

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2019-39

October 25, 2019

GRANDE PRAIRIE PUBLIC SCHOOL DISTRICT #2357

Case File Number 003836

Office URL: www.oipc.ab.ca

Summary: An individual made an request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), dated March 1, 2016 to the Grande Prairie Public School District #2357 (the Public Body).

The Applicant requested a review of the Public Body's search for responsive records, as well as exceptions to access applied by the Public Body to withhold information. The Applicant subsequently requested an inquiry into the Public Body's search. The Applicant was specifically seeking a particular performance evaluation, and contract and bid information she had requested.

The Adjudicator determined that the Public Body conducted 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, 72

Authorities Cited: **AB** Orders 97-006, F2007-029, F2009-009

I. BACKGROUND

[para 1] An individual made an request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), dated March 1, 2016 to the Grande Prairie Public

School District #2357 (the Public Body). The request was for the Applicant's entire human resources file, including evaluations and attendance, as held by the Director of Human Resources. The Applicant also requested all Board meeting minutes, including *in camera* meetings and emails circulated by Board members regarding her employment. The Applicant also requested copies of "Alberta Education letters provided by Zone 1 Directors and or Managers for the past four years, up [to] and including this year." In addition, the Applicant requested copies of all contracts, projects, jobs, work and designs awarded to a particular Trustee or any of his companies and the dollar value of each. She also requested the information available to the Secretary Treasurer regarding a bid on the downtown central office proposal, which she stated had been submitted by the Trustee referred to above.

[para 2] The Public Body responded to the Applicant's access request. It located 288 pages of records, and withheld some information relying on several sections of the Act. The Public Body stated that it was unable to locate any records regarding a downtown central office proposal submitted by the Trustee.

[para 3] The Applicant requested a review by the Commissioner of the adequacy of the Public Body's search and its severing decisions. The Public Body subsequently reviewed its severing decisions and provided more information to the Applicant.

[para 4] The Applicant requested an inquiry regarding the adequacy of the Public Body's search, as it had not produced a specific performance evaluation dated February 11, 2011 for the 2012-2013 year, or the specific contract and bid information she had requested.

II. RECORDS AT ISSUE

[para 5] As the inquiry relates to the Public Body's obligations under section 10(1), there are no records at issue.

III. ISSUES

[para 6] The issue set out in the Notice of Inquiry dated June 10, 2019, is as follows:

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

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 former 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 her request for review the Applicant argues that the Public Body's search was not adequate because it did not locate a 2-page evaluation that was written in February 2013, and because it did not locate records relating to contracts, projects, jobs, work, designs awarded to a particular company for a Health and Wellness project. The Applicant also raised a concern about the accuracy of the Public Body's statement made during the mediation phase of this file, that a particular company's bid for a project was delivered by the owner of the company. The Applicant believes the bid was delivered by a particular school board trustee. She states that a Public Body employee confirmed in another proceeding that the employee received the bid from the school board trustee as alleged by the Applicant. The Applicant had asked that this inaccuracy be resolved in this inquiry.

[para 11] Regarding the latter concern, the accuracy of a Public Body's statement regarding who delivered a bid proposal is not within the scope of this inquiry. This inquiry is about whether the Public Body conducted an adequate search for responsive records; the accuracy of information provided by the Public Body as an explanation to the Applicant (whether the statement was made during the mediation or in another proceeding) and/or the accuracy of the information in the responsive records is not an issue. Under the FOIP Act, the only power of the Commissioner relating to accuracy of information relates to a correction request from an applicant to correct his or her *personal* information in the custody or control of a public body. Therefore, whether the Public

Body is correct or incorrect about who delivered a bid proposal is not a matter that I can address.

[para 12] Regarding the first concern – the 2-page evaluation – the Public Body has provided a detailed explanation regarding its search for this record. With its submission, the Public Body provided an affidavit sworn by the Public Body Superintendent, who provided a detailed outline of the steps taken to respond to the Applicant’s request. Attached to the affidavit is a report from an employee in the Public Body’s IT department, whom the Superintendent had asked to perform a search of relevant email mailboxes.

