

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2017-63**

July 28, 2017

**ALBERTA HEALTH SERVICES**

Case File Number 000247

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant, a former employee of Alberta Health Services (AHS), made a request on March 18, 2014 under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to examine her own occupational health and safety file.

AHS decided to give access by providing a severed copy of the file at no charge, rather than make it available to the Applicant to view, as she had requested. On December 23, 2014, the Public Body provided the Applicant with a severed copy of the file.

The Applicant requested review by the Commissioner of AHS's decision to provide a copy of the file, rather than allow her to examine it. She also requested review of the length of time AHS had taken to respond to her access request.

The Adjudicator determined that AHS was authorized to provide a copy of the file to the Applicant. She noted section 13 of the FOIP Act distinguishes between "a record or part of it" and "a copy of a record." In the context of section 13, the record refers to an original document, while a copy is a copy that is made from an original document. Section 4 of the Regulation continues this same distinction. Section 4 holds that a *copy* of a record should be given when examination *of the record* would result in disclosure of information subject to exceptions. Further, a record as defined by section 1(q) of the FOIP Act may be one page, or it may consist of several pages. The Adjudicator determined that the Applicant's file was one record in this case, as the Applicant sought the file in its entirety, as one indivisible record.

If the Applicant were permitted to examine the original file, she would necessarily also be permitted to view the information in the file that the head has decided to sever from it, because the information to be severed is part of the original file as much as is the information that would not be severed. As AHS decided to sever information from the file, the Applicant could not examine it in its entirety, whether in paper or electronic form. However, if the Applicant were to make a request to examine specific records or to obtain particular information from the file that AHS had not severed, then the Adjudicator considered that section 13 could require AHS to allow her to examine such records, provided no other provisions of section 4 of the Regulation applied.

The Adjudicator found that there was no benefit in making an order in relation to AHS's compliance with section 11 of the FOIP Act (time limit for responding), as it had already provided the records to the Applicant.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 6, 11, 13, 72; *Freedom of Information and Protection of Privacy Regulation* A.R. 186/2008 s. 4

**Authority Cited:** **AB:** Order F2011-R-001

## **I. BACKGROUND**

[para 1] On March 18, 2014, the Applicant made a request for access under the FOIP Act to AHS, her former employer, to view her entire occupational health and safety file. She stated that she wanted to view the information on the electronic file for the date range 2005 – March 18, 2014. She indicated that the time frame of the request was from 1998 – 2014.

[para 2] The Public Body sought clarification of the time frame of the access request on March 28, 2014. It asked the Applicant whether she wanted access to paper records going back to 1998, or wanted access only to the electronic file from 2005 onward.

[para 3] On April 8, 2014, the Applicant clarified that she wanted to view both the physical file and the electronic file which comprised her occupational health and safety file, rather than to a copy.

[para 4] The Public Body wrote the Applicant on May 16, 2014 and stated that it had determined that to complete her request fully, it would have to provide a copy of the file. The Public Body stated that there would be no additional costs for providing the copy.

[para 5] On May 29, 2014, the Applicant reiterated that she wanted to view the original file rather than obtain a copy. She provided copies of emails that were sent by employees of the Public Body's Workplace Health and Safety area in May of 2013 regarding an earlier request the Applicant had made to view her records. This email indicates that the Applicant was permitted to view the file, once the personal information

of others had been removed from it, and to bring a union representative with her as she viewed the file.

[para 6] On December 23, 2014, the Public Body provided the Applicant with 638 pages of severed, responsive records.

[para 7] On January 16, 2015, the Applicant requested review by the Commissioner of the Public Body's decision to provide her with a copy of her file, rather than allow her to examine the file.

