

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-73

September 21, 2017

ALBERTA CHILDREN'S SERVICES

Case File Number 002224

Office URL: www.oipc.ab.ca

Summary: The Applicant requested review of the search conducted by Alberta Children's Services (the Public Body) as a result of Order F2015-21. In conducting the new search, the Public Body was ordered to obtain any responsive records from the Watch Me Grow Agency [Watch Me Grow] that are in Watch Me Grow's possession, as it is permitted to do by term 5.1.f of the contract between the Public Body and Watch Me Grow.

According to Order F2015-21, once the Public Body conducted the new search, if it was unable to locate all the records the Applicant requested, the Adjudicator required it to prepare a new response to the Applicant that contained an explanation of the new search, with reference to all the evidentiary requirements set out in Order F2007-029.

Finally, the Adjudicator had held that if the Public Body located additional responsive records, it was to provide these to the Applicant subject to the application of any applicable exceptions to disclosure.

The Public Body conducted a new search for responsive records. On October 22, 2015, it provided a new response to the Applicant. The Public Body located an additional 12 records from the Watch Me Grow Agency that it had not located in its initial search and provided them to the Applicant. (These records had been provided by Watch Me Grow to the Applicant in response to an access request under the *Personal Information Protection*

Act.) The Applicant was not satisfied with the Public Body's new response to his access request and requested an inquiry.

The Adjudicator determined that the Public Body had conducted 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(1), 17, 72; *Personal Information Protection Act*, S.A. 2003, c. P-6.5

Authorities Cited: AB: Orders 2001-16, F2007-029, F2015-21

I. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Northwest Alberta Child and Family Services Authority Region 8 (the Public Body) for "all records and documentation from / for the Watch Me Grow Agency of Grande Prairie Alberta, surrounding the placement, care, and termination of care of [his son], with the Watch Me Grow Agency in Grande Prairie."

[para 2] The Public Body responded to the Applicant on July 15, 2013. The Public Body stated:

Some of the Child Intervention records which you requested contain information that is excepted from disclosure under the Act. Excepted information was severed so that the remaining information in the document could be disclosed to you. The severed information is excepted from disclosure under section 17 of the Act. Severing was necessary because Section 17 states that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. We have noted on the record disclosed to you which section(s) of the Act we have relied on to sever the information. A copy of the records that may be disclosed pages [55] is enclosed.

It has been determined that [day-to-day] operational records in the control and / or custody of Watch Me Grow Agency are not subject to the access provisions of the FOIP Act, but rather are subject to private sector privacy legislation, specifically the Personal Information Protection (PIPA) Act.

[para 3] The Applicant requested review of the Public Body's response by the Commissioner. The Commissioner authorized mediation to resolve the dispute. The Public Body subsequently determined that the requested records from the Watch Me Grow Agency were in its custody or control and it released records 56 – 107, with some information severed from them under section 17 of the FOIP Act. The Public Body stated:

These records, relating to your son, from the Watch Me Grow – Family Child Care Program, and consisting of such documents as Attendance Records, Incident / Accident Reports and Authorizations for Medication, are being released as part of the review process with the Office of the Information and Privacy Commissioner (OIPC).

As mediation did not resolve the dispute, the matter was scheduled for a written inquiry.

[para 4] I issued Order F2015-21 on August 25, 2015. In that order, I ordered the Public Body to conduct a new search for responsive records. In conducting the new search, the Public Body was to obtain any responsive records from the agency that are in the agency's possession, as it is permitted to do by term 5.1.f of the contract between the Public Body and the Watch Me Grow agency.

[para 5] I also ordered the Public Body, once it had conducted the new search, if it was unable to locate all the records the Applicant has requested, to prepare a new response to the Applicant that contained an explanation of the new search with reference to all the evidentiary requirements set out in Order F2007-029.

[para 6] Finally, I held that if the Public Body located additional responsive records, it was to provide these to the Applicant, subject to the application of any applicable exceptions to disclosure.

[para 7] The Public Body conducted a new search for responsive records. On October 22, 2015, it provided a new response to the Applicant. The Public Body located an additional 12 records from the Watch Me Grow Agency that it had not located in its initial search and provided them to the Applicant. The Applicant was not satisfied with the Public Body's new response to his access request and requested an inquiry.

