

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-01

January 19, 2021

CITY OF EDMONTON

Case File Number 007183

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*, R.S.A. 2000, c. F-25 (the Act) to the City of Edmonton (the Public Body). The Public Body provided 1284 pages of responsive records, with redactions under sections 17, 24, and 25 of the Act, as well as on the basis that information was non-responsive.

The Applicant challenged the Public Body's redactions, and also alleged that it failed to conduct a proper search for records under section 10 of the Act, and failed to respond to the access request in time, as required by section 11 of the Act.

At inquiry, the Public Body elected to release all information previously redacted under sections 24 and 25. The Public Body admitted that it failed to meet the timelines to respond to the request under section 11 of the Act.

The Adjudicator found that the Public Body conducted a reasonable search for records as required by section 10 and properly redacted information under section 17 and as non-responsive.

Since the Public Body had since provided the responsive records to the Applicant, no order was made in respect of the failure to meet the timelines under section 11.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n); 10; 11; 14; 17(1), (4), and (5); 72

Authorities Cited: AB: Orders 97-006, 2000-030, F2004-008, and F2007-029

I. BACKGROUND

[para 1] On June 19, 2017, the Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the City of Edmonton (the Public Body). The Applicant was concerned about development, maintenance, and drainage from a property adjacent to her own, and sought information about the property. Frequently, the request for information contains the street address of the property that the Applicant was concerned about. To shield the identity of the Applicant and the third party owner of the property, I have replaced the street address with the words “the address.” I have replaced the name of the neighbourhood that contains the address with “the neighbourhood.”

Request for access to information:

1. Lot grading plan for [the address].
 - a. All lot grading plans since 2011 presented to the City of Edmonton and approved by the City of Edmonton, including dates of approval and signature of authorized personnel (quality of copies to be sufficient to be read and reviewed by an independent third party, and the information to be contained there within that has been approved by the City of Edmonton).
 - b. July 7, 2015 letter to [the Applicant] from [name of Public Body employee], stating, “Rough Grade approval was issued for [the address] on Oct. 14, 2014. Drainage Bylaw 16200 specifies that Final Grading should be approved within 12 month of rough grade approval” (Appendix A). Please provide all correspondence relating to lot grading from July 7, 2015 to June 19, 2017.
2. All correspondence relating to drainage, site visits and actions taken to mitigate the drainage issues and the development permit conditions with [the address].
[Correspondence with 11 named individuals.]
3. Complaints to 311 Ticket #s 229866451-001, 223357605-001, and 2233576005-001.
Request action taken to these complaints.
4. Report from Cindy the Bylaw Officer who conducted onsite visits to [the address] in both the summer and fall of 2016.
5. 2017 weed management plan for [the address].
6. All correspondence from Community Standards Branch related to complaints, action and enforcement on [the address].
7. Copy of Government Order as it relates to [the address].

8. Copy of permit approved for water treatment system. Inspector's report, approval and completion of plumbing, water and sanitation systems for [the address].
9. Copy of permit and inspection approval of gas lines as it relates to the most recent approved lot grading plan for [the address].
10. Copy of proposed neighbourhood renewal plan for [the neighbourhood], including who submitted the plan and the date.
11. Copy of the naturalization request for [the neighbourhood], including who submitted the plan, date of plan approval, and City of Edmonton engagement with residents of [the neighbourhood].
12. Who requested in 2016 that Forestry plant trees in [the neighbourhood] including reasons why the trees were planted, cost to the residents of [the neighbourhood] and consultation with the residents of [the neighbourhood].

[para 2] The access request specified that the Applicant was seeking such information from the time period of January 2, 2011 to June 20, 2017.

[para 3] The Public Body located approximately 4000 pages of records in response to the access request, many of which were duplicates or entirely non-responsive. It sent responsive records to the Applicant in batches, as they were made ready. The Public Body provided the first batch of 678 pages of responsive records on August 10, 2017. The second and final batch of a further 606 pages of responsive records followed on September 27, 2017.

[para 4] The Public Body redacted some information from the records relying on sections 17(1), 24(1), and 25(1) of the Act, and other information on the basis that it was non-responsive.

