

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2009-034

March 31, 2010

UNIVERSITY OF ALBERTA

Case File Number F4508

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Summary: Under the *Freedom of Information and Protection of Privacy Act*, the Applicant asked the University of Alberta (the “Public Body”) for information regarding its teaching and research involving the use of animals. The Public Body assessed fees in order to process the request. The Applicant requested a fee waiver, but the Public Body refused to grant one under section 93(4) of the Act.

The Adjudicator found that a fee waiver was not warranted on the basis of inability to pay, as the Applicant provided insufficient evidence of his financial circumstances.

The Adjudicator found that a fee waiver was not warranted on the basis that the requested records related to a matter of public interest. While the Applicant showed that animal research was, in general, a matter of public interest, the Adjudicator found that the specific information that he requested from the Public Body did not relate to a matter of public interest. There was insufficient evidence to show that the activities of the Public Body had been called into question, that its activities required public scrutiny, or that a fee waiver was in the interest of promoting openness, transparency or accountability in the particular case.

The Adjudicator confirmed the Public Body’s decision not to grant a fee waiver.

Statutes and Regulations Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 18(1), 20(1)(k), 20(1)(m), 72, 93, 93(1), 93(4), 93(4)(a) and 93(4)(b); *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 186/2008, s. 13(1); *Animal Protection Act*, R.S.A. 2000, c. A-41; *Animal Protection Regulation*, Alta. Reg. 203/2005, s. 2(1).

Authorities Cited: **AB:** Orders 96-002, 99-027, 2000-011, 2001-023, F2003-011, F2006-032 and F2007-024; External Adjudication Order No. 2 (2002). **ON:** Orders PO-2197 (2003) and PO-2461 (2006).

I. BACKGROUND

[para 1] In a letter dated October 2, 2007, the Applicant made the following access request to the University of Alberta (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”):

[Y]ou may take this letter as a formal request for access to and/or copies of the CCAC [Canadian Council on Animal Care] assessments conducted after October 7, 1999 to the present date as well as to manuals and directives used in the granting of approval for research or teaching involving animals, a listing of faculties that use animals in research and teaching, the number and species of animals used in research and teaching, the number and species of animals used in each research under each level of invasiveness as set out and defined by the CCAC and the specifics of all research involving animals where the level of invasiveness are at level C [experiments which cause minor stress or pain of short duration] or D [experiments which cause moderate to severe distress or discomfort] under the CCAC guidelines.

[para 2] In letters dated November 6, 2007 and January 17, 2008, the Public Body sought clarification of the access request. The Applicant responded in letters dated December 26, 2007 and February 3, 2008. In particular, he withdrew his request for the manuals and directives; added a request for the protocol as to the specific procedures that are performed on animals and the purpose of the research where the level of invasiveness is at level C or D; added a request for the source of the animals used in research or teaching (i.e., whether they were raised at the university for research purposes, purchased from a supplier and/or obtained from animal shelters/pounds); clarified that his reference to CCAC “assessments” was to the reports of the Canadian Council on Animal Care provided to the Public Body outlining the findings and recommendations of the panel that attends the institution and inspects and observes the facilities in which animals are cared for and used, as well as to responses, appeals or any other reaction on the part of the Public Body, its faculty or any other person associated with the Public Body, regarding the assessment reports of the CCAC; and clarified the time period in respect of which he wanted various records.

[para 3] In a letter dated February 28, 2008, the Public Body estimated its fees, in order to provide the responsive records, to be \$2,117.10.

[para 4] In a letter dated March 13, 2008, the Applicant requested a reduction in fees because the records relate to a matter of public interest, some of the records were once freely available, and the fees are beyond his ability to pay. He asked that all of the fees be waived, with the exception of the costs to search for, locate and retrieve the records, which the Public Body estimated to be \$175.50.

[para 5] By letter dated March 27, 2008, the Public Body refused to grant a fee waiver, and provided a breakdown of the fees according to each set of requested records so that the Applicant could narrow his request and obtain a reduction in fees accordingly. In a letter dated April 7, 2008, the Applicant provided further reasons as to why he believed that the records related to a matter of public interest, and requested a waiver of all fees associated with his access request (i.e., not just those over and above \$175.50). The Public Body again denied a fee waiver, by letter dated April 15, 2008. The Applicant again wrote to the Public Body on May 3, 2008, indicating that he preferred to view rather than obtain copies of the records containing the responses, appeals or reaction regarding the CCAC assessments. The Public Body revised the fee estimate to reflect this, by letter dated May 7, 2008, but stood by its refusal to grant a fee waiver.

[para 6] On May 25, 2008, the Applicant requested a review by the Commissioner of the Public Body's decision not to grant him a fee waiver. The Commissioner authorized a portfolio officer to investigate and try to settle the matter between the parties. This was not successful, so a written inquiry was set down.

II. RECORDS AT ISSUE

[para 7] As this inquiry involves a refusal to grant a fee waiver, there are no records at issue. For context, however, the Applicant requested records regarding the Public Body's teaching and research that involves the use of animals.

III. ISSUE

[para 8] The Notice of Inquiry, dated July 10, 2009, set out the issue of whether the Applicant should be excused from paying all or part of a fee, as provided by section 93(4) of the Act.

