

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-42

September 21, 2022

CITY OF CALGARY

Case File Number 014237

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the City of Calgary (the Public Body). The Public Body transferred part of the access request to the Kensington Business Improvement Area (KBIA). When it transferred the request, the Public Body disclosed the Applicant's name, contact information, and full request for information. The Applicant complained that the Public Body improperly transferred the request, and disclosed her personal information in contravention of the Act when it did so.

The Adjudicator found that the Public Body properly transferred part of the request to the KBIA under section 15(1) of the Act. This was so even if the KBIA had not appointed a head under section 95(a) of the Act, and was not listed in a directory of public bodies required under section 87(1) of the Act.

The Adjudicator found that the Public Body complied with the Act when it disclosed the Applicant's personal information.

Statutes Cited: **AB:** *Business Improvement Area Regulation*, Alberta Regulation, 93/2016 s. 17; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss., 1(i)(xii), 1(j)(iii), 1(n)(i), 1(p), 6(1), 7(1), 15(1), 15(1)(a), 15(1)(c), 15(2)(a),

40(1)(a), 40(1)(c), 40(1)(f), 40(4), 72, 87, 87(1), 87.1, 95(a); *Freedom of Information and Protection of Privacy Ministerial Regulation*, Alberta Regulation 56/2009.

Authorities Cited: AB: Order F2014-04, F2022-05, F2022-15.

I. BACKGROUND

[para 1] On June 19, 2019, the Applicant made a request for access to information under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the City of Calgary (the Public Body). The Applicant sought three categories of records, labelled numbers one through three. Since the requests are the Applicant's personal information I have not reproduced them word for word; rather I have summarized the description of the sought after records as follows:

- 1) Correspondence accompanying the release of specific development permits on specific dates.
- 2) Copies of Kensington BIA (Business Improvement Association) or Kensington BRZ (Business Revitalization Zone) resolutions and related correspondence regarding expenditures.
- 3) Several specific Service Request Summary Report printouts. Attached: 2 pages

[para 2] The two pages attached to the access request are an article from the Calgary Herald that is mentioned in #2. In the original, hand-written version of the access request, the words "Attached: 2 pages" appears at the end of #3, as shown above.

[para 3] Shortly after the Public Body received the access request, the Public Body's Deputy City Clerk received legal advice from the Public Body's legal counsel indicating that the Kensington Business Improvement Area (the KBIA) was a public body under the Act.

[para 4] On June 28, 2019, the Public Body informed the Executive Director of the KBIA that it was transferring part of the access request.

[para 5] By letter dated June 28, 2019, the Public Body acknowledged receipt of the Applicant's access request and informed the applicant that it transferred #2 of the request to the KBIA:

As a portion (#2 of the request) of the requested records are not under the custody or control of The City, this request has been forwarded to the Kensington Business Improvement Area on June 28, 2019 under Section 15 of the FOIP Act. This government body has agreed to process the request and will respond within 30 days of receiving the request.

[para 6] On July 4, 2019, the Applicant sent a letter to the Public Body complaining about the transfer.

[para 7] On August 12, 2019, the Applicant filed a request for review of the Public Body's response to the access request. Investigation and mediation were authorized to resolve the issues between the parties but did not do so. The matter proceeded to inquiry.

[para 8] In the Applicant's Request for Inquiry received June 9, 2020, she stated that her concern for inquiry was as follows:

My FOIP request was addressed to the public body listed in the directory of public bodies pursuant to s. 87 of the FOIP Act, i.e. the City of Calgary. The City of Calgary improperly transferred my request (the relevant portion thereof, that is) to one of its "boards" that is not listed in the Minister's directory of public bodies pursuant to s. 87 of the Act.

[para 9] She also stated that "No doubt, my personal information is now also in the hands of the Kensington BIA".

II. ISSUES

[para 10] The issues set out in the Notice of Inquiry are as follows:

ISSUE A: Did the Public Body properly transfer the access request as authorized by section 15 of the Act?

