

ALBERTA
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

ORDER F2003-023

January 12, 2005

LETHBRIDGE POLICE SERVICE

Review Number 2654

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

Summary: The Applicant requested access under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to a transcript of a phone call made on October 29, 2002 from the Lethbridge Hospital to the Lethbridge Police Service (“the Public Body”). The Applicant requested that all fees related to the request be waived. During the course of this inquiry, the Public Body notified the Adjudicator that the records sought by the Applicant were missing. The Adjudicator ordered the Public Body to conduct a further search for records. In the event that the records were found, the Adjudicator decided to order the public body to reduce the fees to \$0, under section 93(4)(a) of the Act (for any other reason it is fair to excuse payment).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 93(4), 93(4)(a), 72, 72(3)(c).

I. BACKGROUND

[para 1] On December 32002, the Applicant requested the transcript of a phone call made on October 29, 2002 from the Lethbridge Hospital to the Lethbridge Police Service (“the Public Body”), and all information in regard to that matter. The Applicant also requested a waiver of all fees for the records due to financial hardship and victim status. The requests were made under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25 (the “Act”). The Public Body advised the Applicant that the initial fee to process the request was \$25. Further, the Public Body provided an estimate of fees related to locating the record and providing a transcript of the records in the amount of \$647.

[para 2] The Public Body requested further information from the Applicant with respect to the Applicant’s request for a waiver of all fees. The Applicant provided further information

relating to her inability to pay and, as a result, the Public Body reduced its fee estimate to \$215 plus the initial fee of \$25. The Public Body stated that it was not prepared to reduce fees further without more information from the Applicant.

[para 3] The Applicant requested a review by this Office. Initial submissions and rebuttal submissions were received from both the Applicant and the Public Body. The Applicant's rebuttal submissions were accepted *in camera*.

II. RECORDS AT ISSUE

[para 4] The records are the recordings of two different phone conversations between the Applicant, a third party, and the dispatch service of the Public Body, and transcripts of those recordings of phone conversations. The records are not directly at issue in relation to the fee waiver.

III. ISSUE

[para 5] There is one issue initially identified in this inquiry:

Should the Applicant be excused from payment of all or part of the fees as provided by section 93(4) of the Act?

[para 6] During the course of submissions, the Public Body admitted that it had conducted a search and could not find the data cartridge containing the conversations in question. The Public Body offered some possible scenarios related to the whereabouts of the data cartridge, including authorized and unauthorized removal. The Public Body admitted that record-keeping practices were deficient and that it had instituted changes to its record keeping as a result of this incident. The significance of this revelation will be dealt with below.

IV. DISCUSSION OF THE ISSUE

[para 7] In its initial submission, the Public Body notified this Office of what it called "an unexpected problem". The problem was that the data cartridge, which contained the telephone conversations for October 29, 2002, could not be located. The Public Body offered some possible scenarios related to the whereabouts of the data cartridge, including authorized and unauthorized removal. The Public Body says it conducted a two-day exhaustive search in an attempt to locate the data cartridge, taking all possible scenarios into account. The search was unsuccessful.

[para 8] There was a possibility that the data cartridge was taken for the purposes of court without being properly signed out. The Public Body made an email appeal to its entire staff without response.

[para 9] As a result of the disappearance, the Public Body states that a modified procedure has been implemented to ensure the tapes are secured daily. Additionally, the Public Body indicated that the recording technology used at the time of the phone conversations was slated to be replaced by a new computer digital system, which will permit better security and management of these types of records.

[para 10] I accept the Public Body's statements that the data cartridge is missing. There is no evidence before me that would cause me to conclude that the data cartridge was deliberately destroyed or concealed to avoid the Applicant's request under the Act. Nevertheless, it is of grave concern that the records have gone missing.

[para 11] The Public Body's submissions have left some hope that perhaps the data cartridge might turn up at some time in the future if it had been misplaced and not found during the initial search. Considerable time has passed between the initial search and this Order. Therefore, I intend to order the Public Body to conduct a new search for the missing data cartridge and notify both the Applicant and me of the specific nature of the search and the results of that search.

[para 12] Unless the data cartridge is located in the Public Body's subsequent search, it is somewhat irrelevant whether the Applicant is granted a fee waiver. However, since the possibility of finding the records exists, I intend to deal with the fee waiver as follows.

[para 13] Section 93(4)(a) of the Act states:

93(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reasons it is fair to excuse payment, ...

[para 14] In addition to inability to pay, section 93(4)(a) allows for a waiver of fees "for any other reasons it is fair to excuse payment." Section 72(3)(c) allows me to "confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met."

[para 15] As a result of the records being lost by the Public Body, and the bar to access that this creates, it is my view that these are appropriate circumstances in which to excuse the Applicant from paying all fees. In the end, through no fault of her own, it is still unlikely that the Applicant will be able to access the records that she requested. It would not be appropriate to require the Applicant to pay any fees under these circumstances.

[para 16] I intend to order the Public Body to reduce all fees to \$0, in the event that the Public Body is successful in locating the missing data cartridge.

[para 17] Since I have already decided to order the Public Body to reduce all fees to \$0, on the basis that it is fair to excuse payment, I do not need to consider whether the Applicant should

be excused from payment of all or part of the fees on the basis that the Applicant cannot afford to pay.

V. ORDER

[para 18] I make this Order under section 72 of the Act.

[para 19] I order the Public Body to conduct a further search for the missing records and to report on the nature and results of that search to both the Applicant and me.

[para 20] I order that the fees (both the initial application fee and the fee estimate) be reduced to \$0 under section 93(4)(a) of the Act.

[para 23] I further 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.

Dave Bell
Adjudicator