

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-55

October 31, 2016

ALBERTA HEALTH SERVICES

Case File Number 002479

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for copies of any documentation to or from a coordinator (the coordinator) of the Environmental Public Health area of Alberta Health Services (the Public Body), or any other person, in respect of environmental health, tenant complaints, health inspections or correspondence, messages, or email of any kind, related to the Applicant's name or to his property.

The Public Body located responsive records and provided them to the Applicant. The Applicant requested review by the Commissioner of the search conducted by the Public Body.

In Order F2014-09, the Public Body was ordered to conduct a new search for responsive records and to explain the steps it took to locate responsive records.

The Public Body conducted a new search for responsive records. It was unable to locate additional records, but it explained the steps it took to locate responsive records and explained why it believed there were no more responsive records than what it located.

The Applicant requested review of the Public Body's search for responsive records. The Adjudicator confirmed that the Public Body's search included all reasonable steps for locating responsive records and that it had met its duty to assist the Applicant as required by section 10 of the FOIP Act.

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

Authorities Cited: AB: Orders 2001-016, F2007-029, F2014-09

I. BACKGROUND

[para 1] On February 12, 2012, the Applicant made a request under the FOIP Act for copies of any documentation to or from a coordinator (the coordinator) of the Environmental Public Health area of the Public Body, or any other person, in respect of environmental health, tenant complaints, health inspections or correspondence, messages, or email of any kind, related to the Applicant's name or to his property.

[para 2] The Public Body conducted a search for responsive records and provided them to the Applicant. The Applicant was dissatisfied with the search conducted by the Public Body and sought review by the Commissioner.

[para 3] I issued Order F2014-09 to resolve the issues between the Applicant and the Public Body. In that order, I found that the Public Body had not demonstrated that it conducted an adequate search for responsive records. In making this determination I noted that the Public Body had excluded from its search records where the "only way to determine if a topic or an individual is included, would be to read every page or every line". I also found that such records should have been included in the search. I noticed that the records the Public Body had located referred to potentially responsive records that had not yet been located or produced.

[para 4] I ordered the Public Body to conduct a new search for responsive records and to make a new response to the Applicant.

[para 5] The Public Body conducted a new search for responsive records. It did not locate any additional records that the Applicant had not already obtained.

[para 6] The Applicant requested a review by the Commissioner. The Commissioner delegated her authority to me to conduct an inquiry into the issues raised by the Applicant.

II. ISSUE

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 7] 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 8] 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 9] As discussed in the foregoing excerpt, a public body bears the burden of proving that it conducted a reasonable or adequate search for responsive records.

[para 10] The Public Body provided the affidavit evidence of its Information Access and Privacy Coordinator regarding the new search it conducted and its record keeping practices:

On March 4, 2014 I wrote to the Manager Environmental Public Health ("EPH") in Calgary regarding the new search with revised guidelines for conducting a search. Attached to this my affidavit and marked as Exhibit "A" is a true copy of the letter and attachments I sent to the Manager. In the letter to the Manager I reiterated the Adjudicator's finding that a search of only the Hedgehog database, EH Lookup Archives files, the SHIP database, the coordinator's emails and another employee's email (all of which were searchable by keyword) was overly narrow. I further provided the relevant paragraphs of the Order which supported the Applicant's assertion that records existed that Environmental Public Health did not locate or produce.

EPH searched its three repositories for additional information. The first Hedgehog is a database of reports of inspections pursuant to the *Public Health Act*. Inspection reports have been entered into this database since 2010 and all rental property reports are organized and searchable by the property address. The database was searched for the address of the Applicant's property. The second repository is the database that was used prior to the introduction of Hedgehog and called EH Lookup Archives. This database contains records back to 2000 and is searchable by the property address. This database was also searched. The third repository is not a database but a shared drive referred to as SHIP, the acronym for the Safe Housing Inspection Program. This program focuses on buildings with issues that fall within the purview of different agencies. All records associated with a particular property are filed in the folder for the property in the SHIP drive. Folders are organized by property address. All records in the folder relating to the Applicant's property were retrieved.

It should be noted that the retention period for EPH records is eleven years. All paper records and electronic records on storage media that are older than eleven years have been destroyed in accordance with AHS' records retention schedule.

The new search of the three repositories did not retrieve any records that were not already disclosed to the Applicant. However, some of those records were not provided in the original

access request but at mediation. On March 25, 2014 a complete set of these records were provided to the Applicant by the Director, FOIP & HIA Access Services in her reporting letter to the Applicant upon conclusion of the second search for records.

