

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2020-28

September 23, 2020

CITY OF CALGARY

Case File Number 004134

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the City of Calgary (the Public Body) for certain emails.

The Public Body advised the Applicant that its search failed to produce records responsive to the Applicant's access request. The Applicant sought a review of the Public Body's search for responsive records by this Office. Subsequently, the Applicant requested, and the Commissioner agreed to conduct, an inquiry into the Public Body's response.

The Adjudicator found that the Public Body conducted an adequate search for records responsive to the Applicant's access request and met its duty to assist the Applicant under section 10(1) of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1), 72.

Authorities Cited: AB: Orders F2003-001, F2007-029, F2009-009, F2013-27, H2015-01/F2015-24, F2015-34, F2017-02, F2017-39, F2017-40.

I. BACKGROUND

[para 1] On September 15, 2016, the Applicant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the City of Calgary (the Public Body) for the following records:

An email was sent by city prosecutor [name of individual (“Employee A”)] who is not a lawyer and member of the bar about me pertaining court file #B62149076L. They did not provide me this email when I requested disclosure multiple times and I believe it is pertinent to my case. I require a copy of any and all emails sent by city of Calgary staff, including [name of Employee A] and [name of individual (“Employee B”)] pertaining to court file #B62148076.

[para 2] The time frame specified for the records was 2015 – 2016.

[para 3] By letter dated October 4, 2016, the Public Body responded to the Applicant and advised as follows:

The City of Calgary has conducted a search for the records requested by you on 2016 September 15 for:

A copy of any and all emails sent by [name of Employee A] and [name of Employee B] pertaining to Court file #B62148076 between the period of 2015 March 12 to 2016 September 15.

We confirm discussions this office had with you that support the search to be exclusive to emails sent by the above-named and that we would conduct our search and limit it to the timeframe subsequent to your request 2015-P-0062 (2015 March 12).

As you are aware, your request relating to City of Calgary FOIP 2015-P-0062 sought:

Copies of any and all emails sent or received from all City of Calgary Law Department/Prosecutions branch/ municipal prosecutors/managers and administrative staff, including emails from [name of Employee B], [name of individual], [name of Employee A], and [name of individual] accounts pertaining to the subject, during the period of January 2013 – Present (2015 March 12).

This current search (2015 March 12 – 2016 September 15) has failed to produce records responsive to this FOIP request.

[para 4] The Applicant requested a review of the Public Body’s response by the Commissioner. In particular, the Applicant questioned whether the Public Body had conducted an adequate search for records. The Commissioner appointed a Senior Information and Privacy Manager to review the Public Body’s response.

[para 5] Subsequently, the Applicant requested an inquiry. The Commissioner agreed to conduct an inquiry and delegated her authority to me.

II. ISSUES

1. Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants)?

III. DISCUSSION OF ISSUES

[para 6] As a preliminary matter, I note that in the Applicant's Request for Inquiry the Applicant indicated that he believed the Senior Information and Privacy Manager made errors in fact, law and/or mixed fact and law, and made other errors in their review of the Public Body's response.

[para 7] As noted in prior Orders of this Office, an inquiry is not a review of the investigation, mediation or findings of the Senior Information and Privacy Manager (see, for example, Orders F2013-27 at para. 4, F2015-34 at para. 5, F2017-02 at para. 14, F2017-39 (upheld on judicial review) at para. 10 and F2017-40 (upheld on judicial review) at para. 10). Therefore, in this inquiry I will not be reviewing or considering any of the findings of the Senior Information and Privacy Manager.

1. Did the Public Body meet its obligations required by section 10(1) of the Act (Duty to assist applicants)?

[para 8] Section 10(1) of the Act states:

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] In Order F2007-029, the Commissioner made the following statements about a public body's duty to assist under section 10(1):

[para 46] The Public Body has the onus to establish that it has made every reasonable effort to assist the Applicant, as it is in the best position to explain the steps it has taken to assist the applicant within the meaning of section 10(1).

...

[para 50] Previous orders of my office have established that the duty to assist includes the duty to conduct an adequate search for records. In Order 2001-016, I 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) 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 what has been done.

. . .

