

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2020-15

June 22, 2020

CITY OF CALGARY

Case File Number 007581

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Calgary (the Public Body), for the Calgary Fire Department Workplace Review conducted by a consultant (the Consultant) retained by the Public Body. Initially, the Public Body responded that it did not find any records responsive to the Applicant's request. However, after conducting a subsequent search, it located a PowerPoint slideshow (the Slideshow) prepared by the Consultant and an employee of the Calgary Fire Department, which was responsive to the Applicant's request. The Applicant was not satisfied. The Applicant asserted that the Consultant had created and provided the Public Body with a written report and the Public Body was not being truthful about having the report.

The Adjudicator determined that the Public Body's initial search for responsive records was not adequate; however, as the Public Body conducted a subsequent search which located or identified the Slideshow as a responsive record, and provided evidence to rebut the Applicant's assertion that the Consultant had created and provided the Public Body with a written report of her findings or recommendations, other than the Slideshow, the Adjudicator found that the Public Body's search was adequate, and it had met its duty to assist the Applicant under section 10(1) of the FOIP 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 F2003-001, F2007-029, F2009-009, F2014-08, H2015-01/F2015-24, F2019-37, F2019-39

I. BACKGROUND

[para 1] An individual (the Applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Calgary (the Public Body) for the following record:

Calgary Fire Department Workplace Review by [name of consultant]. Deals with the abuse of vulnerable employees within the Calgary Fire Department.

The date range specified for the record was between 2013 and 2015.

[para 2] The following relevant keywords were specified by the Applicant to assist the Public Body with the search: “Calgary Fire Department”, “Workplace Review”, “Workplace Abuse”, “[name of consultant]”.

[para 3] In a letter dated October 24, 2017, the Public Body responded to the Applicant and informed him that it had conducted a search for the above record, and the search had failed to produce any records related to his request. It informed him that the business units provided a response to indicate that there was no report published by the consultant he had named (the Consultant).

[para 4] The Applicant requested a review by this office of the Public Body’s response. The Commissioner appointed a senior information and privacy manager to investigate and attempt to settle the matter.

[para 5] During the investigation, the Public Body conducted an additional search and located a responsive record. As it was not the record the Applicant believed existed and was in the possession of the Public Body, the Applicant requested an inquiry.

[para 6] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

II. ISSUE

[para 7] The Notice of Inquiry states the issue for this inquiry as follows:

Did the Respondent 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.

III. DISCUSSION OF ISSUE

[para 8] 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 9] Prior orders of this office have established the following principles with respect to a public body's duty to assist an applicant under section 10(1):

1. The public body has the onus to establish that it has made every reasonable effort to assist the applicant, as it is in the best position to explain the steps it has taken to assist the applicant within the meaning of section 10(1) (see, for example, Orders F2007-029 at para. 46, F2014-08 at para. 4, and F2019-39 at para. 8).
2. The duty to make every reasonable effort to assist applicants includes the duty to conduct an adequate search for responsive records (see, for example, Orders F2007-029 at para. 50, F2014-08 at para. 5, F2019-37 at para. 6, and F2019-39 at para. 8).
3. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done (see, for example, Orders F2007-029 at para. 50, and F2014-08 at para. 5).
4. In general, evidence as to the adequacy of 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, record 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

(see, for example, Orders F2007-029 at para. 66, F2019-37 at para. 6, and F2019-39 at para. 9).

5. An adequate search does not require perfection; a public body is required only to make every reasonable effort (see, for example, Orders F2003-001 at para. 40, F2009-009 at para. 48, and H2015-01/F2015-24 at para. 8).
6. Failing to find records during an initial search does not preclude a finding that a public body made every reasonable effort (see, for example, Orders F2003-001 at para. 40 and F2009-009 at para. 48).

[para 10] In his request for an inquiry, the Applicant indicated he believed that the Consultant had prepared and provided a written report to the Public Body, and that the Public Body was not being truthful in its response that there was no report published by the Consultant. He stated:

The issue isn't with the Public Body performing a disingenuous and unnecessary search of something it already knows the location of. Rather it is whether it provided the clearly existing document that they wasted time searching for – despite its custodians' obvious perjury to the contrary. The Public Body in question obviously has it. I obviously have a right to it.

