

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-41

October 21, 2014

BOW VALLEY COLLEGE

Case File Numbers F7096 and F7184

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access to records under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Bow Valley College (the Public Body). The Public Body informed the Applicant that it was extending the time for responding to his access request by 30 days. The Public Body subsequently responded to the Applicant's access request. It provided the Applicant access to records with some information severed under section 17 (disclosure harmful to personal privacy). The Applicant requested that the Commissioner review the Public Body's response, its severing decisions, and the timing of the response.

The Adjudicator determined that the Public Body had conducted a reasonable search for responsive records. The Adjudicator also determined that the Public Body had complied with the time limits set out in the FOIP Act. She also confirmed the Public Body's decision to sever personal information.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss.10, 11, 14, 17, 72

Authorities Cited: **AB:** Orders 2001-016, F2007-029

Cases Cited: *University of Alberta v. Pylypiuk*, 2002 ABQB 22

I. BACKGROUND

[para 1] On March 27, 2013, the Applicant made an access request under the FOIP Act to Bow Valley College (the Public Body). He stated:

Please be advised that I wish to receive a copy of any and all information and records Bow Valley College has under my name, [...] and / or in relation to me, including, but not limited to emails, written paper work and documentation, video tape surveillance from the Bow Valley Testing centre. I require such documentation for, among other things, outstanding litigation.

On April 26, 2013, the Public Body informed the Applicant that it was extending the time to respond to his access request by 30 days. The Public Body stated:

Your request involves a large number of records. The volume of information involved cannot be processed within the usual 30-day limit. An extension of time of 30 days will allow Bow Valley College to provide you with a complete response to your request.

A response to your request will be ready no later than May 30, 2013.

The Public Body also noted that if the Applicant considered the extension to be unjustified, he could request review by the Commissioner.

[para 2] The Applicant requested review by the Commissioner of the Public Body's extension of the time for responding to his access request.

[para 3] The Public Body responded to the Applicant's access request on May 24, 2013. The Public Body provided records responsive to the request, but withheld some information under section 17 of the FOIP Act (disclosure harmful to personal privacy).

[para 4] The Applicant requested that the Commissioner review the Public Body's response to his access request. He argued that the Public Body had not produced all available records and that it should not have severed information from the records.

[para 5] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 6] Once I received the Public Body's initial submissions and the Applicant's initial and reply submissions, I determined that I did not require any further submissions from the parties.

II. INFORMATION AT ISSUE

[para 7] The information severed by the Public Body is at issue.

III. ISSUES

Issue A: Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

Issue B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

Issue C: Did the Public Body properly extend the time limit for responding to the request as authorized by section 14 of the Act?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

[para 8] The Applicant's request for review contains his sole argument relating to the issue of whether the Public Body met its duty to assist him. He states:

I do not believe that all available records were issued to me and as a result I respectfully ask that the OIPC review the records search and in addition, [compel] the Public Body to review for any additional records.

[para 9] Section 10 of the FOIP Act states, in part:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 10] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. The Applicant's argument that the Public Body has not located all responsive records can be addressed under section 10.

[para 11] In Order 2001-016, the Commissioner said:

In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) [now 10(1)] of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) [now 10(1)].

Previous orders ... say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) [now 10(1)] of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done.

[para 12] As discussed in the foregoing excerpt, a public body bears the burden of proving that it conducted a reasonable search for responsive records.

[para 13] In Order F2007-029, former Commissioner Work explained the kinds of evidence that a Public Body must produce or adduce in an inquiry in order to establish that a search was conducted in a reasonable way. He said:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

Did the Public Body complete a reasonable search for responsive records?

