

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2019-36

October 10, 2019

ALBERTA COMMUNITY AND SOCIAL SERVICES

Case File Number 004048

Office URL: www.oipc.ab.ca

Summary: Alberta Community and Social Services (the Public Body) received a request for access from the Applicant under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Public Body conducted a search for responsive records. It located 78 records and provided them to the Applicant in their entirety.

The Applicant requested review by the Commissioner of the Public Body's search for responsive records. The Adjudicator confirmed that the Public Body had met its duty to assist the Applicant by conducting a reasonable search for responsive records.

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 F2007-029, F2015-29

Cases Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII)

I. BACKGROUND

[para 1] On June 30, 2016, Alberta Community and Social Services (the Public Body) received a request for access from the Applicant under the *Freedom of Information*

and Protection of Privacy Act (the FOIP Act). The Public Body reports that the Applicant stated the following in his access request:

I went to Bredin Institute on Jan 2007 and I believe I have had file then till August 2007. I like to have copies of these records, please. Time Period: January 2007 to August 2007.

The Public Body conducted a search for responsive records. It located 78 records and provided them to the Applicant in their entirety.

[para 2] The Applicant asked the Commissioner to review the adequacy of the Public Body's search for responsive records as he did not believe he had been provided with all the responsive information in the Public Body's custody or control.

[para 3] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested that the Commissioner conduct an inquiry. The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

II. ISSUE: Did the Public Body meet its obligations under section 10(1) of the Act (duty to assist applicants)?

[para 4] Section 10 of the FOIP Act 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 5] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order F2007-029, the Commissioner noted:

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

[para 6] In Order F2015-29, the Director of Adjudication reviewed past orders of this office and noted that the duty to assist has an informational component, in the sense that a public body is required to provide explanations of the search it conducts when it is unable to locate responsive records and there is a likelihood that responsive records exist. She said:

Earlier orders of this office provide that a public body's description of its search should include a statement of the reasons why no more records exist than those that have been located. (See, for example, Order F2007-029, in which the former Commissioner included "why the Public Body believes no more responsive records exist than what has been found or produced" in the list of points that evidence as to the adequacy of a search should cover. This requirement is especially important where an applicant provides a credible reason for its belief that additional records exist.

[para 7] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), the Alberta Court of Queen's Bench confirmed that the duty to assist has an informational component. Manderscheid J. stated:

The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission*, F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):

In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and *why the Public Body believes that no more responsive records exist than what has been found or produced*. [Emphasis added in original]

Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University's rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, *its reasons for concluding that no more responsive records existed*. [My emphasis]

[para 8] From the foregoing cases, I conclude that the duty to assist requires a public body to search for responsive records. In addition, the duty to assist has an informational component, which requires the public body both to explain the search it conducted and to provide its reasons for believing that no additional responsive records are likely to exist.

[para 9] The Applicant is concerned that the Public Body has not conducted an adequate search, as it has not produced all the records he had anticipated receiving in response to his access request. He states:

Alberta College of Pharmacists sent Employ Abilities a direct letter in January 26, 2010 to say to them that I have been registered to them as an Intern and the entire file was removed from the system. I find the letter sent to me by Honorable Sarah Hoffman is related closely to the removed documents from the system and proves about my registration to Alberta College of Pharmacists as an Intern.

I would like the Office of Information and Privacy Commissioner of Alberta to investigate the matter with Government of Alberta the disappearance of the whole file from the system and some important documents from the other file and the letter sent to me by Honorable Sarah Hoffman in Sept 8, 2015 which I see is closely related to what happened to both files.

[para 10] The Public Body made the following submissions for the inquiry:

Specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request.

- The PFCS FOIP [People, Families, and Community Sector] Office requested any and all records from Bredin Centre for Learning pertaining to the Applicant that have been “obtained, related, generated, collected or provided for Human Services as per the contract agreement’.
- Bredin Centre for Learning provides contracted services to the Public Body. In the search for records Bredin Centre for Learning informed the PFCS FOIP Office that a search performed determined that records for the Applicant under the contract had been inventoried and provided back to the Public Body. Records for the Applicant were now under the custody and control of the Public Body.
- The PFCS FOIP Office subsequently requested the Regional Support Services, Human Services program area to retrieve the Bredin Centre for Learning inventoried records held at the Alberta Records Centre.
- The PFCS FOIP Office received the inventoried records from the Alberta Records Centre.
- A review of the records determined that services under the contract for the Applicant were for the timeframe in 2003. There were no records for 2007 as requested by the Applicant.
- The PFCS FOIP Office sent a letter to the Applicant stating that the timeframe of records held by Bredin Centre of Learning under contract was for 2003 and no records were found for 2007.

Steps Taken to Assist the Applicant

- In response to the PFCS FOIP Office letter the Applicant communicated that he was in attendance at Bredin Centre for Learning from September 2006 to 2007.
- The PFCS FOIP Office contacted Bredin Center for Learning to perform another search for records. The search found a Service Need Determination Assessment (4 pages) from 2007 in the Human Services’ user information system (MOBIUS) pertaining to the Applicant. A copy of these records [was] provided to the PFCS FOIP Office. The records did not pertain to any information on services provided by Bredin Center for Learning.
- The PFCS FOIP Office undertook a further search of the records that were previously provided to the Applicant through a request for access to records in May 2016. This request contained records from the Applicant’s client file with Human Services. The records contained a receipt dated February 7, 2007 and course information from Bredin Centre for Learning that the Applicant had directly provided to Human Services.
- The PFCS FOIP Office contacted the Public Body’s program area supervisor in regards to the course to determine if further records should be on file. The supervisor indicated that this was not a course that a client would be required to take and therefore no further information would be on file. It appears the Applicant registered on his own for the course and provided the records to Human Services which were filed on his client file.
- The PFCS FOIP Office determined that if the Applicant registered on his own for a course not required by the Public Body records on this course held by Bredin Center for Learning would not be under the control and custody of the Public Body under the FOIP Act.

- To obtain records from Bredin Centre for Learning the Applicant would be required to make a request for access directly to Bredin Centre for Learning under the *Personal Information Protection Act*.
- The PFCS FOIP Office notes that in the Applicant's documentation provided with the request for inquiry there is an indication that the Applicant did make a request for records directly to the Bredin Centre for Learning.

Applicant's Inquiry Correspondence

- The Applicant's inquiry correspondence contains information on his requests for search of records not only with this Public Body but with the Alberta College of Pharmacists and directly with Bredin Centre for Learning.
- The Public Body submits that a comprehensive search for records under the Public Body's control and custody was undertaken and the Applicant was provided with all responsive records under the FOIP Act.
- Searches the Applicant requested by the Alberta College of Pharmacists and Bredin Centre for Learning fall under the *Personal information Protection Act* and the Public Body has no control or custody of records held under this Act.

[para 11] The Public Body has explained the steps it took to locate responsive records. Its evidence established that it conducted searches where responsive records were likely to be located and what the result of the search was. It also explained who conducted the search and how the search was conducted. I infer that it believes no additional responsive records exist in its custody or control, because these would have been located in the search it conducted. Finally, it explained that it does not have control over records gathered by the Bredin Centre outside the scope of its contract with the Bredin Centre, such as any records sent to the Bredin Centre by the College of Pharmacists.

[para 12] I find that the Public Body conducted a reasonable search for responsive records and provided a detailed explanation of the search it conducted. I find that the Public Body met its duty to assist the Applicant.

III. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] I confirm that the Public Body met its duties under section 10 of the FOIP Act.

Teresa Cunningham
 Adjudicator