[para 5] The Applicant sought review of the Public Body's redactions, and also questions whether it conducted a proper search for responsive records as required by section 10 of the Act. The Applicant further alleges that the Public Body failed to respond to the access request within the timelines established under section 11(1) of the Act. Mediation and investigation were authorized to resolve the matter, but did not do so. The matter proceeded to inquiry.

[para 6] After receiving the first batch of documents, the Applicant filed a second access request seeking information about how the first request was handled. The second request is not in issue in this inquiry.

II. RECORDS AT ISSUE

[para 7] The records at issue are those among the 1284 pages of responsive records that were withheld in their entirety or had information redacted from them. The page numbers in question under each issue are set out in the discussion of the issues.

III. ISSUES

[para 8] The issues identified in the Notice of Inquiry are:

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

ISSUE B: Did the Public Body comply with section 11 of the Act (time limit for responding)?

ISSUE C: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

ISSUE D: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

ISSUE E: Did the Public Body properly apply section 25(1) of the Act (disclosure harmful to economic and other interests of a public body) to the information in the records?

ISSUE F: Did the Public Body properly withhold information as non-responsive to the Applicant's request?

IV. DISCUSSION OF ISSUES

Preliminary Matter – Reference to Page Numbers

[para 9] The Public Body provided an index of records assigning a page number to each page on which disputed redactions occur. However, in the index of records, the pages are numbered differently than they are in the redacted copy of all responsive records provided to the Applicant, and in the unredacted copy of all responsive records provided to me in this inquiry, in order that I am able to review redacted information. The Public Body seems to have numbered the pages on which disputed redactions occur sequentially, as though there were no pages between them. For example, in the Index of Records page 18 is described to be an e-mail date December 18, 2012 at 1:40 p.m. That document is numbered as page 82 in the responsive records provided to the Applicant.

[para 10] Additionally, the unredacted copy of all responsive records contains two copies of page 288, which results in the pages in that version being one number higher than those in the redacted copy provided to the Applicant. The different numbering resolves itself when two pages were assigned page number 399 in the unredacted version. The numbers between the two versions of the records at issue are synchronized again starting at page 400.

[para 11] For ease of reference, all page number references in this order refer to the page number assigned to the redacted copy of all of the responsive records.

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

[para 12] Section 10(1) states as follows:

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 13] The two parts of the duty to assist in section 10(1) were set out in Order F2004-008 at para. 32:

- Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of FOIP?
- Did the Public Body conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(1) of FOIP?

[para 14] The burden of proof falls on the Public Body to demonstrate that it met its duty under section 10(1). (See Order 97-006). A public body must provide the Commissioner with sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request. (See Order 2000-030). Former Commissioner Work, Q.C. described the general points that a public body's evidence should cover in Order F2007-029 at para. 66:

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

[para 15] While the entire response to the access request is under review, the Applicant is most concerned with the first item on it: lot grading plans for the address. The Applicant has been concerned about the development at the address since 2011 as it has substantially affected drainage onto her property. Pages 83 through 86 contain a letter from an engineering company that includes a lot grading plan prepared in November 2012. The Applicant notes that there are significant amounts of correspondence regarding lot grading and grade approval after 2012 that suggests that further grading plans were prepared in respect of the property. Included with the Applicant's request for review of the response to the access request is a letter to the Applicant from the Public Body's City Manager, dated September 22, 2014, stating that the owner of the address submitted a lot grading design on July 23, 2014. In light of this correspondence, the Applicant believes that the Public Body failed to locate and provide all responsive lot grading plans. I note that the letter from the City Manager does not indicate whether the lot grading plan submitted in 2014 is the same as that prepared in 2012 or if it is a different plan.

[para 16] The Public Body's Privacy Analyst provided a statutory declaration briefly describing the search for responsive records. The Privacy Analyst states that her office received the access request and distributed the request to several Departments in order that they may search for responsive records. Each Department was tasked with searching for specific information requested in the 12 parts of the access request. Taking into account all of the Departments, each of the 12 items of requested information were searched for, including correspondence with the 11 individuals named in item 2 of the access request. The details of the search are recorded on tracking sheets used to record the activities undertaken in the search.

