal computer hardware and software and technical expertise, and whether creating such a record would unreasonably interfere with its operations. Even if it cannot be created in the suggested formats, the Public Body is still under a duty to provide the data in the dataset in an open data format so long as this can be done within the aforementioned limitations. If the data cannot be provided in an open data format, the Public Body should consult with the Applicant as to whether he wants the data in some other form.

[para 24] Whether and how these things can be done cannot be determined until the Public Body performs its duty under section 10 and processes the Applicant's access request, and consults with its technical experts, and I will order it to do so.

III. ORDER

[para 25] I make this order under section 72 of the Act.

[para 26] I find that the Public Body has failed to meet its duty to make all reasonable efforts to respond to the Applicant within 30 days of receiving the access request.

[para 27] I order the Public Body to comply with its duty to assist the Applicant under section 10(2) by consulting with its technical experts to determine whether it can

create a copy of the data in the Quest database in open data format without the names of individuals.

[para 28] I further order the Public Body to notify me within 50 days of receiving this order that it has complied with it.

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Teresa Cunningham
Adjudicator