

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2015-04

March 11, 2015

MEDICINE HAT POLICE COMMISSION

Case File Number F7055

Office URL: www.oipc.ab.ca

Summary: The Applicant requested all emails the Medicine Hat Police Commission received, and all letters from the Chief of Police, about the Applicant between November 1, 2012 – March 13, 2013. The Applicant's request was made under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

The Public Body conducted a search for responsive records but was unable to locate any.

The Applicant requested review by the Commissioner of the Public Body's response, the adequacy of the search it had conducted and the timing of the response.

The Adjudicator found that the Public Body had met its duties to the Applicant under the FOIP Act in relation to the response it had provided.

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

Authorities Cited: AB: Order 2001-016

I. BACKGROUND

[para 1] On March 13, 2013, the Applicant made a request to the Medicine Hat Police Commission (the Public Body) for all emails the Public Body received about the Applicant, including all letters from the Chief of Police. The Applicant provided a date range of November 1, 2012 – March 13, 2013.

[para 2] The Public Body conducted a search for responsive records, but was unable to locate any. The Public Body responded to the Applicant on March 21, 2013. The Public Body described the search it conducted to the Applicant and explained that it was unable to locate any responsive records.

[para 3] The Applicant requested review by the Commissioner of the Public Body's response to him. The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

II. 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: Did the Public Body comply with section 11 of the Act (time limit for responding)?

III. 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 4] Section 10(1) of the Act requires public bodies to assist applicants. It states:

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 5] 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. 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 6] As discussed in the foregoing excerpt, a public body bears the burden of proving that it conducted a reasonable search for responsive records.

[para 7] The Applicant made no submissions for the inquiry. From his request for review and his request for inquiry, it appears that he believes that the Public Body should have located responsive records. However, no basis for this belief is contained in these documents.

[para 8] The Public Body provided submissions and the affidavit evidence of the employees who participated in the search for responsive records. It states:

1. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act? As well, did the Public Body conduct an adequate search for responsive records?

In this instance, the request for information from [the Applicant] was straight forward and the person responsible for the file did not feel the need to seek additional clarification from [the Applicant]. The request asked for;

"all emails the Commissioner has received, & letters from the Chief of Police about me. Date range November 1, 2012- March 31, 2013"

The request was received on March 13, 2013 and after research was completed into the issue, a response was drafted by [a police information coordinator] on March 21, 2014. This response was provided to [the Applicant] by way of registered mail on March 22, 2013 and stated the following;

"A search was conducted by the Medicine Hat Police Service for any emails sent or received from the Chief of Police [...] to the Police commissioner in relation to you or [the Applicant's email address]. The search included the time frame of November 1, 2012 to March 13, 2013 as that is the date this request was received. There were no emails located. A search for any letters relating to you between the Chief of Police and the Police Commission was also conducted with no letters identified. Personal contact with Police Commission [employee] confirmed they have no other emails or letters."

1.1. In completing the investigation into the Access to Information Request, [the police information coordinator] has advised that he did the following;

a. Searched the Service's Record Management System using the name [of the Applicant], and the email address, [...]

b. Spoke with [...], the Information Technology Manager and requested him to search the Services electronic records for any electronic records such as current or deleted emails or letters from the Chief of Police to the Police Commission or from the Commission to the Chief in relation to [the Applicant]. The request included the email address of [the Applicant].

c. Spoke with Deputy Chief [...] regarding correspondence between the Chief of Police and the Police Commission

d. Spoke with [...] the Public Complaints Director for the Medicine Hat Police Commission to determine if he was aware of or held any emails or correspondence between the Police Commission and the Chief of Police Information Manager

e. Spoke with [...], the Executive Assistant to the Office of the Chief requesting she check any hard cover or electronic records that may be on file for the request of [the Applicant].

f. That in receiving negative replies from each of these persons, he concluded that there were no records held by the Service or the Commission responsive to [the Applicant's] request.

[...]

You will see that [police information coordinator] indicates that as there is no other off-site facility where these documents or information would be housed, he was satisfied that no records existed as were requested by the Applicant.

[para 9] The Public Body provided statements from the police information coordinator, the Chief of Police, an information technology manager, and an executive assistant to the Chief of Police regarding the search they conducted for responsive records. These parties indicate that they conducted searches for responsive electronic and paper records, but did not find any responsive records.

[para 10] From my review of the Public Body's evidence, I am satisfied that it searched all locations that might possibly house responsive records. I am also satisfied that when it searched these locations, that it was unable to locate any responsive records. The Public Body has established that the most likely reason it has not provided any responsive records is because none exist. In addition, I am satisfied that the Public Body provided a satisfactory response to the Applicant, and properly explained the steps it took to locate responsive records. The Public Body's response was open, accurate and complete, as required by section 10(1) of the FOIP Act.

[para 11] I find that the Public Body met its duty to assist the Applicant.

Issue B: Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 12] Section 11 of the FOIP Act requires public bodies to respond to applicants within 30 days of receiving an access request. This provision states, in part:

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.

[para 13] The Public Body argues:

2. Did the Public Body comply with section 11 of the Act (time limit for responding)?

a. The request of [the Applicant] was received by the Service on March 13, 2013 and was assigned to [the police information officer] for research and response. The response to [the Applicant] was mailed to him by registered mail on March 22, 2013, some 10 days after the request was received.

The records submitted by the Applicant and the Public Body establish that the Applicant submitted his access request on March 13, 2013, and that the Public Body prepared the

response on March 21, 2013 and mailed it out on March 22, 2013. I agree with the Public Body that it complied with its duty under section 11.

IV. ORDER

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

[para 15] I confirm that the Public Body met its duties under the Act to the Applicant.

Teresa Cunningham
Adjudicator