[para 17] The tracking sheets indicate the Departments and each Department's Branches and Sections that were searched, as well as the name and title of each person who performed the search, where they searched, search terms and key words used, whether or not records were found, how many pages, and how much time was spent searching, rounded to the nearest quarter-hour. The Departments, Branches, and Sections are as follows:

Department: Citizen Services

Branches: Community Standards

Sections: Complaints and Investigations, Community Peace Officers,

Department: Integrated Infrastructure Services

Branches: DCMO, Business Planning & Support, Infrastructure Delivery,
Integrated Infrastructure Services, LRT Delivery, Building Great
Neighbourhoods, Blatchford Redevelopment Project

Sections: Engineering Services, Construction Services, BMO, Transit Stimulus
Project, Project Management Centre of Excellence, Quality Management

Department: Office of the Mayor

Department: City Operations

Department: Sustainable Development

Branches: Development Services, City Planning

Sections: Branch Manager's Office, Development & Zoning, Network Integration Systems Planning, Subdivision Planning, Urban Research, Developing Servicing Agreements, Development Inspections, Drainage Planning & Engineering, Planning Coordination, Policy Development

[para 18] In all, 62 people searched for responsive records.

[para 19] The locations searched by these 62 people include numerous e-mail accounts, drives, files, folders, and databases. The search terms consisted of the address, the neighbourhood, and the ticket numbers specified in item 3 of the access request.

[para 20] The Privacy Analyst concluded that no further responsive records exist in light of the thoroughness of the search and the large amount of records located in response to the access request.

[para 21] While I understand that the Applicant believes that further lot grading plans should have been provided in response to the access request, the evidence before me established that the Public Body met its duty under section 10(1) of the Act.

[para 22] The Public Body appears to have conducted a broad search of pertinent locations using reasonable keywords in its efforts to locate responsive records. In light of the details of the search, and having regard to the fact that I cannot conclude on the evidence that there was a second lot grading plan submitted in 2014, the absence of multiple lot grade plans in itself does not support the conclusion that the search was inadequate under the Act.

[para 23] I find that the Public Body met its duty under section 10(1) of the Act.

ISSUE B: Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 24] Section 11(1) of the Act sets timelines by which a public body must respond to an access request, and provides procedures for extending those timelines. Section 11(1) states:

11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 14, or

(b) *the request has been transferred under section 15 to another public body.*

[para 25] Section 14 of the Act states:

14(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

(a) *the applicant does not give enough detail to enable the public body to identify a requested record,*

(b) *a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,*

(c) *more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or*

(d) *a third party asks for a review under section 65(2) or 77(3).*

[para 26] The Public Body admits that it did not meet the 30 day deadline in section 11, and did not extend the time to respond under section 14.

[para 27] I find that the Public Body failed to comply with section 11 of the Act.

ISSUE C: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

[para 28] Section 17(1) requires a public body to withhold third party personal information when disclosing it would be an unreasonable invasion of personal privacy; it states:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[para 29] Determining whether disclosing information is an unreasonable invasion of third party personal privacy requires consideration of sections 17(4) and 17(5); they state:

(4) *A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*

(a) *the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*

(b) *the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*

- (c) *the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,*
- (d) *the personal information relates to employment or educational history,*
- (e) *the personal information was collected on a tax return or gathered for the purpose of collecting a tax,*
- (e.1) *the personal information consists of an individual's bank account information or credit card information,*
- (f) *the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*
- (g) *the personal information consists of the third party's name when*
 - (i) *it appears with other personal information about the third party, or*
 - (ii) *the disclosure of the name itself would reveal personal information about the third party,*

or

- (h) *the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.*

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*
- (b) *the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) *the personal information is relevant to a fair determination of the applicant's rights,*
- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
- (e) *the third party will be exposed unfairly to financial or other harm,*
- (f) *the personal information has been supplied in confidence,*
- (g) *the personal information is likely to be inaccurate or unreliable,*

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 30] “Personal information” is defined in section 1(n) of the Act; it states:

(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual’s age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual’s health and health care history, including information about a physical or mental disability,

(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else’s opinions about the individual, and

(ix) the individual’s personal views or opinions, except if they are about someone else;