[para 13] In response to the request, the Public Body states that it searched the Applicant’s personnel file, electronic and paper files of the Applicant’s former executive assistant, the Public Body’s website, email accounts of the Applicant and each trustee on the Board of Trustees, personal notes and email folders of each trustee, and a hard copy file of all correspondence with Alberta Education. The Public Body also included a list of more than two dozen search terms used to find responsive records, including several search terms relating to job evaluations. The Public Body also asked each trustee to perform their own search for responsive records, in the event that a trustee used a personal email account to send or receive emails that could be responsive.

[para 14] The Public Body states that the Applicant’s request for inquiry provided additional information about the evaluation record she is seeking: the date of the evaluation (February 11, 2013), and that the evaluation was discussed in a memo between two named Public Body employees. The Public Body states that it used this information to conduct a further search for the record. The Public Body’s description of the additional search is very detailed; in the end, the Public Body located a 1-page letter, dated February 11, 2013, from two trustees to the Applicant, regarding a salary change affecting the Applicant. The Public Body provided a copy of this letter to the Applicant. The Applicant indicates that this is not the evaluation she was seeking.

[para 15] The Public Body states that it found this letter in June 2019, when preparing for this inquiry. It was located in the Applicant’s physical personnel file. In the course of the initial search, this personnel file was scanned by an HR employee and provided to the Public Body’s FOIP Coordinator. Presumably, the February 11, 2013 letter was not scanned. The Public Body states that it cannot confirm who scanned the file.

[para 16] The Public Body argues, citing Order F2009-009 (submission at para. 15):

To the extent that any prior search conducted by the Public Body failed to retrieve the document dated February 11, 2013, this issue has been resolved and the requested document provided to the Applicant. Further, failing to find records during an initial search does not preclude a finding that a public body made every reasonable effort.

[para 17] In Order F2009-009, the adjudicator found (at para. 48):

The Public Body submits that its initial inability to locate records in February 2007 was due to human error, which was apparently the filing of records by date incorrectly. It also says that workload volume and the fact that the Applicant had a large file existing in various areas contributed to the overlooked records. I accept these explanations, but particularly the fact that there was a filing error. An adequate search does not require perfection; a public body is required only to make every reasonable effort (Order 2000-021 at para 68; Order F2008-006 at para. 38). Failing to find records during an initial search does not preclude a finding that a public body made every reasonable effort (Order F2003-001 at para. 40).

[para 18] I agree with the analysis in that Order. In this case, the Public Body provided a detailed account of its equally detailed search for responsive records. In my view, the steps taken by the Public Body to locate responsive records met the duty to make every reasonable effort. Undoubtedly it is frustrating to the Applicant that a record was not located.

[para 19] With respect to the additional record, the Public Body's failure to locate it during the initial search does not detract from the thoroughness or adequacy of its search.

[para 20] The last of the Applicant's concerns relates to records of contracts, projects, jobs, work, designs awarded to two particular engineering companies for a Health and Wellness project (I will refer to these companies as BLK and DW). The Public Body states that its financial area searched its vendor reports and ledgers for records relating to work performed by BLK. It located records, but not relating to the Health and Wellness project. No records relating to DW were located.

[para 21] The Public Body explains that the Health and Wellness project was awarded to another company, not BLK. It also explains that it has not had any work done by DW.

[para 22] The Applicant states in her request for inquiry that different companies may have worked on the Health and Wellness project, but BLK was involved. She states that various articles referred to their involvement. The Applicant did not provide me with copies of any such articles. I don't have any direct evidence regarding which companies performed work for the Public Body on the Health and Wellness project.

[para 23] In her submission, the Applicant states that "[m]any older records were kept off site in the Operations building. There is no indication if these records were searched." I asked the Public Body to tell me whether offsite locations were searched. The Public Body confirmed that it stores original paper copies of invoices at the offsite Maintenance and Operations building, after one or two years of storage at the main Administration Office. As no records relating to DW were located (i.e. the Public Body has no record of awarding bids to or contracting with DW), no invoices from DW would be located at the offsite location.

[para 24] Regarding contracts with BLW, the Public Body states that copies of *contracts* are all maintained at the main Administration building; however, copies of *invoices* from any contracts with BLW could be located at the offsite location.

[para 25] The Public Body states that the employee responsible for responding to the Applicant's request is no longer employed with the Public Body and therefore is not available to swear an affidavit as to whether the offsite location was searched. However, the Public Body pointed to invoices dating back to 2010, 2013 and 2014, that were located as part of the search. The Public Body argues that its usual storage practices indicate that these invoices would have been stored at the offsite location as they were more than two years old by the time of the access request. Therefore, the Public Body surmises that the offsite location was searched in response to the Applicant's request.

