

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2002-022

August 28, 2002

ALBERTA JUSTICE

Review Number 2314

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

Summary: The Applicant wanted access to trial and docket sheets (the “Records”), past and future, for all courthouses in Alberta. Alberta Justice denied access under the *Freedom of Information and Protection of Privacy Act* (the “Act”), on the grounds that the Records were excluded from the Act because they were either information in a court file (section 4(1)(a) of the Act), judicial administration records (section 4(1)(a) and section 4(3) of the Act) or records relating to a prosecution (section 4(1)(k) of the Act). The Commissioner found that the Records were in the custody (possession) of Alberta Justice and were not excluded from the Act. The Commissioner decided that the Records were court administration records to which the Act applied. Alberta Justice would therefore be expected to take the next step in processing the Applicant’s access requests under the Act by providing fee estimates for the Records requested.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(p)(ix), 4(1), 4(1)(a), 4(1)(k), 4(3).

Authorities Cited: BC: Order 202-1997.

I. BACKGROUND

[para 1] Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Applicant applied to Alberta Justice (the “Public Body”) for access to the following:

- 1) Trial and docket sheets for all Court Houses in Alberta from January 1, 1990 to the date of this letter [November 5, 2001]; (the “First Request”)
- 2) Trial and docket sheets for all Court Houses in Alberta from the date of this letter [November 5, 2001] to two years hence. (the “Second Request”)

[para 2] The Public Body refused access on the basis that the Act did not apply to the records requested. The Public Body said it was relying on section 4(1)(a) and section 4(3) of the Act, which exclude from the Act information in a court file and judicial administration records, among other records.

[para 3] The Applicant asked for a review of the Public Body’s decision. Mediation was authorized but was not successful. The matters were set down for a written inquiry.

[para 4] The revised *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, came into force on January 1, 2002. Most of the section numbers of the Act changed, but not the substance of the sections. As the Notice of Inquiry was issued under the R.S.A. 2000, c. F-25 section numbers and the parties provided submissions under those section numbers, I have not included the previous section numbers of the Act in this Order.

II. RECORDS AT ISSUE

[para 5] The records at issue are those set out in the Applicant’s access request. In this Order, I will refer to those records as the “Records”.

[para 6] For the inquiry, the Public Body provided a sample of a trial and docket sheet from The Provincial Court of Alberta, Criminal Division, entitled “Court Appearance List” (the “appearance list”).

III. ISSUES

[para 7] The Notice of Inquiry set out the following issue:

Are the Records excluded from the Act by section 4(1)(a) and section 4(3) of the Act?

[para 8] Although not set out as an issue in the Notice of Inquiry, the Public Body also said that the Records are excluded from the Act by section 4(1)(k), which is a record

relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[para 9] As both section 4(1)(a) and section 4(1)(k) are issues concerning my jurisdiction over records, I also intend to consider section 4(1)(k). Consequently, I have set it out as the second issue in this inquiry:

Are the Records excluded from the Act by section 4(1)(k) of the Act?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Are the Records excluded from the Act by section 4(1)(a) and section 4(3) of the Act?

1. Application of section 4(1)(a) and section 4(3)

[para 10] Section 4(1)(a) and section 4(3) read:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen’s Bench of Alberta, a record of a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause; ...

(3) In this section, “judicial administration record” means a record containing information relating to a judge of the Court of Appeal of Alberta, the Court of Queen’s Bench of Alberta or The Provincial Court of Alberta or to a master of the Court of Queen’s Bench of Alberta or a sitting justice of the peace or a presiding justice of the peace under the Justice of the Peace Act, and includes

(a) the scheduling of judges and trials,

(b) the content of judicial training programs,

*(c) statistics of judicial activity prepared by or for a judge,
and*

*(d) any record of the Judicial Council established under
Part 6 of the Judicature Act.*

[para 11] For the Act to apply to records, the records must be in the custody or under the control of a public body, as provided by section 4(1) of the Act. I find that the Records are in the custody of the Public Body, since the Public Body has possession of the Records. Although the Public Body did not say so, it appears that the Public Body receives the Records from the courthouses so that it may assign Crown prosecutors to the various cases.

