

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2014-46

November 6, 2014

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7183

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) to Alberta Justice and Solicitor General (the Public Body) for all information relating to him within all Alberta court record-keeping systems, as well as emails about him in the inboxes of certain Government of Alberta employees.

The Public Body initially estimated 300 pages of responsive records; however, after a telephone conversation with the Applicant in which the request was apparently narrowed, the Public Body located 22 pages of responsive records. The Public Body provided access to 1 page of these records, withholding the remainder under section 4 of the Act.

The Applicant asked this Office to review the Public Body's response; he also argued that the Public Body improperly withheld records as non-responsive.

The Adjudicator found that the Applicant had narrowed his access request, after which the records initially located by the Public Body as responsive, were no longer responsive to the Applicant's request. The Adjudicator also found that the Public Body properly applied section 4(1)(a) to the records at issue.

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

Authorities Cited: **AB:** Orders F2004-030, F2007-007, F2010-031.

Cases Cited: *Alberta (Attorney General) v. Krushell*, 2003 ABQB 252 (CanLII), 2003 ABQB 252.

I. BACKGROUND

[para 1] On November 20, 2012, the Applicant made a request to Alberta Justice and Solicitor General (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for “any and all information and notes about me and/or in relation to me within **any and all court record keeping systems**, including but not limited to the record keeping system known as **C.A.S.E.S., J.O.I.N., C.T.I.N.** used in the Court of Queen’s Bench of Alberta, along with any other Alberta Court of Queen’s Bench or Provincial Court of Alberta record keeping systems. I also wish to be issued any emails and/or [memos] in relation to me which may have been relayed within the Calgary Court House government of Alberta email inboxes...” for the time period of 2006 to November 20, 2012.

[para 2] The Public Body responded by letter dated February 6, 2013, telling the Applicant that “all records contained within the ‘court records keeping systems’ are considered court records, and therefore, in accordance with section 4, are not subject to the *FOIP Act*.” The Public Body directed the Applicant to obtain these records from the relevant court. The Public Body issued a fee estimate for providing records responsive to the remainder of the Applicant’s request; the Public Body estimated 300 pages of responsive records (letter to Applicant, dated February 21, 2013.) The Public Body waived the fees on April 3, 2013.

[para 3] The Public Body stated a letter to the Applicant, dated April 3, 2013:

In our correspondence dated February 6, 2013, you were informed to contact the relevant Court House directly, to obtain any records contained within the “court records keeping systems”.

...

In a March 15, 2013, telephone conversation with [the Public Body’s FOIP advisor], you advised that you were only requesting copies of records you did not already have.

[para 4] By letter dated May 17, 2013, the Public Body again restated its understanding of the Applicant’s request:

In a March 15, 2013, telephone conversation with [the Public Body’s FOIP advisor], you narrowed your request to only records, relating to you, that were sent amongst Calgary Court Centre staff. As a result, a majority of the records, that were originally responsive, became non-responsive.

[para 5] In that same letter, the Public Body informed the Applicant that 22 pages of responsive records were located, 1 of which would be provided to the Applicant. The remainder of the 22 pages was withheld under section 4 of the Act.

[para 6] The Applicant requested a review of the Public Body's response. He also requested a review of the Public Body's withholding records as non-responsive.

[para 7] The Commissioner authorized an investigation into the matter but this was not successful in resolving the issues between the parties so the Applicant requested an inquiry.

II. INFORMATION AT ISSUE

[para 8] The information at issue in this inquiry consists of the withheld records that were responsive to the Applicant's request.

III. ISSUES

[para 9] The Notice of Inquiry dated May 29, 2014, sets out the issues in this inquiry as follows:

1. Did the Public Body properly withhold records it had initially located as non-responsive to the Applicant's request?
2. Does section 4(1)(a) (information in court records) apply to the 20 pages of records withheld under this provision?

IV. DISCUSSION OF ISSUES

Did the Public Body properly withhold records it had initially located as non-responsive to the Applicant's request?