[para 31] Almost all of the information redacted under section 17(1) consists of personal information about the owner of the address (the owner) as defined in section 1(n)(i). This information consists of the name, telephone number, and address of the person who owns the lot that the Applicant was seeking information about. Some of the redacted information also reveals whether the owner is married. This information is personal information under section 1(n)(iii). Redactions of the owner’s personal information appears on the following pages:

Pages: 42, 44, 62, 63, 65, 70, 71, 72, 73, 82, 83, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 100, 105, 107, 109, 110, 121, 156, 159, 161, 209, 213, 214, 217, 219, 227, 230, 241, 245, 248, 269, 270, 283, 298, 299, 314, 318, 359, 368, 396, 400, 401, 411, 414, 416, 417, 418, 419, 420, 421, 422, 560, 561, 563, 567, 569, 590, 591, 594, 611, 613, 661, 665, 666, 669, 671, 674, 753, 756, 767, 769, 770, 771, 775, 781, 782, 841, 858, 859, 861, 862, 863, 900, 901, 902, 905, 912, 916, 917, 923, 924, 926, 931, 960, 965, 972, 973, 977, 979, 980, 981,

984, 986, 992, 993, 995, 1011, 1019, 1020, 1021, 1022, 1053, 1055, 1059, 1060, 1062, 1111, 1121, 1130, 1132, 1133, 1141, 1144, 1145, 1147, 1148, 1164, 1167, 1170, 1171, 1173, 1178, 1180, 1185, 1196, 1216, 1217, 1218, 1219, 1220, 1221, 1224, 1258, 1259, 1261, and 1284.

[para 32] I now consider whether the Public Body was required to withhold this information, and the applicable factors under sections 17(4) and (5).

[para 33] I find that a presumption against disclosure arises under sections 17(4)(g)(i) and (ii).

[para 34] Regarding section 17(4)(g)(i), the redacted information consists of the owner's name along with other personal information such as their telephone number.

[para 35] Regarding section 17(4)(g)(ii), it is evident that revealing the owner's name will reveal other personal information about them.

[para 36] "Personal information" is not limited to the items of information listed in section 1(n)(i) through (ix). Any information that is about an identifiable individual is personal information. Among the records provided to the Applicant are numerous notices of failure to comply with the *Weed Control Act*, SA 2008, c W-51 and municipal bylaws related to maintenance of the property. Revealing information about a person's attitude toward obeying the law reveals something of their moral character; the information is about the person in that sense. If the identity of the person committing an offence is revealed, the information will also be identifiable, and constitute personal information. Thus, revealing the identity of the owner of the lot will reveal personal information about them. The same reasoning applies with regard to the owner's e-mail address which was redacted from page 782. As personal contact information for the owner, the information is about the owner. Identifying the owner will result in revealing this personal information.

[para 37] Neither party has argued that any of the factors listed in section 17(5), or any other relevant circumstances, weigh in favour of disclosing or withholding information redacted under section 17(1). I find that there are no relevant circumstances under section 17(5).

[para 38] Since there are no factors weighing in favour of disclosure under section 17(5), the presumption against disclosing information under sections 17(4)(g)(i) and (ii) remains operative. I find that the Public Body was required to withhold the information it redacted under section 17(1).

[para 39] Redactions to third party personal information other than that of the owner occur on the following pages:

Pages: 62, 65, 100, 143, 230, 302, 304, 306, 308, 328, 329, 563, 785, 786, 787, 788, 977, and 1008.

I discuss these redactions below.

[para 40] Page 62 contains name and address of a third party making a lot grading application.

[para 41] Pages 65 and 563 contain the name and telephone number of a third party process server.

[para 42] Page 100 contains information that can identify a person who complained about the address, and the fact that they complained.

[para 43] Information redacted from page 143 was initially redacted as non-responsive. During the inquiry, the Public Body determined that it should be redacted as third party personal information under section 17(1). The redacted information consists of the name and telephone number of another person making a complaint to the Public Body.

[para 44] Page 230 also contains the name and address of another person making a complaint to the Public Body.

[para 45] Pages 302, 304, 306, 308, 328, and 329 contain the personal e-mail address of a named third party.