IV. DISCUSSION OF ISSUE

Should the Applicant be excused from paying all or part of a fee, as provided by section 93(4) of the Act?

[para 9] Section 93 of the Act reads, in part, as follows:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

...

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(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 reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

...

[para 10] In his submissions in this inquiry, the Applicant argues in favour of a fee waiver based on an inability to pay and, alternatively, based on public interest. I will therefore address those two grounds in this Order under separate headings below.

[para 11] I note, in his letter of March 13, 2008 to the Public Body, that the Applicant also requested a fee waiver because “at least some of the records were previously freely available”. I considered whether this amounted to a request for a fee waiver on the basis that it is fair to excuse payment “for any other reason” under section 93(4)(a). Because the Applicant did not indicate in his request for review or submissions in this inquiry that he was requesting a fee waiver on the ground of fairness, I will not review that ground in this Order. I will however, refer to the Applicant’s argument that some of the records were once previously freely available to the public in my review of the ground relating to public interest. Indeed, the Applicant associated that particular argument with the issue of public interest in a follow-up letter of April 7, 2008 to the Public Body.

1. Fee waiver based on inability to pay

[para 12] Before a public body must exercise its discretion to grant, or not grant, a fee waiver on the basis of an applicant’s inability to pay, the applicant has the burden of establishing that he or she cannot afford payment, as the applicant is in a better position to provide proof of his or her financial circumstances (Order 96-002 at p. 14 or para. 40; Order F2003-011 at para. 17).

[para 13] The Applicant submits that he does not have the financial means necessary to pay the fee assessed by the Public Body, as he has been laid off from higher-paying jobs and his present salary is less than \$30,000 per year. In support, he provided a copy of a recent pay stub.

[para 14] The Public Body argues that the Applicant has not provided any evidence of his expenses or other responsibilities in order to show an inability to pay. It notes that an applicant should normally provide evidence not only of income, but also of expenses (Order 96-002 at p. 14 or para. 40; Order 2000-011 at paras. 30 and 32).

The Public Body questions whether someone earning approximately \$30,000 per year may be considered to be of limited means.

[para 15] I find that the Applicant has not presented sufficient evidence to establish an inability to pay. I required more than just the pay stub in order to make an objective determination of whether the Applicant can afford the fees assessed. Because access requests involve the use of public resources that are paid for by taxpayers and public bodies are accountable for the use of public resources, it is reasonable, and in fairness to all, that decisions to waive fees be based on sufficient information that clearly shows that an inability to pay exists (Order 2000-011 at para. 31).

[para 16] I conclude that the Public Body properly exercised its discretion when it refused to grant a fee waiver on the basis of inability to pay.

2. Fee waiver based on public interest

[para 17] An applicant requesting a fee waiver on the basis of public interest must present sufficient information to show how the records relate to a matter of public interest (Order 96-002 at pp. 4 and 5 or paras. 14 and 15; Order 2000-011 at para. 27). At the same time, the public body must form a proper opinion as to whether the requested records relate to a matter of public interest, and exercise its discretion as to whether to grant a fee waiver, by reviewing all of the relevant facts and circumstances and considering the principles and objects of the Act (Order 2001-023 at para. 29).

[para 18] Two overriding principles have been mentioned when deciding whether records relate to a matter of public interest. The two principles are that the Act was intended to foster open, transparent and accountable government, subject to the limits contained in the Act, and that the user seeking records should normally pay [Order 96-002 at p. 16 or para. 50; External Adjudication Order No. 2 (2002) at para. 26].

[para 19] Order F2006-032 (at para. 43) set out a revised, non-exhaustive list of three main criteria and several possibly relevant sub-criteria to consider in determining whether an applicant should be excused from paying all or part of a fee on the basis of public interest. The Applicant made his submissions based on criteria originally set out in Order 96-002 (at pp. 16 and 17 or para. 51), while the Public Body noted both the old and new criteria. Below, I consider the parties' submissions by placing them under the revised criterion or sub-criterion that is most fitting (the headings for the main criteria are at the left margin and the headings for the sub-criteria are indented). I then go on to consider other circumstances raised by the parties that are not so easily placed under the list of non-exhaustive criteria. Finally, I weigh all of the relevant criteria and considerations in order to decide whether a fee waiver on the basis of public interest is warranted in this case.

a) Review of non-exhaustive criteria and sub-criteria

Will the records contribute to the public understanding of, or to debate on or resolution of, a matter or issue that is of concern to the public or a sector of the public, or that would be, if the public knew about it?

[para 20] The Applicant submits that the requested records relate to two matters of public interest. The first concerns the appropriate use of public funds. He argues that the public has an interest in knowing how funds are used for research by the Public Body, given the high level of public dollars being spent. He notes the latest figures showing that 75.5% of the Public Body's research funding comes from the provincial and federal governments. However, I find that the records requested by the Applicant will not sufficiently contribute to public understanding, debate or resolution regarding the use of funds for research purposes. The Applicant has not requested any financial information, such as how much the Public Body has spent on particular research or how much of the funding has come from public sources. The possibility that the requested information may show where the Public Body has spent its research funds is not enough to shed light on whether those funds have been spent appropriately or not.