The Commissioner will consider whether the Kensington Business Improvement Area is a "public body" under the FOIP Act.

ISSUE B: Did the Public Body disclose the Applicant's personal information? If yes, did it have authority to do so under section 40(1) and did the Public Body comply with section 40(4) of the Act?

III. DISCUSSION OF ISSUES

Preliminary Matter – Rebuttal Submissions

[para 11] In the course of the Inquiry, the Public Body sought a variance of the submission process, requesting that the parties be limited to initial submissions without the opportunity for rebuttal submissions. As the Applicant made the first initial submission, removing the opportunity for rebuttal submissions would have deprived her of the opportunity to respond to the Public Body's argument. The opportunity for full rebuttals also allows for greater consideration of section 15 of the Act, which has not been often explored. In the interest of ensuring a procedurally fair inquiry, the parties were afforded the chance to make rebuttal submissions.

Preliminary Matter – Issue not added – section 87.1

[para 12] In her initial submission, the Applicant argued that the Public Body had failed to meet its obligation under section 87.1 of the Act, which requires public bodies to publish a directory of their personal information banks. The issue was not raised in the Applicant’s initial complaint, which concerned the way the Public Body had responded to her access request. Accordingly, I do not add it to this Inquiry.

Preliminary Matter – Applicant’s arguments re: file 015769

[para 13] In her submissions, the Applicant references findings from the investigation/mediation of another case file at the Office of the Information and Privacy Commissioner. That file, 015769, is not before me, and did not involve the Public Body. Accordingly, I do not consider the findings of file 015769 mentioned by the Applicant.

ISSUE A: Did the Public Body properly transfer the access request as authorized by section 15 of the Act?

The Commissioner will consider whether the Kensington Business Improvement Area is a “public body” under the FOIP Act.

[para 14] I considered whether the KBIA is a public body in Order F2022-15. I found that it was a local government body pursuant to section 1(i)(xii) of the Act as a corporation created by a municipality, whose members are appointed by a municipality:

(i) *“local government body” means*

(i) *a municipality as defined in the Municipal Government Act,*

...

(xii) *any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) to (xi) and all the members or officers of which are appointed or chosen by that body, but does not include EPCOR Utilities Inc. or ENMAX Corporation or any of their respective subsidiaries*

[para 15] The same reasoning and conclusion from Order F2022-15 apply here. I note that the name of the public body in Order F2022-15, Kensington Business Revitalization Zone, is different from Kensington Business Improvement Area. Despite the differing names, they are the same entity. For the purposes of the following discussion, it is also important to note that as a local government body, the KBIA is also a local public body per section 1(j)(iii) of the Act.

[para 16] The Applicant argues that the KBIA is not a public body since neither it, its head, nor its contact person appear in a directory of public bodies required under section 87 of the Act. Section 87 states,

87(1) The Minister must publish, in printed or electronic form, a directory to assist in identifying and locating records.

(2) The directory must list each public body and include for each public body

(a) the name and business contact information of the individual that is the public body's contact person for matters relating to the administration of this Act, or

(b) if the public body does not have a contact person for matters relating to the administration of this Act, the name and business contact information of the head of the public body.

[para 17] The directory searched by the Applicant was the "Find a FOIP Office" directory prepared by Service Alberta. The Public Body notes that the "Find a FOIP Office" directory is not the only directory that lists public bodies. It observes that the *Freedom of Information and Protection of Privacy Ministerial Regulation*, Alberta Regulation 56/2009 also lists public bodies, as does the Service Alberta unofficial alphabetical index. There is no indication that any of them listed the KBIA at the time of the access request.

[para 18] While it is no doubt frustrating for anyone making an access to information request that the directory required under section 87(1) is incomplete, section 87(1) does not determine which entities are public bodies. The entities that are public bodies are those that are captured within the definition of "public body" in section 1(p) of the Act, and related provisions mentioned therein.

