

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER 2001-007

April 4, 2001

**ALBERTA MUNICIPAL AFFAIRS
TOWN OF PONOKA**

Review Numbers 1904/1905

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant requested information from the Town of Ponoka and from Alberta Municipal Affairs about "investigations" the two public bodies had conducted further to the Applicant's allegations of the Town Council's and Administration's impropriety. The Applicant complained that the public bodies failed to provide the responsive records and that they did not conduct an adequate search pursuant to their obligation under section 9(1) of the Act. The Assistant Commissioner found that both public bodies fulfilled their duties to assist the Applicant and that they both conducted adequate searches.

Statutes Considered: **AB:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, s. 9(1).

Authorities Considered: **AB:** Orders 97-003; 97-006; 98-012.

I. BACKGROUND

[para 1.] The Applicant believes that there was some impropriety related to the Council and Administration of the Town of Ponoka (the "Town"). He requested that the Town

and the department of Municipal Affairs conduct investigations into his allegations of corruption. On February 1, 2000, the Applicant made the following request to the Town under the *Freedom of Information and Protection of Privacy Act* (the "Act"):

A number of town officials, past and present, have claimed to have investigated the concerns of mismanagement and dishonesty I have raised. Would you please provide me with documentation or evidence of any kind showing specifically what these Town Officials did investigate.

[para 2.] The Applicant also requested that the Town provide him with information for items A-E appended to the request.

[para 3.] On February 18, 2000 the Applicant made the following request to Municipal Affairs under the Act:

Would you please provide me with documentation or evidence of any kind showing specifically what Alberta Municipal Affairs did investigate in regard to my allegations of mismanagement and dishonesty on the part of senior Town of Ponoka Officials. Please do not provide me with any other information. All I want is information showing exactly what Municipal Affairs did investigate and their finding of fact.

[para 4.] On May 10, 2000, the Applicant wrote to the Commissioner to request a review of his access requests to the Town and to Municipal Affairs (the "Public Bodies" when referred together). The Applicant was not satisfied with the records the two public bodies provided in response to his requests. The Commissioner authorized mediation, however, the parties were unable to reach a resolution.

[para 5.] On February 15, 2001 an oral inquiry was held, where I heard submissions and evidence from the Applicant and from both Public Bodies.

II. RECORDS AT ISSUE

[para 6.] As the issue is whether the Public Bodies fulfilled their duties under section 9(1) of the Act, the records themselves are not directly at issue.

III. ISSUE

[para 7.] Did the Public Bodies conduct adequate searches under section 9(1) of the Act for the records?

IV. DISCUSSION

1. General

Section 9(1) of the Act reads:

9(1) The head of a public body must make every reasonable effort to assist an applicant and to respond to applicants openly, accurately and completely.

[para 8.] The Commissioner stated that in order to properly discharge its obligation under section 9(1), a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request. See Order 97-003.

[para 9.] In Order 97-006, the Commissioner said that the public body has the burden of proving it fulfilled its duty under section 9(1). In other words, the Public Bodies must provide the inquiry with sufficient evidence to show that it has meet its duty under section 9(1).

[para 10.] To fulfil its duty under section 9(1), a public body must show that it conducted an adequate search. There are two components to an adequate search: (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 about what has been done. See Order 98-012.

2. Applicant's Position

[para 11.] The Applicant has been told several times that there were "investigations" to look into his allegations. He is frustrated because he thinks the investigations were not conducted properly or at all. He wants the information regarding how the investigations were conducted.

[para 12.] He stated at the inquiry that he does not want the records about the subject matter of his allegations, but rather about the investigation itself. The Applicant stated that the Town's response is not accurate, nor complete, although he acknowledged the capable effort put forth by the Town's FOIP Coordinator.

[para 13.] The Applicant stated that, given the contention surrounding the development issues, he believed there would be records that exist to respond to his request.

3. Did the Town fulfill its section 9(1) duty?

[para 14.] Ms. Raugust, Town Manager and FOIP Coordinator for the Town gave evidence under oath on behalf of the Town. She stated that she has been with the Town for over 30 years and is familiar with the issues and records referred to by the Applicant. She stated that there is a central filing system in the town and the records in the filing system are her responsibility as Town Manager. She stated that people responsible for filing put all records in the central filing system.