[para 21] The second matter of public interest raised by the Applicant relates to the treatment and use of animals for research purposes. He submits that the records contain information that will contribute to the debate regarding the use and potential overuse of animals, as well as the appropriateness of the numbers and species of animals used. In support of his view that animal research is of concern to the public, the Applicant submitted material showing that public support for animal research has dropped from 50 years ago, and that public attitudes about the appropriateness of animal research depends on the potential benefits of the research, the type of animal involved, and the level of invasiveness of the experiment. The Applicant submits that, relative to 50 years ago, the public is less confident that animals are being treated humanely by researchers.

[para 22] The Public Body argues that a general public concern for the welfare of animals does not equate to a general public concern regarding the housing and treatment of animals at a research institution such as itself, which is monitored. I do not give much weight to this submission. Even animal research that is already monitored can be a matter of public interest.

[para 23] I find that the Applicant has demonstrated that animal research is a matter of concern to the public, given his supporting material showing that the general public is interested in this issue, as well as other material submitted by both parties in the form of articles and blogs showing that animal research is of particular concern to a sector of the public comprised of animal rights activists. I also find that the requested records will contribute to public understanding, debate and resolution of issues regarding animal research, given that the requested information consists of the source, numbers and species of animals used in research or teaching, including where there is a high level of invasiveness as defined by the CCAC; the purpose and specifics of research involving high levels of invasiveness; the applicable protocols and specific procedures that are

performed on animals; and the reports of the CCAC panels that have inspected and observed the Public Body's facilities in which animals are housed. All of this information will shed light on issues pertaining to animal research undertaken at the Public Body.

[para 24] Given the foregoing, this criterion weighs in favour of a fee waiver.

Have others besides the applicant sought or expressed an interest in the records?

[para 25] The Applicant says that he has attempted to obtain access to records of the Public Body for two years and, moreover, that he has cooperated with it by narrowing his request. He submits that, if there has been a lack of similar requests for information, it is because people believe that the Public Body will not be forthcoming in its response and will refuse to provide the requested information. He points out that the Public Body has not indicated how many others have requested similar information.

[para 26] Because I have no evidence as to whether others have, or have not, sought or expressed an interest in the records, I find that this sub-criterion is neutral in my determination of whether there should be a fee waiver.

Are there other indicators that the public has or would have an interest in the records?

[para 27] The Applicant submits that the majority of funding for university teaching and research comes from taxpayers, thereby suggesting that the public has, or would have, an interest in the records. This, by itself, does not persuade me that the records relate to a matter of public interest, given that virtually every public body is funded in part by the government and therefore taxpayers. Further, as explained elsewhere in this Order, I find that the records requested by the Applicant do not sufficiently relate to public spending.

Is the applicant motivated by commercial or other private interests or purposes, or by a concern on behalf of the public or a sector of the public?

[para 28] The Applicant submits that his access request is motivated by a concern for the well-being of animals and that he has no commercial interest in the records. While the Public Body does not dispute this, it argues that the Applicant is motivated by a sector of the public comprised of extremist animal rights activists. Even if this is so, I find that the Applicant is nonetheless motivated by a concern on behalf of the public or a sector of it, rather than his own private interests. This weighs in favour of a fee waiver.

Do the records relate to a conflict between the applicant and government?

[para 29] While the Applicant and Public Body clearly disagree on the use of animals for the purpose of teaching and research, there is no conflict between the parties that suggests that the Applicant made his access request to advance a personal or

individual agenda, as opposed to a perceived public concern. This weighs in favour of a fee waiver.

What is the likelihood the applicant will disseminate the contents of the records?

[para 30] The Applicant indicates that he will share the records with interested groups such as animal rights organizations, members of the provincial and federal governments, and the media. The Public Body says that the Applicant may serve at most as a “self-appointed reporter” in relation to certain extremist animal rights groups and that he has not shown that he plays any recognized or formal role in keeping the general public apprised.

[para 31] Regardless of the Public Body’s characterization of the Applicant, I find that he is likely to disseminate the contents of the records, which weighs in favour of a fee waiver. Having said this, I note that the Public Body further argues that dissemination, in the circumstances of this particular case, will result in harm. I address this later in the Order.

If the records are about the process or functioning of government, will they contribute to open, transparent and accountable government?

[para 32] The Public Body argues that information regarding animal research is in the public domain and available from the CCAC, thereby suggesting that there is already sufficient openness, transparency and accountability. The Applicant counters that the Public Body was once open to CCAC assessments being available to the public but that they are no longer made publicly available. The Applicant says that the Public Body is secretive and less responsive to the public than in the past. He argues that other entities, such as the Canadian Association of University Teachers, have made policy statements that recognize the need for openness and transparency in post-secondary education, whereas the Public Body has not.

[para 33] On my review of the three sub-criteria below, I find that the records requested by the Applicant will not sufficiently contribute to open, transparent and accountable government. This weighs against a fee waiver for the reasons that follow.

Do the records contain information that will show how the Government of Alberta or a public body reached or will reach a decision?

[para 34] The Applicant submits that, without access to the requested records, it is impossible for the public to have any clear understanding of how decisions regarding research involving animals, as well as the care and use of animals, are made. He adds that there is no way for the public to determine whether the Public Body is maintaining appropriate and applicable standards for the care of animals housed and used in its facilities.

