ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2023-31

July 11, 2023

CALGARY POLICE SERVICE

Case File Number 007052

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to the Calgary Police Service for access to all of the Applicant's personal information located in the CPS FOIP Administration files related to any and all CPS FOIP requests she had made at any time to the CPS since the beginning of 2003. The CPS responded by providing correspondence with the Applicant about the access requests and re-release of all records that were previously provided to the Applicant for every access request processed since 2010 (advising that pre-2010 records had been destroyed according to retention requirements). The CPS did not provide records concerning the internal administrative handling of the requests, as it did not consider those records to be responsive to a request for personal information.

The Applicant requested review on the basis that the CPS had interpreted her request too narrowly when it interpreted "personal information" in the context of the request as having the meaning it had been assigned by earlier decisions of this office. The Applicant also stated that the CPS should have provided information in the files that had been withheld from her in previous requests as it existed in the administration files, or alternatively it should have provided the reasons for withholding the information. She also stated her belief that more information existed in the files that had not been provided to her (or that it had been inappropriately destroyed), referring in particular to information that she had provided in support of a correction request she had made to CPS.

The Adjudicator held that CPS had interpreted "personal information" in the context of the access request appropriately, as the interpretation was in accordance with earlier decisions of this office. She also held that CPS was not required to again specify the reasons for withholding information it had withheld in earlier requests.

The Adjudicator also found that CPS's explanations for why it was unable to locate the information that the Applicant had provided to it in support of the correction request was inadequate. She ordered CPS to consider whether there might be more information as to what may have happened to these records, and to conduct a new search if this consideration made such a course reasonable. Otherwise, she ordered it to provide any other information available to it that would explain why neither the records nor information about what became of them could be located.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1), 1(n), 35(b), 36(7), 55, 72.

Authorities Cited: AB: Orders F2014-04, F2018-43, F2020-13.

I. BACKGROUND

[para 1] On June 28, 2017, the Applicant made a request to the Calgary Police Service (CPS or the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for access to all of the Applicant's personal information located in the CPS FOIP Administration files (both electronic and paper) related to any and all CPS FOIP requests she has made at any time to the CPS/CPS FOIP since the beginning of 2003.

[para 2] The CPS responded August 9, 2017, with responsive records that included:

- correspondence with the Applicant about the access requests - un-redacted, and
- re-release of all records (redacted and un-redacted) that were previously provided to the Applicant for every access request processed since 2010.

[para 3] The Applicant was advised that records from before 2010 were destroyed in accordance with the CPS's retention schedule.

[para 4] The CPS did not provide records concerning the internal administrative handling of the requests, as it did not consider those records to be responsive to a request for personal information.

[para 5] The Applicant requested that this office review numerous items in her October 17, 2017 request for review with attached Detailed Review on the basis that the Applicant had expected to receive more records than had been provided. Mediation was authorized, but was not successful, and on January 31, 2020 the Applicant requested an inquiry.

[para 6] In the Notice of Inquiry issued March 3, 2022, I asked the Applicant to provide the initial submission, so as to give her an opportunity to explain her reasons for believing more records exist than were located and provided to her and to describe as precisely as possible the records/kinds of records she believed should have been located and provided.

[para 7] In the letter accompanying the Notice, I noted the Applicant's request for inquiry had attached numerous documents, and that in past inquiries, she had relied on a series of attachments to her request for review as constituting her submission for the inquiry, rather than providing a single, concise and comprehensive submission. This had required me as the

adjudicator in these inquiries to review and try to synthesize the content of hundreds of pages of documents, which took a very considerable and disproportionate amount of time relative to other inquiries. I therefore indicated that if the Applicant wished to provide a submission for the inquiry, I required it to be a single submission addressing the issues in the Notice that did not exceed 50 pages in length inclusive of attachments. I also gave some suggestions as to the type of material contained in some of the attachments that was not helpful to include. As well, I said that if the Applicant did not comply with the requirement to provide a submission consisting of a single document not exceeding 50 pages inclusive of attachments, I would, for the purpose of deciding any related issues in this inquiry, read and consider only the first 50 pages of any submission she provided (or the first 50 pages of any document already in the possession of this office which she wished to designate in lieu of providing a submission), and that I would make only such decisions as could be made on the basis of this reviewed material together with the submissions of the CPS.