[para 11] The Information Access and Privacy Coordinator also provided the names of employees who were likely to have responsive information and provided details of the search they conducted for responsive records. She stated:

Each individual was required to conduct a search related to the file of [the Applicant] and the property at [the address of the Applicant's property], SW Calgary. Each individual was required to use the search terms [...]: to find any files in personal drives, email inboxes, sent emails, deleted emails and smart phones. In addition, each individual was required to search his or her work station and vehicle for any physical notes or files. Each individual provided written confirmation that they did not have any materials specified in the request that had not already been provided.

[para 12] In Order F2007-029, former Commissioner Work explained the kinds of evidence that must be adduced 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

[para 13] I turn now to the question of whether the Public Body's evidence answers these questions.

[para 14] The Public Body's Information Access and Privacy Coordinator explained how the search was conducted, the areas it searched, the methods employees used to search for records, the identities of the employees who searched for records, and the results of their searches. It also described the steps it took to ensure that no responsive records were excluded from its search. One such step was interviewing the employee whose records were the subject of the access request to determine what kinds of responsive documents she had maintained. Another step was to ask employees whose references to the Applicant are documented in the records at issue to clarify whether their references were based on other responsive documents.

[para 15] The Public Body explained its position that there are no more responsive records than what it has found in the following terms:

Given that the Manager EPH [Environmental Public Health] cascaded the search request to all members of his team that would be involved in EPH files and each was instructed to search personal drives, sent emails, deleted emails, smart phones, work stations and vehicles for any notes or files, in conjunction with a new search of existing repositories as set out in paragraphs 4 and 6 of this affidavit and that the Manager EPH has replied to the paragraphs in the Order regarding the possible existence of additional records it is AHS' belief that no further records exist other than what has been found and produced.

I understand the Public Body's position to be that it is satisfied that it has located all responsive records because it has looked in all possible repositories of responsive records and had all persons likely to have created or maintained responsive records to search these areas.

[para 16] The evidence of the Public Body satisfies me that it has conducted a reasonable search for responsive records.

[para 17] The Applicant is not satisfied with the Public Body's search for responsive records. He states:

The actions of AHS employees have had very serious consequences for me. My reputation at the City of Calgary is ruined. Whenever I go there to pay a bill or make an inquiry, the responding clerk GASPS when my file comes up on the screen because of all the inspection records, which – as I have noted many times – come up generally with things like 1” of peeling paint – and which are things I have addressed. However, that's not how it looks to anyone reviewing my file at city hall.

It is quite clear from the many hundreds of pages of documentation I have submitted to you in this process, which are drawn from the actual AHS and City of Calgary FOIP emails, that there was a concerted effort by AHS and the City of Calgary employees and my gentrifying neighbors to drive me out of my house and business, primarily based on spurious claims that I was operating “illegal suites”.

Throughout the seven or more years of persistent bylaw harassment, by AHS and the City of Calgary / SHIP, I was denied the right of due process. Inaccurate records were kept by AHS or those that they had have vanished and I have been told that no records are kept of people calling in to make a complaint – suggesting that any Tom, Dick, or Harry could, for instance, call in a mold complaint about a building like the Bow Tower and have it evacuated with no consequences for such mischief. The law requires the public health authority to keep accurate records – mine have vanished and all we have is an affidavit. In my opinion, AHS is in breach of its duties.

The Applicant is concerned that over the years the Public Body collected information that has damaged his reputation and that it no longer has this information in its custody or control. He is concerned that information he believes the Public Body is required to maintain under the *Public Health Act* has not been maintained.

[para 18] The scope of this inquiry is to determine whether the Public Body conducted a reasonable search for records in its custody or control. The Public Body in this case has established that it is unlikely that it has any additional responsive records in its custody or control. Whether the *Public Health Act* requires the Public Body to keep

records beyond those it has kept is an issue that is outside the scope of this inquiry and beyond my jurisdiction to decide. The issue for me to decide is whether the Public Body has taken all reasonable steps to assist the Applicant in relation to his access request as the FOIP Act requires. Now that the Public Body has conducted a new search and explained the steps it took in conducting the new search, I find that it has.

III. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] I confirm that the Public Body has met its duty to assist the Applicant as required by section 10 of the Act.

Teresa Cunningham
Adjudicator