[para 35] I find that the records requested by the Applicant will not likely contain information as to how the Public Body has reached or will reach decisions regarding animal research. Most of the requested information is either raw factual information (i.e., a listing of faculties that use animals in research and teaching; the source, numbers and species of animals used) or sets out decisions already made (i.e., the specifics and purpose of research involving animals; the applicable protocols and procedures), as opposed to information showing how particular decisions were or will be reached, such as what research to conduct and why, or what animals to use and from where.

[para 36] The Applicant also requested CCAC assessments reports. In a letter to the Public Body, he described these as the reports provided to the Public Body outlining the findings and recommendations of the panel that attends the institution and inspects and observes the facilities in which animals are cared for and used. As the CCAC assessment reports contain the views of that council, as opposed to the Public Body, I find that they will not show how the Public Body has reached or will reach any decision.

[para 37] The Applicant also initially requested responses, appeals or any other reaction on the part of the Public Body, its faculty or any other person associated with the Public Body, regarding the CCAC assessment reports. However, I do not believe that such records will likely show how the Public Body reached particular decisions about its animal research or its use and treatment of animals. The Public Body's reaction to the CCAC reports may possibly include some information explaining its past or future decisions, but I would not find this to be sufficient to warrant a fee waiver in relation to them. The requested records should more fully and more directly show how the Public Body has reached or will reach a decision.

[para 38] Moreover, in his May 25, 2008 request for this Office to review the Public Body's decision not to grant him a fee waiver, the Applicant withdrew his request for the Public Body's responses, appeals or reaction regarding the CCAC assessment reports. This narrowing of the access request was presumably done in an effort to cooperate with the Public Body and to justify a fee waiver in processing the request for the remaining records, and I commend the Applicant for that effort. However, because a fee waiver in relation to the Public Body's responses, appeals or reaction regarding the CCAC reports did not form the subject of the Applicant's request for review, I would not have jurisdiction to order a fee waiver in relation to those records. I chose to discuss the records in the preceding paragraph because the Applicant again made reference to them in his submissions and he may later decide to reinstate his request for them. In other words, my comments in relation to the Public Body's responses, appeals or reaction regarding the CCAC assessment reports are offered as guidance.

[para 39] One of the original criteria for determining whether a fee waiver is warranted on the basis of public interest was whether disclosure of the requested records will add to public research on the operation of government (Order 96-002 at p. 16 or para. 51). Here, the Applicant submits that disclosure of the records in question will add to public research on the operation of animal housing and use facilities at the Public Body. This does not persuade me that a fee waiver should be

granted, given that virtually every record held by a public body deals somehow with its “operations”. In this case, I find that the records will not sufficiently shed light on the Public Body’s operations, given that they are not about a decision-making process or function.

[para 40] With respect to public funding of research, the Applicant does not squarely address in what way the records will show how the Public Body has reached or will reach funding decisions. Regardless, I find that they will not. As explained earlier in this Order, the information requested by the Applicant does not really consist of information about the Public Body’s spending. Even though the records will indicate what animal research is being done, and therefore indicate that the Public Body has funded that research, they are very unlikely to say anything about how or why it chose to fund the particular research.

[para 41] The result of the foregoing is that this sub-criterion weighs against a fee waiver.

Are the records desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to scrutiny?

[para 42] The Applicant submits that the records relate to activities that are heavily subsidized by public funds but that occur in areas inaccessible to the public, and that access to the records is the only way to begin to assess the appropriateness of the activities taking place. With respect to public funding of research, I find that the records are not desirable for the purpose of subjecting this aspect of the Public Body’s activities to scrutiny. As explained elsewhere in this Order, the requested records do not sufficiently relate to the issue of research funding.

[para 43] As for the Public Body’s animal research activities, the Applicant argues that there is no government agency that sets policies and standards for universities that use animals, and that there is no governmental oversight of facilities that conduct research on animals. He submits that the CCAC is a non-governmental, not-for-profit corporation that is primarily financed by two of Canada’s research granting councils, and that its members represent, almost exclusively, animal research interests such as the academic community, the pharmaceutical industry and associations of veterinarians. He says that only three of the 22 member organizations that comprise the CCAC are “not clearly biased” in favour of animal experimentation. There are representatives from government departments and agencies, but the Applicant says that they have no ability to override decisions made by the other, majority members of the CCAC.

[para 44] The Applicant further submits that the CCAC’s authority to freeze or withdraw funding from laboratories, for failing to meet standards, has never been used, which he finds surprising given the 41-year history of the CCAC. He accordingly argues that the CCAC has become a “rubber stamp” for any conduct engaged in by laboratories. In support, he cites an article by an individual criticizing the CCAC’s code of ethics because it essentially gives researchers “blank cheques” to do whatever experimentation

they want. The Applicant also argues that the Public Body's teaching and research involving the use of animals is not properly scrutinized by the public because the laboratories and housing facilities are located in high security areas, and the Public Body routinely refuses requests to visit the sites on the basis that interested visitors are a "threat" to the activities taking place.

[para 45] The Applicant notes that the Public Body allows members of the public to serve on its animal use committees, but submits that the Public Body appoints individuals who are predisposed to the use of animals in research. He himself has not been appointed, despite making applications. He believes that, like the CCAC, animal use committees simply "rubber stamp" any research that students and faculty wish to conduct on animals. In support, he submitted a copy of an article by a member of such a committee (at a different university) who writes that, because animal users constitute a majority of members on the committees overseeing animal research, the eventual abolition of painful research is never contemplated. The author further notes that the animal use committee at his university chose not to shut down a particular laboratory despite the laboratory being cited on repeated occasions for violating CCAC guidelines.