[para 8] The Applicant did not provide a submission in the form required, nor an indication of which 50 pages she would like to have considered. In her email of March 14, 2022, she indicated that she was relying on the materials she had already provided. In a subsequent email dated March 19, 2022 she reiterated this position, but also set out facts related to the history of her correction request which resulted in CPS File 2016-C-1188, explaining why she believed that correction requests the CPS had undertaken to make had not been made, and her view that decisions made by the Commissioner related to this request had been based on a misapprehension about these facts. As well, on April 27, 2023, the Applicant sent an email referring to some specific materials she had provided to this office, including specific emails by which she had requested clarification from the CPS's FOIP Unit about its response to her access request 2017-P-0969, which she said are relevant to the issues with respect to which I had requested a response from the CPS in this inquiry. The Applicant took the position that these references were offered by way of "example" of what she had already provided that was significant, and she did not explain their significance beyond commenting that they were relevant to the issues in the inquiry, as well as to the issue of retention of records.[1] The Applicant did not alter her position that consideration should be given to all the materials she had provided earlier.

[para 9] Despite the Applicant's failure to specify which 50 pages of the many materials she had provided she wanted me to consider, I reviewed the Request for Inquiry, as well as a 51-page document entitled "DETAILED REEQUEST (sic) FOR REVIEW (BY THE OIPC OF THE AUG 9/17 RESPONSE, RECEIVED AUG 19/17, TO THE JUNE 28/17 CPS REQUEST FOR ACCESS I 7-P-0969)". I will refer to this document within as 'the DRFR document'.

[para 10] The Request for Inquiry makes clear that the Applicant believes that the CPS response should have included administration materials related to her requests that is not her personal information as that term has been interpreted in earlier decisions of this office. In this regard, she states the following in her Request for Inquiry:

> Regarding the issue of what records in a FOIP Administration File are responsive records and the related issue of what is personal information within a FOIP Administration File, reliance is placed on the position taken by the RCMP with respect to what is personal information within an ATIP Administration File pursuant to the

[1] I refer to a point the Applicant made in these clarification requests in my discussion about retention periods below.

federal Privacy Act. This leads to an important issue regarding conflicting interpretation of/application of basically "parallel" provisions under the federal Privacy Act and Alberta's Freedom of Information and Protection of Privacy Act.[2]

[para 11] As well, the DRFR document referenced above makes clear that another primary concern of the Applicant is that in response to her present access request, she has not received material that had been withheld from her in the responses to her earlier access requests, nor an indication that such material had been located but withheld under particular exceptions. She also refers specifically to the unredacted version of the records at issue which she believes ought to exist in the administration files. As well, she points out that she did not receive some of the material that she had received in the CPS's responses to her earlier access requests.

[para 12] In addition, the Applicant points to a large volume of information, including 400 attachments, she sent to the CPS documenting the reasons for a correction request in CPS File 2016-C-1188, which she did not receive as part of the response to the present access request. At pages 29 of 51 and following in the PDF version of the DRFR document cited above, the Applicant discusses and lists a large number of documents/emails both sent and received by CPS and/or sent or received by the OIPC, that she believes were missing from the folders of documents provided to her from the administration file relative to her correction request File 2016-C-1188.

[para 13] In view of the foregoing, I decided to continue with this inquiry, and to ask the CPS to respond to the Applicant's arguments that I had identified in the referenced document. I indicated this to the parties on November 4, 2022, and on February 3, 2023, I sent a further letter to both parties setting out the more particular questions I had for the CPS that arose from the Applicant's statements in the aforesaid document. These questions have been added to the list of issues contained in the Notice of Inquiry, as set out below.

II. ISSUES

[para 14] The issues set out in the Notice of Inquiry were as follows:

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

   In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

   The Applicant's submission should set out their reasons for believing more records exist than were located and provided to them and/or should describe as precisely as possible records/kinds of records they believe should have been located and provided.

[2] In the clarification request materials referred to in para 8 above, the Applicant also says: "For purposes of the *FOIPP Act*, and, thus of a FOIP Request for Access, "personal information" has a fairly extensive definition and the right to access to that personal information is not restricted to only certain types of records such that the right of access applies to one's personal information located only in records such as communications previously exchanged between the public body in question and the FOIP applicant." However, the Applicant does not deviate from the position that it is personal information that she was requesting.

The Public Body's submission should provide direct evidence (preferably in the form of a sworn document) regarding the search conducted for records responsive to the Applicant's access request. In preparing the evidence, the Public Body may wish to consider addressing the following:

- *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, 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 Public Body believes no more responsive records exist other than what has been found or produced.*
- *Any other relevant information.*

2. Did the Public Body properly regard internal administrative documents as non-responsive to the access request on the basis that it is not "personal information" of the Applicant, and therefore not encompassed by the terms of the request?

[para 15] The additional questions set out in my letter to the parties of February 3, 2023 were as follows:

1. Given that [the Applicant] requested her "personal information" in a specific file, is she entitled to administration materials in the file that consist of information that is not her personal information as that term has been interpreted in some earlier decisions of this office? In other words, are records in the administration file that are not "about" [the Applicant in the sense discussed in, for example, Orders P2006-004 (at para 12) and F2007-019 (at para 20), responsive to the access request?

