

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-09

April 6, 2016

CALGARY POLICE SERVICE

Case File Number F8295

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for records pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) to the City of Calgary. The City of Calgary transferred parts of the Applicant's access request to the Calgary Police Service (CPS or Public Body). The Public Body attempted to clarify the Applicant's access request and provided him with the records it located that were responsive to his request. The Applicant believes that the Public Body did not conduct an adequate search for records and did not meet its duty under section 10 of the Act.

The Adjudicator found that the Public Body did meet its duty to assist the Applicant and did conduct an adequate search for responsive records.

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] On April 12, 2011, the Applicant made an access request to the City of Calgary. Given the possibility that the Calgary Police Service (Public Body or CPS) may have records that were responsive to parts of the Applicant's access request, the City of Calgary transferred those portions of the Applicant's access request to the CPS. The portions of the Applicant's access request that were transferred to the CPS were records relating to:

- Police Information, investigation reports, witness statements and on site photographs in connection with a criminal complaint secretly raised against the Applicant;
- A decision taken not to contact the Applicant further to an injury caused to him when an individual smashed the window of a bus on which the Applicant was travelling. He further requested reasons why the CPS never contacted him to provide him with an opportunity to participate in criminal proceedings against the person who is alleged to have smashed the bus window;
- An attempted hit and run of the Applicant in the parking lot of the Canadian Superstore;
- Disclosures of the Applicant's personal information to persons unknown to him and information regarding the manner in which his personal information was processed and used by third persons;
- A representation made by the City before Alberta Justice and the Attorney General concerning the Applicant.

[para 2] According to the Public Body, on receipt of the Applicant's access request, the Public Body did an initial search of the Police Information Management System using the Applicant's name. It did not return any results, so the Public Body's Disclosure Analyst contacted the Applicant, first by phone and then by letter, asking for additional information to assist her in searching for responsive records. The letter, dated May 5, 2011, stated that until more information was provided to assist in the search, the Applicant's access request would be put on hold. According to the Public Body, the Applicant's response, dated May 15, 2011, did not address any of questions posed by the disclosure analyst. As a result, the Disclosure Analyst proceeded to search the Public Body's databases. On May 19, 2015 the Applicant was advised that two responsive records had been recovered. The Public Body noted that the Applicant did not appear interested in one of the records and that to answer his question about why an investigation relating to the second record was conducted as it was, the Applicant would have to contact the officer involved or the Professional Standards Section. Finally, the Public Body advised that there were no other records found and that it was closing its file.

[para 3] Following the Public Body's response to the Applicant, the Public Body also contacted the Superintendent for the Real Times Operations Centre for the CPS and confirmed that there were no records of any unit using surveillance resources on the Applicant.

[para 4] In May of 2014, the Applicant wrote to the Public Body, asking it to re-open his access request and asking for guidance on how to get his name taken off of a terror watch list he believed he was on. On June 3, 2014, the Applicant was advised that the searches performed in 2011 were complete and he could request a review of its response from the Office of the Information and Privacy Commissioner (this Office).

[para 5] On July 15, 2014, the Applicant requested that this Office review the response of the Public Body to his access request. He believes that there were more responsive records than

were produced to him and that the Public Body failed to assist him as required by the Act. Mediation was authorized but failed to resolve the issues between the parties and on January 2, 2015, the Applicant requested an inquiry. I received submissions from both the Applicant and Public Body.

II. RECORDS AT ISSUE

[para 6] As the issue in this inquiry is whether the Public Body met its duty to assist the Applicant (including performing an adequate search), there are no records directly at issue.

III. ISSUE

[para 7] The Notice of Inquiry states that the issue in this inquiry is 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 also consider whether the Public Body conducted an adequate search for responsive records.

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 also consider whether the Public Body conducted an adequate search for responsive records.

[para 8] 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 9] In this inquiry, the Public Body's duty to the Applicant can be split into two parts. First, I will decide if, generally, the Public Body met its duty to assist the Applicant when it was attempting to respond to the Applicant's access request. Second, I will decide if, specifically, the Public Body conducted an adequate search for responsive records.

a. Did the Public Body assist the Applicant and respond to him openly, accurately and completely?