[para 10] The Public Body states that in a telephone conversation on March 15, 2013, the Applicant narrowed the scope of his request to include "only records that were between Calgary Court Centre staff, not records of which he would already be in possession. This resulted in the majority of records (307 of 329 pages) becoming non-responsive." (Initial submission, page 3). It provided me with a letters sent to the Applicant (dated April 3, 2013 and May 17, 2013), in which it confirmed this new understanding of the scope of the Applicant's request. The Applicant does not appear to have replied to these letters.

[para 11] The Public Body further states that the non-responsive records consist of the following:

- records provided to the Public Body by the Applicant,

- records previously provided by the Public Body to the Applicant (e.g. responses to emails from the Applicant),
- records outside the timeframe of the Applicant's request, and
- records created in response to the [internal] search for records request.

[para 12] Although he had an opportunity to do so in his rebuttal submission, the Applicant did not deny that he had narrowed his request, or that he had received the letters from the Public Body indicating that his access request had been narrowed. He did not comment on why, if he disagreed with the letters' contents, he did not indicate this to the Public Body.

[para 13] The letters from the Public Body support its position that the Applicant's request had been narrowed to include only records between Calgary Court Centre staff, of which the Applicant would not already have possession. As such, I agree that the 307 records, as described by the Public Body, were no longer responsive to the Applicant's request. I conclude, on a balance of probabilities, that the Applicant narrowed the request in the way the Public Body contends.

Does section 4(1)(a) (information in court records) apply to the records withheld under this provision?

[para 14] Although the Notice of Inquiry referred to 20 pages withheld under section 4(1)(a), in fact 21 pages were withheld under this provision. The Public Body's arguments, and my decision, apply to all 21 pages.

[para 15] If section 4(1)(a) applies to the records at issue, I do not have jurisdiction to review the Public Body's decision to withhold them.

[para 16] Section 4(1)(a) of the Act states:

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

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

[para 17] This provision applies to information taken or copied from a court file (Order F2004-030 at para. 20 and F2007-007 at para. 25); it also applies to information copied from a court file to create a new document, such as a court docket (*Alberta (Attorney General) v. Krushell*, 2003 ABQB 252 (CanLII), 2003 ABQB 252). However, these orders state that records emanating from the Public Body itself or from some source other

than the court file are within the scope of the Act, even though duplicates of the records may also exist in the court file (F2010-031).

[para 18] The Public Body states that the withheld records (pages 2-22 of the responsive records) consist of court documents, judicial administration records, and records relating to support services provided to judges.

[para 19] In his request for inquiry the Applicant mentioned that a Public Body employee, who apparently worked in the court system, had been terminated and that he had known this person. The Applicant seems to indicate that this person had been terminated because of some wrongdoing against the Applicant.

[para 20] In his rebuttal submissions, the Applicant states:

The alleged non-responsive records fell within the jurisdiction of the FOIP Act due to, among other outstanding proceedings, outstanding human rights proceedings involving breach of privacy by certain court clerks who were thereafter terminated for such conduct (e.g. [named individual]), among other related police investigations pertaining [to] the matter. (Rebuttal submission, page 2).

[para 21] It is unclear what proceedings the Applicant may be referring to. Regardless, if information falls under section 4(1)(a) (or another subsection of section 4(1)), it is outside the scope of the FOIP Act, whether or not it pertains to a legal proceeding.

[para 22] Having reviewed the records at issue, I confirm that they fall within the scope of section 4(1)(a). Some of the records are records of a judge of an Alberta court, and the remaining records are records relating to support services within the terms of section 4(1)(a). Therefore, I do not have jurisdiction to review the Public Body's decision to withhold these records.

V. ORDER

[para 23] I make this Order under section 72 of the Act.

[para 24] I find that the Public Body properly applied section 4(1)(a) of the Act to the records at issue.

Amanda Swanek
Adjudicator