   In this regard, I note that [the Applicant] states the following in her Request for Inquiry:

   > Regarding the issue of what records in a FOIP Administration File are responsive records and the related issue of what is personal information within a FOIP Administration File, reliance is placed on the position taken by the RCMP with respect to what is personal information within an ATIP Administration File pursuant to the federal Privacy Act. This leads to an important issue regarding conflicting interpretation of/application of basically "parallel" provisions under the federal Privacy Act and Alberta's Freedom of Information and Protection of Privacy Act.

   In addition to the appropriate interpretation of the phrase "personal information" in the present context, I must also determine whether it was reasonable in the circumstances for the CPS to have interpreted the access request as one for "personal information" in this narrow sense, or whether it would have been more appropriate to clarify with [the Applicant] whether by using this phrase she intended to limit her access request in this way. I ask the CPS to provide any factual information or comments it may have about this question.

2. Is [the Applicant] entitled to material that had been withheld from her in the responses to her earlier requests for review, or in the alternative to an indication that such material had been located but withheld under particular exceptions? In this regard [the Applicant] refers specifically to the unredacted version of the records at issue which she believes ought to exist in administration files. As well, she points to material that she had received in responses to earlier access requests that she did not receive in response to the present request. In answering this question the CPS may wish to consider paras 65 to 70 of Order F2020-13.

3. The following questions relate to the "adequacy of search" issue set out in the Notice of Inquiry:

   [The Applicant] says she sent records, including 400 attachments, to the CPS documenting the reasons for a correction request in CPS File 2016-C-1188, but that these records were not provided in response to the present access request. She also points to related information that CPS and OIPC sent to her that she likewise says she did not receive. (At page 29 and following of the 51-page document "DETAILED REQUEST FOR REVIEW" cited above, [the Applicant] lists and discusses documents/emails that she sent to the CPS and the OIPC, and that the CPS and OIPC sent to her, that she says were missing from the folders of documents provided to her from the administration file relative to her correction request 2016-C- 1188.)

   Did the CPS search for the attachments and the records [the Applicant] lists and discusses at pages 29 and following of the "DETAILED REQUEST FOR REVIEW document? If it did not search for such records, why did it not?

   (I note in this regard that some of the information in the records may not consist of 'personal' information in the narrower sense noted in question 1 above. To the extent this is so, the question of whether there was a duty to search for all of the records listed by [the Applicant] depends on the answer to question 1. However, on the assumption it was correct to regard some of the information as non-responsive because it was not 'personal' in the strict sense, it would still be necessary to locate and review such records in order to determine which of them consisted of 'non-personal' information.)

III. DISCUSSION OF ISSUES

[para 16] Section 10)(1) of the Act reads as follows:

> *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 17] The duty to assist under section 10 includes the duty to conduct a reasonable search. In Order F2014-04, the Adjudicator stated, at para 15:

> A public body's duty to assist an applicant under section 10(1) includes the obligation to conduct an adequate search of records responsive to an access request (Order 2001-016 at para. 13; Order F2007-029 at para. 50). The Public Body has the burden of proving that it conducted an adequate search, as it is in the best position to provide evidence of the adequacy of its search and to explain the steps that it has taken (Order F2005-019 at para. 7; Order F2007-029 at para. 46).

[para 18] In Order F2018-43, the Adjudicator stated, at para 11:

> However, conducting an adequate search for responsive records is only one aspect of the duty to assist. Previous orders of this office (Orders F2009-001, F2009-005, F2015-36) have held that the

duty to respond openly, accurately, and completely, includes explaining the steps taken to locate responsive records and to explain to an applicant why a public body believes no further records exist. In *University of Alberta v. Alberta (Information and Privacy Commissioner),* 2010 ABQB 89 (CanLII) the Alberta Court of Queen's Bench confirmed the reasonableness of this interpretation of section 10, stating:

> The University argues that it provided a full, complete and accurate response, and that it was unreasonable to find that it failed in the information component of the duty to assist. In particular, the University says that the Adjudicator unreasonably required it to explain why it believes no further responsive records exist and failed to describe the steps it took to identify the location of responsive records.
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> 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):
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> > 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 in original]
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> …
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> In my view, the Adjudicator's conclusion that the University either expand its search or explain why such a search would not produce responsive records was reasonable in the circumstances and based on the evidence.

From the foregoing, I conclude that in addition to requiring that a public body conduct an adequate search for responsive records, the duty to assist includes the duty to explain why certain records have not been produced when it is reasonable to expect that a public body would have such records in its custody or control.

[para 19] As already discussed, there were a number of categories of records that the Applicant indicated, in her Request for Inquiry and in the DRFR document, that she had expected to receive but did not receive. I will deal with each category in turn in terms of whether the CPS conducted a reasonable search.