[para 10] The parts of the Applicant's access request which were transferred to the Public Body by the City of Calgary are set out above. When it received this transfer, the Public Body did an initial search. That initial search did not recover any responsive records, so the Public Body's Disclosure Analyst attempted to phone the Applicant to clarify what he was looking for. The Applicant advised the Disclosure Analyst that for various reasons he did not wish to communicate via telephone and wanted to communicate in writing only and so the Disclosure Analyst wrote the Applicant a letter asking for the following:

- Please provide details on the investigation that you are asking records for as an initial query of our database is negative for any criminal complaint against you.
- You indicated over the phone that you already have a copy of the police report relating to the bus incident, however, you require "more nuts and bolts" about the incident. Please specify what records you are requesting since you already have the police report. (In relation to your wanting the opportunity to learn of the logic as to why you were not contacted further on this investigation, you were advised that if you have concerns on how the investigation was handled that you would need to contact the Professional Standards Unit).
- Initial query of our database is negative for any record relating to a hit and run. Please provide a date and location of when this occurred and I will complete another search.
- Please provide details as to what information was disclosed and to who it was disclosed.
- More details are required in order to determine what records, or personal information, you are referring to (a search for police reports involving you that would result in any communication with Alberta Justice was negative).

(Letter dated May 5, 2011 from the Public Body to the Applicant)

[para 11] The Applicant responded by giving a detailed explanation of why he did not want to communicate verbally, why he wanted more information about the "bus incident" and advising the Public Body that it ought to seek further information from the City of Calgary.

[para 12] The Public Body did not find any of this information helpful in expanding or refining its search. With the information that it had, the Public Body conducted a search and advised the Applicant of the results. As well, the Applicant was advised that if he wanted answers as to why the investigation of the "bus incident" was conducted as it was, that he should contact the investigating officer directly or the Professional Standards Section.

[para 13] On June 1, 2011, Privacy Counsel for the Public Body followed up with the Applicant advising that she had reviewed everything that the Disclosure Analyst did to clarify the Applicant's request and respond to the Applicant. She also advised that because the Applicant had given no further information to perform another search, his file had been closed. On June 3, 2014, in response to the Applicant's request to the Public Body to re-open his file, Privacy Counsel sent a letter to the Applicant reiterating everything that was found and the steps taken to clarify his request.

[para 14] I find that the Public Body contacted the Applicant on more than one occasion to attempt to clarify his request. The Applicant was advised on more than one occasion that the Public Body could not do a further search without more information. Given the information provided to me by the Public Body, I find that it did meet its duty under section 10 of the Act to assist the Applicant with his request.

b. Did the Public Body conduct an adequate search for responsive records?

[para 15] The Applicant believes that there ought to be more records responsive to his access request than were provided to him by the Public Body. His basis for this belief is that the City of Calgary would not have transferred his access request if that public body did not have a reasonable belief that there were responsive records in the custody or control of the CPS. I do not believe it was the case that the City of Calgary knew or believed that the CPS had records that were responsive to the Applicant's access request. I think, given the Applicant's access request, that the City believed that certain portions of the Applicant's access request were more properly made to the CPS because they related to police files. I do not see the City of Calgary's attempt to assist the Applicant as conclusive or compelling evidence that the CPS had records responsive to the Applicant's request.

[para 16] However, as part of its duty to assist the Applicant, the Public Body must conduct an adequate search for responsive records. In Order F2007-029 the former Commissioner stated that the Public Body ought to provide the following evidence as proof of an adequate search:

- 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 17] In an affidavit sworn by the Disclosure Analyst that conducted the search, the Public Body advised that it used the Applicant's name to search the Public Body's databases. While the Disclosure Analyst had no specific memory of the databases she searched in 2011, her common practice was to search the main Police Information Management System (using the Applicant's name), the UNIQ database (using the Applicant's name or address) and the CADI database (using the Applicant's address). In addition, Privacy Counsel contacted the Superintendent for the Real Times Operations Centre for the CPS and confirmed that there was no record of any unit utilizing surveillance resources on the Applicant. The Public Body also stated that it had the Applicant's date of birth from the records that were found but that it did not use it as a search term because an applicant's date of birth is used to narrow results when a large volume of responsive records are found – which was not the case here.

[para 18] The Public Body believes that no further records exist other than the two that were found because the fact that two records were located means that if others had been in the custody and control of the Public Body, the searches would have recovered those.

[para 19] Based on the evidence provided to me, I find that the Public Body conducted an adequate search for responsive records and met its duty under section 10 of the Act.

V. ORDER

[para 20] I make this Order under section 72 of the Act.

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

Keri H. Ridley
Adjudicator