[para 11] The Applicant does not question the search conducted by the Public Body. He believes the Public Body has a written report prepared by the Consultant and is deliberately withholding it from him.

[para 12] In support of his request for an inquiry, the Applicant included a letter which he had previously sent to the senior information and privacy manager. In the letter he stated:

Further to my FOIP action against the City of Calgary, in response to its denial that the document *Calgary Fire Department Workplace Review* by [name of consultant] is in its possession, please find enclosed a document provided to me, entitled *Diversity & Inclusion Framework*, published July 2015. This document, which is typically replete with fiction and which has hitherto done little to quell the persistent and extreme abuse that exists in the CFD, as obviously documented in the [last name of consultant]'s Report, continues to appear on the Calgary Fire Department's CFDnet and references the above [last name of consultant]'s Report on the bottom of page six (footnote) and top of page eight. I have also received a phone call from a colleague who contacted previous Fire Chief [name] on May 18 regarding the Report. [Name of Fire Chief] indicated that, while he does not have a copy of the Report, he was contacted and briefed about the same. He clearly pointed out that the Report does indeed exist. Of course, I have other evidence that the Report [exists] and that it would be provided to CFD employees upon its promulgation, contrary to the response by the City's FOIP department, which I will be most happy to provide. However, I think this, and that which I have already submitted, proves definitively that the FOIPed document does exist and that its possessors clearly lied about the same.

[para 13] I understand these are arguments which the Applicant is also making for the purpose of this inquiry.

[para 14] The Applicant provided two documents as evidence to support his allegations.

[para 15] The first document was a memo dated May 2, 2012 with the heading “Calgary Fire Department”. The memo was referenced as “F.D. Notice #66 – 2012” and indicated it was “FROM: Fire Chief’s Office”, “TO: ALL MEMBERS”, “RE: WORKPLACE REVIEW” (the Memo).

[para 16] The Memo stated that over the next several weeks, an external consultant, in partnership with the Assistant Deputy Chief [name], would be conducting a workplace review of the Fire Department. It went on to state:

The purpose of this review is to get a current snapshot of the overall work environment and identify the unwritten norms and rules governing employee interaction and workplace practices as well as possible barriers to teamwork, inclusiveness and communication. The findings of the review and recommendations will be presented in a report that will be shared with our staff. Our goal is to use this report as a tool to better understand and improve the work environment for all employees, including both uniformed and civilian staff.

[para 17] The Memo provided the Consultant’s name and advised that the review would include interviews with staff at all levels of the organization. It advised that participation was voluntary and that the Consultant would not disclose the employee’s involvement. It also provided the Consultant’s email address and stated that anyone who was not contacted for an interview, but wished to discuss their experiences and thoughts regarding their work environment, could contact the Consultant.

[para 18] The second document provided by the Applicant was titled “Diversity & Inclusion Framework” and contained the subtitle “An important part of Workplace Psychological Health & Safety.” The title page indicates it was created by “The City of Calgary Fire” in July 2015 (the July 2015 Report).

[para 19] The July 2015 Report contained an illustration. The source of the illustration was attributed in the second footnote to:

2. [Name of Consultant], Calgary Fire Department Report on Workplace Review, April 2014.

[para 20] The Applicant pointed to the footnote as proof that the Consultant had prepared and provided a written report to the Public Body.

[para 21] The July 2015 Report also contained the following paragraph on page 8:

Over the past decade, the Calgary Fire Department has also completed **several workplace reviews** to assess the current state of our culture and identify issues for resolution. **The most recent review was completed in early 2014** and resulted in significant enhancements to our workplace issues management process, outlined in Figure C. [Applicant’s emphasis]

[para 22] The issue in this inquiry is whether the Public Body conducted an adequate search for records responsive to the Applicant's access request. Central to this determination is whether the record the Applicant is seeking, exists.