[para 14] In his reply submissions, the Applicant argued that I should disregard the Public Body's submissions. He states:

Further to Bow Valley College's [...] response, please be advised that I [...] expressly deny any & all statements, inferences, suggestions and allegations outlined within such response, and accordingly, wish to place the Respondent to strict proof thereof. Additionally, most, if not all of BVC's submissions, which are not admitted and are in fact, expressly denied, are improper and not properly placed before the Office of the Information and Privacy Commissioner ("OIPC"). Furthermore, BVC appears to be referring to [the Applicant] having exercised his right to file an OIPC request for review, as a complaint, and in addition, BVC appears to have included voluminous improper and vexatious materials and pleadings which appear rather unprofessional, improper and contrary to, among other pertinent laws, legislation, policies, rules, and statutes, OIPC provincial privacy legislation, and in addition, evidently depict unprofessionalism contrary to the *law society of Alberta rules and ethics* [emphasis in original] on behalf of BVC's counsel.

[para 15] The Public Body provided the following background information in its submissions:

The [Applicant] was a correspondent learner with Lethbridge College and wrote his exams by correspondence at the College's Testing Center.

Between October 2012 and March 2013 while attending the Testing Center to write his exams, issues arose between the [Applicant] and the College which led to the [Applicant] filing [an] Alberta Human Rights complaint against the College. The Alberta Human Rights complaint was wholly dismissed by the Commission on May 14, 2014.

[para 16] The affidavit of the Public Body's FOIP Coordinator states:

To comply with the request and obtain the records responsive to the Applicant's access request I took the following specific steps:

- i. Contacted each staff member at the Testing Center requesting they provide any email communications or other documentation they have relating to the [Applicant];
- ii. Contacted each individual administrative staff member at the College requesting they provide any email communications or other documentation they have relating to the [Applicant]; and,

iii. Upon receiving all the records from the previous two steps, reviewed each record to sever / redact the information that was properly withheld as being an unreasonable invasion of a third party's privacy.

The scope of my search included all staff [who] interacted with the [Applicant] during the [Applicant]'s use of the College's Testing Center and the events resulting from the [Applicant]'s use of the Testing Center.

I believe no more responsive records than those provided exist because I have canvassed all staff members connected to the College as it relates to the matter who have interacted with the [Applicant], and I have received from them the records relating to the [Applicant] that they possess.

[para 17] I find the information and the evidence of the Public Body supports finding that it conducted a reasonable search for responsive records. The background information it provided regarding the Applicant's attendance at its testing center and his human rights complaint established the kinds of responsive records the Public Body was likely to have in its custody or control, and where they were likely to be located. While the Applicant denies that submissions and evidence of the Public Body are true, he provides no alternative theory as to the facts. Moreover, if it is not the case that he attended the Testing Center to write an examination, and filed a human rights complaint against the Public Body, then it is unclear why he believes the Public Body would have any records responsive to his access request. In any event, the records establish that the Applicant attended the testing center for the purpose of writing an examination and that he made a human rights complaint. The records at issue also support the Public Body's account of events, as does the evidence it provided for the inquiry.

[para 18] The Public Body has explained the steps it took to locate responsive records, the locations it searched for records, who conducted the search, the results of its search, and why it believes there are no additional responsive records. I accept its evidence, and from this evidence, I am satisfied that the Public Body's search for records was reasonable.

[para 19] As there is no basis for me to disregard the Public Body's submissions and evidence, and I find that it has established that it conducted a reasonable search for responsive records. I will confirm that the Public Body has met its duty to the Applicant under section 10 of the FOIP Act.

Issue B: Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

[para 20] The Public Body applied section 17 to withhold the name of a student and some other information about an employee from the Applicant. The Public Body argues:

It is further the position of the College that the severed information referred to earlier was properly withheld and severed in accordance with section 17(1) of the Act. The severed information consisted of personal information such as the names of another student and faculty of the College, the disclosure of which would consist of an unreasonable invasion of these third parties' personal privacy. Considering all the relevant circumstances, the severed information

does not fall within subsection 17(2) of the Act as being not an unreasonable invasion of a third person's privacy; contrarily, and against subsection 17(1) of the Act, disclosure of the severed information would constitute an unreasonable invasion of these third parties' privacy if not withheld.