[para 12] The Public Body argues that:

(a) The information on the appearance list (such as the name of an accused, the crime with which that accused is charged, and the nature of the appearance) is drawn from the court files, is “information in a court file”, and is therefore excluded from the Act by section 4(1)(a).

(b) Alternatively, as the appearance list contains information relating to “the scheduling of judges and trials”, it is a “judicial administration record” as provided by section 4(3), and is therefore excluded from the Act by section 4(1)(a).

[para 13] I also intend to consider whether the Records are “court administration records”, as set out in the initial part of section 4(1). The Act applies to court administration records that are in the custody or under the control of a public body.

a. “Information in a court file”

[para 14] The Public Body says that the court appearance lists are produced from court files by courthouses in the province. The lists are normally processed early on the day in question, and are printed at and distributed to the courthouses by approximately 6:00 a.m., then posted by court staff in a prominent public place in the particular courthouse prior to court sessions commencing.

[para 15] The markings on the appearance list provided by the Public Body indicate that it was produced the day before the court sessions, and faxed from The Provincial Court of Alberta to the Public Body late in the afternoon of that day.

[para 16] The appearance list contains several columns consisting of the following information:

- what appears to be the court file number (the Public Body did not provide an explanation for this information)
- the full name of the accused

- an abbreviation indicating the legislation under which the accused is charged
- the section number of the legislation under which the accused is charged
- a brief description of the offence
- an abbreviation indicating the type of offence (summary conviction, indictable, hybrid)
- an abbreviation for the police agency that dealt with the accused
- the agency's file number
- a column with an "N" after each entry (the Public Body did not provide an explanation for this information)
- an abbreviation indicating the appearance type (first appearance, bail hearing, summary disposition, etc.)

[para 17] The Public Body argues that the Records are "information in a court file" because the information in the appearance lists is drawn from court files. The Public Body did not provide any evidence about those court files and what information may be in them.

[para 18] The Applicant says that the October 5, 1998 meeting of the *Freedom of Information and Protection of Privacy Act* Select Special Review Committee, documented in Hansard, states the legislative intention of the exclusion for "information in a court file". That intention is to continue with the present court process for public access to information in court files. Courts are not public bodies under the Act, as provided by section 1(p)(ix) of the Act, so the access process under the Act does not apply.

[para 19] As stated in Hansard, information in court files has been excluded from the Act because:

...There has long been a process whereby people can go to the courthouse and obtain access to court records, subject to orders of the court saying: these records will be sealed, and you can't get at them. That's primarily what we were after there. There's already a process in place for access to court records, and because of the importance of openness of the courts the provisions of privacy have been set aside for a higher social policy of allowing people to see what's going on in the court system. So that's the reason they're excluded, primarily.

[para 20] As contemplated by the statements in Hansard, "information in a court file" would include what a judge has in front of him or her when sitting as a judge. That is the essence of what would be in a court file to which the public would have access through the court. At a minimum, it is clear that the court has jurisdiction over information in a court file that is physically before a judge.

[para 21] I am also mindful of the fundamental principle that our judicial system is open. Trials are not conducted in secret unless the court so orders. It is therefore fair to say that there is a public interest in knowing what is going on before the court. Once a matter is before the court, the court has exclusive jurisdiction over the "information in a court file" before it. The Act does not apply to that information.

[para 22] The appearance lists serve a transitory purpose, being produced on a daily basis and applying to that day only. The fact that appearance lists are posted in prominent public places in the various courthouses is significant in determining their purpose, which is to inform accused persons about the charges they face and to direct accused persons to the appropriate courtroom to speak to those charges. In my view, the appearance lists are more in the nature of “court administration records”.

