

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2015-38

December 3, 2015

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number F7509

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”) to Alberta Justice and Solicitor General (“the Public Body”) for information in a file held by the Crown Prosecutor’s Office in Medicine Hat. The Public Body responded to the Applicant’s access request but the Applicant believes that she was not provided with all of the records in the Public Body’s possession that were responsive to her access request.

The Adjudicator found that the Public Body had performed an adequate search for responsive records and fulfilled its duty under section 10 of the Act.

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

Authorities Cited: AB: Order F2007-029.

I. BACKGROUND

[para 1] The Applicant states that she was a victim of a crime in 2005. In 2009, the charges against the accused in that case were dropped by the Crown Prosecutor assigned to the case. The Applicant did not agree with the Crown Prosecutor’s actions and in 2009 made an access request for the file relating to this matter pursuant to the *Freedom of Information and Protection of Privacy Act* (“the Act”). According to the Public Body,

the Applicant was provided with records at that time but some of the information in those records had been severed.

[para 2] On August 9, 2013, the Applicant made another access request to the Public Body pursuant to the Act for:

Crown Attorney copy of the Judicial Process File. See attached – For File #3
Any and All documents, correspondence about me from 2005 to present.

[para 3] The attachment stated:

Request for a copy of Medicine Hat crown prosecutors Judicial Process file and all other documents pertaining to me [the Applicant] between 2005 to present, which as per this offices responsibility to be transparent to the public and as a victim of crime I am entitled to.

[para 4] The Public Body advised the Applicant that there were no further responsive records beyond the records she had already been provided in 2009. The Public Body later provided the Applicant with another copy of the records that were provided to her in 2009 with the same information severed.

[para 5] On September 20, 2013, the Applicant requested that the Office of the Information and Privacy Commissioner (“this Office”) review the Public Body’s response to her 2013 request (which was the same response the Public Body gave to her 2009 request) stating that the Public Body had not provided her with all the information responsive to her access request. The Commissioner authorized mediation to attempt to resolve this matter but this was unsuccessful and on October 13, 2014, this Office received a copy of the Applicant’s Request for Inquiry. I received initial and rebuttal submissions from both parties.

II. RECORDS AT ISSUE

[para 6] The only issue in this inquiry is the adequacy of the Public Body’s search for responsive records. Therefore, there are no records at issue.

III. ISSUES

[para 7] The Notice of Inquiry dated May 28, 2015 states the issue in this inquiry as follows:

Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)? In this case the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

[para 8] The Applicant also briefly mentioned in her initial submissions that she does not agree with the way the records were severed pursuant to sections 4, 17, 20 and 27.

The Applicant did not mention that she was taking issue with the Public Body's severing of the records responsive to her 2009 access request in either her Request for Review or her Request for Inquiry. Therefore, I will not be dealing with this issue in this inquiry. Should the Applicant wish to have these issues reviewed by this Office, she must submit a new Request for Review. If she does so, the Commissioner will decide whether to accept this request despite the lapse of time.

[para 9] As well, in her rebuttal submissions, the Applicant argues that the Public Body acted inappropriately when it provided her with a URL with which she could look up some of the information she was asking for. It is my understanding that the URL was provided to the Applicant in response to another access request and is not an issue in this inquiry. In any event, the only issue in this inquiry is whether the Public Body performed an adequate search for responsive records.

[para 10] Finally, most of the Applicant's submissions revolve around her belief that the Crown Prosecutor did not properly handle a case in which she claims she was a victim. The propriety of scrutinizing a Crown prosecutor's decisions as to how he or she chose to deal with a prosecution file is beyond my jurisdiction and will not be addressed in this Order.

IV. DISCUSSION OF ISSUE

Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)? In this case the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

[para 11] The Applicant submits that the Public Body has not provided her with all of the records responsive to her access request. She specifically states that the following records are missing:

1. A copy of the crown's procedural history file
2. 519 Production Order;
3. The file retention policy.

[para 12] I am not sure what the Applicant is referring to when she states that she wants a copy of the "519 Production Order". However, I suspect that this is a Court record and if it is, it would be exempt from the Act pursuant to section 4(a) of the Act.

[para 13] With regard to the Public Body's file retention policy, this is not a record that is responsive to the Applicant's access request and therefore would have been no reason to produce it in response to that request. From the information that is before me, the Applicant recently made a separate access request for this information. From the Applicant's submissions, it also appears as though she was provided with responsive records as the result of this request. If the Applicant is not content with the Public Body's response to her request for the file retention policy, she can ask for a review of

that response. Therefore, I will not be addressing her request for the file retention policy in this Order.

[para 14] However, the Applicant provided me with copies of pages, apparently from the Public Body's file retention policy in support of her complaint. The policy does not appear to deal with what types of records/information are to be considered transitory or not and speaks only to what certain files *may* contain. It also states how long a file is to be retained. The file that the Applicant requested had not been destroyed. Therefore, it appears as though there is no issue that the Public Body did not follow its own procedures.

[para 15] The Applicant was provided with the file from the Medicine Hat Crown Prosecutor's Office. The Applicant's submissions indicate that she believes that there are records missing from this file including evidence that ought to have been on the file and correspondence between herself and the Crown Prosecutor's Office.

[para 16] Section 10(1) of the Act 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 17] Previous orders issued by this office have stated that 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

(Order F2007-029 at para 66)

[para 18] The Public Body provided me with Affidavit evidence of the following:

- In 2013, on receiving the Applicant's access request, an employee of the Public Body examined the closed file from the Medicine Hat Crown Office and found that there was no additional information on that file since the Applicant's 2009 access request beyond correspondence dealing with the

access requests.

- Only the Medicine Hat Crown Office file was reviewed because in the lengthy experience of the person conducting the search, this was the only possible repository of information responsive to the Applicant's access request.
- The file had been closed for several years and there was no reasonable basis to believe that there would be new responsive records.

[para 19] In her submissions, the Applicant provided me with correspondence dated after 2009 between herself and the Crown Prosecutor. As I understand her submissions, she believes that this information should have been provided to her as a result of her 2013 access request. In its submissions, the Public Body explained that any correspondence received by the Crown Prosecutor's Office from the Applicant would have been considered transitory. I presume that this means that it would not have been retained at all. In addition, the Public Body stated that no new or additional information is added to a closed Crown Prosecutor's file, which, according to the Public Body is the only possible repository for the information the Applicant requested. I find that this adequately explains why the correspondence from the Applicant was not provided to her.

[para 20] In addition to the missing correspondence, the Applicant also indicates that there was evidence missing from her file. From reading the Applicant's submissions, this seems to have been an ongoing complaint of hers as she believes that the investigation into her assault was not properly carried out. While the Applicant may believe that this information ought to be on her file, it is not. The Public Body can only provide her with records which are in existence at the time of her access requests.

[para 21] Therefore, I find that the Public Body met its obligations under section 10 of the Act.

V. ORDER

[para 22] I make this Order under section 72 of the Act.

[para 23] I find that the Public Body conducted an adequate search for responsive records pursuant to section 10(1) of the Act.

Keri H. Ridley
Adjudicator