

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-04

February 19, 2021

ALBERTA HEALTH SERVICES

Case File Number 004745

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Alberta Health Services (the Public Body) for certain information.

The Public Body responded and provided the Applicant with 428 pages of responsive records. The Applicant requested that this Office review the search conducted by the Public Body as she believed it did not provide her with all responsive records.

Subsequently, the Applicant requested, and the Commissioner agreed to conduct, an inquiry.

The Adjudicator found that the Public Body had conducted an adequate search and met its duty to assist the Applicant under section 10(1) of the Act.

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

Authorities Cited: AB: Orders F2003-001, F2007-029, F2009-009, and H2015-01/F2015-24.

I. BACKGROUND

[para 1] On April 18, 2016, an individual (the Applicant) made an access request to Alberta Health Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) for the following information:

- 1) my complete occ health and safety records from 1995 – present
- 2) my complete WCB records from 1995 – present
- 3) management personal files from [specific unit]
- 4) my complete human resources file from 1995 to present
- 5) my complete submissions to the bullying/harassment report a [sic] incident and safety learning reports from 1995- present

[para 2] On October 20, 2016, the Public Body responded and provided the Applicant with 428 pages of responsive records. The Public Body advised the Applicant that some of the records the Applicant requested contained information that was withheld from disclosure under sections 17(1), 19(1) and 24(1)(b) of the Act.

[para 3] The Applicant submitted a Request for Review/Complaint form to this Office, identifying numerous issues she wished this Office to review or investigate. File No. 004745 was opened to address the Applicant's concern that the search conducted by the Public Body for records responsive to the Applicant's April 18, 2016 access request was not adequate or failed to locate records believed to exist.

[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.

[para 5] The Commissioner agreed to conduct an inquiry and delegated her authority to me.

II. ISSUE

[para 6] The Notice of Inquiry set out the following issue for this inquiry:

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.

The Respondent is the Public Body.

III. DISCUSSION OF ISSUE

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.

[para 7] Section 10(1) of the 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.

[para 8] In Order F2007-029, the Commissioner made the following statements about a public body's duty to assist under section 10(1):

[para 46] 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).

...

[para 50] Previous orders of my office have established that the duty to assist includes the duty to conduct an adequate search for records. In Order 2001-016, I said:

In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) (now 10(1)) of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) (now 10(1)).

Previous orders . . . say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) of the Act. 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 what has been done.

...

[para 66] 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, 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 9] In this case, as the Applicant questioned whether the Public Body conducted an adequate search for records, this inquiry will focus on the search conducted by the Public Body.

[para 10] The Notice of Inquiry (the Notice) specified that as this case was a review of the Public Body's search for records in response to the access request, there were no specific records at issue at present. However, if the parties had evidence in the form of documents that related to the issue in this case that were not attached to the Notice, they should include them with their initial exchangeable submission.

[para 11] The Notice further specified that the Applicant's submission should set out their reasons for believing more records exist than were located and provided to them and/or should describe as precisely as possible the records or kinds of records they believe should have been located and provided.

[para 12] The Applicant did not provide a submission in this inquiry by the deadline set out in the Notice. By email dated February 20, 2020 she advised that "There is nothing further to add."

[para 13] Accordingly, the only information before me from the Applicant for the purpose of this inquiry is her Request for Review/Complaint form and attachments, and her Request for Inquiry form and attachments. These documents were attached to the Notice that was provided to the parties.

[para 14] From what I understand from the Applicant's Request for Review/Complaint form and attachments, and her Request for Inquiry form and attachments, it appears that the Applicant was engaged in litigation with the Public Body and involved in a matter before the Workers' Compensation Board (the WCB), and that there was some discrepancy between the number of records she had received in the litigation with the Public Body as well as the number of records the Public Body had provided in the matter before the WCB, and what the Public Body provided her in response to her access request. In the Applicant's Request for Inquiry form she stated that she has a right to a copy of anything that she had submitted to the Public Body.

[para 15] In addition, as an attachment to her Request for Review/Complaint form, the Applicant provided a copy of the Public Body's response dated October 20, 2016 upon which she had written beside various categories of records she had requested, that records were missing or partially missing.

[para 16] In its initial submission, the Public Body set out the background facts as follows:

1. By way of email dated April 18, 2016 from [name of Applicant] (the "Applicant") to various individuals at Alberta Health Services ("AHS"), the Applicant requested that AHS disclose the following records (the "FOIP Request") to her:
 - 1) my complete occ health and safety records from 1995 – present [2016]
 - 2) my complete WCB records from 1995 – present [2016]
 - 3) management personal files from [specific unit]
 - 4) my complete human resources files from 1995 to present [2016]

- 5) my complete submissions to the bullying/harassment report a [sic] incident and safety learning reports from 1995 – present [2016].
2. Under cover letter dated October 20, 2016, AHS provided the Applicant with 428 pages of records (the “Disclosed Records”).
3. The Applicant believes there are records that are in addition to the Disclosed Records, as set out in her Request for Review / Complaint form, dated August 5, 2016 and Request for Inquiry, dated February 17, 2018.
4. From the Applicant’s Request for Review / Complaint form, it appears the basis for the Applicant’s contention that AHS has failed to meet its duty to assist is based on the difference between the number of pages of records disclosed in the context of each of civil litigation (stated to be 178 pages), from AHS’ response to the FOIP Request (428 pages), and from the WCB (stated to be 700+ pages).
5. From the Request for Inquiry, there is a suggestion that there are records that were created by the Applicant that have not been provided in response to the FOIP Request.
6. There are no particulars provided of the specific records believed to be missing.