[para 66] In general, evidence as to the adequacy of 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 10] Prior Orders of this Office have determined that an adequate search does not require perfection; a public body is required only to make every reasonable effort (see, for example, Orders F2003-001 at para. 40, F2009-009 at para. 48, and H2015-01/F2015-24 at para. 8).

[para 11] In this case, as the Applicant questioned whether the Public Body conducted an adequate search for records, this inquiry will focus on the search conducted by the Public Body.

[para 12] In support of his view that the Public Body had not conducted an adequate search, the Applicant stated in his initial submission (emphasis in original):

Please know that upon speaking to staff for the city of Calgary, I specifically recall being advised, among other things, that other emails with respect to the subject matter outlined in the above captioned action number existed but were in fact deleted by staff of the public body. In addition, I was also advised by staff of the public body that I didn't get all documents related to the matter because some of the staff who was included in the email chain was terminated and their accounts deactivated or purged. In addition, a considerable amount of concerning news media articles appear to support or reinforce such theories and beliefs pertaining possible information suppression. (<https://www.cbc.ca/news/canada/calgary/calgary-city-councillor-misconduct-harassment-discrimination-1.4698967>) I have no other additional information at this point in time and wish to respectfully rely upon my initially submitted documentation and materials.

[para 13] In its initial submission, the Public Body advised that Court file #B62149076L related to a parking violation ticket issued by the Calgary Parking Authority to the Applicant with an offence date of June 22, 2016 (the “Violation Ticket”).

[para 14] By way of background, the Public Body explained how it is involved in the prosecution of parking tickets. It stated:

2. The Public Body is a municipality, and enforces its municipal bylaws. The Public Body prosecutes violations of many municipal offences including parking offenses in Alberta Provincial Court – Traffic Court (“Traffic Court”). The Public Body’s prosecutions are generally handled by the Prosecutions Section of the Public Body’s Law Department. These prosecutions may be handled by either a lawyer, a municipal prosecutor, or in some cases a student-at-law employed by the Public Body. There are several paralegals and assistants within the Prosecutions Section who support the lawyers, municipal prosecutors, and students-at-law.
3. Calgary Parking Authority manages and operates public parking facilities as well as on-street parking within the City of Calgary. The Calgary Parking Authority was established as a committee of Calgary City Council by a City of Calgary Bylaw number 28M2002, included as Tab 3. All the members of the Calgary Parking Authority’s governing committee are appointed by the Public Body.
4. Pursuant to the Act, the Calgary Parking Authority is a “local government body” and has operated as a public body separate from the Public Body under the Act.¹ Parking violations issued by the Calgary Parking Authority are referred to, and prosecuted by the Public Body.

[para 15] The Public Body provided the following information on the specific steps it took to identify and locate records responsive to the Applicant’s access request:

18. The Public Body’s Access and Privacy Analysts (“Analyst”) review an Applicant’s access request and identify which business units may have records that would be responsive to the request. The Access and Privacy division then provides a business unit record request to the applicable business unit within the Public Body with the information necessary to conduct a search for records.
19. The business unit that conducted the search at issue was Law. The Analyst determined Law was the appropriate business unit as the Applicant identified that the request was for a specific “court file” (“Violation Ticket”) and the individuals named in the access request worked in the Prosecution Section of the Law business unit.

¹ Section 1(i)(xii) of the Act.

20. The Public Body took steps to clarify the request with the Applicant and clarified the Applicant was seeking emails sent by the specifically named Public Body employees about the Violation Ticket. The time frame of the request was clarified to commence on the date that the search for records conducted in the Applicant's previous access request had concluded. This was initially thought to be April 13, 2015.
21. The Analyst subsequently expanded the timeframe by an additional month when she determined the search for records conducted in the Applicant's previous access request had concluded in March 2015. The timeframe for the search was March 12, 2015 – September 15, 2016 (the date which the Public Body had received the Applicant's access request).