[para 23] In its submission, the Public Body provided me with an affidavit sworn by the Access & Privacy Leader (the Leader) employed by the Public Body, attesting to the search that was conducted by the Public Body for records responsive to the Applicant's access request (the Request).

[para 24] The Leader advised that the original Access & Privacy Analyst (the Initial Analyst) assigned to process the Applicant's request was no longer in that role within the Access & Privacy Office of the Public Body. The Leader advised that she had reviewed the correspondence, notes and other information on the relevant file (the File), and that unless otherwise stated, information deposed to in her affidavit was based on her scrutiny of the File, and her personal experience in her role with the Public Body.

[para 25] The Leader stated that based on her review of the File, she believed that the Initial Analyst interpreted the Applicant's request to be for a report authored by the Consultant.

[para 26] The Leader advised that the practice of the Access & Privacy Office is to send a business unit record request form (a BURR) to business units which are identified by the Access & Privacy Analysts as potentially having records responsive to an access request.

[para 27] The business units tasked with searching for records responsive to the Request were The City of Calgary Fire Department (the CFD) and the Law Department.

[para 28] The Leader advised that the Initial Analyst sent a BURR to the FOIP Program Administrators for the CFD and the Law Department. She stated that the FOIP Program Administrators are familiar with searching for responsive records and either conduct or delegate the search within the business unit for responsive records.

[para 29] The Leader advised she reviewed an email dated August 28, 2017 from the FOIP Program Administrator of the Law Department (the Law Department FOIP Administrator). The Leader provided details from the email of the search conducted by the Law Department FOIP Administrator, including the locations that were searched and the keywords that were used. The Leader advised that the email indicated that no responsive records were located, and that the Law file did not contain either recommendations or a report authored by the Consultant.

[para 30] The Leader also attested she was advised by the Law Department FOIP Administrator that the Law Department FOIP Administrator manually searched a paper file and did not locate any records responsive to the request.

[para 31] The Leader further attested that she reviewed an email dated October 23, 2017 from the Deputy Fire Chief with the CFD, which indicated that the Consultant was contracted to complete a workplace review in CFD, that the Consultant did not create or publish a report, and that the Consultant's final results and recommendations were presented verbally.

[para 32] The Leader advised that she reviewed correspondence dated October 24, 2017 which was sent by the Public Body to the Applicant, which indicated that the Public Body's search had failed to produce any records responsive to the request and further, that business units within the Public Body had indicated that no report was published by the Consultant.

[para 33] The Leader advised that the Public Body subsequently received a request for review/complaint from the Applicant which requested that the Office of the Information and Privacy Commissioner (the OIPC) conduct a review, and that the OIPC assigned a Senior Information and Privacy Manager (SIPM) to mediate the matter.

[para 34] The Leader stated:

19. I am advised by [name], Deputy City Clerk and Manager of the Access & Privacy Office (the "Manager") and do verily believe:
 - a. The Manager provided timelines and a description of the searches conducted by the Public Body in response to the Request;
 - b. as a result of questions from the SIPM regarding a citation in a CFD report she had received from the Applicant, and which referenced work done by [name of Consultant], including references to past workplace reviews, the Manager spoke with [name], the Deputy Fire Chief with the CFD;
 - c. [Name of Deputy Fire Chief] indicated she had authored a report entitled "The City of Calgary Fire Diversity & Inclusion Framework – An important part of the Workplace Psychological Health & Safety dated July 2015" (the "July 2015 Report");
 - d. [Name of Deputy Fire Chief] indicated the citation, including references to past workplace reviews, within the July 2015 Report identified by the Applicant, was to a PowerPoint presentation and not a report;
 - e. [Name of Deputy Fire Chief] indicated there were no reports prepared or produced by [name of Consultant] in relation to [name of Consultant]'s review;
 - f. the Manager provided the PowerPoint presentation to the SIPM in June 2018;
 - g. the Applicant was made aware of the PowerPoint presentation during the course of the OIPC mediation, but did not request a copy of this document.