[para 23] “Court administration records” are subject to the Act. “Information in a court file” is not. I must draw the line. I find that the Records are court administration records, not information in a court file. Therefore, the Act applies to the Records.

b. “Judicial administration record”

[para 24] The Public Body argues that the appearance lists relate to the scheduling of judges and trials, as set out in section 4(3) of the Act. On the appearance list the Public Body provided, there is a space for the name of the judge, but the judge’s name does not appear. The Public Body argues that this omission does not prevent appearance lists from relating to the scheduling of judges and trials.

[para 25] The Applicant maintains that appearance lists are not records containing information “relating to a judge...” Furthermore, the Applicant provided evidence that he was able to access appearance lists in British Columbia, where a provision similar to section 4(3) exists. However, the public body in British Columbia severed the personal information on the appearance lists.

[para 26] I have said that the purpose of appearance lists is to inform accused persons about the charges they face and to direct accused persons to the appropriate courtroom to speak to those charges. Consequently, I find that appearance lists are not information “relating to a judge...including the scheduling of judges and trials”. Therefore, the Records are not judicial administration records.

2. Conclusion under section 4(1)(a) and section 4(3)

[para 27] I find that the Records are not excluded from the Act by section 4(1)(a) and section 4(3). I find that the Records are court administration records. Therefore, the Act applies to the Records.

[para 28] I respect the wish that information in court files and particularly judicial administration records be kept out of the FOIP process. However, the Records are neither of those.

ISSUE B: Are the Records excluded from the Act by section 4(1)(k) of the Act?

1. Application of section 4(1)(k)

[para 29] Given my finding above, I normally would not find it necessary to consider whether the Records are excluded from the Act by section 4(1)(k). However, I have decided to set out my views about section 4(1)(k) in this case.

[para 30] Section 4(1)(k) reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(k) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed, ...

[para 31] In a decision under the equivalent exclusion in British Columbia (British Columbia Order 202-1997 at Tab 12 of the Public Body's submission), the British Columbia Commissioner excluded police records concerning an incident for which an applicant was charged with a criminal offence and for which a prosecution was underway. The Commissioner said that the purpose of the exclusion was to insulate Crown Counsel from requests for access under the legislation until a prosecution was completed.

[para 32] I take the British Columbia Commissioner to mean that the exclusion equivalent to section 4(1)(k) is intended to apply to evidentiary records in a prosecution, but only until the prosecution is completed, and not afterward. I accept that interpretation.

[para 33] The Public Body argues for a broader interpretation that would see section 4(1)(k) excluding appearance lists containing the offences for which persons are about to be prosecuted. I do not accept that section 4(1)(k) should be interpreted so broadly.

[para 34] Even if I were to accept that appearance lists are records relating to a prosecution, those appearance lists would be excluded from the Act only until the prosecutions are completed. After that, the Act would apply to those records.

[para 35] For example, the appearance list provided by the Public Body is for appearances scheduled for October 5, 2001. The Applicant's access request is November 5, 2001. In all likelihood, the prosecutions on the appearance list would have been completed by the date of the access request and in any event at a future date, so that section 4(1)(k) would not exclude the appearance list at that time. The Public Body did not provide evidence that the prosecutions were not completed.

2. Conclusion under section 4(1)(k)

[para 36] I find that the Records are not excluded from the Act by section 4(1)(k).

V. ORDER

[para 37] The Records are in the custody (possession) of the Public Body.

[para 38] The Records are not excluded from the Act by section 4(1)(a) and section 4(3) of the Act. The Records are also not excluded from the Act by section 4(1)(k) of the Act.

[para 39] The Records are court administration records. Therefore, the Act applies to the Records.

[para 40] I now expect the Public Body to take the next step in processing the Applicant's access requests under the Act by providing the Applicant with fee estimates for the Records requested.

Frank Work, Q.C.
Information and Privacy Commissioner