

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-49

November 21, 2013

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F6131

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* to Alberta Justice and Solicitor General (the “Public Body”). As contemplated by section 8(1)(a), the Public Body declared the request abandoned, on the basis that the Applicant had failed to respond to its request for further information necessary to process the request. The Applicant requested a review of that decision.

The Adjudicator found that the Applicant had provided the requested information, in sufficient fashion or to the extent that he was able to do so, and that the Public Body therefore improperly declared the access request abandoned. He ordered the Public Body to comply with its duty to respond to the Applicant’s access request.

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4(1), 7(2), 8, 8(1)(a), 10(1), 11, 72 and 72(3)(a).

I. BACKGROUND

[para 1] In an access request dated December 13, 2011, the Applicant asked Alberta Justice and Solicitor General (formerly known as Alberta Justice and Attorney General) (the “Public Body”) for information under the *Freedom of Information and Protection of Privacy Act* (the “Act”). He wrote as follows:

1. I seek access to a communication, if any, of any kind which may have been directed to Justice Hall at the Court of Queen’s Bench Judicial District of Calgary by any unit or

section within the offices of Alberta Justice and Attorney General (“JAG”) in relation to an appeal of mine which was set before this judge for examination.

2. Any information bearing personal identifiers to me and possibly stored at either the Justice Online Information Network system (“JOIN”) or the Criminal Justice Information System (“CJIS”) I positively seek to access.
3. Any circumstance(s) which may have given rise to a judicial clerk, master or judge at the Court of Queen’s Bench, Calgary, accessing my personal information, if any, which may be held on either one or both of these systems and which may have affected the conduct of my affairs at this Court and negatively impacting the Orders issued over the years by it, I positively seek to access.
4. Any adverse decision taken against me and positively featured in the personal information held at either of these two systems I positively seek to access; or, in the alternative, any flag or security marker or feature attached to any personal information held at these systems and readily made available before the aforementioned Court I seek to access.

In total, I seek access to any personal information which may have served to cause some disruption to the conduct of affairs at the Court of Queen’s Bench, Calgary, for the period indicated [being 2000 to December 12, 2011, as written on the access request form].

[para 2] In a letter dated December 19, 2011, the Public Body informed the Applicant that he had not provided sufficient information in order for it to identify the records that he was requesting. It wrote as follows:

Please provide additional information to clarify the records you are asking to access and the subject of the records are requested. Alberta Justice is not able to search for records based on general descriptions or comments as provided in the 4 points include[d] in your request. We ask that you be specific in [sic] about the records you believe exist and would like our office to locate so that we are able to respond to your request.

[para 3] In an e-mail sent on December 21, 2011, the Applicant asked the Public Body to be more specific in its request for additional information. In an e-mail sent on December 22, 2011, he asked for a letter clearly outlining in point form the particular aspects of his access request in respect of which the Public Body needed additional information. The Public Body replied by e-mail on December 23, 2011, the contents of which are reproduced in the discussion below. In turn, the Applicant replied by e-mail on January 20, 2012, the contents of which are summarized in the discussion below.

[para 4] By letter dated January 27, 2012, the Public Body declared the Applicant’s access request abandoned, on the basis that, as of that date, it had not received the required clarification of the records requested by him.

[para 5] The Applicant requested a review of the Public Body’s decision to declare his request abandoned, by way of a form dated March 5, 2012. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry by way of a form dated June 24, 2012. A written inquiry was set down.

The Notice of Inquiry referred to an earlier access request apparently sent by the Applicant to the Public Body on November 29, 2011. However, the access request at issue in this inquiry, as referenced by both parties in their submissions, is the one dated December 13, 2011.

II. RECORDS AT ISSUE

[para 6] As this inquiry involves an access request that was declared abandoned, rather than one that was processed, there are no records at issue.

III. ISSUE

[para 7] The Notice of Inquiry, dated March 25, 2013, set out the issue of whether the Public Body properly applied section 8 of the Act to declare the Applicant's access request abandoned.

IV. DISCUSSION OF ISSUE

Did the Public Body properly apply section 8 of the Act to declare the Applicant's access request abandoned?

[para 8] Section 8 of the Act reads as follows:

8(1) Where the head of a public body contacts an applicant in writing respecting the applicant's request, including

(a) seeking further information from the applicant that is necessary to process the request, or

(b) requesting the applicant to pay a fee or to agree to pay a fee,

and the applicant fails to respond to the head of the public body, as requested by the head, within 30 days after being contacted, the head of the public body may, by notice in writing to the applicant, declare the request abandoned.

(2) A notice under subsection (1) must state that the applicant may ask for a review under Part 5.

[para 9] The Public Body argues that the Applicant failed to provide the further information that it considered necessary to process his access request, which further information was first generally described in its letter of December 19, 2011 and more specifically described in its follow-up e-mail of December 23, 2011. I find that the Applicant did, in fact, provide the further information, in sufficient fashion or to the extent that he was able to do so, in his e-mail of January 20, 2012. In order to explain, I will reproduce the content of the Public Body's e-mail of December 23, 2011, interspersing a summary of the Applicant's various responses along with my own comments in square brackets.