[para 46] The Applicant argues that public scrutiny of the activities of the Public Body is desirable because the public cannot simply rely on the Public Body's assurances that it is treating and using animals for research appropriately. He cites examples of cases at other institutions and facilities where, despite similar assurances, evidence obtained by the media or police showed that animals were, in fact, being mistreated. The Applicant submits that these cases led to significant public debate, as well as changes to the laws governing the use of animals at research facilities. The Applicant adds that the Public Body has a responsibility not to use animals for redundant or unnecessary research or procedures, and to use methods of study other than animal research. He argues that the requested records will allow the public to know whether these responsibilities are being met.

[para 47] In response, the Public Body submits that the CCAC provides sufficient oversight and monitoring of animal research, and that there is no need to have the Applicant act as a self-appointed "watchdog". The Public Body notes section 2(1) of the *Animal Protection Regulation*, which was enacted under the *Animal Protection Act* and requires a person who owns or has custody, care or control of an animal for research activities to comply with various CCAC documents and guidelines. The Public Body argues that it meets the standards of the statutory oversight regime put in place by the federal and provincial governments and that, if the Applicant is dissatisfied with that regime, he should address his concerns to those levels of government. I do not give much weight to these submissions, as an applicant may initiate public scrutiny by requesting records from a public body itself and does not have to address his or her concerns to other levels of government. He or she may also initiate public scrutiny despite an existing oversight regime, as scrutinizing that oversight can be part of the point.

[para 48] Still, in this case, I find that the records requested by the Applicant are not desirable for the purpose of subjecting the animal research activities of the Public Body

to scrutiny. The Applicant's personal views on the composition of the CCAC and of animal use committees, and his and others' arguments that their members are predisposed to animal research and experimentation, do not persuade me that public scrutiny is needed. The Applicant does not explain the extent to which members are predisposed to using animals, or how that is problematic in specific ways. The article submitted by the Applicant about the workings of an animal use committee is about a committee at a different university, and therefore does not address the Public Body's own activities. The Applicant's views about "rubber stamping" animal research, and about "blank cheques" to conduct any type of animal research, are not grounded in any concrete examples involving research at the Public Body.

[para 49] The Applicant says that adherence to CCAC guidelines is voluntary, but the Public Body notes that it must comply with various CCAC guidelines under section 2(1) of the *Animal Protection Regulation*. In any event, the facts remain that the CCAC has set guidelines in relation to the use and treatment of animals in research and experimentation, and that the Public Body is adhering to them. The Public Body submitted material showing that it holds a Certificate of Good Animal Practice from the CCAC, which means that it has been found by the panels and the CCAC Assessment Committee to have standards of experimental animal care and use that satisfy the CCAC's guidelines and policies.

[para 50] While public scrutiny may occur with respect to existing oversight mechanisms, the Applicant has not adequately explained how the CCAC or its guidelines fall short. I note that the article by the member of an animal use committee at a different university, submitted by the Applicant, states that the CCAC "stands for what it sees as a reasonable and moderate set of ethical principles for the use of vertebrates in research", and that the CCAC does not endorse the "polarized views of those at the extreme ends of the spectrum – those wishing to conduct experiments with little or no constraints regarding infliction of pain [and] those opposed, on humanitarian principles, to any suffering whatsoever". I am not in a position to judge whether the CCAC has maintained an appropriate balance with respect to animal research undertaken at the Public Body without a better explanation of how particular guidelines were not followed, or failed to protect the well-being of animals, in specific cases. The Applicant's submission that the CCAC has never taken enforcement action against laboratories is not helpful without information about instances when it should have done so at the Public Body.

[para 51] I agree with the Public Body that its refusal to allow the Applicant and others to tour its building and facilities, or allow the Applicant himself to serve on an animal use committee, has no bearing on the issue of the requested fee waiver. Decisions about access to buildings and facilities involve separate concerns about security that pertain regardless of whether there is a public interest in animal research. A refusal to allow the Applicant to personally serve on an animal use committee does not mean that the Public Body is avoiding public scrutiny.

[para 52] Given the foregoing, this sub-criterion weighs against a fee waiver. In short, the Applicant's arguments in relation to the desirability of public scrutiny are based

on generally-stated concerns about the CCAC, its guidelines and the approaches taken by animal use committees, as opposed to specific and concrete evidence that there has been insufficient scrutiny of the use and treatment of animals at the Public Body itself.

Will the records shed light on an activity of the Government of Alberta or a public body that has been called into question?

[para 53] With respect to the issue of public spending, the Applicant refers to difficulties encountered by the Canadian Taxpayers Federation in obtaining travel and expense claims from three universities in Manitoba. He also submitted an article regarding a lack of transparency and accountability on the part of certain Australian universities. As these examples do not involve the Public Body, they are insufficient to demonstrate that the use of funds by the Public Body has been called into question.