[para 19] Section 15(1) of the Act permits one public body to transfer an access request to another under certain circumstances:

15(1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

(a) the record was produced by or for the other public body,

(b) the other public body was the first to obtain the record, or

(c) the record is in the custody or under the control of the other public body.

[para 20] A public body transferring a request must exercise its discretion to do so properly in view of the relevant facts and circumstances surrounding the transfer (Order F2014-04 at para. 32).

[para 21] The Public Body submits that it complied with sections 15(1)(a) and (c) when it transferred #2 of the access request. I agree that it complied with section 15(1)(a), and therefore do not need to consider section 15(1)(c) in this case.

[para 22] The records sought in #2 of the access request are, by the description given by the Applicant in the access request, records created by or for the KBIA. In brief, the #2 of the request sought records created by the KBIA (its resolution) or records that would have been prepared by or for it (records relating to its expenditures). Regarding records of expenditures, section 17 of the *Business Improvement Area Regulation*, Alberta Regulation, 93/2016 require the KBIA to maintain proper financial records and minutes of meetings.

[para 23] As to whether the Public Body properly exercised discretion to transfer #2 of the request, the Applicant argues that the transfer was improper since the KBIA failed to comply with section 95(a) of the Act. Section 95(a) requires a public body to designate a head for the purposes of the Act:

95 A local public body, by bylaw or other legal instrument by which the local public body acts,

(a) must designate a person or group of persons as the head of the local public body for the purposes of this Act, and

[para 24] Further, the lack of a designated head of the KBIA, and the lack of any directory providing contact information for the purposes of the Act at the KBIA, led the Applicant to the conclusion that the Public Body's City Clerk was the proper person to whom to send the access request. The City Clerk is the Public Body's designated head under section 95(a) pursuant to bylaws 73M94 and 26M97. To quote the Applicant, "Who is the head of the BRZ/BIA, under section 95 of the Act, if not the City Clerk?"

[para 25] The Applicant posits that the fact that the KBIA had not designated a head would have alerted the Public Body to the fact that it was not aware of its obligations under FOIP, when it transferred #2 of the request. I infer that the Applicant is arguing that it was not proper for the Public Body to transfer #2 of the access request to the KBIA under these circumstances.

[para 26] Lastly, the Applicant argues that the Public Body ignored her July 4, 2019 letter complaining about the transfer. I note though that the reasons for objecting to the transfer given in the letter are the same as those described above.

[para 27] The KBIA was not a party to this inquiry, and has had not the chance to address the Applicant's allegations that it was unaware of its responsibilities under the Act. However, I do not need to consider the KBIA's awareness of its responsibilities under FOIP in order to make a decision in this case. As described below, even if the KBIA was unaware as alleged, that does not mean that the Public Body's decision to transfer #2 of the request was improper.

[para 28] The ability of one public body to transfer an access request to another is an integral part of the access right under section 6(1) of the Act. That section sets out a right to records in the custody or under the control of a public body. Section 7(1) sets out the method through which the access right is realized. Section 7(1) does not, however, require an applicant to make an access request directly to the public body that has custody or control over a record; it requires an applicant only to make an access request to the public body that the applicant *believes* has custody or control:

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

[emphasis added]

[para 29] The rationale behind providing that an access request may be made to a public body on the belief that it has custody or control is obvious. There are hundreds of public bodies, the inner workings and interrelationships of which will not be known to the citizen applicant. Under such circumstances, it would be impractical and unreasonable that an applicant should have to *know* in advance which public body has what sorts of records. Thus, the ability for a public body to transfer an access request to another permits a smoother and more efficient access process. Rather than simply rejecting an access request inadvertently sent to it and requiring an applicant to resubmit elsewhere, a public body may avail itself of its knowledge of the workings of government and forward the access request on to another public body in a better position to respond to it.

