

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-18

March 25, 2022

UNIVERSITY OF CALGARY

Case File Number 003842

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 University of Calgary (the Public Body). The Public Body provided eight e-mails and attachments in response to the request. The Applicant sought a review of whether the Public Body had met its duty to properly respond to the access request under section 10(1) of the Act. The Public Body argued that it met its duty and that it did not have custody or control over the records that the Applicant sought.

The Adjudicator found that the Public Body did not have custody or control over the records. The records were on the Public Body's e-mail servers by virtue of its Deputy Provost's involvement with an external organization: the Social Sciences and Humanities Research Council (SSHRC). Since the records were not related to the Public Body's business, they were not in its custody or control.

The Adjudicator found that the Public Body met the duty under section 10(1). It was reasonable for the Public Body to confine its search to the records of the single employee whose records were requested since there was no reason to believe that there were further records anywhere else. It was reasonable to omit searching for records by court file number since no numbers were specified and the employee mentioned in the request was not aware or involved in earlier litigation between the Applicant and the Public Body. The duty under section 10(1) did not require the Public Body to provide the Applicant

with information regarding the circumstances under which it obtained information from the Deputy Provost when conducting the search for records.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(a), 6, 10(1), 69(3), 72. *Social Sciences and Humanities Research Council Act*, R.S.C., 1985, c. S-12.

Authorities Cited: **AB:** Orders 97-006, 2000-030, F2004-008, F2007-029, F2009-023, F2009-043, F2018-37, F2020-06

Cases Cited: *Oleynik v Canada (Attorney General)*, 2018 FC 737, *Oleynik v Canada (Attorney General)*, 2020 FCA 5; *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89; *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2012 ABQB 247.

I. BACKGROUND

[para 1] On June 3, 2016, 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 University of Calgary (the Public Body). The Applicant sought the following information:

Documents in which my name ([two variant spellings of the Applicant's last name], any identifying number including court files numbers assigned to me) is mentioned in the custody and control of:

- 1) Dean of the Faculty of Social Sciences (Oct. 2007 – March 2010)
- 2) Dean of the Faculty of Arts (April 2010 – December 2013)
- 3) Deputy Provost (since January 1, 2014.)

The list of documents includes minute of meetings, memos, and e-mails. Thus a search on e-mail servers is required.

[para 2] The specified time period for the request was October, 2007 to June 3, 2016.

[para 3] The Public Body replied to the access request on June 30, 2016, and provided the Applicant with 8 e-mails and attachments as responsive records, with some redactions. In the letter accompanying its response to the access request, the Public Body informed the Applicant that the three positions specified in the access request were all held by the same person during the specified time periods. For ease of reference, I refer to this person as the Deputy Provost throughout this Order.

[para 4] The Public Body further informed the Applicant that the Deputy Provost did not know him, had not met him, was not familiar with his name, and had no reason to believe that he had any further records other than those provided. In light of the Deputy Provost's unfamiliarity with the Applicant, the Public Body informed the Applicant that

there was no reason to conduct a wider search of its e-mail servers, and that doing so would unreasonably interfere with its operations. Regarding documents that may contain court file numbers associated with the Applicant, the Public Body informed the Applicant that Deputy Provost was not involved in any court proceedings between the Applicant and the University of Calgary. The Public Body's position was that any court documents it had that referenced the Applicant would have been provided in past court proceedings.

[para 5] On July 4, 2016 the Applicant e-mailed the Public Body asking it to,

... "specify the form in which the U of C Deputy Provost made the statements he cited (written, oral, under oath, etc.) and how exactly this issue has been discussed with him (in person, in written form etc.).

The Public Body did not provide an answer the Applicant's request.

[para 6] On July 7, 2016 the Applicant requested that this Office review the response to his access request. Mediation and investigation were attempted to resolve the issues in this matter, but did not do so.

[para 7] On April 26, 2017 the Applicant requested that the Commissioner hold an inquiry into the response to his access request. After this Inquiry was confirmed, and a Notice of Inquiry was issued this Inquiry was held in abeyance from June 10, 2020 to March 15, 2022 due to difficulties caused by the Covid-10 pandemic.