[para 15.] In responding to the Applicant's request, she searched the filing system, she notified the a third party contracting company, she consulted with the municipal engineer, she discussed the request at the Town Manager's meeting and she informed council.

[para 16.] She also stated that she had examined the Town Manager's office and filing cabinets and that there were no other records pertaining to the Applicant's request that she could find in any other location.

[para 17.] Ms. Raugust when asked by me, confirmed that a wide net was cast, and all records related to the request was provided. If no records were provided, it is because none existed at the time the search was conducted, even if this was not explicitly stated. While some records were thought to be an inaccurate in the sense of being not relevant to the response by the Applicant, the Town tried to provide any documentation which touched on the issues raised by the Applicant.

[para 18.] I note that in the March 14, 2000, letter from the Town, no mention is made of any records pertaining to an investigation. While it would have been preferable to have stated that no documentation existed regarding a Town investigation, I am satisfied that the Town made every reasonable effort to search for such a record based on Ms. Raugust's response, made under oath, that she could not locate any such record dealing with a town investigation.

[para 19.] With respect to Item E of the Applicant's request, which was to provide the Applicant with information that would clearly confirm exactly what is the Development Area for a particular development, I am also satisfied that the Town fulfilled its section 9 obligation. The Town provided a subdivision plan in response. While I agree with the Applicant, that this does not completely answer the Applicant's request, the Town can only provide what records it has. Ms. Raugust again confirmed that the Town does not have any other documentation that would shed light on the interpretation of that particular development agreement.

[para 20.] Therefore, I find that the Town has fulfilled its section 9 duty by making every reasonable effort to search for the requested records and by providing any information it thought might assist the Applicant. Further, I also note that the Town was prompt and timely in responding to the Applicant. Lastly, I also commend the Town on its complete submissions and the procedures it followed.

4. Did Municipal Affairs fulfill its section 9(1) duty?

[para 21.] Mr. LeRoy Brower, FOIP Coordinator and Ms. Liz Fleming, Municipal Advisor for the Local Government Services Division of Alberta Municipal Affairs, gave evidence, under oath, for Alberta Municipal Affairs.

[para 22.] Municipal Affairs stated that it provided the records to the Applicant in two previous requests for information conducted in 1995 and 1999. A further search was conducted, but no additional records were found. However, to address the Applicant's concerns, Municipal Affairs referred his access request to Local Government Services Division to provide further information to the Applicant.

[para 23.] I understand that some of the Applicant's frustration arises out of Municipal Affairs' broad use of the word "investigation". It appears that the Applicant and Municipal Affairs have different understandings of the meaning of the word "investigation".

[para 24.] Municipal Affairs attempted to clear up this misunderstanding in a letter it wrote to the Applicant dated May 28, 1999. It stated:

"Investigation" is terminology used by the department to describe a variety of activities including a review of materials, discussions or meetings with people germane to the issue, etc. It means department personnel looked into a matter, assessed it and responded to it or closed it.

[para 25.] The Applicant has shown how misleading and frustrating this use of language was for him. When he was told that there was an investigation done, he assumed it was, I think, a more significant operation than it was. Consequently, when he was told that there was little or no records resulting from the investigation, he believed something was being withheld.

[para 26.] I find that Municipal Affairs was very cooperative with the Applicant. On April 14, 2000, the Assistant Deputy Minister for Local Government Services sent a comprehensive three-page letter to the Applicant to answer the questions posed by the Applicant in the FOIP Request. Even though no records were found to respond to the Applicant's request, the Assistant Deputy Minister explained the role of the department with respect to the Applicant's allegations to assist the Applicant in understanding why there were no responsive records to his request.

[para 27.] Therefore, I find that Municipal Affairs has fulfilled its section 9 duty by making every reasonable effort to search for the requested records and by providing any information it thought might assist the Applicant. Further, I also note that Municipal Affairs was prompt and timely in responding to the Applicant. Lastly, I also commend Municipal Affairs on its complete submissions and the procedures it followed.

V. ORDER

[para 28.] I make the following order under section 68 of the Act.

[para 29.] The Town of Ponoka and Municipal Affairs conducted adequate searches for the records responsive to the Applicant's request, and thereby made every reasonable effort to assist the Applicant, as provided by section 9(1) of the Act.

Frank Work, Q.C.
Assistant Information & Privacy Commissioner