[para 35] The Public Body also provided me with an affidavit sworn by the Consultant. The Consultant swore to the following facts:

1. I am a lawyer and in this capacity I have personal knowledge of the matters herein deposed to except where stated to be based upon information and belief, and where so stated I do verily believe the same to be true.

Background

2. I was retained by The City of Calgary in April 2012 to conduct a workplace culture review (the Review) into the culture of workplace of The City of Calgary's Fire Department ("Calgary Fire Department" or "CFD") and to provide my findings and recommendations to The City of Calgary.
3. At the conclusion of the Review, [name of employee], an Assistant Deputy Chief who was assigned as my liaison for the Review, provided a verbal report of my findings and recommendations to the executive management team of the Calgary Fire Department on February 23, 2013 and to a combined CFD executive and Local 255 executive on April 15, 2014 and to a large leadership group in December 2014.
4. [Name of Assistant Deputy Chief] and I prepared a Microsoft PowerPoint slideshow (the "Slideshow") of the recommendations which was presented at the various presentations referred to above.
5. Other than the Slideshow, I was not requested to nor did I prepare or provide a written report of my findings or recommendations to anyone at The City of Calgary or the Calgary Fire Department.
6. I make this Affidavit for the purpose of assisting the Alberta Information and Privacy Commissioner and presenting the facts and evidence of the Public Body.

[para 36] Based on the foregoing, the Public Body submitted that it had conducted a reasonable and thorough search for records responsive to the Applicant's access request, and that no further records exist that were responsive.

[para 37] The Applicant provided detailed arguments in rebuttal to the Public Body's submissions. They can generally be summarized as follows:

1. The PowerPoint presentation had to be based on the written report the Consultant created. It is not believable that the Consultant could have created the PowerPoint presentation without referring to or relying on a written report.
2. No reasonable person could possibly believe that the Consultant only gave a verbal presentation of her findings and did not prepare a written report.
3. It would be incredibly irresponsible for Public Body to have expended money on a review, and accept only a verbal presentation from the Consultant, and not require a written report of her findings. Therefore, the Consultant must have created a written report of her findings.

4. Since the Consultant has produced written reports of her findings for other public bodies, she must have created a written report in this case.
5. Workplace reviews have been conducted by other consultants and the Applicant has received a copy of a written report prepared by another consultant, therefore, the Consultant in this case must have prepared a written report.
6. The Memo and the July 2015 Report prove that a written report exists and the Public Body is not telling the truth about its existence, and is deliberately withholding it from the Applicant.
7. The Consultant prepared a written report and is not being truthful in her response.
8. The written report must contain information the Public Body does not want to make public, and therefore it is denying the existence of the report.

[para 38] In particular, the Applicant stated in his rebuttal submission:

... Contractual consideration certainly demands more than a one time verbal presentation, whitewashed into a few “PowerPoint slides,” to/by a handful of undisclosed individuals who just happen to be the ones responsible for the abuse the Review was purporting to address. While there is little reason to doubt that a PowerPoint presentation was performed, albeit difficult to understand why, it is obvious that such presentations are based on promulgated (ie written) studies. They are not created out of thin air – or memory. This is especially the case with the reported extensive nature of the study.

...

The Public Body has admittedly commissioned several of these Workplace Review Reports before and after the [name of Consultant] Report, with this one being the *only* exception not in written form! [Applicant’s emphasis]

... The [name of Consultant] Report about abuse in the CFD was based on the one [name of Consultant] did for the Calgary Police Service. I can find absolutely no historical instance where such an endeavor was not provided in a published, written form – anywhere.

...

It is of course *technically* possible that the Public Body has somehow managed to lose the Report, or not even ask [name of Consultant] for a copy of her Report (for reasons of “plausible deniability” perhaps). [Applicant’s emphasis]

However, such a situation, while incredulous, can be rectified immediately by simply *asking* [name of Consultant] for the Report, which she had most certainly promulgated and could not possibly have likewise lost. As publicly provided funds were used to

conduct this study, which addresses “the abuse of vulnerable employees within the Calgary Fire Department,” the Report belongs in the public domain. It is obviously of great interest to the public – the public has a right to it. *I* obviously have a right to it. [Applicant’s emphasis]

...

