

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2019-14**

April 9, 2019

**CALGARY POLICE SERVICE**

Case File Number 004082

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

**Summary:** The Applicant made a request for access to the Calgary Police Service (the Public Body). He requested:

[...] a copy of the In-Car Digital Video System's [ICDVS] footage from the CPS unmarked police motor vehicle (it being a white Ford Interceptor) operated by Constable [...] at approximately 12:45 PM on 1 2016 June while said vehicle travelled northbound on 19<sup>th</sup> Street W. between 16<sup>th</sup> Avenue N. and Morely Trail NW.

The Public Body responded to the Applicant, stating that it had been unable to locate responsive records. In order to answer to the Applicant's questions regarding the camera installed in the police vehicle, the Public Body's disclosure analyst contacted the ICDV unit and discovered that the camera installed in the relevant police vehicle was non-operational. The Public Body informed the Applicant that the camera had not been functioning at the relevant time (June 1, 2016).

The Adjudicator determined that the Public Body had met its duty to assist the Applicant.

**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 F2007-029, F2015-29

**Cases Cited:** *University of Alberta v. Alberta (Information and Privacy Commissioner)*  
2010 ABQB 89

## **I. BACKGROUND**

[para 1] On July 10, 2016, the Applicant made a request for access to the Calgary Police Service (the Public Body). He requested:

[...] a copy of the In-Car Digital Video System's [ICDVS] footage from the CPS unmarked police motor vehicle (it being a white Ford Interceptor) operated by Constable [...] at approximately 12:45 PM on 1 2016 June while said vehicle travelled northbound on 19<sup>th</sup> Street W. between 16<sup>th</sup> Avenue N. and Morely Trail NW.

[para 2] The Public Body responded to the Applicant's access request on August 5, 2016. The Public Body stated:

A search by the Calgary Police Service has failed to retrieve any video responsive to your request. Cst. [...] from ICDV has advised our office that no video exists in regard to this incident.

[para 3] On September 30, 2016, the Applicant emailed the Public Body and asked whether the unmarked police motor vehicle to which his access request refers was equipped with an ICDVS camera. He indicated that he believed that if it was equipped with such a camera, there would be responsive footage, even if the footage were not uploaded to a server.

[para 4] A disclosure analyst for the Public Body asked the ICDV Unit if it were possible that the ICDV camera was installed, but not active at the time of the incident. He also asked whether the camera was recording, but not uploading to the server.

[para 5] The ICDV unit replied that the ICDV was not active, as it did not have power. It indicated that none of the District Three vehicles were actively taking video prior to August 30, 2016

[para 6] On October 3, 2016, the Disclosure Analyst emailed the Applicant and stated:

Thank you for following up. I wish to advise you that I have double checked with Cst. [...] and was advised that the in-car camera was installed but was not functional at the time of the incident. Please note that [the Constable to whom the Applicant referred in his access request] did not do anything to the camera.

[para 7] On October 3, 2016, the Applicant requested review by the Commissioner.

[para 8] The Commissioner authorized a senior information and privacy manager (SIPM) to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested an inquiry. In his request for inquiry, he stated:

The Public Body's third response to my access request has never been provided to me. My only appreciation of this third response comes solely from two paragraphs found in the Report [the SIPM's findings letter]:

The CPS' FOIP Office (the FOIP Office) advised me how the ICDV video is collected, stored, retained and who can access these videos. The FOIP office said that its initial search identified two potentially responsive vehicle stops, so the Applicant was contacted to confirm license plate number of the car the Applicant was driving. Subsequently, the FOIP office found three potentially responsive files.

The FOIP office sent a request for all three videos to CPS's ICDV unit with the intention of reviewing them to determine which one was responsive to the Applicant's request. The ICDV unit informed the FOIP Office that the vehicle in question from District 3 was not connected to the ICDV server at the time in question and therefore no ICDV video was captured. [my emphasis]

[para 9] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct the inquiry to me.

[para 10] In its submissions, the Public Body provided the September 30, 2016 email from a constable in the ICDV unit responding to the question of the disclosure analyst as to whether cameras could record, despite not being connected to the server. This email states:

There were cameras installed in most of the vehicles. The hardware and wiring were all installed and ready to go. However, all the fuses were removed rendering the ICDV inactive. (There was no power to the VPU so the camera could not record.)

During the month of August 2016 the ICDV team attended District 3 and prepared all their vehicles for the cutover date. This included updating the configurations. On the 30<sup>th</sup> August 3 we attended and inserted the fuses in all the ICDV equipped vehicles. As of August 30<sup>th</sup> 2016, District 3 is now online and fully operational with ICDV. At no point before this date did we come across any District three vehicles that were actively taking video.

[para 11] The Applicant made the following comments once he received the Public Body's submissions:

With the tendering of the Respondent's *last* response, the issue of the adequacy of the search for the Record is now moot.

