

May 2, 2002

To: The Municipality of Crowsnest Pass (the “Public Body”)  
And to: The Applicant

Dear Public Body and Applicant:

**Re: ORDER 2001-033  
Review Number 2176**

This letter sets out my decision and Order in the inquiry I held concerning Review Number 2176.

## **I. BACKGROUND AND ISSUES**

[para 1] Under the *Freedom of Information and Protection of Privacy Act*, now R.S.A. 2000, c. F-25 [previously S.A. 1994, c. F-18.5] (the “Act”), the Applicant asked the Public Body to provide access to information about (a) the Coleman Sportsplex, (b) the Blairmore-Bellvue pipeline and the well drilled in Blairmore, and (c) the Crowsnest Centre. The Applicant’s access request included a series of questions he wanted the Public Body to answer about those three projects. The Applicant’s questions are about the costs of, the contracts for, and the Public Body’s authority concerning, those projects. The Applicant has withdrawn some of those questions because the Applicant considers those questions settled and resolved (2<sup>nd</sup> page of the Applicant’s submission).

[para 2] The main issues are whether the Public Body conducted a thorough search for records and otherwise fulfilled its duty to assist the Applicant (section 10(1) [previously section 9(1)] of the Act).

[para 3] A further issue is whether the Public Body was required to create records for the Applicant in the format requested (section 10(2) [previously section 9(2)] of the Act). The Applicant also says that there may be grounds for the application of section 59(4) [previously section 57(4)] of the Act, which requires that I disclose to the Minister of Justice and Attorney General information relating to the commission of an offence.

## **II. DISCUSSION OF THE ISSUES**

[para 4] Section 10(1) [previously section 9(1)] of the Act 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.*

[para 5] The Public Body's evidence is that its search encompassed:

...interviewing our resource personnel in the Culture and Recreation Centre Department, the Public Works Department and the Accounting and Administration Department. It also included the extensive procedure of going through the Municipal records system of the Sportsplex facility, the Blairmore/Bellevue water projects and the records of the Crowsnest Centre facility.

[para 6] It is evident that the Public Body knew what records it had and searched for those records. Based on the evidence, I am satisfied that the Public Body conducted a thorough search for records, thereby fulfilling its duty to assist the Applicant.

[para 7] Section 10(1) also requires a public body to respond to each applicant openly, accurately and completely. One of a public body's duties in this regard is to tell an applicant whether there are records that respond to the applicant's access request.

[para 8] The Applicant's access request consists partly of a series of questions he wanted the Public Body to answer. The Public Body attempted to answer those questions (the Applicant provided me with the Public Body's initial and subsequent responses). However, some of the Public Body's responses do not tell the Applicant whether there are records that respond to the Applicant's access request. Certain of those responses seem vague or evasive as to whether the Public Body has records.

[para 9] The Applicant has a right of access to records (section 6(1) of the Act). The Applicant does not have a right to have the Public Body answer questions. Similarly, the Public Body does not have a duty to answer the Applicant's questions (it may do so if it wishes), but the Public Body does have a duty to respond to the Applicant about whether it has records that will answer the Applicant's questions.

[para 10] In brief, the Public Body should have responded to the Applicant in the following manner: "You asked for (a)..., (b)..., and (c)... We searched.... Here's what we have... We don't have anything else."

[para 11] Therefore, because the Public Body did not tell the Applicant whether it had records that would answer the Applicant's questions, I find that the Public Body did not respond openly, accurately and completely to the following parts of the Applicant's access request: (a)10 ((a)1, 3-9 are not at issue); (b)1, 2, 3, 5, 6, 7; (c)7.

[para 12] I intend to order the Public Body to respond to foregoing parts of the Applicant's access request in the following way: "The Public Body does/does not have records that answer the Applicant's questions about (a) the Coleman Sportsplex...; (b) the Blairmore-Bellvue pipeline and the well drilled in Blairmore...; and (c) The

Crowsnest Centre... I am telling the Public Body to be direct in its responses as to whether it has records, as opposed to answering the Applicant's questions.

[para 13] If the Public Body has records that answer the Applicant's questions, I further intend to order the Public Body to respond by telling the Applicant whether the Public Body will give the Applicant access to those records in whole or in part.

[para 14] I find that the Public Body responded openly, accurately and completely to the following parts of the Applicant's access request: (a)2; (b)4, 8; (c)1-6.

[para 15] A further issue is whether the Public Body is required to create records for the Applicant in the format requested (section 10(2) [previously section 9(2)] of the Act). Section 10(2) reads:

*10(2) The head of a public body must create a record for an applicant if*

*(a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and*

*(b) creating the record would not unreasonably interfere with the operations of the public body.*

[para 16] It appears that the Applicant believes that section 10(2) [previously section 9(2)] requires the Public Body to create a record to answer the Applicant's questions.

[para 17] Section 10(2) does not require a record to be created in the format requested. Section 10(2) requires only that the Public Body create a record from a record that is in electronic form.

[para 18] The Public Body was able to create at least two records from records in electronic form, to answer a series of the Applicant's questions. The Applicant was not satisfied with those records because they did not set out the information in the manner in which the Applicant requested it.

[para 19] I am satisfied that the Public Body created what records it was able to create. I am also satisfied that the Public Body cannot create other records that will answer the remainder of the Applicant's questions, in the format requested.

[para 20] I find that the Public Body is not required to create records for the Applicant in the format requested.

[para 21] Finally, the Applicant believes there may be offences under the previous section 248(1)(a) of the *Municipal Government Act*, which requires that an expenditure

be authorized by the council of a municipality. Therefore, the Applicant says that there may be grounds for the application of section 59(4) [previously section 57(4)] of the Act.

[para 22] Section 59(4) [previously section 57(4)] reads:

*59(4) The Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.*

[para 23] In my view, there is no evidence of an offence. A belief alone, as the Applicant expressed here, is not sufficient for me to act under section 59(4), and I decline to do so. Section 59(4) does not operate on allegations, conjecture or assumptions.

### **III. ORDER**

[para 24] I find that the Public Body conducted a thorough search for records, thereby fulfilling its duty to assist the Applicant.

[para 25] I find that the Public Body responded openly, accurately and completely to the following parts of the Applicant's access request: (a)2; (b)4, 8; (c)1-6.

[para 26] I find that the Public Body did not respond openly, accurately and completely to the following parts of the Applicant's access request: (a)10 ((a)1, 3-9 are not at issue); (b)1, 2, 3, 5, 6, 7; (c)7.

[para 27] I order the Public Body to respond to the foregoing parts of the Applicant's access request in the following way: "The Public Body does/does not have records that answer the Applicant's questions about a) the Coleman Sportsplex...; (b) the Blairmore-Bellvue pipeline and the well drilled in Blairmore...; and (c) The Crowsnest Centre...

[para 28] If the Public Body has records that answer the Applicant's questions, I further order the Public Body to respond by telling the Applicant whether the Public Body will give the Applicant access to those records in whole or in part.

[para 29] I find that the Public Body is not required to create records for the Applicant in the format requested.

[para 30] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

Yours truly,

Frank Work, Q.C.  
Acting Information and Privacy Commissioner