Obviously, very few individuals have such a capacity for memorization. That is why “professionals” such as [name of Consultant] *always* promulgate a *written* document. Any “verbal” (or “PowerPoint”) *synopsis* of such an extensive review is always performed from a document. [Applicant’s emphasis]

[para 39] The Applicant’s submissions in this inquiry indicate to me that he does not consider the PowerPoint Slideshow to be the record he is seeking. I understand that he believes the PowerPoint Slideshow is a synopsis of a written document which he believes the Consultant must have prepared, which detailed her findings and recommendations from her review, and it is this latter document which he is seeking access to.

[para 40] While the Applicant’s request for an inquiry and his submissions indicate that he is not interested in the PowerPoint Slideshow, his access request to the Public Body was for the following:

Calgary Fire Department Workplace Review by [name of consultant]. Deals with the abuse of vulnerable employees within the Calgary Fire Department.

[para 41] The Applicant specified the following keywords to assist the Public Body with the search: “Calgary Fire Department”, “Workplace Review”, “Workplace Abuse”, “[name of consultant]”.

[para 42] The footnote in the July 2015 Report indicated that the title of the Consultant’s PowerPoint Slideshow was “Calgary Fire Department Report on Workplace Review, April 2014.”

[para 43] Based on the affidavit of the Consultant, the PowerPoint Slideshow was a responsive record to the Applicant’s access request.

[para 44] The issue in this inquiry is whether the Public Body conducted an adequate search for records responsive to the Applicant’s access request.

[para 45] While the Public Body provided me with information about the initial search that was conducted by the Law Department for responsive records, it did not provide me with similar information regarding the initial search that was conducted by the CFD.

[para 46] The Public Body did not tell me, for example, the specific steps that were taken by the CFD to identify and locate records responsive to the Applicant’s access request, or the scope of the search that the CFD conducted, or the steps it took to identify and locate all possible repositories of records relevant to the access request.

[para 47] The Public Body has not provided me with a satisfactory explanation as to why the PowerPoint Slideshow was not located, or located but not identified, as a responsive record by the CFD in its original search, but was subsequently either located or identified by the CFD after the Public Body was informed of the citation in the July 2015 Report by the SIPM, during the investigation phase before this Office.

[para 48] I am unable to determine on the information before me whether the CFD found the PowerPoint Slideshow and excluded it as a responsive record because it was only looking for a report, and did not consider the PowerPoint Slideshow to be a report (even though it had the word “Report” in its title), or whether it searched for any record that would be responsive, but did not find the PowerPoint Slideshow at all initially.

[para 49] As I have insufficient information regarding the initial search conducted by the CFD, and cannot determine why the PowerPoint Slideshow was either not located as a responsive record, or located but not identified as a responsive record, I am unable to conclude that the Public Body made every reasonable effort in its initial search, to locate responsive records.

[para 50] However, after being informed of the citation in the July 2015 Report by the SIPM, the Public Body made further enquiries, and located the PowerPoint Slideshow.

[para 51] Nonetheless, the Applicant has not indicated in his request for an inquiry or in his submissions that he is interested in, or wishes to receive a copy of the PowerPoint Slideshow. He has made arguments that the PowerPoint Slideshow is a synopsis of a written report that the Consultant must have prepared, detailing her findings and recommendations, and it is this record that he is seeking from the Public Body.

[para 52] With respect to the Applicant’s argument that the footnote in the July 2015 Report was evidence that the Consultant prepared a written report of her findings, the Public Body stated that it spoke with the author of the July 2015 Report, the Deputy Fire Chief of the CFD, about this. The Deputy Fire Chief stated that the citation was to a PowerPoint presentation and not to a report. The Deputy Fire Chief further indicated there were no reports prepared or produced by the Consultant in her review.