To that end, the College considered all relevant circumstances in deciding that not severing the personal information of the staff and student was an unreasonable invasion of privacy to those third parties. The main considerations relied on by the College were:

a) the information severed contained the identity of a student of the College who did not provide consent to having his name revealed and who had reason to believe was being antagonized by the [Applicant]; and,

b) the information severed contained statements by a Staff Member that dealt with safety concerns. The information was redacted because it was the personal state of mind of the staff member in the context of their employment. The College also felt that disclosing such statements to the [Applicant] may result in further retaliatory actions by the [Applicant] as against the Staff Member, which was a safety issue.

In deciding to sever portions of the requested records the College considered the relevant circumstances around the request for records and determined that disclosing such portions would constitute an unreasonable invasion of two third party's personal privacy. Accordingly, the College submits that the severed information was properly withheld and that the College wholly complied with section 17 of the Act.

[para 21] As noted above, the Public Body severed the name of a student, and information about an employee, from the records. The Public Body provided the remaining information to the Applicant.

[para 22] I agree with the Public Body that the name of the student and the information about the employee in the context where this information appears in the records, is personal information. With regard to the employee information, the information has a personal dimension as it refers to her personal point of view. The information that was severed is therefore about her, rather than about the public body she represents as an employee.

[para 23] As I find that the information that was severed is personal information, I must consider whether section 17 requires the Public Body to withhold it. Section 17 states, in part:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[...]

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

[...]

(g) *the personal information consists of the third party's name when*

(i) *it appears with other personal information about the third party, or*

(ii) *the disclosure of the name itself would reveal personal information about the third party [...]*

(5) *In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*

(a) *the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

(b) *the disclosure is likely to promote public health and safety or the protection of the environment,*

(c) *the personal information is relevant to a fair determination of the applicant's rights,*

(d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*

(e) *the third party will be exposed unfairly to financial or other harm,*

(f) *the personal information has been supplied in confidence,*

(g) *the personal information is likely to be inaccurate or unreliable,*

(h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*

(i) *the personal information was originally provided by the applicant.*

[para 24] Section 17 does not say that a public body is *never* allowed to disclose third party personal information. It is only when the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy that a public body must refuse to disclose the information to an applicant (such as the Applicant in this case) under section 17(1). Section 17(2) (not reproduced) establishes that disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 25] When the specific types of personal information set out in section 17(4) are involved, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered.

[para 26] In *University of Alberta v. Pylypiuk*, 2002 ABQB 22, the Court commented on the interpretation of what is now section 17. The Court said:

In interpreting how these sections work together, the Commissioner noted that s. [17(4)] lists a set of circumstances where disclosure of a third party's personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Then, according to the Commissioner, the relevant circumstances listed in s. [17(5)] and any other relevant factors, are factors that must be weighed either in favour of or against disclosure of personal information once it has been determined that the information comes within s. [17(1) and (4)].

In my opinion, that is a reasonable and correct interpretation of those provisions in s. [17]. Once it is determined that the criteria in s. [17(4)] is [sic] met, the presumption is that disclosure will be an unreasonable invasion of personal privacy, subject to the other factors to be considered in s. [17(5)]. The factors in s. [17(5)] must then be weighed against the presumption in s. [17(4)]. [my emphasis]

[para 27] The information I have found to be personal information, is subject to the presumption created by section 17(4)(g) of the FOIP Act (reproduced above). I say this because the name of the individual appears in the records in the context of other information about them. In the case of the student, the Public Body severed the name of the student; in the case of the employee, it severed the information about her. However, prior to the severing, the information contained both components of section 17(4)(g)(i) – that the personal information consist of a name in the context of other information about the individual.

[para 28] Section 17(1) requires a public body to withhold information only once all relevant interests in disclosing and withholding information have been weighed under section 17(5) and, having engaged in this process, the head concludes that it would be an unreasonable invasion of the personal privacy of a third party to disclose his or her personal information.

[para 29] Once the decision is made that a presumption set out in section 17(4) applies to information, then it is necessary to consider all relevant factors under section 17(5) to determine whether it would, or would not, be an unreasonable invasion of a third party's personal privacy to disclose the information.