The Applicant's position is that the Respondent has failed – up to the moment of the inquiry – to comply with its duty to make every reasonable effort to assist the Applicant, and to assist the Applicant openly, accurately and completely, based upon:

- a) the Respondent's *several* different responses to the Applicant's same access request; and
  - b) [the] Respondent's substantial delay in providing the *last* response to the Applicant.
- [emphasis in original]

[para 12] The Applicant no longer challenges the adequacy of the Public Body's search, but takes the position that the Public Body did not provide details of its search in a timely way.

## II. ISSUE

### **Did the Public Body meet its obligations required by section 10(1) (duty to assist applicants)?**

[para 13] 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 14] 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 F2007-029, the Commissioner noted:

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 15] In Order F2015-29, the Director of Adjudication reviewed past orders of this office and noted that the duty to assist has an informational component, in the sense that a public body is required to provide explanations of the search it conducts when it is unable to locate responsive records and there is a likelihood that responsive records exist. She said:

Earlier orders of this office provide that a public body's description of its search should include a statement of the reasons why no more records exist than those that have been located. (See, for example, Order F2007-029, in which the former Commissioner included "why the Public Body believes no more responsive records exist than what has been found or produced" in the list of points that evidence as to the adequacy of a search should cover. This requirement is especially important where an applicant provides a credible reason for its belief that additional records exist.

[para 16] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), the Alberta Court of Queen's Bench confirmed that the duty to assist has an informational component. Manderscheid J. stated:

The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission*, F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):

In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and *why the Public Body believes that no more responsive records exist than what has been found or produced.* [Emphasis added in original]

Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University's rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, *its reasons for concluding that no more responsive records existed.* [My emphasis]

[para 9] From the foregoing cases, I conclude that the duty to assist requires a public body to search for responsive records. In addition, the duty to assist has an informational component, which requires the public body both to explain the search it conducted and to provide its reasons for believing that no additional records are likely to exist. The questions set out in Order F2007-029 assist a public body to comply with the informational component of the duty to assist.

[para 17] As noted in the background above, the Public Body conducted a search for records in the ICDV unit, where ICDV camera footage was likely to be located. The disclosure analyst of the Public Body promptly informed the Applicant as to what was found there. In response to the Applicant's questions as to whether the cameras could record, despite not being connected to a server, the disclosure analyst took the step of finding out, by asking the ICDV unit. The answer was that the cameras were non-functional as they did not have fuses. The disclosure analyst explained to the Applicant – only four days after receiving the Applicant's question – that the camera footage the Applicant was seeking did not exist, because the camera in the police vehicle was not functioning.

[para 18] The disclosure analyst did not explain that the camera did not have a fuse; however, I find that the duty to assist does not necessarily require that degree of specificity. The Public Body could have said the camera lacked power, did not have a fuse, or was non-functional, to describe the same state. The Public Body chose to provide the more general explanation that it did not have any camera footage because the camera was not functioning at the relevant time. In my view, this explanation satisfies the informational component of the duty to assist in this case: the Public Body could not locate video footage because none was created. No footage was created, because the camera in this case was not functional.

[para 19] I acknowledge that the Applicant believes he has received inconsistent answers regarding his access request. When I review the responses the Public Body provided to the Applicant directly, I note that they are consistent. The Public Body's response of October 3, 2016 differs from its August 5, 2016 response only in that it seeks to answer the Applicant's questions as to whether there could possibly be video footage, even though the camera in question was not connected to a server. (The Public Body informed the Applicant that the camera was non-functional.)

[para 20] The only inconsistency I note is that which the Applicant describes as the Public Body’s “third response” – the quoted passage he provides of the SIPM’s summary of the Public Body’s submissions in the findings letter. I agree that if it were the case that the Public Body indicated it requested and reviewed *videos* and also suggested that it did not have responsive footage because the camera was not connected to the server (as opposed to being non-functioning), this would be an account inconsistent with the Public Body’s previous responses to the Applicant. However, the Public Body’s submissions to the SIPM are not in evidence in this inquiry and I am unable to determine whether the cited passage accurately reproduces the Public Body’s submissions to the SIPM. It seems possible that the SIPM could have interpreted the Public Body’s submissions as something other than what the Public Body intended to convey and what the evidence before me establishes to be true. I *am* able to conclude, on the basis of the Public Body’s two responses to the Applicant and its submissions and evidence for the inquiry, that the Public Body responded to the Applicant openly, accurately, and completely, thereby meeting the informational component to the duty to assist.

[para 21] To conclude, I find that the Public Body conducted a reasonable search for responsive records, and that it satisfied the informational component of the duty to assist.

### **III. ORDER**

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

[para 23] I confirm that the Public Body met its duty to assist the Applicant.

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Teresa Cunningham  
Adjudicator