[para 30] In view of the above, it stands to reason that the transfer process permitted under section 15 should not be thwarted simply because the public body on the receiving end of a transfer has not organized itself to efficiently respond to an access request. Indeed, it is contrary to the entire scheme of the Act that a public body should be able to avoid responding to an access request at all, simply by reason that it has not complied with the administrative requirements of sections 95(a), or that it does not appear in a directory required under section 87(1). This is so whether an access request comes directly from an applicant, or is transferred from another public body.

[para 31] Applying the above analysis to this case, there is no reason why the transfer was improper or unreasonable. While it is understandable that the Applicant made the access request to the Public Body rather than the KBIA (since the KBIA's contact person

was not identified in any registry), the access request was for information that would be in the custody or control of the KBIA. The Public Body identified the same and recognized that the KBIA was the proper entity to respond to the access request.

ISSUE B: Did the Public Body disclose the Applicant's personal information? If yes, did it have authority to do so under section 40(1) and did the Public Body comply with section 40(4) of the Act?

[para 32] When the Public Body transferred #2 of the access request it disclosed to the KBIA the Applicant's name, address, and telephone number. The Applicant's original access request form was also sent to the KBIA, including items #1 and #3 of the access request as well.

[para 33] An individual's name and contact information are personal information as defined in section 1(n)(i) of the Act. Personal information also includes any information that is about an identifiable individual. In combination with the Applicant's name (which identifies her), items #1 and #3 of the access request are also her personal information as they represent subject matter in which she has an interest.

[para 34] The Public Body submits that disclosure of the Applicant's personal information is permitted pursuant to sections 40(1)(a), (c), and (f) of the Act.

40(1) A public body may disclose personal information only

(a) in accordance with Part 1,

...

(c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose

...

(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,

[para 35] Section 15, under which the Public Body transferred # 2 of the access request is in Part 1 of the Act. Since an access request cannot be responded to without the name and contact information of the applicant making it, transferring that information is part of transferring the request. Accordingly, disclosing the Applicant's name and contact information to the KBIA was permitted under section 40(1)(a).

[para 36] Whether or not disclosing items #1 and #3 of the access request was also in accordance with Part 1 of the Act is less clear. To summarize the Applicant's argument, disclosing #1 and #3 was outside of the scope of, and unnecessary to, transferring #2 and

therefore not permitted under section 15(1). In contrast the Public Body argues that disclosing #1 and #3 was necessary when transferring #2 to ensure that it was understood, and therefore required under section 15(1).

[para 37] In brief, the Applicant's position is that disclosing #1 and #3 was superfluous to transferring #2 since the three categories of information sought in her access request are discrete from each other. The Public Body's position is that it had no way of knowing that #1 and #3 had no relation to #2, and considered that #1 and #3 were required to provide context for #2, as they were all part of the same access request.

[para 38] I can see some merit in both arguments; however I do not need to decide if either prevails here. It is evident that the Public Body collected the Applicant's personal information for the purposes of responding to her access request, and disclosed it to the KBIA for the same purpose. Thus, disclosing #1 and #3 is permitted under section 40(1)(c).

[para 39] I now consider whether the Public Body complied with section 40(4) of the Act:

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 40] Previous orders of this Office have discussed the meaning of "necessary" in section 40(4). The Adjudicator in Order F2022-05 at para. 36 summarized the meaning:

The meaning of "necessary" in sections 40(4) and 41 has been interpreted in past Orders of this Office; it does not mean 'indispensable'. In Order F2008-029 the adjudicator determined that a disclosure was necessary insofar as it permitted the public body "a means by which they may achieve their objectives... that would be unavailable without [the disclosure]" (at para. 51).