[para 46] Pages 785, 786, 787, and 788 contain the name and telephone number of a third party leaving a message for the Public Body.

[para 47] Page 977 contains another complainant's name and address.

[para 48] Page 1008 contains another complainant's name, address and telephone number.

[para 49] For all of these pages, save for page 100, the presumption against disclosure in section 17(4)(g)(i) applies, since an individual's name is present with other personal information. As there are no factors that weigh in favour of disclosure under section 17(5), the presumption against disclosure remains operative. The Public Body was required to withhold this information.

[para 50] The information on page 100 does not contain a name but provides information about a person making a complaint to the Public Body that would enable anyone so inclined to identify the person making the complaint with relative ease. The information is such that it provides a means of contacting that person. Revealing this information would thus render the person identifiable, and disclose the fact that the person made a complaint, which is information about the person, and therefore constitutes personal information.

[para 51] No presumptions against disclosure under section 17(4) apply to the information redacted on page 100.

[para 52] Regarding factors listed in section 17(5)(a) through (i), I do not find that any apply to information redacted on page 100. I do find that there are other relevant circumstances applicable under section 17(5) to page 100 that weigh in favour of withholding this information.

[para 53] The personal information on page 100 is not germane to the information sought in the access request. Revealing it serves no purpose in this context, and I see no basis that justifies invading third party personal privacy. For this reason, I find that the circumstances weigh in favour of withholding the information, and that the Public Body was required to do so under section 17(1).

[para 54] I find that the Public Body properly redacted information under section 17(1).

ISSUE D: Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information in the records?

ISSUE E: Did the Public Body properly apply section 25(1) of the Act (disclosure harmful to economic and other interests of a public body) to the information in the records?

[para 55] The Public Body has elected to release to the Applicant information previously withheld under sections 24(1) and 25(1), and has provided the Applicant with the updated records. Accordingly, I do not need to consider these issues.

ISSUE F: Did the Public Body properly withhold information as non-responsive to the Applicant's request?

[para 56] The Public Body withheld all information from the following pages on the basis that it is non-responsive to the access request:

Pages: 689-690, 694-698, 700-724, 726-729, 794-795, 798-799, 802-806, 808-832, 834-839, 842-855, and 866-867.

[para 57] The information redacted from these pages as non-responsive consists entirely of lists of addresses unrelated to the access request. I find that it is non-responsive. Similarly, the information redacted from the following pages also consists entirely of lists of addresses unrelated to the access request, and is also non-responsive:

Pages: 699, 725, 796, 797, 800, 801, 807, 833, 840, 841, 865, and 893.

[para 58] The remainder of the information redacted as non-responsive appears on the following pages:

Pages: 4, 686, 687, 688, 879, 880, 881, and 883.

I address these pages below.

[para 59] The information redacted from page 4 is related to complaints about properties other than the one the Applicant is concerned about. I find that this information is non-responsive.

[para 60] Information redacted as non-responsive on page 686 was initially redacted as third party personal information under section 17(1). In the course of the inquiry, the Public Body argued that the information is non-responsive. I agree that it is.

[para 61] Pages 686, 687, and 688 are part of the Public Body's District 3 Work Plan for 2015. The redacted information consists of complaints about properties other than the one the Applicant is concerned about, and lists of community events. The information is not responsive to the access request.

[para 62] Pages 879, 880, 881, and 883 are part of a slightly different version of the District 3 Work Plan for 2015. The information redacted from pages 879, 880, and 881 is of the same types as on pages 686, 687, and 688, and is not responsive for the same reasons. The information redacted from page 883 consists of information related to snow-removal and initiatives in a neighbourhood other than the one the Applicant is concerned about. This information is non-responsive.

[para 63] For the above reasons, I find that the Public Body properly withheld information as non-responsive.

V. ORDER

[para 64] I make this Order under section 72 of the Act.

[para 65] While the Public Body failed to meet the timelines set in section 11, the responsive records have since been provided to the Applicant. No order is necessary to remedy the failure.

[para 66] I confirm that the Public Body met its duty under section 10(1) and properly redacted information under section 17(1) and as non-responsive.

John Gabriele
Adjudicator
/kh