II. RECORDS AT ISSUE

[para 8] The records at issue relevant to Issue B are 8 e-mails and attachments provided to the Applicant in response to the access request.

III. ISSUES

[para 9] The Notice of Inquiry sent to the parties identified the following as an Issue in this matter:

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 10] In the course of the Inquiry, both parties addressed the matter of whether the records provided to the Applicant were under the custody or control of the Public Body. Accordingly, the following issue was added:

ISSUE B: Are the responsive records under the custody and control of the Public Body?

IV. DISCUSSION OF ISSUES

Preliminary Matter – Applicant's arguments about the Public Body's submission

[para 11] The Applicant argues that the Public Body's submissions are unreliable because they consist of unsworn statements and hearsay and are not in the form of an affidavit, and are unsigned.

[para 12] While sworn evidence is always preferable to unsworn statements, it is not required (See, for example, Order F2009-043 at para 21.). Further, the Public Body's submissions indicate the source of the information therein, where its employees are the ones providing it. Since I have no reason to doubt the information in the Public Body's submissions, I consider them below.

[para 13] The Applicant also argued that the fact that the Public Body's submissions are not signed determines whether section 4(a) of the Act applies to them. This matter was also addressed in Order F2020-06 at para. 11. There, as here, it was determined that,

This section excludes filed court records from the scope of the FOIP Act. It does not have any application to the Public Body's submission to this inquiry, nor does it apply to the records requested by the Applicant.

[para 14] In his submissions the Applicant also requested the opportunity to cross examine the Deputy Provost. Granting such a request is not practical, since the Applicant has been out of province for the entire Inquiry, which, at his request, had to be put into abeyance because of problems communicating over that distance caused by the covid-19 pandemic. Moreover, there is no right of cross examination in an inquiry. Section 69(3) of the Act states,

(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

[para 15] I now address Issue B.

ISSUE B: Are the responsive records under the custody and control of the Public Body?

[para 16] The access right in section 6 of the Act is limited to records in the custody or under the control of a public body.

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[para 17] The Public Body argues that the records provided to the Applicant were never in its custody or control. The Public Body states that the records are provided to the Applicant as "a gesture of goodwill."

[para 18] At the time of the access request, the Deputy Provost had been serving as a volunteer member of the grant selection committee of the Social Sciences and Humanities Research Council (the SSHRC) since 2013. The SSHRC is not part of the Public Body; it is a federal agency with a mandate to promote research in the social sciences and humanities, created under *Social Sciences and Humanities Research Council Act*, R.S.C. 1985, c. S-12. One of the functions of the SSHRC is to review grant applications for funding. The Applicant appears to have made an application to the SSHRC, some details of which were then forwarded to the Deputy Provost by the SSHRC via e-mail. (I address whether the Deputy Provost would have been familiar with the Applicant in light of these e-mails in more detail further below). These e-mails were the records provided to the Applicant. The Public Body's position is that the Deputy Provost's work with the SSHRC is separate from his role at the Public Body, and as such, it does not have custody or control over them.

[para 19] The Applicant argues to the contrary.

[para 20] The present approach to determining whether an entity has custody or control of information was reviewed in Order F2018-37. The Adjudicator in Order F2018-37 stated at paras. 19 to 21:

The phrase "custody or control" refers to an enforceable right of an entity to possess a record or to obtain or demand it, if the record is not in its immediate possession. "Custody or control" also imparts the notion that a public body has duties and powers in relation to a record, such as the duty to preserve or maintain records, or the authority to destroy them.

Previous orders of this office have considered a non-exhaustive list of factors compiled from previous orders of this office and across Canada when answering the question of whether a public body has custody or control of a record. In Order F2008-023, following previous orders of this office, the Adjudicator set out and considered the following factors to determine whether a public body had custody or control over records:

- Was the record created by an officer or employee of the public body?
- What use did the creator intend to make of the record?
- Does the public body have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
- If the public body does not have possession of the record, is it being held by an officer or employee of the public body for the purposes of his or her duties as an officer or employee?
- Does the public body have a right to possession of the record?
- Does the content of the record relate to the public body's mandate and functions?
- Does the public body have the authority to regulate the record's use?