[para 8] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

## II. ISSUES

**Issue A: Did the Public Body comply with section 13 of the Act, and section 4 of the Regulation (how access will be given)?**

**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 comply with section 13 of the Act, and section 4 of the Regulation (how access will be given)?**

[para 9] Section 13 establishes how a public body is to give access to records, once it has made a decision to grant access. It states:

*13(1) If an applicant is told under section 12(1) that access will be granted, the head of the public body must comply with this section.*

*(2) If the applicant has asked for a copy of a record and the record can reasonably be reproduced,*

*(a) a copy of the record or part of it must be provided with the response, or*

*(b) the applicant must be given reasons for any delay in providing the copy.*

*(3) If there will be a delay in providing the copy under subsection (2), the applicant must be told where, when and how the copy will be provided.*

*(4) If the applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced, the applicant*

(a) *must be permitted to examine the record or part of it, or*

(b) *must be given access in accordance with the regulations.*

[para 10] Section 4 of the Freedom of Information and Protection of Privacy Regulation (the Regulation), to which section 13(4)(b) refers, states:

*4 Where a person is given access to a record, the head of the public body may require that the person be given a copy of the record, rather than the opportunity to examine it, if the head is of the opinion that*

*(a) allowing examination of the record would unreasonably interfere with the operations of the public body,*

*(b) allowing examination of the record might result in the disclosure of information that the head of the public body must refuse to disclose or has exercised discretion to refuse to disclose under the Act, or*

*(c) allowing examination of the record might result in the disclosure of information where that disclosure is restricted or prohibited by an enactment or a provision of an enactment that prevails despite the Act.*

From the foregoing provisions, I conclude that when the head decides to give access to a record, the head must decide whether to give access by allowing the applicant to view the record or to receive a copy of it. In deciding to provide a copy of the record rather than allowing the applicant to view it, the head of the public body must first form the opinion that at least one of the three factors listed in section 4 of the Regulation applies.

[para 11] Section 1(q) of the FOIP Act defines the term “record” for the purposes of the Act. It states:

*I In this Act,*

*(q) “record” means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records [...]*

From the foregoing, I conclude that a “record” within the terms of the FOIP Act may be a document, or it may be “documents”. In other words, one page may be one record under the FOIP Act, but so too may be a number of pages.

[para 12] In this case, the Applicant has requested her occupational health and safety file, which is comprised of a paper file and an electronic file. While the file may be comprised of many pages, the Applicant has requested the whole file and has not indicated that she wants particular pages from it, or records from it that contain particular information. Her request, therefore, is for the occupational health and safety file as one record.

[para 13] The Public Body argues:

In this instance, there were electronic records and paper records. The paper records were archived and offsite.

With regard to the electronic records [...] such records could only be made available if there was [...] an application accessible to the Applicant. As [the] Applicant was not an authorized user of the electronic record keeping system she could not view the electronic records. So as to permit the Applicant to view the electronic records AHS would have to create a computer application for viewing that would have limited her access only to the records in question. This [in] the opinion of the head of the public body's delegate would have unduly interfered with the operations of AHS.

With regard to the paper records in order to prepare the records for viewing AHS would have to:

1. Retrieve archived records stored offsite and arrange for the return of the records.
2. Review each page line by line to remove any information that is subject to an exception under the FOIP Act as opposed to electronically reviewing the records and using software to sever the records.
3. Replace any original pages which contain information that must be removed under the FOIP Act with a copy of the page with the information manually removed.
4. Arrange for a staff person to supervise the viewing.

The work required of AHS to arrange for viewing would be more time-consuming and require more staff than providing a copy of the records. (It should be noted this was the second access request for the same information.)

[para 14] In essence, AHS argues that the first two considerations under section 4 of the Regulation factored into its decision to provide the Applicant with a copy of the file. It was required to sever information from the file and severing the information from the paper portion of the file to prepare them for viewing would be time consuming. In addition, having a staff member there to replace pages and supervise viewing would be costly. However, if AHS did not do these things with the paper file, the possibility would arise that information the FOIP Act authorizes or requires it to withhold from the Applicant would be disclosed. Moreover, it could not permit the Applicant to view the electronic portion of the file without creating a new application that would ensure she did not view information the FOIP Act requires it to withhold from her. In AHS's view, creating a new computer application to enable the Applicant to view the electronic records would be far more costly and time consuming than providing a copy of the file.

