

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-03

February 3, 2022

LABOUR AND IMMIGRATION

Case File Number 006931

Office URL: www.oipc.ab.ca

Summary: The Applicant requested access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to her employment standards file from Labour and Immigration (the Public Body).

The Public Body provided the Applicant with a copy of her employment standards file and the Applicant requested review by the Commissioner.

The Adjudicator confirmed that the Public Body met its duty to assist the Applicant in relation to her access request as required by section 10 of the FOIP Act.

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

1. BACKGROUND

[para 1] The Applicant made an access request to Labour and Immigration (the Public Body) for her employment standards case file.

[para 2] The Applicant then requested review by the Commissioner. She stated:

I urge you to review my unresolved concerns. **CRA ruled [the Applicant] IS AN EMPLOYEE January 27th/2014-ALBERTA LABOR WAS AWARE AND HAS RULING IN FILE#024562.**

It seems Alberta Labour and Employment Standards was complicit with [the Applicant's former employer's] conduct (Employer) related to [the Applicant] and assisted to remove Employee from her position at [the employer]. I maintain static proof in claiming that inaccurate and falsified records were used to reach payout and conclusion to Employee in 2015.

Statements made to [the Applicant] in September 2017 ("you have everything I have", "unfortunately you signed it", and "not sure how they did calculation") by [an employee of the Public Body] suggest inadequate records: response time limitation compels me to contact you by September 18th/2017. I even called Alberta Labour this year to discuss, however, I was told that after consultation with colleagues- I wasn't their jurisdiction. This letter, and its enclosures, represent my many actions taken to resolve privacy issues; however, not all due to nature of [the Public Body's employee's] unrealistic restrictions on a 60 calendar day response time.

Communications and emails (in ES#024562) show concerns raised through CALGARY WORKERS RESOURCE CENTRE: they *EXIST OUTSIDE OF THE DATES CHOSEN BY GOVERNMENT ON CONCLUSION FORM* and demonstrate the Employer's dynamic record keeping. THE ONLY OPTION PROVIDED BY ALBERTA GOVERNMENT WAS TO SIGN A CONCLUSION FORM IN 2015. IT WAS NOT EXPLAINED WHAT THIS CONCLUSION MEANT, ONLY THAT I HAD TO SIGN IT IF I WANTED MY WAGES. What I was signing in a traumatized and vulnerable position was not explained by supporting documents or any person. I do not believe that the conclusion, especially under the Employee circumstances of an intolerable, unsafe and inequitable workplace, **PRECLUDES** [the former employer] & Alberta Labour/ Employment Standards from compliance with the laws in Alberta, Canada.

[...]

ES#024562 FILE IS MISSING:

June 4/2014 Employer Letter to Employee Regarding Medical Leave
June 16/2014 Employer Letter to Employee Regarding Medical Leave
Record of MANDATORY meeting (0830 hours) outside of regular work hours- therefore overtime- on Friday, May 30/2014. Renegotiation of third year High Level Explosives Display Assistant salary- EMPLOYEE VERBAL ACCEPTANCE OF COMPANY OFFER/ ULTIMATUM MADE OF FOUR THOUSAND DOLLARS PER MONTH SALARY TO REPLACE 2013 WRITTEN SALARY, FOR THE MONTHS OF MAY, JUNE, JULY AND AUGUST 2014. Verbal contract commensurate with third year experience reached at 0900 hours in the presence of supervisor, [...], who then met me at carpool spot and took coworker [...] and I to work.

Who has talked to my Supervisor, [...]? He made an initial wage offer to me earlier in week of May 30/2014- I relayed via text my acceptance & the monthly monetary breakdown immediately to Director [...] (responded by text a "no choice" meeting May 30 /2014. [My supervisor] witnessed acceptance of new salary at 0900 hours, May 30/2014, took me to work following meeting AND June 2, 2014, and watched me slip/strike delivery truck right below him. The following day he received text and verbal report his Assistant [the Applicant] would not be leaving with carpool, that I sustained injury the previous day AND company continued escalating intolerable unsafe workplace- including withholding \$4000.00 previous month new salary. (Of note, termination is of no effect if the Employee continues to work.)

- Records of June 2nd /2014 injury/unsafe workplace (as no report forms, references, manuals, safety policies in place for Employees)

- Physicians assessment/order June 3/2014, Doctors Note
- Return to Work for October 1st /2014 (Doctor Order September 26, copy to Employer given end of September 2014: original note with Service Canada on September 29th/2014)
- Any document supporting wage change to hourly versus monthly pay in 2014
- Any document supporting acceptance of hourly rate of \$13.63
- Calculations representing Gross payables, representative of arriving at payout Employee. In January 2015, NO SUPPORTING DOCUMENTS PROVIDED TO EMPLOYEE, ONLY (net) conclusion form. WAS TERMINATION PAYOUT FOR AN EMPLOYEE OF MORE THAN TWO YEARS OR LESS THAN TWO YEARS?
- Any record of injury or illness per coded R.O.E. issued mid- June 2017
- Any rationale as to why \$4000.00 salary for May 2014 was withheld by [the Applicant's employer]
- PAYSTUB for June 2014 (refusal allows backdated R.O.E.'s as accurate documents)
- TERMINATION- Where is Notice of Termination, what is termination date, Why- rationale for and details of termination.
- R.O.E.-
 1. Accurately showing last day worked
 2. For all significant gaps in employment as due by law
 3. THAT RELECT GOVERNMENT'S OWN RULING JANUARY 2015
- Where are records to support Employment date span used on ES#024562?