- To what extent has the record been relied upon by the public body?
- How closely is the record integrated with other records held by the public body?
- Does the public body have the authority to dispose of the record?

Not every factor is determinative, or relevant, to the issues of custody or control in a given case. Custody or control may be determined by the presence of only one factor. If it can be said, after consideration of the factors, that a public body has an enforceable right to possess records or obtain or demand them from someone else, and has duties in relation to them, such as preserving them, it follows that this entity would have control or custody over the records. In this case, it would appear that the Public Body would have no right to possess the record, and would have no reason or use for the record.

[para 21] The Applicant addresses the first 8 points listed above. However, I do not review them all in the Order.

[para 22] To begin, I note that “bare” possession of a records does not amount to custody or control (Order F2009-023).

[para 23] In *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2012 ABQB 247 (*U of A*) the Court considered substantially the same circumstances as in this case: namely whether e-mails received by an employee volunteering on the SSHRC that are on a public body’s servers are in the custody or control of the public body. While recognizing that the above factors may indicate custody and control in some circumstances, the Court found that the public body did not have custody or control and clarified the appropriate approach in the circumstances, the Court stated, at para. 107,

I also agree with the University that it was unreasonable to examine whether the public body is an institution that approves and encourages the work of an external organization. That question does not actually address custody or control. A public body may approve and support external organizations without that general approval and support somehow triggering public access to records that are not directly related to the public body’s operations. Public bodies will often encourage and support its employees’ participation in external organizations, like professional associations and charitable organizations. An employee may well participate in an organization that has some relationship to his employment duties; for example a lawyer may be involved with the Law Society and an accountant may do the audit for a non-profit society. The public body may, in a general way, encourage such participation by allowing time off for these duties and by promoting active professional development as part of one’s employment, but that does not bring those activities within the public body’s functions. The appropriate approach is to determine whether the record in question relates to the business of the public body. The Adjudicator’s approach failed to ask that question.

[para 24] In this case, if the Public Body can be said to have custody or control over the records, it will be because the Deputy Provost had possession of them as part of his duties to the Public Body, such that the records relate to the Public Body’s business. There is no other evidence suggesting that the Public Body has any involvement with or

rights to possess the records beyond the fact that the Deputy Provost had them by virtue of his work on the SSHRC.

[para 25] The Applicant refers to two agreements that he argues suggest that the Deputy Provost's work on the SSHRC is part of his duties to the Public Body. The first is Agreement on the Administration of Agency Grants and Awards by Research Institutions (the Administration Agreement) between the Public Body and the SSHRC. The Applicant states,

When sitting on the SSHRC Adjudication committee, [The Deputy Provost] represented his home institution, the University of Calgary, as per Agreement on the Administration of Agency Grants and Awards by Research Institutions with the SSHRC, the NSERC and the CNR. Section 3.7 of this Agreement requires that the Public Body 'makes its applicants, Recipients, students and administrative staff available to participate in the monitoring, review and evaluation of the Agency's programs, policies and processes'.

The full text of section 3.7 is below:

a, The Institution shall:

I. provide any information about a Grant or Award that an Agency reasonably requests, in a timely manner;

II. contribute to the monitoring, review and evaluation of the Agency's programs, policies and processes by participating in mid-term reviews, evaluation studies, surveys, workshops, audits and other activities organized for the purpose of collecting information to assess progress and results; and

III. make its applicants, Recipients, students and administrative staff available to participate in the monitoring, review and evaluation of the Agency's programs, policies and processes.

[para 26] The second agreement referred to by the Applicant is the collective agreement between the Public Body and the University of Calgary Faculty Association. The Applicant states,

The Collective agreement between the Faculty Association of the University of Calgary and the Governors of the University of Calgary considers an academic staff member's participation in peer-review as a 'community service'. A community service is a form of 'outside professional activity', O.P.A. Outside professional activity 'is normally restricted to activities associated with the academic staff member's major academic interests as an employee of the University of Calgary'.... The Public Body 'acknowledges the importance of O.P.A. to the professional development of academic staff members and to the exercise of their University responsibilities' and 'encourages the involvement of academic staff members in O.P.A.'