II. ISSUE

Issue A: Did the Public Body meet its obligations under section 10(1) of the Act (duty to assist applicants)?

[para 8] 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 9] 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 10] 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 11] In Order F2007-029, former Commissioner Work posed five questions that, if answered by a public body's evidence, assist the adjudicator to assess the quality of the search a public body has conducted. Answering these questions will also assist a public body to ensure that it has conducted a reasonable search. The questions are the following:

1. What specific steps were taken by the Public Body to identify and locate records responsive to the Applicant's access request?
2. What was the scope of the search conducted – for example: physical sites, program areas, databases, off-site storage areas, etc.?
3. What steps were taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.?
4. Who did the search?
5. Why does the Public Body believe no more responsive records exist than what has been found or produced?

[para 12] I will now review the Public Body's answers to each question, which it provided in its October 22, 2015 response to the Applicant.

What specific steps were taken by the Public Body to identify and locate records responsive to the Applicant's access request?

[para 13] In answer to this question, the Public Body stated:

1. What specific steps were taken by the Public Body to identify and locate records responsive to the Applicant's access request?

It had been determined that you were seeking a copy of all personal information as contained in Watch Me Grow records relating to your grandson, his father and yourself. As Watch Me Grow is a contracted agency, the only place to search for its records would be Watch Me Grow itself.

[para 14] From the foregoing, I understand that the Public Body determined that all responsive records would be located at the Watch Me Grow Agency. Given that the Applicant requested "all records and documentation *from / for the Watch Me Grow Agency of Grande Prairie Alberta* [my emphasis], surrounding the placement, care, and termination of care of [his son], with the Watch Me Grow Agency in Grande Prairie", I agree with the Public Body that responsive records would likely be at Watch Me Grow.

What was the scope of the search conducted – for example: physical sites, program areas, databases, off-site storage areas, etc.?

[para 15] In answer to this question, the Public Body stated:

2. What was the scope of the search conducted — for example, physical sites, program areas, databases, off-site storage areas, etc.?

Pursuant to the OIPC Order, on August 28, 2015 via email the Public Body requested Watch Me Grow to conduct another search for all records relating to the child, including all documentation of interactions, correspondence, etc. with both parents and grandfather, from time of first involvement up to the time the FOIP request was received on May 27, 2013. It was requested that all electronic records and all paper records/files in the time frame noted be searched, including any inventoried records or closed records or file. Watch Me Grow responded through its lawyer on September 8, 2015 that [the owner and manager] had searched the provider files and child's file, including written telephone contact notes, for the dates June 2010 to May 2013 and no other records were located over and above those already provided. The Watch Me Grow record had been received by the Information and Privacy Office (IPO) on June 10, 2013. Through the review process with OIPC, that record numbered as pages 56-107 had been disclosed as Release #2 on June 11, 2014.

On October 14, 2015, the public body via email requested yet another search of Watch Me Grow records to include business premises and any off-site locations. As well the public body requested clarification of any records retention and disposition policies they may have. Confirmation that emails were searched by keyword was also requested, plus clarification as to whether or not Watch Me Grow has a data base to be searched or just paper records.

On October 20, 2015 Watch Me Grow advised through its lawyer that following our August 28, 2015 request [the owner and manager] searched three physical files – the Applicant's ex-partner's day home provider file, the child's care provider file and the child's file. All three of those files were onsite at the Watch Me Grow place of business in a filing cabinet. Also searched were handwritten notes.

It was also finally clarified that [the owner and manager] in October 2013, in response to your PIPA request, had searched Watch Me Grow's off-site storage in a seacan located at her private residence. It is there that out-of-date files are brought and stored. That search located additional records (12 pages - handwritten note dated June 29, 2010, Family Day Home Agency Home Visitor/Consultant Checklist, Consultant Quarterly Monitoring Report & Home Visit Documentation) that were released directly to you by Watch Me Grow on June 5, 2014, and a copy of which was also provided to [a senior information and privacy manager at the OIPC] that same date. The Public Body was not aware of this additional 12 page release to you until now [emphasis in original]. As Watch Me Grow had already provided those records to you through your PIPA request, it appears Watch Me Grow considered all its records concerning your grandson had been provided. The Public Body has reviewed those records and determined that they were responsive to your FOIP request. Although you already have a redacted copy of those 12 pages as provided to you by Watch Me Grow, we will provide you with another copy next week via Express Post.

