

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2019-05

October 4, 2019

YWCA OF CALGARY

Case File Number 002956

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to the YWCA of Calgary (the Organization) under the *Personal Information Protection Act* (PIPA) for his and his children's personal information. The Organization responded to the request on May 6, 2016. The Applicant requested a review of the search for information conducted by the Organization.

The Adjudicator found that the Organization conducted an adequate search for responsive records. The Applicant's submissions indicated that he may have expected to receive information he is not entitled to under PIPA. The Organization also confirmed that there are no backups of emails from the timeframe of the Applicant's request.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 27, 52.

Authorities Cited: AB: Orders F2018-75, P2006-006, P2006-007.

I. BACKGROUND

[para 1] The Applicant states that he made an access request under the *Personal Information Protection Act* (PIPA) to the YWCA of Calgary (the Organization) in October 2013 to which he did not receive a response. He made another access request under PIPA in November 2015. The Applicant's requests are for his and his children's personal information. The Organization responded to the request, providing responsive information on May 6, 2016, November 18, 2016,

and December 5, 2016. The Applicant states that he received additional pages on February 11, 2019.

[para 2] The Applicant requested a review of the search for information conducted by the Organization. The Applicant subsequently requested an inquiry, which the Commissioner granted. Specifically, the Applicant states that he believes the Organization has more information regarding the Applicant's involvement and/or correspondence with the Organization and other entities.

II. ISSUES

[para 3] The Notice of Inquiry, dated January 10, 2019, states the issue for inquiry as the following:

Did the Respondent meet its obligations required by section 27(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.

III. DISCUSSION OF ISSUES

Preliminary issue – additional issues raised by the Applicant

[para 4] The sole issue in the Notice of Inquiry sent to the parties is the Organization's search for responsive information. In his 1000+ page initial submission to the inquiry, the Applicant raised numerous issues that were not addressed in the investigation/mediation by this Office, that were not included in the Notice of Inquiry, and/or that do not fall within the jurisdiction of this Office.

[para 5] The Applicant refers to "privacy concerns" at several points in his submission; he also refers to wanting to correct personal information. While these issues fall within the scope of PIPA, they were not raised by the Applicant during the investigation/mediation and do not relate to the sole issue identified in the Notice of Inquiry. The Applicant can file a complaint with this Office with respect to privacy concerns and make a request for correction of his personal information to the Organization if he wishes.

[para 6] The Applicant argues, at page 20 of his submission, that fees associated with his request should be waived. I do not know if the Organization charged fees for the information provided to the Applicant. If so, I do not have the Organization's decision regarding fees. I do not know if the Applicant made a request to the Organization to waive the fees, and if so, how the Organization responded. I cannot review a decision made by the Organization if the Organization has not yet made the decision, or if I do not know what the decision was. If the Applicant was charged fees by the Organization and wished to dispute those fees, he needed to have raised that issue well before his submission to an inquiry into another matter.

[para 7] The Applicant has also made voluminous submissions outlining the deleterious effects he has experienced as a result of not obtaining the information he sought by the Organization, in

a timely manner. To the extent that these submissions are relevant to the issue of whether the Organization conducted an adequate search for records, I will consider them.

[para 8] Lastly, the Applicant has raised numerous concerns regarding the integrity and competence of the Organization and its employees. These are not matters that fall within the jurisdiction of this Office.

Did the Respondent meet its obligations required by section 27(1) of the Act (duty to assist applicants)?

[para 9] Section 27(1)(a) of the Act states the following:

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible,

...

[para 10] The duty to assist under section 27(1)(a) includes an obligation to conduct an adequate search (Orders P2006-006 and P2006-007).

[para 11] The *Notice of Inquiry* directs the Organization to provide its submission in the form of a sworn document describing the search it conducted in response to the Applicant's request. It directs the Organization to consider addressing the following:

- The specific steps taken by the Respondent to identify and locate records responsive to the Applicant's access request.
- The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search? (Note: that person or persons is the best person to provide the direct evidence).
- Why the Respondent believes no more responsive records exist other than what has been found or produced. (In answering this question the Respondent should have regard to the reasons the Applicant gave for believing more records exist than were located/provided to him/her **or** in answering this question the Respondent should have regard to the Applicant's description of the records/kinds or records he/she believes should have been provided to him/her.)
- Any other relevant information.