[para 27] The relevant provisions of the collective bargaining agreement are 13.1 – 13.3, set out below:

13.1 “Outside Professional Activity” (O.P.A.) refers to those activities which the academic staff member performs as a community service unless otherwise contractually arranged with the Governors or those for which the academic staff member may receive remuneration. O.P.A. is normally restricted to activities associated with the academic staff member’s major academic interests as an employee of the University of Calgary.

13.2 The Governors acknowledge the importance of O.P.A. to the professional development of academic staff members and to the exercise of their University responsibilities. In recognition that O.P.A. offers valuable opportunities to enrich teaching and research, and to share the knowledge, skills, know-how and other resources of the institution with the community at large, the Governors encourage the involvement of academic staff members in O.P.A.

13.3 O.P.A. must not detract from or interfere with the staff member’s ability to render full service to the University in other areas of responsibility. Responsibility for ensuring compliance with this requirement rests with the Dean of the Faculty concerned.

[para 28] The Public Body argues that the Administration Agreement provides only a high-level general framework for the interaction between the Public Body and the SSHRC as a grant-providing body and does not describe the Deputy Provost’s duties. The Public Body notes that the Deputy Provost is not required to be involved with the SSHRC, but has chosen to volunteer for those duties himself, and was accepted for the role by the SSHRC.

[para 29] Regarding the collective agreement, the Public Body argues that it is not relevant to the issue of custody and control. The Public Body further clarifies that the O.P.A. provisions are meant to encourage outside professional development, and not directing or ordering academic staff to engage in professional development activities.

[para 30] Lastly, the Public Body refers to the decision in *U of A* and argues that the volunteer aspect of the Deputy Provost’s involvement indicates that it does not have custody or control of the records in this case.

[para 31] I agree with the Public Body; it does not have custody or control over the records it provided to the Applicant.

[para 32] The Administrative Agreement sets out terms which the Public Body must observe as an institution which may receive grants from the SSHRC. While the Administrative Agreement assigns duties and responsibilities to the Public Body, they are not specific to the Deputy Provost. Further, the e-mails from the SSHRC sent to the Deputy Provost were sent to him in his capacity as a volunteer for the SSHRC, not as an employee of the Public Body engaged in the Public Body’s responsibilities under the Administrative Agreement. They do not relate to the Public Body’s business.

[para 33] As to the Applicant’s assertion that the Deputy Provost represents the Public Body in his role with the SSHRC, that does not appear to be the case. The Public Body

provided the following explanation of the Deputy Provost's role on the SSHRC from the SSHRC's website, which states that he does not represent the Public Body.

Reviewers volunteer their time to assist in SSHRC merit review processes. They are enlisted based on individual experience and expertise, and do not represent particular institutions. SSHRC seeks to ensure a diversity of perspectives: reviewers may be from Canada or abroad; they may come from postsecondary institutions; or they may come from organizations across the public, private and not-for-profit sectors.¹

[para 34] Regarding the O.P.A. provisions of the collective agreement, I find that they are irrelevant. The quoted passage from *U of A* above makes clear that encouraging employees to participate in outside professional activities does not result in the Public Body's obtaining custody or control over e-mails employees receive pursuant to external roles they assume when undertaking those activities.

[para 35] I recognize that in *U of A*, one of the factors that led the Court to conclude that the public body did not have custody or control that is not present in this case was that the SSHRC had control over the handling and disposal of the e-mails in that case. Control was established via an agreement between the SSHRC and the public body's employee stipulating how the employee was to handle records (*U of A* at para. 89). In this case, the Applicant observes that while the SSHRC has a Conflict of Interest and Confidentiality Agreement which sets out requirements to keep SSHRC matters confidential, and a standard on storing information, the Deputy Provost did not sign the Conflict of Interest and Confidentiality agreement. The Applicant argues that in this case, therefore, the circumstances are distinguishable from those in *U of A*, and the SSHRC does not have control over the records.