[para 16] From the foregoing, I conclude that the Public Body's new search involved learning where and how Watch Me Grow kept records. As a result of doing so, the Public Body discovered the existence of 12 records it had not located in its original search.

[para 17] The Public Body has satisfactorily explained where records were likely to be located and described how these areas were searched.

What steps were taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.?

[para 18] In answer to this question, the Public Body stated:

3. What steps were taken to identify and locate all possible repositories of record relevant to the access request: keyword searches, records retention and disposition schedules, etc.?

Watch Me Grow has advised through its lawyer that it is a small organization with no formal records retention or disposition schedules. It was clarified that a paper file is created when a child is placed at Watch Me Grow. And a paper file is created when a day home provider contracts with it. Therefore Watch Me Grow did not have a database to search for records. It is indicated that there had been no email communication with you at any time and therefore an email search was not conducted.

[The owner and manager's] lawyer has indicated that [the owner and manager] has an intimate understanding of Watch Me Grow records as she is responsible for creating and maintaining all files. She has also been dealing with this record for the past two and one half years subsequent to both a FOIP request and a PIPA request and she remains adamant that there are no other records over and above those already released to you.

The Family Day Home Standards Manual for Alberta, of which you have a copy, specifies that all records must be maintained on the premises for a period of two years. This is consistent with Schedule A of the agency contract, a copy of which was provided to you by OIPC on August 19, 2015.

[para 19] The Public Body contacted Watch Me Grow to learn how it stores records and where it stores them. From its discussion with the owner and manager, it learned that Watch Me Grow does not have a searchable database in which it keeps records. Instead it kept paper files to store information regarding children placed at Watch Me Grow. The owner and manager informed the Public Body that there are no records located at Watch Me Grow that are responsive to the access request other than those the Applicant has already received.

Who did the search?

[para 20] The Public Body stated in its response:

4. Who did the search?

[The owner and manager] Watch Me Grow, conducted all searches.

[para 21] From the Public Body's response, I understand that the owner and manager of Watch Me Grow conducted the search for responsive records at Watch Me Grow.

Why does the Public Body believe no more responsive records exist than what has been found or produced?

[para 22] The Public Body stated in its response:

5. Why does the Public Body believe no more responsive records [exist] than what has been found or produced?

Watch Me Grow records responsive to this request are consistent with the requirements of the Family Day Home Standards Manual for Alberta and the agency contract.

Although you may believe that Watch Me Grow has additional records, the Public Body has been unable to establish that there are any other records available and we are satisfied that Watch Me Grow search was thorough.

[para 23] From its submissions in relation to questions 1 – 5, I understand the Public Body to mean that the records that were located are the kinds of records it requires an agency like the Watch Me Grow agency to keep. Because records are only kept in the paper file or in offsite storage, and both these sites were searched, the Public Body is satisfied that the search was thorough. Further, the Public Body cannot find evidence to support the existence of the specific records the Applicant is seeking.

[para 24] On the evidence before me, I find that the Public Body has established that it conducted an adequate search for records.

[para 25] I acknowledge that the Applicant takes the position in his submissions that he had contact with the Watch Me Grow Agency and that notes should have been kept regarding this contact. However, the fact that notes should have been taken regarding the contact and maintained in accordance with the contract between the Public Body and Watch Me Grow and the Family Day Home Standards Manual does not mean that this was actually done, or that any records continue to exist. It appears possible that records were not kept or maintained of all contact to the standard that the Applicant believes they should have been.

[para 26] In essence, the Public Body has stated that a search has been conducted of all the areas in which responsive records are likely to be located and that it has been unable to locate anything other than the records that the Applicant has received. Ultimately, I am unable to say that there are additional responsive records in existence that the Public Body has failed to search for or locate.

[para 27] In conclusion, I find that the Public Body has now done all it can reasonably do to locate responsive records and that it has included all the records in its custody or control that are responsive to the access request in its response to the Applicant.

V. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I confirm that the Public Body has met its duty to conduct an adequate search for responsive records.

Teresa Cunningham
Adjudicator