[para 41] Section 15(2)(a) of the Act warrants consideration here. Section 15(2)(a) of the Act permits a public body to transfer an access request, while providing notice of transfer after the fact; it states,

2) If a request is transferred under subsection (1),

(a) the head of the public body who transferred the request must notify the applicant of the transfer as soon as possible, and

[para 42] The fact that a public body may transfer an access request without first providing notice to an applicant suggests that it is reasonable to disclose personal information required to effect the transfer, even without consulting an applicant first, unless some circumstances indicate that doing so may be unreasonable. In this case, such

information is the Applicant's name and contact information. The Public Body cannot transfer #2 to the KBIA without providing the KBIA the identity of the one making the request, and the means to contact that person. Without such information, the KBIA would not have been able to process the request that was transferred to it. For these reasons, I find that the Public Body complied with section 40(4) when it disclosed that information.

[para 43] I now consider whether the Public Body complied with section 40(4) when it disclosed #1 and #3.

[para 44] To begin, I note that neither #1 or #3, nor any other part of the access request, contains any sensitive personal information. At most, the wording of the access request indicates an unspecified interest in matters of a commercial or civic nature. Further there is some suggestion in the Applicant's submission that she had initially sought to send the entire access request directly to the KBIA herself, and only sent it to the Public Body since she could not locate appropriate contact information for the KBIA. She states,

Based on the information provided under "Find a FOIP Office", on the Service Alberta website, citizens know that it is the Respondent's FOIP Coordinator (officially the Deputy City Clerk, Information and Privacy) who is authorized to receive access requests for the Respondent. The information provided under "Find a FOIP Office", for the municipality of Calgary does not show anyone specifically authorized to receive access requests for the Kensington BIA...

Relying on that information, the Applicant addressed her request for the Kensington BIA records to the Respondent's FOIP Coordinator...

Personal information of a more sensitive or intimate nature, or personal information which an applicant clearly wishes to keep out of the hands of a public body receiving a transfer will likely require different analysis.

[para 45] As noted by the Applicant, it was possible for the KBIA to respond to #2 without reference to #1 and #3. However, under the broader meaning of "necessary" in section 40(4), the fact that #1 and #3 were not indispensable to responding to #2, does not preclude finding that disclosing #1 and #3 met the standard of necessity in section 40(4). The Public Body describes several circumstances that it submits, and I agree, indicate that disclosing #1 and #3 was reasonably necessary in this case.

[para 46] The Public Body observes that while #2 referenced the article from the Calgary Herald, the placement of the words "Attached: 2 pages" at the end of #3 in the access request suggest that the article was relevant to #3 as well. Hence, #2 and #3 on the face of the access request, appear to be related. Regarding #1, and the access request as a whole, the Public Body also notes that to determine whether or not the three elements of the request were related, it would have been necessary to obtain and analyze all of the records, which could not have been reasonably done within the 15 day period to transfer

the request, prescribed in section 15. It also states, “For the analyst to modify the request, by severing out Category 1 and 3 information, would risk obscuring, or unduly narrowing, the request when received and processed by the Kensington BIA”.

[para 47] In light of the above, I conclude that disclosure of #1 and #3 complied with section 40(4). The access request itself suggested that #2 was related #3, and there is nothing to indicate that #1 must have been wholly separate from #2 or #3. Disclosing #1 and #3 enabled the Public Body to provide to the KBIA what it reasonably regarded as necessary context for the request, which would otherwise have been absent. The transfer of information was therefore necessary to enable it to carry out its purposes in a reasonable manner within the terms of section 40(4).

[para 48] In closing on this issue, I wish to underscore that section 15 does not provide carte blanche to public bodies to disclose any and all personal information when transferring an access request. There may very well be circumstances where such information is clearly intended only for the public body receiving the request, and/or is so sensitive that reasonable disclosure under section 40(4) requires conferring with an applicant about disclosure prior to transfer. As there is no such information at stake in this case, further discussion of these concerns is not warranted.

[para 49] I find that the Public Body complied with section 40(4).

IV. ORDER

[para 50] I make this Order under section 72 of the Act.

[para 51] I confirm that the Public Body properly transferred #2 of the access request.

[para 52] I confirm that the Public Body complied with the Act when it disclosed the Applicant’s personal information.

John Gabriele
Adjudicator