[para 16] The Public Body described the scope of its search as follows:

22. A search was conducted on: 1) Law's shared drive on which electronic legal files are stored, 2) Prolaw which is an electronic legal software system that stores and manages legal files, and 3) Microsoft Outlook where emails may be stored. These are the electronic systems which are used by the Law business unit and are where electronic records are generally stored.
23. The specific employees named in the Applicant's access request conducted a search for responsive records in all items in the Microsoft Outlook. The Public Body also conducted a search using the Justice Online Information Network ("JOIN"). Information contained on JOIN indicated that the issuing agency for the Ticket was the Calgary Parking Authority, the Violation Ticket offence date was June 22, 2016, and a not guilty plea (by mail) was received at the Justice of the Peace counter in Traffic Court on September 7, 2016. An initial trial date of November 29, 2016 was set in Traffic Court. The name listed as the accused in association with the Violation Ticket was that of the Applicant.
24. This search on JOIN was done to determine the status of the ticket before the Traffic Court and to determine whether the ticket had been set for trial. The Public Body receives a violation ticket and information about violation tickets from the issuing agency in the following circumstances:
 - i. when the issuing agency has been notified by Traffic Court that a trial date has been set, the issuing agency will provide information relating to the violation ticket to the Public Body's Prosecution Section; or
 - ii. when the Public Body's Prosecution Section receives a municipal offence request for disclosure from the accused or their representative the Prosecutions Section will request information relating to the violation ticket from the issuing agency
25. A municipal offence request for disclosure is a request for information about municipal offences requested by the offender or their representative and is not an access request under the Act.

26. The Prosecution Section did not receive a municipal offence request for disclosure from the Applicant or his representative until the trial date of November 29, 2016.
27. The issuing agency was the Calgary Parking Authority and information relating to the Violation Ticket was received by the Public Body (Prosecutions Section) from Calgary Parking Authority sometime after September 22, 2016. Information received by the Public Body from the Calgary Parking Authority did not contain/include any emails sent by either of the employees named in the Applicant's access request.

[para 17] The Public Body described the steps it took to identify and locate all possible repositories where there may be records relevant to the access request, and who did the search as follows:

28. The Public Body searched Outlook, Prolaw, and the Shared Drive which are electronic systems used to store and manage electronic files (including emails) in the Law business unit. The search on Prolaw and the shared drive was conducted by a paralegal whose job responsibility was to conduct searches for records pursuant to a request for records made under the Act and who was trained to conduct such searches. The Public Body's employees who were specifically named in the access request searched all items within their Outlook Programs and used keywords which were appropriate for the request, including the Violation Ticket number, and the Applicant's name.

[para 18] The Public Body provided the following explanation as to why it believed no responsive records existed to the Applicant's access request:

29. The Public Body conducted a search for records in accordance with the Applicant's access request. The Public Body searched for records in electronic systems where it reasonably believed responsive records would be held. The Public Body's employees who were specifically named in the access request conducted searches for responsive records in a system where emails would reasonably be located. The Public Body determined the Violation Ticket had an offence date of June 22, 2016. No responsive records would have been created before June 22, 2016 which was the offence date of the Violation Ticket.
30. For the remaining time period of the Applicant's request (June 22, 2016 – September 15, 2016), the Public Body did not have information or records about the Violation Ticket as the Public Body had not yet received information about the Violation Ticket from the issuing agency. Also, the Public Body had not received a request for disclosure from the Applicant or his representative for the Violation Ticket, therefore, the Public Body did not request information about the Violation Ticket from the issuing agency.
31. Based on the foregoing reasons the Public Body reasonably believes that during the time frame established in the access request [March 12, 2015 –

September 15, 2016] the Public Body did not have responsive records pertaining to the Violation Ticket.

[para 19] As part of its initial submission, the Public Body provided an affidavit sworn by an individual employed as an analyst in the Access, Privacy and Policy division of the Public Body (the “Analyst”), to support the statements it made in its initial submission.

[para 20] In her affidavit, the Analyst provided specific details about the searches undertaken by the Public Body to respond to the Applicant’s access request, including the searches conducted by the paralegal within the Law Business Unit who performed the searches on Law’s shared drive and Prolaw, as well as the searches conducted by Employee A and Employee B in their Outlook programs.