[para 54] The Applicant submitted news articles saying that the Public Body has been the recipient of funds for fraudulent or questionable research, that researchers have been found to be violating research ethics and integrity, that a particular researcher was found to be deliberately falsifying experiments, and that the Public Body has been secretive when these types of stories have surfaced rather than addressing them publicly. However, there is no indication that these examples involved animal research (references are made to research involving human subjects and biochemistry). I therefore find that the Applicant's arguments regarding fraudulent research do not sufficiently relate to the records that he has requested. Allegations or evidence of inappropriate research in other fields is not enough to call into question the Public Body's activities relating to the funding of animal research.

[para 55] With respect to the use of animals in teaching and research, the Applicant cites examples of what he considers to be horrific animal abuse by certain facilities. While he hopes that the conditions and treatments of animals by the Public Body is in no way similar, he says that he has received anonymous reports alleging mistreatment of animals by the Public Body. The reports allege that rabbits and other small animals have been thrown and kicked against walls when they kicked or bit researchers in fear or pain, that surgery and other invasive procedures are routinely carried out with either no or insufficient anesthetic to render the animals unconscious, that researchers routinely laugh at and torment the animals being subjected to painful and invasive procedures, that animals are frequently left without adequate food and water, and that inadequate veterinary care is provided. He submits that, because the Public Body refuses access to its facilities and records, it is impossible to confirm or deny these allegations. The Applicant says further that the Public Body, in partnership with a pet food company, conducted questionable and useless research on puppies, after which the puppies were killed. He alleges that the Public Body has lied altogether about the fact that it conducted this research, even though the results were published in a journal. I also note the Applicant's reference, in his initial access request as well as his request for review, to an experiment involving the sterilization and killing of wolves, which he says was of dubious value and involved huge public outcry.

[para 56] The Public Body submits that instances of misconduct at other institutions and facilities are not relevant to the present matter. As for the Applicant's allegations that animals are being mistreated by the Public Body's own students and faculty, the Public Body says that these are unfounded. It argues that the Applicant's reports of incidents at the Public Body cannot be accepted as credible evidence, as they are anonymous and hearsay. It submits that the Applicant's unfounded and unsupported fears about the housing and treatment of animals do not meet the evidentiary burden of showing that release of the requested records would be in the public interest. The Public Body distinguishes its activities, which are monitored, from various examples of animal mistreatment or cruelty cited by the Applicant.

[para 57] The Public Body notes that, before public funds are expended in order to shed light on an alleged problem, there must be some convincing evidence or a convincing argument that the problem exists or likely exists (Order F2006-032 at para. 26). I find, in this case, that the Applicant has not presented sufficient evidence to show that the animal research activities of the Public Body itself have been called into question. Most of the Applicant's submissions are about other entities or about treatment of animals in contexts other than research. Where he discusses the activities of the Public Body, his allegations are speculative or are not sufficiently grounded. I agree with the Public Body that I cannot rely on the anonymous reports of individuals regarding the Public Body's animal research, as I have no way of assessing the credibility of those reports. With respect to the Public Body's apparent research projects involving puppies and wolves, the Applicant simply asserts that they were questionable, useless or of dubious value, without any further explanation as to why or how. Even where animals are disposed of at the conclusion of research, I am not in a position to judge the appropriateness of that result without something more.

[para 58] The Applicant submits that, because improper conditions and treatment of animals have been found at other universities, it is not unreasonable to believe that these types of incidents do, in fact, take place at the Public Body. I also note, in his initial access request, that the Applicant suspects that the Public Body's decision not to make its CCAC assessments public available since 1999 is due to serious problems arising in more recent assessments. However, a belief or suspicion of questionable or problematic activities is not enough.

[para 59] The Applicant submitted a copy of an article regarding the reliability of the review of protocols for animal research by American universities and colleges, in which the authors found that 61% of the protocols reviewed were "poor", "not understandable" or "not convincing". Because protocols of the Public Body were not reviewed in this study, I again find that the Applicant's evidence does not call the activities of the Public Body itself into question. The Applicant argues that the United States regulates the use of animals in laboratories far more stringently than Canada, and that there is accordingly a greater potential for the use or misuse of animals in Canada. Again, a potential is not sufficient to show that public scrutiny is desirable.

[para 60] Given the foregoing, this sub-criterion weighs against a fee waiver. While animals used for the purpose of teaching and research should no doubt be treated appropriately (however that is defined), I required more evidence from the Applicant, specifically relating to the use of animals at the Public Body, in order to find that its own activities have been called into question and that public scrutiny is therefore desirable in this case.

(b) Review of other circumstances raised by the parties

[para 61] One of the original criteria for determining whether a fee waiver is warranted on the basis of public interest was whether the public body should have anticipated the need of the public to have the records (Order 96-002 at p. 16 or para. 51). Here, the Applicant submits that this criterion is met, given that the requested records are similar or complimentary to the CCAC assessments that the Public Body previously made publicly available, the Public Body is aware of public skepticism regarding the treatment of animals in research facilities, and a significant percentage of university research comes from public funds.

[para 62] In my view, the foregoing former criterion begs the question of whether there should be a fee waiver based on public interest. If the records relate to a matter of public interest, the need for the public to have them should have been anticipated by the public body, whereas if the records do not relate to a matter of public interest, the public body could not be expected to anticipate the public's need to have them. The criterion "presumes" that there is a need for the public to have the particular records (Order 2006-032 at para. 30) – which is essentially the question to be answered when deciding whether a fee waiver in the public interest is warranted. As a result, I give little weight to the Applicant's submissions about whether the Public Body should have anticipated the need of the public to have the records.