[para 26] The Public Body also provided a copy of a vendor report showing invoices from BLW between 2003-2014, a copy of which had also been provided to the Applicant. This vendor report shows the dates of invoices; these dates correspond to the dates of invoices provided to the Applicant (except invoices dated prior to 2010. Those invoices were destroyed in accordance with the Public Body's records retention policy, which was provided to me).

[para 27] The Public Body's evidence regarding its usual practice for storing records at the offsite Maintenance and Operations building and the records that were located and provided to the Applicant, is sufficient for me to conclude that this offsite location was included in the search for records.

[para 28] More generally, the areas searched by the Public Body searched for records of work performed by BLK and DW are logical areas to search. It located some responsive records but not the ones the Applicant specified. The Public Body has provided a reasonable explanation as to why there are no records of BLK performing work for the Health and Wellness project, and I have not been provided with evidence to conclude that the search was insufficient.

[para 29] The Applicant raised a number of additional concerns in her submission. She states that during a discovery process for a separate proceeding, a Public Body employee disclosed that she had found some additional records. Pursuant to rules around that separate proceeding, the Applicant could not provide me with discovery transcripts without the Public Body's consent; the Public Body did not provide that consent. As a result, I do not have information about other records that may have been later located. As stated above (at paras. 14-19), locating responsive records at a later date does not necessarily indicate that the Public Body's initial search for records was inadequate.

[para 30] The Applicant has also raised a concern about the scope of the search for emails as described in the report of the IT employee attached to the Superintendent's affidavit. That report states that "the entire contents of each listed individual's GPPSD [Grande Prairie Public School Division] mailbox was searched" (at page 5). The report went on to note that the mailboxes associated with the GPPDS email addresses were the basis of the data that was searched. The report then lists several additional email addresses that were used in the search criteria. That list includes the personal email address of the Applicant's spouse.

[para 31] The Applicant is concerned that her spouse's personal email *account* was searched by the Public Body. I do not read the report to mean this. At page 4 of the report, the IT employee specifically notes that some Public Body employees use personal email accounts for work-related business and that these emails would not be captured by the search unless the emails were also sent to a GPPSD address. I understand the report to mean that the IT employee included relevant personal email addresses as *search terms*, to locate responsive emails, not that those personal accounts (i.e. mailboxes) were searched.

[para 32] Lastly, the Applicant has raised a concern that the Superintendent reviewed records provided by an investigator. In his affidavit, the Superintendent states that the Applicant indicated she had provided an investigator for the Board with all performance evaluations she had requested in her access request. The Superintendent therefore requested that the investigator search his records. The investigator did not locate any performance evaluations. The Superintendent further states that the investigator forwarded his files to the Superintendent, and that the Superintendent searched the files for evaluations but did not locate any.

[para 33] The Applicant is concerned that the Superintendent had access to documents the Applicant had provided to the investigator in confidence. She further states that she was told that the investigator's files would not be shared with her (the Applicant) once the investigation was closed and is alarmed that the Superintendent was given this information.

[para 34] It is not clear to me what investigation was conducted or how it relates to the Applicant's access request. It seems that the Public Body was alerted by the Applicant to the possibility that the investigator may have responsive records. It was reasonable for the Public Body to ask the investigator to search his files. When the investigator forwarded the files, the Superintendent conducted his own search; in my view, this was also reasonable for the purpose of conducting a thorough search. There is no indication that the Superintendent searched these files for any reason other than locating responsive records. The fact that the Applicant may have been informed that she (the Applicant) would not be given the investigator's files following the investigation does not mean that the files would not contain records responsive to an access request, which is a different process from the investigation, with different rules for providing information. In responding to an access request, it is certainly not uncommon for Public Body employees to review records containing confidential information, whether or not the Public Body ultimately decides to disclose or withhold that information.

[para 35] I find that the Public Body met its duty to assist the Applicant, including conducting an adequate search for records, as required by section 10(1) of the Act.

V. ORDER

[para 36] I make this Order under section 72 of the Act.

[para 37] I find that the Public Body met its duty under section 10 of the Act.

A. Swanek
Adjudicator