[para 30] I am unable to identify any factors weighing in favor of disclosure of the name of the student or the personal information about the employee. The Applicant has not argued that any factors weighing in favor of disclosure apply. I therefore find that the presumption created by section 17(4)(g) is not rebutted in relation to the information the

Public Body severed from the records. I will therefore confirm the Public Body's decision to withhold the information under section 17(1).

Issue C: Did the Public Body properly extend the time limit for responding to the request as authorized by section 14 of the Act?

[para 31] Section 11 of the FOIP Act requires a Public Body to make every reasonable effort to respond to an access request not later than 30 days after receiving the access request unless it extends the time limit for responding under section 14. Section 11 states:

- 11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*
- (a) that time limit is extended under section 14, or*
 - (b) the request has been transferred under section 15 to another public body.*
- (2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.*

[para 32] Section 14 of the FOIP Act states:

- 14(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if*
- (a) the applicant does not give enough detail to enable the public body to identify a requested record,*
 - (b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,*
 - (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or*
 - (d) a third party asks for a review under section 65(2) or 77(3).*

[...]

- (4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant*
- (a) the reason for the extension,*
 - (b) when a response can be expected, and*
 - (c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.*

[para 33] The Public Body argues that its decision to extend the time for responding to the access request was reasonable. It states:

It is the position of the College that its decision to extend the 30 days required to respond to the request for records was a reasonable exercise of its right to do so under section 14 of the Act. The [Applicant's] request involved numerous records, of which several records required severing to comply with section 17 of the Act. Not only did the search involve numerous records but the College's information systems are not connected to a central server which required meticulous retrieval of the email records from each individual staff member holding relevant records [...]

The College properly complied with its 30 day extension by providing the [Applicant] the requested documents on May 24, 2013.

The College submits that extending its response to the request for records by 30 days was a legitimate and reasonable exercise of section 14 of the Act and that accordingly no irregularity exists.

[para 34] The affidavit of the FOIP Coordinator states:

The 30 day extension was required because of the large volume of records related to the request.

Additionally, the College's information system is not a central server type system; to procure records the College has to contact each individual staff member or student who might have relevant records and request that the staff member or student provide the College with copies of the records. This is a time consuming process.

[para 35] The Applicant states that the Public Body's extension is unjustified and was done for strategic reasons. Beyond this assertion, he provided no evidence of the "strategic" nature of the decision to extend (assuming the Applicant's assertion is intended to suggest some improper motive on the part of the Public Body).

[para 36] I find that the Public Body's decision to extend the time for responding to the Applicant complies with section 14(1)(b). Cited above, section 14(1)(b) authorizes a public body to extend the time for up to 30 days if there are a large number of records to be searched and responding within 30 days as set out in section 11 would unreasonably interfere with the operations of the public body. Although the Public Body did not expressly address the requirement that responding to the access request within 30 days would interfere with its operations, I infer from its evidence and from the records at issue that it would have had to either hire more staff, or establish a central server in order to respond within 30 days. Either outcome would interfere with its operations.

[para 37] To conclude, I find that the Public Body's decision to extend the time limit for responding was authorized by section 14(1)(b) of the FOIP Act. I also note that its extension decision complied with the requirements of section 14(4), as it included the reasons for the extension, an expected date for a response, and information regarding the right of the Applicant to request review by the Commissioner. I will therefore confirm that the Public Body did not fail to meet its duty to the Applicant under section 11 of the FOIP Act.

V. ORDER

[para 38] I make this Order under section 72 of the Act.

[para 39] I confirm that the Public Body conducted a reasonable search for responsive records and complied with its duty to the Applicant under section 10 of the Act.

[para 40] I confirm that the Public Body is required to withhold the information it severed under section 17(1) from the Applicant.

[para 41] I confirm that the Public Body did not fail to meet a duty to the Applicant imposed by section 11 of the Act.

Teresa Cunningham
Adjudicator