

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-56

November 10, 2022

UNIVERSITY OF ALBERTA

Case File Number 005994

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Summary: In Order F2022-22, the Adjudicator ordered the University of Alberta to reconsider its discretion to withhold information responsive to an access request under sections 19 and 24(1) of the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body reconsidered its discretion and elected not to release any further information. The Applicant who made the access request requested a review of the Public Body's reconsideration.

The Adjudicator found that upon reconsideration, the Public Body properly exercised its discretion to withhold information under sections 19 and 24(1) of the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 19, 24(1), 72.

Authorities Cited: **AB:** Order F2022-22

I. BACKGROUND

[para 1] The background events leading to this Inquiry are set out in Order F2022-22. In that Order, I ordered the University of Alberta (the Public Body) to reconsider exercising discretion to withhold information under sections 19 and 24(1) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). I stated at para. 36:

I order the Public Body to reconsider its exercise of discretion to withhold information under sections 19 and 24 of the Act, and to release to the Applicant any further information

that it finds it should. When reconsidering the exercise of discretion, the Public Body should consider both public and private interests, the interest in open government, as well as both harms and benefits of disclosure, and balance them against each other.

[para 2] In Order F2022-22 I also afforded the Applicant the opportunity to seek review of the Public Body's reconsidered application of sections 19 and 24(1); the Applicant sought such a review. Accordingly, I reconvened this Inquiry to consider those matters.

II. ISSUES

- A. Did the Public Body properly exercise discretion to withhold information under section 19 (confidential evaluations) of the Act?**
- B. Did the Public Body properly exercise discretion to withhold information under section 24(1) (Advice from Officials) of the Act?**

III. DISCUSSION OF ISSUES

- A. Did the Public Body properly exercise discretion to withhold information under section 19 (confidential evaluations) of the Act?**
- B. Did the Public Body properly exercise discretion to withhold information under section 24(1) (Advice from Officials) of the Act?**

[para 3] The Public Body did not release any further information to the Applicant upon reconsideration of the application of sections 19 and 24(1). It provided a detailed explanation of the factors it took into account when reconsidering its exercise of discretion; the pertinent details are below. The Applicant did not address the Public Body's explanation.

[para 4] Whether withheld under section 19 or section 24(1), all of the withheld information relates to the same matter: the Applicant's application for an assistant professor position. The information withheld under section 19 is evaluation material, while the information withheld under section 24(1) is advice on the Applicant's suitability for the assistant professor position, and future plans for the management of personnel in light of that advice. Since all of the information relates to the same matter, the Public Body addressed its exercise of discretion under both sections, together. It considered the following when exercising discretion:

- The process of evaluating applicants for the assistant professor position is confidential.
- The Public Body represents to those who provide evaluation information and recommendations that they will be kept confidential, and it would be unfair to them to break that promise by disclosing information.

- The evaluation committee considering applications for the assistant professor position requires space to consider proposals, recommendations, and possible course of actions without public scrutiny, or interference. Since the withheld information contains draft proposals of the evaluation committee, disclosing it will impair the evaluation committee’s ability to carry out its duties.
- The information withheld is not a final decision regarding the application process. The Applicant has been informed of the final decision.
- Maintaining the confidentiality of the evaluation process materials remains important because “these evaluations for these positions” still happen today.
- Disclosing the withheld information does not serve any public purpose since the withheld information relates to an evaluation of a single applicant for the assistant professor position and there is no public interest in knowing how one particular applicant was evaluated.
- “The applicant’s personal interest in these records does not tip the balance for disclosure when weighed against the impact disclosure would have upon the integrity of an established university process. A process that depends on frank, open and honest opinion submitted by individual participants who have an expectation of confidentiality.”
- As noted in Order F2022-22 at paras. 7 and 8, the Applicant has a history of making scandalous allegations against the Public Body, intended to harass and punish its employees. If the information were disclosed, there would be nothing restraining the Applicant from using it to that end.

[para 5] The Public Body also considered the following:

The reasonable foreseeability that releasing the information would have a chilling effect on the participation of the University’s employees in its selection process (or any other confidential process). In this regard, the University respectfully submits that it is not required to prove a negative.

[para 6] I note that the Public Body’s submission that it is not required to prove a negative appears to be made in response to my statement at para. 33 of Order F2022-22:

I also note that the Public Body’s statements that disclosure will have a chilling effect and impact governance are bald assertions, without explanation of how or why that would be the case.

[para 7] In light of the above, I find that the Public Body has demonstrated that it properly exercised its discretion to withhold information under sections 19 and 24(1) upon reconsideration. The Public Body has set out how it weighed relevant public and

private interests when deciding whether or not to disclose the withheld information in this particular case.

[para 8] In reaching my conclusion, I observe the Public Body’s concern that the Applicant may use the withheld information to further scandalous allegations is grounded in the facts of this very case, and not on a mere assumption that any information released might be used to cause mischief. In his initial submission in part of this Inquiry, the Applicant states his belief that the Public Body decided to withhold the information he sought in this case in order to destroy his academic career in furtherance of an NDP-led conspiracy to murder or seriously harm cancer patients in the Alberta health care system, with the ultimate goal of relocating cutting edge cancer research and therapies developed in Alberta to British Columbia, with the aid of \$300,000,000.00 in funding from the “Justin Trudeau led” federal government. Upon reviewing *the particular information withheld in this case*, I am satisfied that the Public Body is reasonably concerned that releasing it could prompt further steps from the Applicant to push a conspiratorial narrative, detrimental to the operation of the Public Body and its ongoing activities.

[para 9] In closing, I would briefly address the Public Body’s concern about “proving a negative.” It is not the case that in order to demonstrate that a public body properly exercised discretion, it must prove a negative. Rather, the point of my comment at para. 33 of Order F2022-22 was that there should be a rationale behind a public body’s assertion that disclosing information in a given case will have negative effects, as opposed to simply declaring that disclosure will have negative effects without tying the assertion to the circumstances of the case in question. In the absence of a connection to the circumstances of a specific case, a bare assertion that disclosing information will have negative effects appears to be an irrelevant consideration to the exercise of discretion.

IV. ORDER

[para 10] I make this Order under section 72 of the Act.

[para 11] I confirm that the Public Body properly withheld information under sections 19 and 24(1) of the Act upon reconsideration.

John Gabriele
Adjudicator