

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2019-32

September 11, 2019

### MUNICIPAL AFFAIRS

Case File Number 002959

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

**Summary:** An individual made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), dated March 9, 2016 to Municipal Affairs (the Public Body). The request was for emails sent by an individual employed by the Public Body to Thorhild County Councillors and the Thorhild County Acting CAO.

The Applicant requested a review by this Office, during which time the Public Body provided a response to the Applicant.

The Applicant subsequently requested an inquiry into the Public Body's response.

The Adjudicator determined that the Public Body 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, 72.

**Authorities Cited: AB:** Investigation Report F2019-IR-01, Orders 97-006, F2007-029.

#### I. BACKGROUND

[para 1] An individual made an access request under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), dated March 9, 2016 to Municipal Affairs (the

Public Body). The request was for emails sent by an individual employed by the Public Body to Thorhild County Councillors and the Thorhild County Acting CAO. The timeframe was September 1, 2015 to December 31, 2015.

[para 2] The Applicant requested a review of the Public Body's search for responsive records, and the time taken to respond. Subsequent to the review, the Applicant requested an inquiry into the search for responsive records (specifically relating to deleted emails). In his request for inquiry, the Applicant also stated that 15 pages of responsive records were missing (pages 9-23).

[para 3] The Public Body responded to the Applicant's issue regarding pages 9-23, by letter dated March 10, 2017 (a copy was provided to me for this inquiry). In that letter, the Public Body explains that the information on pages 9-23 had been withheld under section 27(1). However, the Public Body decided to withdraw its application of that, or any other, exception to access. It provided a copy of pages 9-23 to the Applicant with that letter.

[para 4] In his submission to the inquiry, the Applicant raised a concern that the Public Body employee retained some of his emails as official records, while deleting others as 'transitory'. Whether records should be considered to be official or transitory is not a matter falling within the scope of the FOIP Act. Therefore, I do not have jurisdiction to consider whether the employee's emails were properly categorized.

[para 5] The sole issue remaining for this inquiry is the adequacy of the Public Body's search for records, specifically deleted emails.

## **II. RECORDS AT ISSUE**

[para 6] As the inquiry relates to the Public Body's obligations under section 10(1), there are no records at issue.

## **III. ISSUES**

[para 7] The issue set out in the Notice of Inquiry dated June 10, 2019, is as follows:

1. Did the Respondent meet its obligations required by section 10(1) of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Respondent conducted an adequate search for responsive records.

## **IV. DISCUSSION OF ISSUES**

[para 8] A public body's obligation to respond to an applicant's access request is set out in section 10, which 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] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the applicant (see Order 97-006, at para. 7).

[para 10] In Order F2007-029, the former Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

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 (at para. 66)

[para 11] The Applicant argues that the Public Body's search was not adequate because it searched only the Public Body employee's computer files. He argues that the Public Body ought to have searched for deleted emails. The Applicant has specified certain emails dated December 1 and 2, 2015, that he is seeking.

[para 12] The Public Body's submission details the search conducted in response to the Applicant's access request. I will focus on the details relating to any deleted emails, as the Applicant's concerns related to deleted emails.

[para 13] The Public Body states that the employee in question searched his inbox, deleted items folder and sent items folder when searching for responsive records. The employee had deleted some emails as transitory, prior to the Applicant's access request. As noted earlier in this Order, whether the employee correctly identified emails as transitory is not an issue in this inquiry.

[para 14] The Public Body also provided information about its ability to retrieve deleted emails. It states:

- "soft deleted" items remain in a "deleted items" folder for 30 days; they are then "hard deleted";
- hard deleted items remain in a "recover deleted items" folder for an additional 30 days;

- back up tapes allow for system recovery in the event of a catastrophic event. These tapes retain “live” data that is accessible via the email application. Daily back up tapes are retained for 30 days and are then overwritten.

[para 15] Regarding emails dated December 1 and 2, 2015, the Public Body states that “the back-up tapes made relative to December 1<sup>st</sup> and 2<sup>nd</sup> have been overwritten, and if the emails were sent, replied to, and deleted all within one day, no back-up of this material would have existed, assuming the deletion occurred prior to the back-up being done” (submission at page 3).

[para 16] The Public Body provided me with a copy of the search form filled out and signed by the employee whose emails were requested. The search was conducted on March 15, 2016, and the employee states that all relevant files were provided. If the employee had ‘soft deleted’ any responsive emails in the previous 30 days, such that they remained in the deleted folder on the email application, those emails would have been located during a search by the employee.

[para 17] In correspondence from the Public Body to the Applicant (dated March 26, 2016, provided with the Public Body’s submission), the Public Body explains that the employee confirmed that he considered the emails in question to be transitory, and that he manages his email on a daily basis – ensuring official records are kept and transitory records are deleted. The implication is that the emails in question would have been deleted soon after they were sent to or from the employee’s inbox, as he considered them to be transitory. In the March 26 correspondence, the Public Body informed that Applicant that it contacted its IT area to inquire about recovering deleted emails. The IT area responded that a recovery would not be possible given the deletion date, based on the email retention dates noted above.

[para 18] I accept the Public Body’s explanation regarding the deleted emails. Public bodies are not required to keep copies of all transitory records indefinitely. Indeed, an extraordinary amount of storage would be required if emails could never be deleted. (See OIPC Investigation Report F2019-IR-01 concerning allegedly improper deletion of Government of Alberta emails, and OIPC publication “Guidelines for Managing Emails”<sup>1</sup>).

[para 19] The employee whose emails are at issue did not specifically state that he deleted the December 1 and 2 emails the day they were sent or received; however, his practice as described by the Public Body indicates that they would have been deleted by the employee as soon as they were no longer required by him. The emails would have been retained for an additional 30 days in the recover folder, and/or on the backup tapes (assuming the emails were not deleted by the employee the same day they were sent or received).

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1 [https://www.oipc.ab.ca/media/993375/Guide\\_Managing\\_Email\\_Mar2019.pdf](https://www.oipc.ab.ca/media/993375/Guide_Managing_Email_Mar2019.pdf)

[para 20] Based on the Public Body's explanations, specifically the documentation of the Public Body's inquiries into the possibility of retrieving deleted emails, I am satisfied that the Public Body conducted an adequate search for records.

**V. ORDER**

[para 21] I make this Order under section 72 of the Act.

[para 22] I find that the Public Body met its duty under section 10 of the Act.

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A. Swanek  
Adjudicator