[para 15] There is insufficient evidence before me to establish that it would interfere with AHS's operations to sever the file to make its contents available for viewing. While it has explained that it would have to spend money and use employees that it might

otherwise use for other purposes to supervise the viewing, its evidence falls short of establishing that this would amount to interference with its operations, given that it must sever the information in any event, and has employees on staff who can perform this task. In Order F2011-R-001, I noted that the phrase “interference with a public body’s operations” refers to interference with its functioning as a public body:

In my view, a public body must provide evidence that its operations would be interfered with unreasonably, in order to avoid the duty to create an electronic record under section 10(2). The “operations” of a public body in this provision, refer to its activities as a public body. In the case of the Public Body, its operations would include such things as providing instruction and conducting research. There is no evidence before me that the Public Body’s operations in these areas, or any areas, were interfered with, or were likely to be interfered with, by performing an electronic keyword search of records stored on its backup server.

If AHS could establish that its ability to provide services to the public would be undermined by giving the Applicant the opportunity to examine the files, then the requirements of section 4(a) of the Regulation may be met.

[para 16] In response to my questions regarding its application of section 4(a) of the Regulation, the Public Body indicated that section 4(b) of the Regulation authorized it to provide a copy of the Applicant’s file to her, rather than to provide her the opportunity to examine the file.

[para 17] In response to my question as to whether there were any pages or portions of her file that the Applicant sought to examine personally, the Applicant referred generally to screenshots of records she had attached to her request for review. These records refer to the Applicant being given the opportunity to view her file in 2013. It is not clear to me that these records are part of the files the Applicant would like to examine. Rather, I interpret her purpose in providing these records as supporting her claim that she should be able to examine the file now, as she was in 2013. I am left with no indication from the Applicant as to whether there are specific portions or pages in her file that she would like to examine.

[para 18] I agree with the Public Body that section 4(b) of the Regulation authorizes it to provide a copy of the file in this case, rather than to allow the Applicant to examine it.

[para 19] Section 4(b) of the Regulation authorizes a public body to provide a copy of a record when allowing an applicant to examine the original record would result in disclosure of information the head of the public body is authorized or required not to disclose. In my view, once a head has made the decision to sever information from a record under one of the exceptions to disclosure in the FOIP Act, section 4(b) applies. As discussed above, I find that the file in this case is one record. I acknowledge that the Public Body has considered ways of severing information from the file and allowing the Applicant to then view the file but rejected these as too expensive and time consuming. However, assuming the Public Body did develop an economical means of severing information from the file and made a severed version available to the Applicant for examination, it would not be providing the file or part of it to the Applicant, as it would

be providing a severed version of it. If the Public Body attempted to shield the information to be severed by covering it temporarily from the Applicant's view, then it would not be permitting her to *examine* the record or the part of it that she requested to examine. In this case, the Applicant has requested her entire file. However, she cannot examine this record as the Public Body has decided it must sever information from it.

[para 20] Section 13 of the FOIP Act distinguishes between "a record or part of it" and "a copy of a record." In the context of section 13, the record refers to an original document, while a copy is a copy that is made from an original document. Section 4 of the Regulation continues this same distinction. Section 4 holds that a *copy* of a record should be given when examination *of the record* would result in disclosure of information subject to exceptions. If the Applicant were permitted to examine the original record, she would necessarily also be permitted to view the information the head has decided to sever from it, because the information to be severed is part of the original record as much as is the information that would not be severed. As AHS has decided to sever information from the file, the Applicant cannot be given the original file for examination, whether in paper or electronic form.

[para 21] The Applicant argues:

I believe the public body is using the Act to avoid showing me the actual copy as [opposed] to the copy that was sent to me by the public body, that obviously has been altered.