[...]

[para 3] The Applicant also provided examples of questions she thought the Public Body should have asked in its investigation of her workplace complaints. She took issue with the Public Body's acceptance of evidence from her former employer and decisions it made, based on that evidence. She highlighted her concerns on the records she received and provided them with her request for review.

[para 4] 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 an inquiry. The Commissioner agreed to conduct an inquiry in relation to the issue of whether the Public Body had met the duty to assist by conducting a reasonable search for responsive records. The Commissioner delegated her authority to conduct the inquiry to me.

[para 5] Because it was unclear from the Applicant's request for review and inquiry that the issues she wanted addressed were issues to which the FOIP Act applies, the Applicant was asked to provide her submissions first in the inquiry and asked to explain why she believed more records existed than she had been provided in response to her access request.

ISSUE: Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

[para 6] Section 10(1) of the FOIP Act states:

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.

Past orders of this office have determined that this duty includes conducting a reasonable search for responsive records. The duty to assist an applicant applies to the manner in which a public body responds to an access request under the FOIP Act; it does not apply to a public body's activities outside the FOIP Act, even if those activities relate to the subject matter of the requested records.

[para 7] The Applicant submitted the following for the inquiry:

I think more documents are due as by law to employee-termination pay and explanation, wages, paystubs for every month deemed employed (especially June 2014), two letters from [the former employer] in June 2014, May 30, 2014 mandatory meeting records outside of "work hours", doctors notes, record of injury at work June 2/ 2014, doctors notes, record of injury at work June 2/ 2014, and accurate ROEs. These requests all exist in OIPC File – refer to them.

I maintain that [my former employer] seemingly falsified records and that Alberta Labour Employment Standards assisted them to remove me from my position of employed. Further, the creation of an intolerable workplace – which I endured – is against laws. The lack of licensing for workplace at the time of injury is being investigated on a federal level. Please note there exists many rulings for me as an employee [...]

FYI Be aware that your request to have a mailing address / PO Box expenditures every year, for five years now, while you "handle" the case = \$925 fees for box. Thank you. Box renews again in April, so hopefully I don't have to deal with an extension past April.

[para 8] From my review of the Applicant's submissions and her request for review, I understand that she is dissatisfied with the Public Body's investigation and resolution of her complaints. While the Applicant refers to records in her request for review that she considers missing, her arguments indicate that she believes that the Public Body ought to have collected the records she lists, but did not.

[para 9] An inquiry in relation to a public body's search is only concerned with whether a public body has conducted a reasonable search for responsive records in its custody or control. In this case, the Applicant asked for a copy of her employment standards file, including her complaint and all documents used to calculate payment. The Public Body searched for, and provided, a copy of this file to the Applicant.

[para 10] While the Applicant questions why there aren't pay stubs on the file for months when she was "deemed" to be employed, it is unclear that the employer created pay stubs for that period or provided them to the Public Body. It is also unclear whether the Public Body ever collected the medical reporting to which the Applicant refers in her submissions or conducted an occupational health and safety assessment, given that its role was to calculate employment standards entitlements in accordance with Alberta's employment standards legislation. The Applicant mentions many records in the correspondence, quoted above, some of which (assuming their existence) may have been in the possession of her employer. However, she does not provide evidence or any clear reason to expect they would have been provided to the Public Body. Certainly, the

Applicant has not pointed to any evidence that would support the position that the Public Body has such information in its custody or control, but failed to search for it. Neither is there evidence to conclude the Applicant provided the listed information to the Public Body herself. For example, if the Applicant provided a copy of a doctor's note to the Public Body, with the expectation that it would be added to her employment standards file, and then did not receive it as part of the Public Body's response, she has not said so.

[para 11] From the Applicant's requests for review and inquiry, and her submissions for the inquiry, I conclude that the Applicant's references to specific records are intended to advance the argument that the Public Body should have collected, or made inquiries regarding, the records to which she refers in the course of its investigation, and that her former employer should have created the records to which she refers. I am unable to review the investigation the employment standards officer conducted as the FOIP Act gives me no authority to do so. The same holds true for records created or not by created by her former employer. My jurisdiction in this inquiry is restricted to reviewing the Public Body's response to an access request, not to direct the kinds of evidence it should gather in order to fulfill its statutory duties under its home statute.

[para 12] As the Applicant has not raised issues that can be addressed under the FOIP Act, or, in the alternative, has not pointed to evidence to support the position that the Public Body failed to conduct a search for records she reasonably expected to receive, I have decided that it is unnecessary to hear from the Public Body in this inquiry.

IV. ORDER

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

[para 14] I confirm that the Public Body met its duty to assist the Applicant under the FOIP Act.

Teresa Cunningham

Adjudicator

/kh