[para 21] The Analyst also advised in her affidavit that the Public Body’s response to the Applicant dated October 4, 2016 incorrectly referred to Court file #B62148076; however, the searches that were conducted, were conducted on the correct Court file #B62149076L:

- 16) On October 4, 2016 I sent correspondence to the Applicant which confirmed a search for records was conducted in accordance with his clarified access request and that no responsive records had been located. Due to a typographical error in my October 4, 2016 correspondence Court file # B62149076L was erroneously described as #B62148076. However, the search for records was performed on Court file #B62149076L. A copy of the correspondence sent to the Applicant is attached and labelled as Exhibit “A”.

[para 22] In addition to the Analyst’s affidavit, the Public Body provided an affidavit sworn by an individual employed as a court coordinator with the Public Body (the “Court Coordinator”), who conducted the search for responsive records in the Justice Online Information Network referenced by the Public Body in its initial submission.

[para 23] In her affidavit, the Court Coordinator provided the following information about the Violation Ticket:

10. The information from JOIN indicated that the offence date of ticket B62149076L was June 22, 2016 (the “Violation Ticket”). The issuing agency was Calgary Parking Authority, and the name listed as the accused in association with the Violation Ticket was the Applicant.

[para 24] The Court Coordinator provided the following information in her affidavit about when the Public Body received the Violation Ticket and information pertaining to the Violation Ticket from the Calgary Parking Authority:

15. Sometime after September 22, 2016, the Prosecution Section received the Violation Ticket and information pertaining to the Violation Ticket from Calgary Parking Authority. The information received from the Calgary

Parking Authority did not contain or include any emails from [name of Employee A] or [name of Employee B].

[para 25] Based on the submissions of the Public Body, I understand the Applicant's clarified access request was for a copy of any and all emails sent by [name of Employee A] and [name of Employee B] pertaining to Court file #B62149076L between April 13, 2015 and September 15, 2016, and that the Public Body expanded the date range for the search to be from March 12, 2015 to September 15, 2016, as the Applicant had made a previous access request for certain records from January 2013 to March 12, 2015 and the Analyst wanted to ensure that any responsive records to the Applicant's access request dated September 15, 2016, would be captured by the new search.²

[para 26] The Public Body's evidence indicates that the offence date of the Violation Ticket was June 22, 2016. It is not possible for the Public Body to have records about the Applicant's Violation Ticket before the Violation Ticket was even created.

[para 27] For the remaining time period of the Applicant's request (June 22, 2016 – September 15, 2016), the Public Body submitted that it did not have information or records about the Violation Ticket as the Public Body had not yet received information about the Violation Ticket from the issuing agency.

[para 28] The Public Body's evidence is that it conducted a search for responsive records in all possible repositories where there may be records responsive to the access request, and that no responsive records were located. It provided detailed information about its search that addressed the points set out in Order F2007-029.

[para 29] The Applicant submitted he was told by one or more employees of the Public Body that records responsive to his access request had been deleted by staff of the Public Body. He also stated he was advised by staff of the Public Body that he didn't get all documents related to the matter because some of the staff who were included in the email chain were terminated and their accounts deactivated or purged. He did not provide the names of these employees who allegedly told him this or the dates he was allegedly told this information, or any evidence to support these assertions.

[para 30] The Public Body submitted that the employees who were specifically named in the access request searched all items within their Outlook Programs and no responsive records were found.

[para 31] As I understand the Public Body's submissions, the circumstances in this case suggest that it is unlikely that any emails about the Violation Ticket had been created by Employee A or Employee B between June 22, 2016, being the offence date of the Violation Ticket, and September 15, 2016, being the date of the Applicant's access request.

² The Applicant requested an inquiry into the Public Body's response of October 4, 2016 to his access request dated September 15, 2016. The Applicant's previous access request and the Public Body's response do not form part of and have not been considered in this inquiry.

[para 32] The newspaper article the Applicant referenced as supporting his assertion that the Public Body suppresses information is not relevant to whether the Public Body conducted an adequate search for responsive records in this case.

[para 33] Based on the submissions and evidence provided by the Public Body, I find that the Public Body conducted an adequate search for records responsive to the Applicant's access request and met its duty to assist the Applicant under section 10(1) of the Act.

IV. ORDER

[para 34] I make this Order under section 72 of the Act.

[para 35] I find that the Public Body conducted an adequate search for records responsive to the Applicant's access request and met its duty to assist the Applicant under section 10(1) of the Act.

Carmen Mann
Adjudicator