

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-038

January 7, 2000

ALBERTA ENERGY AND UTILITIES BOARD

Review Number 1572

I. BACKGROUND

[para 1.] On July 20, 1996, the Applicant's farm incurred a power outage. The Applicant filed a complaint with the Alberta Energy and Utilities Board (the "Public Body") regarding the power outage and the subsequent handling of the incident by the Applicant's Rural Electrification Association and TransAlta Utilities ("TransAlta"). The Public Body ruled that it did not have jurisdiction to hear the matter and denied the Applicant's request for a formal hearing.

[para 2.] Between January 29, 1999 and March 9, 1999, the Applicant made 11 access requests under the *Freedom of Information and Protection of Privacy Act* (the "Act") to the Public Body for information relating to that power outage.

[para 3.] On February 25, 1999, the Public Body sent a letter to the Applicant responding to four of the access requests. In addition, on March 11, 1999, the Public Body sent the Applicant an unsevered copy of its entire file referencing the power outage and the subsequent communications between the Public Body and TransAlta.

[para 4.] On March 11, 1999, the Applicant wrote to our Office requesting a review of the Public Body's response to the Applicant's access request. The Applicant believes the Public Body should have additional records in its custody or control that are responsive to the

access request. Mediation was not successful and the matter was set down for a written inquiry.

[para 5.] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para 6.] The records at issue consist of documents in the custody or under the control of the Public Body that pertain to the power outage at the Applicant's farm. However, as the issue is one of duty to assist, the records are not directly at issue.

III. ISSUE

[para 7.] Did the Public Body make every reasonable effort to assist the Applicant and to respond openly, accurately and completely to the Applicant as provided by section 9(1) of the Act?

IV. DISCUSSION – Did the Public Body make every reasonable effort to assist the Applicant and to respond openly, accurately and completely to the Applicant, as provided by section 9(1) of the Act?

[para 8.] The Applicant states that the Public Body did not fulfill its duty to assist and respond as provided by section 9(1) of the Act, because the Public Body did not provide the Applicant with the information that the Applicant requested.

[para 9.] Section 9(1) of the Act reads:

9(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 10.] Section 67(1) of the Act, which establishes the burden of proof, is silent regarding the Public Body's duty to assist and respond under section 9. Since the Public Body is in a better position to address its duty to assist and respond to the access requests, I find that the Public Body has the burden of proof. However, I note that under section 7, the Applicant has a duty to provide the Public Body with enough detail to enable the Public Body to respond appropriately to the request. Section 7 reads:

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.

(3) In a request, the applicant may ask

(a) for a copy of the record, or

(b) to examine the record.

[para 11.] After a review of the Applicant's access requests, I find that the wording of the requests were detailed enough to enable the Public Body to respond to the requests.

[para 12.] In addition, after reviewing the submissions from both parties, I find that the Public Body made every reasonable effort to assist and to respond to the Applicant openly, accurately and completely. My reasons are as follows.

[para 13.] First, under section 6 of the Act, an applicant only has a right of access to a record in the custody or under the control of the Public Body. The term "record" is defined in section 1(1)(q) of the Act. This section reads as follows:

1(1) In this Act,

(q) "record" means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records;

A record does not include information that only exists in the mind of a public body's employee.

[para 14.] In this inquiry, it is clear that much of the information requested by the Applicant does not exist in a "record" of the Public Body, as many of the Applicant's access requests asked for the Public Body's interpretation or opinion. For example, in a number of access requests, the Applicant requested the Public Body's opinion regarding the emotions that were provoked by the hearing process, and whether

that process was fair and user friendly. I am satisfied that this information does not exist in a record of the Public Body.

[para 15.] Second, I find that some of the information requested by the Applicant is not in the custody or under the control of the Public Body. The Applicant requested information regarding the complaints that were made to TransAlta and TransAlta's response to these complaints. I accept the Public Body's submission that although this information may be in the custody or under the control of TransAlta, it is not in the custody or under the control of the Public Body.

[para 16.] Third, I find that the Public Body provided the Applicant with all of the recorded information in its custody or under its control that was responsive to the access requests. The Public Body provided the Applicant with a complete unsevered copy of the file regarding the power outage on the Applicant's farm. The records on the file consist of TransAlta's investigation into the power outage and the subsequent communication between the Public Body and TransAlta. In particular, I note that the file contains a copy of a letter dated October 26, 1998, from the Public Body to the Applicant denying the Applicant's request for a formal hearing, and an internal Public Body memo dated October 13, 1998, which explains the reasons for that decision.

[para 17.] I note that in one of the access requests, the Applicant questioned the Public Body's legal authority to collect the Applicant's personal information under Part 2 of the Act. This was not an issue that was set out in the inquiry notice and, therefore, I will not address this issue in this Order. However, I have asked a Portfolio Officer in this Office to investigate this matter pursuant to section 51 of the Act.

V. ORDER

[para 18.] I make the following Order under section 68 of the Act.

[para 19.] I find that the Public Body made every reasonable effort to assist and to respond to the Applicant, openly, accurately and completely, as provided by section 9(1) of the Act.

Frank J. Work
Assistant Commissioner