AHS has altered the original records by severing information it is authorized or required to sever under the FOIP Act and provided copies of the remaining information in the file to the Applicant as section 6 of the FOIP Act requires it to do. Paper copies have been provided of the electronic portion of the file. The FOIP Act does not require AHS to provide the original of the severed file to the Applicant for examination, by reference to section 4(b) of the Regulation.

[para 22] As the Applicant has framed her request, she is seeking to examine her *entire* occupational health and safety file and she has not suggested that there are specific records contained within the file that she would like to examine. As a result the information she is seeking to examine is subject to severing and section 4(b) of the Regulation applies. However, if she were to reframe her request by listing specific records she would like to examine, and if these records have not had information severed from them, then the Public Body must turn its mind to giving her the opportunity to examine the originals of such records, unless section 4(a) or (c) apply.

[para 23] Based on the Public Body's evidence, I find that section 4(b) applies and authorizes it to give access to the Applicant by providing a severed copy of the file rather than by allowing her to examine the original.

[para 24] The Applicant points out that in 2013 she was permitted by AHS to view the electronic file she would like to examine. As noted in the background above, she provided emails which describe a process by which an employee could view the employee's own occupational health and safety file.

[para 25] I acknowledge the Applicant's argument that AHS permitted her to examine her file in 2013. However, the evidence the Applicant provided supports finding that she received this opportunity because she had recently been an employee of AHS in 2013 and that employees and recent employees could request to see their occupational health and safety files. I say this because she was also authorized to bring a union representative to view the file with her. The evidence also indicates the Applicant is no longer an employee or recent employee. Moreover, that the Applicant was given the opportunity to examine the file in 2013 does not alter the fact that AHS has elected to sever information from the occupational health and safety file on this occasion and is therefore authorized to provide a severed copy of the file to her in this case (unless its severing decisions are successfully challenged). Again, if there are specific records without severing that the Applicant would like to examine, she may make a request to examine those records and AHS must then consider whether section 13 requires it to provide her the opportunity to do so.

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

[para 26] The Public Body states:

AHS acknowledges that it failed to meet the legislated timelines for responding to the Applicant and at the time extended an apology to the Applicant.

In this case the Applicant's access request was received by AHS on March 18, 2014. Day 1 of the access request was the day following receipt which was March 19, 2014.

This meant that AHS was required to complete processing and send the records to the Applicant by April 17, 2014 (Day 30) unless it granted itself a 30 day extension under section 14 of the FOIP Act.

In this case, AHS wrote to the Applicant on March 28, 2014 (Day 10) seeking clarification of the date range of the records and also to inform her that it could not grant her request to view the electronic records. In that letter AHS informed the Applicant that it was extending the time limit for responding to May 19, 2014 (60 days adjusted as the 60th day fell on a Sunday).

AHS did not request or receive permission from the Information and Privacy Commissioner to extend the time limit for completing the access request. In this case the records were not sent to the Applicant until December 23, 2014.

In mitigation AHS submits that the delay was due in part to the access request originally being handled by a Coordinator who left before the processing was complete. This resulted in another Coordinator having to start again at a later date. Also, the records in this access request were the same ones that were at issue in Order F2014-38 and AHS gave priority to complying with the Order. This required AHS to prioritize and respond to the Order at the same time as processing this access request. The search ordered to comply with Order F2014-38 involved the entire FOIP & Access Services team given the wide parameters of the Applicant's request in that Order.

[para 27] AHS acknowledges that it did not respond to the Applicant's access request in a timely manner. However, it has apologized, provided copies of the

responsive records, waived all fees in relation to the access request, and provided an explanation for its delay.

[para 28] As AHS has now responded to the Applicant's access request, there would be no benefit in ordering it to respond to the Applicant under the Act and so I will make no order in relation to section 11.

#### **IV. ORDER**

[para 29] I make this Order under section 72 of the Act.

[para 30] I confirm that the Public Body has met its duty to the Applicant under section 13 of the Act by providing the Applicant with copies of responsive records.

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Teresa Cunningham  
Adjudicator