[para 63] The Public Body cites Order F2007-024 (at para. 31), in which it was stated that the public benefit in obtaining access to records may be weighed against the possibility of detriment and public harm if the records are disclosed. The Public Body argues, in this case, that disclosure of the requested information, and therefore a fee waiver, would be contrary to the public interest because the Applicant appears to be associated with extremist animal rights organizations that advocate violence, destruction of property and unlawful acts. In support, the Public Body notes the website of an animal rights groups in Edmonton, which states that it "has a different philosophy and is prepared to use different tactics than [mainstream] groups" and that "we unconditionally reject pacifism and support the use of any and all tactics in the fight for animal rights including the use of violence". The Public Body also submitted copies of threatening online postings, which it believes the Applicant may himself have authored. These postings advocate making animal abusers fear for their safety, turning offices and buildings into rubble, and even ending perpetrators' lives.

[para 64] Even if the Applicant is not himself a member of an extremist group or posted the online messages, the Public Body submits that he has the intention of

disseminating the requested information to extremist groups. The Public Body asserts that there is a real potential for harm to its faculty, staff, facilities and suppliers if the records were disclosed, and it submitted an article describing attacks on animal researchers at other academic institutions. The Public Body argues that, because there is a reasonable likelihood that the Applicant will use the content of the records to cause or encourage others to cause harm, it is not lawful to require the Public Body to waive fees for access to them. It submits that it would be improper to allow the furthering or support of criminal activity under the guise of serving the public interest.

[para 65] The Public Body also cites two Ontario Orders where it was found that a concern for security of facilities where animals are used in research, and a concern that a facility might be targeted for violent action by extremist groups, was a valid consideration in the decision regarding the release of records relating to the facility [Ontario Order PO-2461 (2006) at p. 14 or para. 71, citing Ontario Order PO-2197 (2003)]. The Public Body notes that sections 20(1)(k) and 20(1)(m) of Alberta's Act similarly authorize a public body to refuse to disclose information to an applicant if the disclosure could reasonably be expected to facilitate the commission of an unlawful act, and harm the security of any property or system, including a building. It further notes that section 18(1) authorizes a public body to refuse to disclose information to an applicant if the disclosure could reasonably be expected to threaten anyone else's safety or interfere with public safety. As disclosure of information may be refused for the foregoing reasons, the Public Body accordingly argues that a fee waiver may also be refused for those reasons.

[para 66] The Applicant responds that the Public Body is exaggerating the likelihood of harm. He submits that there has been no harm in the past to the Public Body, its faculty, staff, facilities or suppliers – including when information about the Public Body's animal research activities was available from CCAC assessments posted online. The Applicant says that the fact that the Public Body is offended by his writings or writings allegedly composed by him is not relevant, as he has a right to hold his opinions and express his views. He argues that the Public Body is only now raising the possibility of non-disclosure of the records when it previously had no objection to providing them if he was willing to pay the fees.

[para 67] I find that the Public Body's submissions regarding the possibility of harm, if the records were disclosed, are not relevant to my determination of whether there should be a fee waiver. I acknowledge that Order F2007-024 suggested that harm on disclosure may be considered. However, in my view, this is tantamount to determining whether the requested records may be withheld, which is not properly part of an inquiry into whether there should be a fee waiver. If I were to agree with the Public Body that harm would result on disclosure of the records requested by the Applicant, I would effectively be finding that the records may be withheld. Conversely, if I were to disagree that harm would result on disclosure, I would be suggesting that the Public Body could not later refuse to disclose information under sections 18(1), 20(1)(k) or 20(1)(m) of the Act. Either way, I would be judging the Public Body's possible response to the Applicant's access request, which has not yet been made, which is outside the scope of

this inquiry, and which is therefore outside my jurisdiction. This matter is different from the Ontario Orders cited by the Public Body, as those dealt with whether information could be withheld, not with a fee waiver.

[para 68] Here, if the Public Body takes the position that harm will result on release of information, it may sever the information under the various sections of the Act that it has cited. In pointing this out, I also remind the Applicant – and other applicants – that fees are not paid on an access request so that a public body will necessarily provide the requested information. Under section 93(1), fees are paid for the public body’s “services” in processing an access request. Where the request is for information other than personal information, section 13(1) of the *Freedom of Information and Protection of Privacy Regulation* permits a public body to assess fees for (among other things) the time and cost to search for, locate and retrieve a record, and for the time and cost for preparing and handling the record for disclosure. “Preparing and handling the record for disclosure” includes the possibility that information will be severed. Applicants must always bear in mind that the payment of fees does not mean that the requested information will be disclosed. Having said this, an applicant may, of course, go on to request a review by the Commissioner of a public body’s decision not to disclose information. I also note that it may be appropriate for fees to be reduced or refunded, on the ground of fairness, if there are a number of blank pages eventually released or a significant amount of information is otherwise withheld (Order 99-027 at para. 34). I obviously make no finding in this regard in this particular inquiry, as the Public Body has not yet responded to the Applicant’s access request.