[para 10] The Public Body wrote as follows:

In regard to point 1 of your request:

- Identify the name of the staff and Judge(s) involved in any records you seek from the Court of Queen's Bench Judicial District of Calgary. [The Applicant indicated that the judge was Justice Hall, and already did so by way of handwriting in his initial access request. He had also already indicated in his initial access request that the staff in question were those "in any unit or section within the offices of Alberta Justice and Attorney General" who were involved in the Applicant's particular court matter, which was clarified in reply to the bullet immediately below. As for identifying the names of the particular staff, it could readily be seen that the Applicant did not know their names, as he was effectively seeking access to communications of anyone *who may have* directed a communication to Justice Hall.]
- Identify the subject of the appeal matter and the date or time frame for the appeal for which you are requesting records of communications. [The Applicant replied that the matter was a special chambers appeal of a decision of a master, which appeal was set down to be heard on November 1, 2011 by Justice Hall. I presume that the Public Body could have determined the subject of the appeal by referring to the Applicant's name, the Justice's name and the originally set date of the appeal.]
- Describe what kinds of records we should be searching for from the Court of Queen's Bench in Calgary. [The Applicant replied that the Public Body should search for records in JOIN and CJIS, and he had indicated as much in his initial access request. He had also already indicated in his access request that he wanted any "communications" directed by staff of the Public Body to Justice Hall in relation to his appeal matter, which could readily be taken to mean, in terms of the "kinds of records", such things as memoranda, e-mail correspondence, notes, etc.]

In regard to point 2 of your request:

- Describe the police charges that were laid, information about the incident the charges are related to, date you were charged, court date for the matter and which provincial court. This is required to locate the JOIN information you seek. [The Applicant replied that he was not aware of any charges being laid against him, and clarified that he was seeking any of his personal information related to charges not yet laid, criminal investigations, search warrants and production orders. The Applicant effectively had no police charges or court dates in a particular court to describe. While the Public Body wrote that the foregoing information was required to locate the information in JOIN sought by the Applicant, I raise the possibility that it might have searched JOIN and/or CJIS using the Applicant's name alone. Regardless, the Applicant provided a response in relation to item 2 of his access request, to the best of his knowledge.]

In regard to point 3 of your request:

- Confirm if you are requesting records showing which staff accessed your personal information. [The Applicant replied in the affirmative by writing that he was requesting records showing which justices, masters and court clerks had accessed his personal information.]
- If so, explain and describe the subject matter of records and the time frame for our search for records of staff access to your personal information. [The Applicant replied that the subject matter was possible breaches of security or

terrorism allegations and that the time frame was the period from 1992 to 1994. I note that this time frame differed from the one initially identified in the Applicant's access request, being 2000 to December 12, 2011, but the Applicant nonetheless provided the requested clarification of what he was seeking.]

In regard to point 4 of your request:

- Provide the date(s) for the adverse decisions and describe the subject of the adverse decisions for which you seek to obtain records. [The Applicant replied that the date of the adverse decision was 1994 and that he was the subject. Given the reference to 1994 and the Applicant's reply to the bullet immediately above, the subject-matter could be presumed to be in relation to breaches of security or terrorism allegations.]
- Identify names of staff involved in the decisions related to the records requested. [The Applicant replied that he was unable to answer this, as he would first have to see the records in question in order to know the staff involved. He did, however, indicate in which particular offices, possibly among others, the Public Body might search for responsive records.]

[para 11] The Public Body submits that the Applicant's e-mail of January 20, 2012 did not sufficiently clarify his access request so that it could identify responsive records, but the Public Body provides no further explanation. In any event, I find that the Applicant provided the further information requested by the Public Body under section 8(1)(a) to the extent possible, as explained in the square brackets above. The Public Body also refers to section 7(2) of the Act, which requires an access request to provide enough detail to enable a public body to identify the records requested. I find that the Applicant's e-mail of January 20, 2012 provided enough detail to enable the Public Body to identify the records requested, and then to consider providing access to them if they existed or could be located. I further note that the Applicant, by way of some of his responses to the bullets above, effectively clarified that he was seeking records that may or may not exist, not records that he definitively knew to exist.

[para 12] I also find that the Applicant provided the information requested by the Public Body within the 30-day time frame set out in section 8(1)(a). The Public Body's own letter of December 19, 2011 did not sufficiently set out the further information that it was requesting, and it had a duty to assist the Applicant under section 10(1) of the Act, which includes assisting him in clarifying his access request. The Public Body did so when it wrote its e-mail of December 23, 2011, which was another date of contact. The Applicant then sent his reply of January 20, 2012 "within 30 days after being contacted", as required by section 8(1)(a). The Public Body was not justified in declaring his access request abandoned by way of its letter of January 27, 2012.

[para 13] I conclude that Public Body did not properly apply section 8 of the Act to declare the Applicant's access request abandoned. I will therefore order it to respond to the request, in accordance with section 11 of the Act. In doing so, it is possible that no responsive records will be located in respect of some of the four items set out in the Applicant's access request. It is also possible that some of the requested records may be excluded from the application of the Act under section 4(1), on the basis that they consist of information in a court file, or other specified types of court-related records. However, this does not obviate the Public Body's duty to respond

to the Applicant's access request, or to adequately search for responsive records that are subject to the Act.

V. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] I find that the Public Body did not properly apply section 8 of the Act to declare the Applicant's access request abandoned. Under section 72(3)(a), I order the Public Body to comply with its duty to respond to the Applicant's access request of December 13, 2011, in accordance with section 11.

[para 16] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Wade Raaflaub
Adjudicator