

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2019-37**

October 10, 2019

**ALBERTA COMMUNITY AND SOCIAL SERVICES**

Case File Number 004128

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made a request for access to Alberta Community and Social Services (formerly Alberta Human Services) (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). He requested his file from EmployAbilities, a nonprofit organization that provided services to the Public Body under contract. He noted that he had attended this organization between 2009 and 2010.

The Public Body searched for responsive records and provided any responsive records it located in their entirety. The Applicant requested review of the Public Body's search for responsive records.

The Adjudicator confirmed that the Public Body had conducted a reasonable search for responsive records and had provided a satisfactory account of the search it conducted.

**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 July 21, 2016, the Applicant made a request for access to Alberta Community and Social Services (formerly Alberta Human Services) (the Public Body). He requested his file from EmployAbilities. He noted that he had attended this organization between 2009 and 2010.

[para 2] The Public Body conducted a search for responsive records. It located eight records and provided these to the Applicant without redaction.

[para 3] The Applicant requested review of the Public Body's response, on the basis that he believed that the Public Body would have more responsive records in its custody or control than it located.

[para 4] The Commissioner appointed a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested 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 duty to assist the Applicant under section 10 of the FOIP Act (duty to assist applicants)?**

[para 5] 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 6] 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 7] 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 8] 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 9] 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 10] 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 11] 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.**

- EmployAbilities provides contracted services to the Public Body.
- The PFCS [People, Families and Community Sector] FOIP Office requested any and all records from EmployAbilities pertaining to the Applicant that have been “obtained, related, generated, collected or provided for Human Services as per the contract agreement”.
- EmployAbilities responded to the request for records stating no record of the Applicant was found.
- The PFCS FOIP Office performed a search on the Human Services’ user information system (LISA). An entry on Nov 4, 2009 stated. “At client’s request, a referral was made to EmployAbilities”.
- The PFCS FOIP Office requested the Regional Support Services perform a search for a file on the Applicant.
- The Regional Support Program area responded to the search stating that the inventoried file held at the Alberta Records Centre had already been provided to the PFCS FOIP Office in response to a former FOIP request.
- The PFCS FOIP Office found the file was returned to the Alberta Records Centre and subsequently had the file retrieved.
- The Applicant’s employment training file from the Alberta Records Centre contained records responsive to the request time period (8 pages).
- A letter with 8 records for the time period, which were held under the program name Contractor Access Emploi, [was] disclosed in [its] entirety to the Applicant.

**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 directly with EmployAbilities.
- 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 EmployAbilities would fall under the Personal Information Protection Act and this Public Body has no control over custody of records held under this Act.

[para 12] 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 has explained that any records held by EmployAbilities that are outside the scope of its contract with this Organization, would be outside the control of the Public Body, and therefore outside the scope of the FOIP Act.

[para 13] 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 14] I make this Order under section 72 of the Act.

[para 15] I confirm that the Public Body met its duties under section 10 of the FOIP Act.

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Teresa Cunningham  
Adjudicator