[para 36] With respect to the Applicant's argument, I cannot agree. As set out in *U of A*, the core consideration in this Issue is whether the records related to the Public Body's business. Whether the Deputy Provost signed the SSHRC's Conflict of Interest and Confidentiality agreement does not inform that matter one way or the other. The same result was reached in in Order F2020-06, which also considered whether the lack of a signature on such an agreement affected the issue of custody or control over records of the SSHRC (Order F2020-06 at paras. 42-43).

[para 37] I find that the Public Body does not have custody or control over the records provided to the Applicant.

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 38] Section 10(1) states as follows:

¹ Available at: https://www.sshrc-crsh.gc.ca/funding-financement/merit_review-evaluation_du_merite/index-eng.aspx

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 39] 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 40] 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 41] The Applicant provides several reasons why he believes the search was inadequate. The first is based on the records that the Applicant received from the Public Body. Among them is a draft copy of a spreadsheet on which grant applications to the SSHRC are scored. The spreadsheet contains a space for the signature of the Deputy Provost. The Applicant possesses a later version of the spreadsheet with a final version of the scores. The Applicant asserts that the fact that he received the draft version of the

spreadsheet but not the final version indicates that the Public Body failed to properly search for and provide all responsive records.

[para 42] Records such as the spreadsheets mentioned above are the sort that are not in the custody or control of the Public Body for the reasons given in Issue B. Accordingly, the Public Body had no obligation to provide them in response to the access request, and I don't consider the Applicant's argument regarding the spreadsheets any further.

[para 43] The Applicant also surmises that there would be more responsive records since he had been involved in extensive litigation with the Public Body, and that the Deputy Provost must have been aware of that litigation. I understand that the Applicant submits that the Deputy Provost, as a member of the Public Body's senior leadership team, must also have been aware of who he was as a result of this litigation. The Applicant has also been involved in litigation in the Federal Court with the SSHRC itself. The Applicant filed with the Federal Court an application for a judicial review of the SSHRC's decision to deny of his grant application. The application included allegations directly involving the Deputy Provost. The matter was ruled on in 2018 FC 737, which was affirmed in 2020 FCA 5.

[para 44] The Public Body states that it has no reason to doubt the word of the Deputy Provost that he is unfamiliar with the Applicant, and that the Applicant is only speculating that the Deputy Provost would have been involved in earlier litigation.

[para 45] I address the Applicant's actions in Federal Court first.

[para 46] The Federal Court stated at para. 1 of 2018 FC 737, that the decision of the SSHRC Appeal committee which was subject of the judicial review was made by letter dated, October 3, 2016. That date is months after the Public Body replied to the Applicant's access request on June 30, 2016. The Deputy Provost would not have known about the Applicant as a function of the latter's litigation in Federal Court that took place after October of 2016.

[para 47] As for the earlier litigation between the Applicant and the Public Body, the Federal Court of Appeal decision cited above notes that such litigation took place between 2008 and 2014. (See 2020 FCA 5 at para. 18.) The subject matter of the litigation was the Applicant's application for a judicial review of an earlier order from the Information and Privacy Commissioner made in respect of a review of the Public Body's response to an earlier access request made by the Applicant. There are several associated motions and appeals regarding change of venue and costs.

[para 48] For most of the duration of the litigation between the Applicant and the Public Body, the Deputy Provost was Dean of the Faculty of Social Sciences and Dean of the Faculty of Arts, becoming Deputy Provost in January 2014. While the Applicant presumes that the Deputy Provost would have been aware of the litigation by virtue of his position, there is nothing in the evidence that suggests that was the case when the access request was made. Indeed there is nothing to suggest that the Deputy Provost was

necessarily familiar with the Applicant's identity at all at the time of the access request. At most, the Deputy Provost had received some e-mails from the SSHRC identifying the Applicant as someone who made an application for funding from the SSHRC, whose application he did not read. The Applicant was all but a stranger to the Deputy Provost.

[para 49] I now consider whether the Public Body's response to the access met the duty under section 10(1) of the Act, in light of the circumstances described above.