[para 17] The Public Body then addressed the components identified by the Commissioner at paragraph 66 of Order F2007-029. It explained who conducted the search; it identified the steps it took to identify and locate all possible repositories of records; it provided a description of the locations it searched for both hard copy records and electronic records; and it explained the search terms that were used to identify records that were or may be associated with the Applicant, including the Applicant’s name (or variations thereof), the Applicant’s employee number, email address, and other information that could possibly be used to identify records associated with the Applicant.

[para 18] In response to the question of why the Public Body believes no more responsive records exist than what has been found or produced, the Public Body stated:

21. The Applicant has submitted that the discrepancy in the number of pages of records produced in the context of civil litigation, in response to her FOIP request, and by the WCB is indicative of there being additional records.
22. The Applicant has not provided any information about the records produced in the context of civil litigation or by the WCB, other than the number of pages produced. She has not provided any information as to the records that are alleged to be missing, despite being asked for such details in the context of the review of this matter.
23. Given this absence of information, it is challenging, if not impossible, for AHS to provide a meaningful response as to the reason why there may be differences in the number of pages produced.
24. Generally speaking, the difference in the number of pages produced in the three contexts may be attributable to the different parameters for production in each context. For instance, in the context of civil litigation, the records that are producible are

determined by what is relevant and material to the litigation. In the FOIP context, the records that are producible are determined by the request made. Differences in the parameters for production may result in different numbers of pages of records being disclosed.

25. With respect to the records produced to the WCB specifically, the Applicant's reference to 700+ pages to the WCB may be a reference to AHS' response to a WCB subpoena in the summer of 2016.
26. Assuming this is the WCB disclosure to which the Applicant is referring, by way of letter dated July 29, 2016, AHS received a subpoena (the "WCB Subpoena") from the Workers Compensation Board ("WCB") for the following records for the time frame 2007 to July 29, 2016:

A complete copy of all employer reports/investigations, memoranda, notes and other documents, including all witness statements, which relate, in any way, to the investigation of the above-noted employee [the Applicant]. Document include both paper and electronic formats.

Subpoena, Workers' Compensation Board, issued July 29, 2016, Tab 4

27. AHS disclosed records to the WCB in response to the WCB Subpoena.
28. To the extent that there was a difference in the number of pages disclosed in relation to the FOIP Request and to the WCB Subpoena, we note that the WCB Subpoena is for a different time period than the FOIP Request and sought a broader category of records. As such, any discrepancy in the number of pages disclosed is likely attributable to the different scope of the records sought and the different applicable time period.
29. In this case, AHS has requested and received responses from each of the teams that are likely to have records that may be responsive to the FOIP Request. Those teams searched multiple hard copy and electronic locations for records. The records that were located as a result of these steps have been provided to the Applicant. There are no further steps that AHS can take in this regard.

[para 19] Prior Orders of this Office have determined that 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).

[para 20] The Public Body located and disclosed 428 pages of records to the Applicant and has provided details of the search it conducted. While the Applicant has expressed her view that records were missing from the 428 pages of records the Public Body provided to her, she has not provided any details about the records she believes were missing from the records that were provided to her.

[para 21] The Public Body has provided a reasonable explanation as to why there was a difference between the number of records that were produced to the Applicant in response to her

access request and the number of records that were produced in the litigation with the Applicant, and the number of records that were produced in response to the WCB Subpoena.

[para 22] An access request that is more general will normally result in more responsive records than one that is more specific. For example, the number of records produced in response to a request for “my personnel file” would likely be less than the number of records produced in response to a request for “all information about me” (unless, of course, all the information a public body has about an individual is located in that individual’s personnel file).

[para 23] What is producible in other contexts is governed by the rules that are applicable in those contexts. The fact that more records, or different records, are produced by a public body in those contexts does not automatically mean that the search conducted by a public body to respond to an access request under the Act is inadequate. If, however, an applicant can point to records produced in those other contexts that would have been responsive to their access request and were not provided by the public body, this can raise the question as to whether the public body’s search for responsive records under the Act was adequate.

[para 24] The Applicant did not point to any of the records produced by the Public Body in either the litigation proceeding with the Public Body or the matter before the WCB, as examples of records that were responsive to her access request and should have been included in the records she received in response to her access request, but were not.

[para 25] Nor did the Applicant identify any records that she submitted to the Public Body that would have been responsive to her access request and should have been included in the records she received in response to her access request, but were not.

[para 26] In light of the submissions of the Public Body regarding its search, and in the absence of any substantive information from the Applicant as to what records the Public Body should have located in its search and disclosed to her that were not included in the 428 pages of records she received, I find that the Public Body conducted an adequate search for records responsive to the Applicant’s access request, and met its duty to assist the Applicant under section 10(1) of the Act.

IV. ORDER

[para 27] I make this Order under section 72 of the Act.

[para 28] I find that the Public Body conducted an adequate search and met its duty to assist the Applicant under section 10(1) of the Act.

Carmen Mann
Adjudicator
/kh