

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2002-009**

December 30, 2002

**THE BANFF CENTRE**

Review Number 1871

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

**Summary:** The Banff Centre (the “Public Body”) could not find certain records that allegedly should have been on the Applicant’s personnel file. Those records predated the coming into force of the *Freedom of Information and Protection of Privacy Act* (the “Act”) for the Public Body. The Adjudicator found that he did not have any jurisdiction over the Public Body’s record-keeping practices before the Act came into force. Furthermore, the issue was whether the Public Body met its duty to make every reasonable effort to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act. The Adjudicator found that the Public Body met that duty.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1) [previously section 9(1)], 72 [previously section 68].

**I. BACKGROUND**

[para 1] The *Freedom of Information and Protection of Privacy Act* (the “Act”) was scheduled to come into force for educational bodies such as The Banff Centre (the “Public Body”) on January 4, 1999.

[para 2] On September 30, 1998, the Applicant wrote to the Public Body, as follows:

I am making this formal letter of intent under The Freedom of Information Act [sic] under which The Banff Centre will come under compliance on January 4, 1999. It's [sic] purpose is to make you aware that I will be exercising my rights under the Act, after it comes into effect. I will be applying under the Act for information/copies regarding my own personal information and complaints and grievances I have made.

[para 3] The in-force date for the Act was delayed until September 1, 1999. However, in January 1999, the Public Body provided some records to the Applicant. In September 1999, the Public Body responded to the Applicant's access request by providing other records. The Applicant believed that the Public Body excluded and withheld some information, and asked this office to review the Public Body's response. During mediation by this office, the Public Body located and provided some additional records to the Applicant.

[para 4] Ultimately, the Applicant was not satisfied that all the records had been provided, and the matter of the Public Body's response proceeded to a written inquiry. I initially accepted some *in camera* material from the Applicant during the inquiry, but returned unread subsequent material the Applicant sent to me that I did not request.

[para 5] On January 1, 2002, the revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, came into force. Most of the section numbers of the Act changed, but not the substance of the sections. In this Order, the previous section numbers appear in square brackets after the new section numbers.

## **II. RECORDS AT ISSUE**

[para 6] As the issue relates to the Public Body's duty under section 10(1) [previously section 9(1)], the records themselves are not directly at issue.

## **III. ISSUE**

[para 7] The issue in this inquiry is:

Did the Public Body properly meet its obligations under section 10(1) [previously section 9(1)] of the Act to respond to the Applicant openly, accurately and completely?

[para 8] In the Applicant's submissions, the Applicant raises other issues concerning the collection, use and disclosure of the Applicant's personal information before September 1, 1999. As Part 2 of the Act concerning the collection, use and disclosure of personal information did not apply to the Public Body before September 1, 1999, I have no jurisdiction to deal with those issues. Furthermore, other issues the Applicant raises are either issues that cannot be resolved under the Act, or issues that were not set out for this inquiry, and I do not intend to consider them.

#### IV. DISCUSSION OF THE ISSUE

[para 9] Section 10(1) [previously section 9(1)] 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 10] The Applicant contends that the Public Body has, in its custody or under its control, some records that are responsive to the Applicant's request made under Part 1 of the Act. The Applicant says those records have not been provided to the Applicant in the Public Body's initial or supplementary responses. Among the records described by the Applicant as still to be provided are:

(i) A copy of the Applicant's job resume once held by a named employee of the Public Body and allegedly annotated by that employee while conducting a job interview with the Applicant in a competition in which the Applicant was the successful candidate.

(ii) Records of the statements made to a sexual harassment panel by witnesses whom the Applicant had recommended to be interviewed in relation to the Applicant's complaint made against another employee of the Public Body.

[para 11] The Applicant says that it was the policy of the Public Body to put a copy of the resume on the employee's personnel file, but the resume was not on the Applicant's file. The Public Body confirms that policy, but says it could not find the resume. The Public Body provided documentary evidence of its initial search. The Public Body also did not find the resume on a subsequent search conducted during mediation.

[para 12] On that subsequent search, the Public Body did locate the shortlist of interviewed applicants and a personal injury accident report, among other records. The Public Body acknowledged the deficiency in the initial search procedure, and said that its search procedures have since been updated to include records retained by the Security and Safety Department (occurrence reports) and archives.

[para 13] The Public Body says that it provided four files to the Applicant concerning the sexual harassment complaint. After searching again, the Public Body said that it did not have in its records any witness statement reports or any notes of the deliberations relating to the sexual harassment investigation conducted in 1998 at the Applicant's request, other than those records already disclosed. The Public Body later contacted three individuals, who said they were unaware of or did not recall any witness interviews conducted by the panel.

[para 14] The Public Body said it did not have a record of one reference letter provided to the Public Body, but the Applicant provided a copy of that letter for the inquiry. The Applicant maintains that personnel files should be complete from commencement to termination of employment.

[para 15] The Applicant is concerned about the Public Body's record-keeping practices for personnel files and its inability to find certain of the Applicant's records. I have some sympathy for the Applicant.

[para 16] However, the Public Body's inability to find certain records does not speak to the Public Body's response to the Applicant. The issue before me is not the Public Body's record-keeping practices before the Act came into force (a matter over which I have no jurisdiction), but whether, on the Applicant's access request, the Public Body made every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely. Based on the evidence of the Public Body's initial and subsequent searches and responses to the Applicant, I am satisfied that the Public Body made every reasonable effort.

## **V. ORDER**

[para 17] I make the following order under section 72 [previously section 68] of the Act.

[para 18] I find that the Public Body properly met its obligations under section 10(1) [previously section 9(1)] of the Act to respond to the Applicant openly, accurately and completely.

Dave Bell  
Adjudicator