



Office of the Information
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August 18, 2003

Brad Pickering, Deputy Minister
Alberta Municipal Affairs
Commerce Place
10155 – 102 Street
Edmonton AB T5J 4L4

Dear Mr. Pickering:

Re: Requests for Inquiries – Review Numbers 2594 and 2595

You have requested that I exercise my discretion and refuse to hold inquiries into Review Numbers 2594 and 2595, under what is now section 70(a) of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), which reads:

70 The Commissioner may refuse to conduct an inquiry pursuant to section 69 if in the opinion of the Commissioner

(a) the subject-matter of a request for review under section 65 has been dealt with in an order or investigation report of the Commissioner,...

I have decided to exercise my discretion under section 70(a) and refuse to hold inquiries into Review Numbers 2594 and 2595, for the reasons that follow.

Background

In 2000, an individual applicant (the “Individual”) applied under the FOIP Act to Alberta Municipal Affairs (the “Public Body”) for access to records concerning what the Public Body investigated in regard to the Individual’s allegations of mismanagement and dishonesty on the part of senior Town of Ponoka officials. The Individual specified that all he

wanted was information showing exactly what the Public Body investigated and its finding of fact.

The Individual had previously requested access to the same records in 1995 and again in 1999. When the Individual once again requested access to those same records in 2000, the Public Body responded that it did not have any further records. Dissatisfied that the records previously provided did not respond to his access requests, and believing that records had been withheld, the Individual requested a review of the Public Body's response under what is now section 10(1) of the FOIP Act, which reads:

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.

I held an oral inquiry to decide whether the Public Body conducted an adequate search for records and made every reasonable effort to assist the Individual and to respond openly, accurately and completely. At the inquiry, the Public Body gave evidence under oath that it had provided what records it had concerning the subject-matter of the Individual's access request, and did not find any additional records when it searched in 2000.

At the conclusion of the inquiry, I decided that, even though no records were found that responded to the Individual's access request, the Public Body had fulfilled its duty under what is now section 10(1) by making every reasonable effort to search for the requested records and by providing any information it thought might assist the Individual. I issued that decision as Order 2001-007.

The subject-matter of Review Numbers 2494 and 2495

These review numbers concern three other individuals (the "Applicants") who, in 2002, requested access to the same information to which the Individual in Order 2001-007 requested access. The Public Body searched for, retrieved and disclosed to the Applicants the same records it disclosed in the Individual's earlier access requests. With the Individual's consent, the Public Body also disclosed the Individual's correspondence with the Public Body concerning the Individual's issue.

The Applicants were not satisfied with the Public Body's response to their access requests and asked for reviews under the FOIP Act. Mediation was not successful, and the Applicants requested inquiries on the basis that the Public Body did not respond openly, accurately and completely

to the Applicants, as required by section 10(1) of the FOIP Act. My Office notified the Public Body of the requests for inquiries.

By letter dated April 23, 2003, the Public Body requested that I exercise my discretion under what is now section 70(a) of the FOIP Act and refuse to hold inquiries. The Public Body argued that I should refuse to hold inquiries because the records and the subject-matter of the requests for review are the same as in Order 2001-007.

Before making a decision under section 70(a), I directed my Office to provide the Applicants with a copy of the Public Body's April 23, 2003 letter and to invite the Applicants to respond in writing to the Public Body's request.

In the Applicants' written responses, the Applicants argued that I should conduct inquiries, for a number of reasons.

The Applicants say that the Public Body provided them with irrelevant information that does not answer their requests for information about (i) what the Public Body investigated in relation to the Individual's allegations, and (ii) on what the Public Body based its conclusions. The Applicants want the Public Body to either provide the requested information or confirm that the Public Body does not have it.

The Applicants' requests for information are the same as the Individual's requests. The Public Body responded to both the Individual and to the Applicants with what records it has. The matter of the adequacy of the Public Body's response to the Applicants' access requests under section 10(1) of the FOIP Act is the identical subject-matter I considered concerning the Individual in Order 2001-007. As in Order 2001-007, I would find that the Public Body fulfilled its duty under section 10(1) by making every reasonable effort to search for the requested records and by providing any information it thought might assist the Applicants, including the Individual's correspondence.

The Applicants appear to be concerned with whether there should be records. However, section 10(1) is concerned only with whether there are records and whether a public body conducted an adequate search for records.

Furthermore, and contrary to what the Applicants believe, section 10(1) is not about providing accurate responses to questions; it is about searching for the records requested and responding accurately concerning the search. In an inquiry, I would not review the accuracy of a public body's response to questions posed by an applicant. Moreover, a public body does not have a duty under section 10(1) to respond to

questions; it has a duty only to search for any records it may have that will respond to questions.

Finally, whether or not the Public Body investigated the Individual's complaint is not a matter that I have jurisdiction to consider under the FOIP Act.

What the Applicants in fact want reviewed cannot be reviewed in an inquiry under the FOIP Act.

My decision under section 70(a)

I have decided to refuse to conduct inquiries for Review Numbers 2494 and 2495.

In my opinion, the subject-matter of the requests for review has been dealt with in Order 2001-007.

Yours truly,

Frank Work, Q.C.
Information and Privacy Commissioner

cc: The Applicants