

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2006-012

March 2, 2007

PETRA CORP.

Case File Number P0269

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to an Organization under the *Personal Information Protection Act* (the “Act”) for information in its files about him as well as for letters written by him, or to him, by a particular individual, regarding particular matters. The Organization responded to the Applicant that it did not have the information he requested. The Organization did not provide a submission in this inquiry.

The Adjudicator found that the Applicant had provided a sufficient factual foundation for his idea that the Organization is or may be in possession of records containing information about him that it failed to locate, or failed to provide. The burden therefore fell on the Organization to show that it had conducted an adequate search for the records as required by section 27(1)(a) of the Act, and that it had provided an adequate response, as required by section 29. As the Organization had not provided a submission in the inquiry, it had not discharged this burden.

The Adjudicator ordered the Organization to take steps to fulfill its duties under the Act, or to demonstrate that it had already done so.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 27(1)(a), 29, 52.

I. BACKGROUND

[para 1] The Applicant made a request to an Organization under the *Personal Information Protection Act* (the “Act”) for information in its files about him as well as for letters written by him, or to him, by a particular individual, regarding particular matters.

[para 2] The Organization responded that it did not have the requested information.

[para 3] The Applicant requested a review of the Organization’s response to him. Mediation was not successful, and the matter proceeded to inquiry. The Organization did not provide a submission.

I. RECORDS AT ISSUE

[para 4] The Organization did not provide any records to the Applicant and told him it could locate none, but the Applicant claims the Organization must have records about him in its possession.

III. ISSUES

[para 5] The issues stated in the Inquiry were as follows:

Issue A: Did the Organization conduct an adequate search for responsive records and thereby meet its duty to the Applicant, as required by section 27(1)(a) of the Act?

Issue B: Did the Organization comply with section 29 of the Act (contents of a response)?

IV. DISCUSSION OF ISSUES

[para 6] In this case, I will deal with both issues together.

[para 7] The Applicant provided a submission. It appears English is not his first language, and his submission was somewhat illegible and hard to understand. I therefore asked him for a supplementary submission to clarify some of his points.

[para 8] The submissions seem to suggest that particular documents, related to the Applicant, had to have been in the possession of the respondent Organization, because the Applicant has copies of documents created by the Organization that refer to him. These include a notice to vacate premises provided to the Applicant by the Organization, a notice of a rent increase provided to the Applicant by the Organization, a copy of a dispute note filed by the Organization to a claim brought by the Applicant, and a settlement agreement between the Applicant and the Organization. The Applicant provided copies of these documents to this Office. A particular document that he

requested (which he described as information about him and letters written to him or by him “to [a particular person] regarding #211 [another particular person] and satellite dish and property of [a named organization] all cities the paper I was signe [sic] on Sept 23-04”), is not among the documents provided by him to this Office.

[para 9] As well, the Applicant seems to suggest that he knows that another organization had these documents or some of them (because they were provided to him by the other organization in the course of a court proceeding). He thinks they could only have been provided to the second organization by the respondent Organization.

[para 10] The Organization did not provide a submission in this inquiry.

[para 11] Previous orders of this Office under the *Freedom of Information and Protection of Privacy Act* have addressed the burden of proof relative to whether a public body has discharged its duty to conduct an adequate search. They have said that because a public body is in a better position than an applicant to show if an adequate search was done, this burden lies on the public body. The same principle is applicable to an organization under the *Personal Information Protection Act*.

[para 12] However, before it is reasonable to ask an organization to show that it conducted an adequate search for a particular record that an applicant is seeking, or provided an adequate response, an applicant must first provide some basis for the idea that the organization is or may be in possession of the particular record that it failed to locate, or failed to provide. In this case the Applicant has provided copies of documents pertaining to him that were created by the Organization (that were, presumably, not provided to him in this access request). In my view, this is enough to place the burden on the Organization to show that it conducted an adequate search for documents in its possession that contain information about the Applicant, and that it provided a proper response.

[para 13] It does not follow from the fact the Organization was once in possession of the documents that it retained copies of them. The material before me includes correspondence from the Organization (to an unspecified recipient), copied to an employee of this Office, indicating that a search was done and records were not located. However, the Organization did not provide a submission in this inquiry. It did not tell me that it conducted a search, how it conducted it, and what response it gave to the Applicant. It also gave no explanation as to what might have happened to documents that recorded its various dealings with the Applicant. I note that the fact the Applicant may have received some documents from the Organization through some other process may in some circumstances, but does not necessarily, obviate an Organization’s duty to provide them in response to an access request under the Act.

V. ORDER

[para 14] I make this Order under section 52 of the Act.

[para 15] The Organization has not shown me that it conducted an adequate search as required by section 27(1)(a) of the Act, or that it provided an adequate response, as required by section 29, in reply to the Applicant's request.

[para 16] I therefore order the Organization to take steps to meet its duty under sections 27(1)(a) and section 29 of the Act, to conduct an adequate search and to provide an adequate response to the Applicant, or, if it has already done so, to demonstrate to me that this is so.

[para 17] I further order the Organization to notify me in writing, within 50 days of its receipt of a copy of this Order, that the Organization has complied with my Order.

Christina Gauk, Ph.D.
Director of Adjudication