[para 12] The Applicant has referred to various Organization employees, other bodies (such as the courts) and employees of other bodies he has had dealings with. He believes that the

Organization's search should locate communications with those employees and bodies. For example, the Applicant has provided excerpts of transcripts from legal proceedings relating to custody of his children, and has highlighted sentences where counsel for his former spouse references emails she (counsel) sent to the Applicant (tab 180 of the Applicant's September 30, 2019 submission). It is not clear why the Applicant believes the Organization would have custody or control of any such emails as the Organization does not appear to be party to the proceedings.

[para 13] It may be the case that the Applicant expects to receive information that he does not have a right to under PIPA. For example, he alludes to the fact that the counselling records for the program he and his family attended are not confidential. Whether this is in fact true is irrelevant: the Applicant has a right to request his own personal information. He may also request the personal information of his minor children assuming he has the requisite authority. He does not have the right to personal information of other individuals, including his ex-spouse or his adult children, under PIPA. This is the case regardless of whether their personal information is held by the Organization in confidence or not.

[para 14] Further, under PIPA personal information is information *about* an individual. The Applicant is entitled information *about him* (and/or the minor child). This does not include any and all records in which his name appears, if none of the information in those records is *about* him.

[para 15] In Order F2018-75, I discussed a similar point in relation to an access request for personal information under the FOIP Act. I said (at paras. 52-53):

To clarify, the Applicant's name is his personal information wherever it appears in the records, regardless of the remaining content of the record; names are specifically listed in the definition of "personal information" under section 1(n)(i). However, in many of the records at issue, the Applicant's name appears as a way for the Public Body employees to identify a particular file; in that way, a record can contain the Applicant's name without containing any other personal information about him. For example, an email might have the Applicant's name in the subject line but the body of the email states only that a particular Public Body employee needs a copy of the file, or will be assigned to work on the file.

Where only the Applicant's name is responsive and the remainder of a record is non-responsive, the Applicant would receive a blank piece of paper with only his name on it. This would be meaningless. Past Orders of this Office have stated that there is no requirement to provide an applicant with a record if, after severing, the remaining information is rendered meaningless (Orders 96-019 and 97-020).

[para 16] In my view, the same reasoning applies to access requests under PIPA, as access requests under this Act can only be for one's own personal information (and/or, in this case, personal information of a minor child if the applicant has authority to request it). The Applicant's lengthy submissions indicate that he believes he should have received information from the Organization that he is not entitled to under the Act.

[para 17] The Applicant argues that deleted emails responsive to his request exist in the Organization's backups, and should be located. The Organization's IT Manager has stated that it

is not possible to search or retrieve emails that have been permanently deleted. I asked the Organization to provide additional information about this claim.

[para 18] The Organization clarified that a search for records would have included a search of files in a ‘trash’ folder – items that have been deleted by a user but remain accessible (i.e. not “double-deleted). The Organization also clarified that it does not have data backups from the time frame of the Applicant’s access request. Therefore, there are no backups that would include any double-deleted emails requested by the Applicant. I accept the Organization’s explanations regarding deleted emails.

[para 19] The Applicant contends that the Organization must have backups in order to recover information lost in an unforeseeable event. He states that at least one Calgary YWCA location was affected by a flood in 2013. Whether or not an organization should maintain backup files is not an issue that falls within my jurisdiction under PIPA. Aside from the Applicant’s speculative arguments, I have no reason to doubt what the Organization has told me regarding backup files.

[para 20] The Applicant has alleged that the Organization must have deleted or destroyed responsive emails if they no longer exist. It is true that, like the FOIP Act, PIPA contains a provision creating an offence for destroying responsive records after receiving an access request. However, it is not at all clear that the evidence before me leads to the Applicant’s conclusion. In any event, this inquiry is not an offence investigation and I do not have authority to investigate or prosecute an offence under the Act.

[para 21] I conclude that the Organization conducted an adequate search for responsive records.

IV. ORDER

[para 22] I make this Order under section 52 of the Act.

[para 23] I find that the Organization met its duty to assist the Applicant as required under section 27(1)(a) of the Act.

A. Swanek
Adjudicator