

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

Request for Authorization to Disregard an Access Request
under section 55(1) of the
Freedom of Information and Protection of Privacy Act

Alberta Justice and Solicitor General
(OIPC File Reference 008539)

July 31, 2018

- [1] Alberta Justice and Solicitor General (“JSG”) brought an application for authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or the “Act”) to disregard two access requests made by an individual (the “Applicant”).
- [2] Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1) states:

55(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if

(a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or

(b) one or more of the requests are frivolous or vexatious.

- [3] On April 24, 2018, JSG received the following access request under FOIP from the Applicant (JSG File No. 2018-P-0408):

“I would like a copy of the unit camera during my 1 hr exercise [sic] I am given every 27 ¼ hours on unit [number redacted]. It will show mail (FOIP) being refused by me after showing the camera I received it opened. Also me busting the ear piece on the phone. This video is very important for continuity purposes. Thank you.”

Time period: “between 4 pm & 5 pm on April 13, 2018”

- [4] On April 27, 2018, JSG received the following access request under FOIP from the Applicant (JSG File No. 2018-P-0422):

“May I have a copy of my cell video in [number redacted] between 3:55 pm – 4:00 pm it shows me putting an RFI in my door to Director after showing the camera.”

Time period: “3:55 pm to 4:10 pm April 19, 2018”

[5] On May 2, 2018, I received an application from Alberta Justice and Solicitor General under section 55(1) of FOIP for authorization to disregard the Applicant's two access requests. JSG included an *in camera* submission with its May 2, 2018 application; therefore, as a preliminary matter, my office wrote JSG on May 4, 2018 explaining that *in camera* submissions are not automatically accepted. My office outlined the conditions under which an *in camera* submission may be accepted, which include when: 1) the submission reveals the contents of the "records at issue"; 2) there is a statutory requirement that the information not be disclosed; or 3) the circumstances of the case require that the information not be disclosed.

[6] JSG was given a deadline of May 25, 2018 to make a submission regarding its *in camera* request, and the Applicant was subsequently given a deadline of June 22, 2018 to provide a response regarding the preliminary *in camera* issue.

[7] On June 28, 2018, in the course of reviewing the file to issue my *in camera* decision, I encountered the following statement on the second last page of JSG's section 55(1) application:

"...the video records have not been secured. As noted, video records are on a 30-day loop. The Public Body requests the OIPC advise if they want the Public Body to reserve the video records for the seventh access request; a response is required by May 15, 2018 in order to ensure the earliest video is secured in time."

[8] On June 29, 2018, I requested immediate confirmation from JSG as to whether it had secured the records responsive to the Applicant's access request under FOIP. In that letter, I stated:

"I should not have to tell Alberta Justice and Solicitor General that it is required to preserve and not destroy any and all records that are responsive to these access requests while these matters are before me."

[9] On July 12, 2018, Alberta Justice and Solicitor General informed me that it had destroyed the records which were responsive to the Applicant's access request under FOIP.

[10] FOIP does not authorize public bodies to decide whether they will respond to an access request; a public body is required to apply to me under section 55(1) to disregard an access or correction request. Although section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests, it is a necessary precondition that the records subject to a request under FOIP must exist. Regardless of a public body's belief in the merits of a section 55(1) application, bringing an application under section 55(1) of FOIP does not guarantee a public body will be granted authorization to disregard a request. Further, a public body does not have authorization under FOIP to destroy records that are the subject of an access request during the intervening period between its application under section 55(1) and my decision.

- [11] In this case, Alberta Justice and Solicitor General received two access requests under FOIP, applied to me under section 55(1), and then fewer than two weeks later, destroyed the responsive records.
- [12] An application under section 55(1) must be in relation to records that exist. Since these records do not exist, there is nothing for me to authorize or to refuse to authorize; therefore, I am not going to decide whether I will exercise my discretion under section 55(1) of FOIP to authorize Alberta Justice and Solicitor General to disregard the access requests at issue in this matter because the records no longer exist and have been destroyed.
- [13] I am extremely concerned about Alberta Justice and Solicitor General's destruction of records that are responsive to an access request under FOIP. I am aware that this same destruction of responsive records has occurred in two other JSG applications under section 55(1) (OIPC File Nos. 008660 and 009008). My decisions in those matters are being issued concurrently.
- [14] I have opened a new file to investigate Alberta Justice and Solicitor General's destruction of responsive records.

Jill Clayton
Information and Privacy Commissioner