[para 53] The Consultant has sworn in paragraph 5 of her affidavit that other than the Slideshow, she was not requested to nor did she prepare or provide a written report of her findings or recommendations to anyone at the City of Calgary or the Calgary Fire Department.

[para 54] The Public Body’s submissions, and in particular the Consultant’s affidavit, support a finding that the footnote in the July 2015 Report to the “Calgary Fire Department Report on Workplace Review, April 2014,” attributed to the Consultant, was to the Slideshow prepared by the Consultant, and not to some other record prepared by

the Consultant, containing her findings and recommendations from her review, as submitted by the Applicant.

[para 55] The Memo submitted by the Applicant as proof that the Consultant had prepared a written report stated:

The findings of the review and recommendations will be presented in a report and shared with our staff. Our goal is to use this report as a tool to better understand and improve the work environment for all employees, including both uniformed and civilian staff.

[para 56] I understand the Applicant to be arguing that because the Memo stated that the findings of the review and recommendations would be presented in a report, the Consultant must have prepared a written report, and it is this report that he is seeking access to. I understand the Applicant's position to be that the PowerPoint Slideshow is not a report (despite the word "Report" in its title), or at least is not the report he is seeking.

[para 57] However, the Consultant's affidavit offers a different interpretation of the reference to a "report" in the Memo, than the interpretation submitted by the Applicant.

[para 58] At paragraphs 3 and 4 of the Consultant's affidavit she states that [name of employee], an Assistant Deputy Chief, provided a verbal report of her findings and recommendations to the executive management team of the Calgary Fire Department on February 23, 2013 and to a combined CFD executive and Local 255 executive on April 15, 2014 and to a large leadership group in December 2014. She states that "[name of Assistant Deputy Chief] and I prepared a Microsoft PowerPoint slideshow (the "Slideshow") of the recommendations which was presented at the various presentations referred to above."

[para 59] At paragraph 5 of the Consultant's affidavit she states that "Other than the Slideshow, I was not requested to nor did I prepare or provide a written report of my findings or recommendations to anyone at The City of Calgary of the Calgary Fire Department."

[para 60] In my view, based on the evidence before me, the Slideshow, which was titled "Calgary Fire Department Report on Workplace Review" and which the Consultant has said was presented to the various groups of people described in paragraph 3 of the Consultant's affidavit, could constitute the "report" that was referred to in the Memo.

[para 61] In other words, in light of the evidence before me, and particularly the Consultant's affidavit, I do not find that the references to a "report" in the Memo incontrovertibly lead to the conclusion suggested by the Applicant, that the Consultant prepared a written report of her findings and recommendations, other than the Slideshow.

[para 62] The arguments made by the Applicant in his request for an inquiry and his rebuttal submission set out the reasons why he believes the Consultant created a written

report other than the PowerPoint Slideshow, but they do not establish that the Consultant, in fact, created such a report.

[para 63] The Public Body's submissions, and in particular the Consultant's affidavit, wherein she swore that other than the Slideshow, she was not requested to, nor did she prepare or provide a written report of her findings or recommendations to anyone at The City of Calgary or the Calgary Fire Department, persuade me that the record the Applicant seeks, does not exist.

[para 64] The Public Body located the PowerPoint Slideshow, and has provided evidence which satisfies me that, other than the PowerPoint Slideshow, the Consultant was not requested to, and did not prepare or provide a written report of her findings and recommendations to the Calgary Fire Department or the Public Body.

[para 65] The Applicant's request for an inquiry and submissions indicate to me that he does not consider the PowerPoint Slideshow to be the record he is seeking. Accordingly, I will not order the Public Body to provide him with this record. If the Applicant wishes to obtain a copy of the Slideshow, he may submit an access request for this record to the Public Body.

[para 66] Based on the submissions and evidence provided by the Public Body, I find that the Public Body has conducted an adequate search for responsive records and has met its duty to assist the Applicant under section 10(1) of the FOIP Act.

IV. ORDER

[para 67] I make this Order under section 72 of the FOIP Act.

[para 68] I confirm that the Public Body met its duties under section 10 of the FOIP Act.

Carmen Mann
Adjudicator