[para 69] Section 93(4)(b) of the Act contemplates a fee waiver where records “relate” to a matter of public interest. In my opinion, records can relate to a matter of public interest, regardless of the consequences of disclosure. A determination of whether there should be a fee waiver depends on whether there is a sufficient public interest in the records that have been requested, not whether the records should or should not be disclosed in the end. Given this, it also follows that a determination that records relate to a matter of public interest does not mean that the records are to be disclosed. It simply means that there is sufficient public interest to justify the taxpayers bearing the cost of the public body’s processing of the access request, during which it will go on to decide whether the records should be disclosed, sever any information that is believed to be subject to an exception to disclosure, and produce a copy of the records to be released to an applicant. Here, the Applicant can assert a public interest in the records without me deciding whether they should be disclosed or withheld, whereas the Public Body’s submissions on harm in this case are effectively asking me to find that it has the authority to withhold the records.

(c) Summary of relevant considerations and conclusion

[para 70] First, with respect to the use of public funds for research, I find that the records actually requested by the Applicant do not sufficiently relate to this particular matter. Rather, they relate to the matter regarding the use and treatment of animals in teaching and research. The records will not contribute to public understanding, debate

or resolution of matters relating to research funding, and they will not contribute to open, transparent or accountable government with respect to research funding. A fee waiver is therefore not warranted on the basis of public interest in how taxpayer money is spent on research undertaken by the Public Body.

[para 71] With respect to the use and treatment of animals in teaching and research, I find that disclosure of the records will contribute to public understanding, debate and resolution of these matters, which criterion weighs in favour of a fee waiver. I also find that the Applicant is motivated by a concern on behalf of the public rather than a private or commercial concern, that the records do not relate to a personal conflict between the Applicant and the Public Body, and that the Applicant will disseminate the contents of the records. This likewise weighs in favour of a fee waiver.

[para 72] However, as to whether the records will contribute to open, transparent and accountable government in relation to the use and treatment of animals in teaching and research, I find that the records will not likely contain information showing how the Public Body has reached or will reach a decision, that the records will not shed light on activities of the Public Body that have actually or sufficiently been called into question, and that their disclosure is not desirable for the purpose of subjecting the activities of the Public Body to scrutiny. The result is that the criterion regarding open, transparent and accountable government weighs against a fee waiver.

[para 73] In balancing the foregoing considerations, I conclude that the records requested by the Applicant do not relate to a matter of public interest in such a way as to warrant a fee waiver. As noted by the Public Body, the requested records should be of significant importance in order for the cost of processing the access request to be passed on to taxpayers (Order 2000-011 at para. 52). Fee waivers on the basis of public interest are to be granted only when there is something about the records that clearly makes it important to bring them to the public's attention or into the public realm (Order F2006-032 at para. 39). It is not sufficient for there to be some marginal benefit or interest in the record; there should be a compelling case for a finding of public interest (Order F2007-024 at para. 47).

[para 74] In this inquiry, I am not satisfied that the records in question are of significant importance, that it is clearly important to bring them to the public's attention, or that there is a compelling case of public interest. While the use and treatment of animals in university teaching and research is of general interest to the public – and animals should certainly be used and treated appropriately – I see no significant, important or compelling public interest in the records of the Public Body that have been requested. Essentially, the Applicant has shown that animal research *in general* is a matter of public interest, but he has not shown that information regarding the Public Body's animal research *in particular* relates to a matter of public interest. An “abstract” public interest is not sufficient to justify a fee waiver without also showing a more “concrete” public interest in the actual case.

[para 75] As discussed in this Order, the Applicant points to the mistreatment of animals at other facilities, and inadequate oversight by an animal use committee at another institution, rather than at the Public Body. His views regarding the Public Body's own activities are mostly based on a mere belief or suspicion that it is treating animals inappropriately. Where he makes more specific allegations about teaching and research involving animals at the Public Body, I cannot determine the reliability of those allegations, or cannot judge the appropriateness of the research without further explanation as to why or how it was inappropriate. The Applicant's concerns about the role of the CCAC and the adequacy of its guidelines are framed in general fashion, rather than grounded in examples involving animal research at the Public Body itself. His opinions that members of the CCAC and animal use committees are predisposed to experimentation on animals, and that they essentially authorize any animal research whatsoever, are not explained in the context of specific projects undertaken at the Public Body. In short, the Applicant's views about inadequate oversight of the use and treatment of animals in university teaching and research, and about a systemic predisposition toward animal research, are not sufficiently grounded in evidence involving the Public Body.

[para 76] In the end, my findings that the animal research activities of the Public Body have not sufficiently been called into question, that its treatment of animals has not been shown to require public scrutiny, and that a fee waiver is not in the interest of promoting openness, transparency or accountability in this case, outweigh the other criteria weighing in favour of a fee waiver.

[para 77] I conclude that the Public Body properly exercised its discretion when it refused to grant a fee waiver on the basis of public interest.

V. ORDER

[para 78] I make this Order under section 72 of the Act.

[para 79] I find that, in the circumstances before me, the Applicant should not be excused from paying all or part of a fee under section 93(4) of the Act. I therefore conclude that the Public Body properly exercised its discretion when it refused to grant the Applicant a fee waiver, and I confirm its decision in this regard.

Wade Riordan Raaflaub
Adjudicator