[para 50] The Public Body explains how it conducted the search for responsive records.

[para 51] The Public Body's FOIP Coordinator handled the response to the access request. Upon receipt of the access request, the FOIP Coordinator met with the Deputy Provost. The Deputy Provost confirmed that he had been in all three positions mentioned in the access request at the relevant times, but any link between the Deputy Provost and the Applicant was not clear. Despite being unaware of any possible connection, the Deputy Provost searched his records, including minutes, memos, meetings, and e-mails using search terms specified in the access request. The search terms were the two variants of the Applicant's last name specified in the access request.

[para 52] After the Deputy Provost discovered the e-mails that were subsequently provided to the Applicant, he met with the FOIP Coordinator again. The FOIP Coordinator had since discovered that the Applicant had made grant applications to the SSHRC during the time when the Deputy Provost served on the SSHRC's grant collection committee. The Deputy Provost explained to the FOIP Coordinator that as chair of the grant selection committee, he was neither asked nor required to read any grant proposals; he still did not recall who the Applicant was.

[para 53] Upon learning that the Deputy Provost was not familiar with the Applicant, the FOIP Coordinator determined that a broader search of its e-mails servers was not necessary to respond to the access request, since there was no reason to believe there were further records than what the Deputy Provost had provided, and searching the e-mail servers would unreasonably interfere with the Public Body's operations. The Public Body explains the reason why such a search would not be practical; however I do not need to go into those details here. For the reasons below, under the circumstances of the case, I find that it was reasonable that the Public Body did not conduct a broader search for e-mails in any case.

[para 54] The access request was specific to records "in the custody and control" of the Deputy Provost. The natural starting point for the search was the Deputy Provost's records, which were searched. Following the search, the Deputy Provost came to understand that he had very little involvement with the Applicant. Moreover, the only e-mails he had with the Applicant's name were from the SSHRC itself. As such, there was no reason to believe that any further responsive records would be held elsewhere, outside of his office. Under those circumstances, while the natural starting point for the search was the Deputy Provost's office, it was also the natural ending point for the search.

[para 55] I note that the Deputy Provost did not conduct a search using any “court files numbers” assigned to the Applicant. Under the circumstances of this case, I find that the search was reasonable despite the omission. The Applicant did not specify any numbers to be searched. The Deputy Provost was thus left to determine if he had any records related to any court matters involving the Applicant, and if so, what the file numbers were. There is no evidence that the Deputy Provost was involved in or aware of the Applicant’s earlier litigation with the Public Body, and the Federal litigation related to the Deputy Provost’s role with the SSHRC had yet to commence. While the Applicant requested a search of court files numbers, there was effectively nothing for the Deputy Provost to search for among his records.

[para 56] Lastly, I consider the Applicant’s argument that the Public Body did not meet the duty under section 10(1) because it did not respond to the request in his e-mail of July 4, 2016. The Public Body’s position is that it met the duty under section 10(1) despite that it did not respond.

[para 57] The duty to assist includes an informational component that can, to one degree or another depending on the circumstances, require public bodies to explain various aspects of the search for responsive records, including why it believes no further records exist (*University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89 at paras. 41 – 45).

[para 58] However, what the Applicant requested in his July 4, 2016 e-mail goes beyond what the duty to assist requires. The Public Body had already explained that it determined no further records based upon the Deputy Provost’s assertions. What the Applicant sought was beyond further explanation of how the public body conducted its search, who was involved in it, or why it believed that no further records exist. Rather, what he requested was information about the particulars of the circumstances under which the Public Body obtained information from the Deputy Provost. In my view, the duty under section 10(1) does not go so far as to obligate a public body to provide such information to an applicant’s satisfaction.

V. ORDER

[para 59] I make this Order under section 72 of the Act.

[para 60] I confirm the Public Body met its duty under section 10(1) of the Act.

[para 61] I confirm that the Public Body did not have custody or control over the records it provided to the Applicant. Since the Public Body considers that the records were provided as a goodwill gesture, I make no order in regard to them.

John Gabriele
Adjudicator
/ah