Records in the Administration file that did not consist of the Applicant's "personal information" within the terms of the FOIP Act.

[para 20] As discussed above, in its response to the Applicant, the CPS took the position that information in its FOIP Administration files that was not the Applicant's "personal information", as the statutory definition of that term has been interpreted by this office, was not responsive to the request. For this reason, the CPS did not provide records concerning the internal administrative handling of the request, as it did not consider those records to be responsive to a request for personal information. The CPS did not take steps to clarify with the Applicant before responding, to ascertain whether the Applicant intended the request to be limited in this way. As well, it appears that the CPS did not charge the Applicant fees for providing the records, as it might have done if it were providing information other than personal information in its response.

[para 21] In its submission relative to this issue the CPS stated:

> … Section 1(n) clearly indicates what is personal information. The Analyst relied upon that definition in determining what needed to be released and based on the notes on the file regarding previous submissions, it was determined that the records that were related to the Access Request and were not actually about the Applicant were considered non-responsive.
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> The Applicant could have made a General request for the records where CPS would have supplied records pertaining to the processing of her Access Request as being the activities of the public body. CPS would have then reviewed the files to determine if any fees were required as the locating, retrieving and reviewing the records for disclosure along with processing the records would have been subject to fees under the Act. As the Applicant selected their own personal information on the Request form, it was processed as a request for personal information and any information that was not under that definition was considered non-responsive.

[para 22] As also noted above, the Applicant in her request for review stated that she expected to receive all records relating to steps taken in processing her requests to the CPS, and not only those consisting of her personal information in that context, as that term has been interpreted in the context of the FOIP Act. As well, she seems to suggest (by implication) that the term "personal information", as she employed it in her access request, should have been interpreted in the way it has been interpreted by RCMP in the context of requests under the federal "Privacy Act" (noting that the latter interpretation in her view conflicts with the way the term "personal information" has been interpreted in the context of the FOIP Act).

[para 23] Given this request was made under the FOIP Act, I do not agree with the Applicant that "personal information" in the context of her access request should have been understood by the CPS to have been intended to have reference to the way the term has been interpreted by a different institution under different legislation. The Applicant was given an opportunity to provide further submissions relative to this question. She might have provided a further explanation about why the CPS should have understood, or thought it possible, that she did not intend to use the phrase in the way it is generally understood in the context of the FOIP Act. As well, she might have made an additional request using broader language (as she had done in other requests for information in specified police files), which would have been a more expeditious way of proceeding than making a request for review. I also note that the Applicant has extensive experience with making access requests under the legislation and also has legal training. This is in contrast to someone who might not be expected to grasp the significance of the statutory definition of the phrase "personal information" that she employed in her access request.

[para 24] I acknowledge it was open to the CPS to check with the Applicant to be sure she intended to use the term as referencing personal in contrast to general information related to her. However, given the factors set out in the previous paragraph, I have concluded that it was reasonable for the CPS to have taken the Applicant to mean what it appeared she was saying. I note that this interpretation is also supported by the parts of the Applicant's submission in this inquiry in which she explains that she was seeking her personal information in CPS files in order to ensure that corrections to this information that the CPS had undertaken to make had been made in fact.

Material withheld from the Applicant in the responses to her earlier requests for review, or (in the alternative) an indication that such material had been located but withheld under particular exceptions

[para 25] As noted, in this regard the Applicant referred specifically to the unredacted version of the records at issue which she believes ought to exist in administration files. As well, she pointed to material that she had received in responses to earlier access requests that she did not receive in response to the present request.

[para 26] In putting the related question to the CPS, I referred to paragraphs 65 to 70 of Order F2020-13. Paragraphs 66 to 69 state the following:

> [para 66] There is no right under the Act to have information that has already been provided on an earlier access request produced a second time. There do not appear to be cases directly addressing this issue in earlier orders of this office. However, I agree with the approach taken in BC Order F13-16 and the cases cited therein. The Adjudicator held as follows:
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> > The School District also requests authorization to disregard any access request made by the respondents to the extent that the request covers records that have already been the subject of a request to which the School District has responded. Previous orders have found that FIPPA does not require public bodies to disclose copies of records that they have already provided to the applicant, either through a previous request or another avenue of access. ... Therefore, the School District does not require authorization under s. 43 to deal with such requests, and I decline to order such relief. I expect the School District will be able to respond to any repeat requests by making it clear when such records were previously provided. If no responsive records exist, the School District need only inform the respondents of that fact.
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> See also BC Order F13-18 at para 41; NL IPC Report A-2017-003.
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> [para 67] A similar approach was taken in Nunavut Review Report 17-120, as follows:
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> > "… the specific records requested should be provided, to the extent that they exist, unless those records have already been disclosed, either in the litigation discovery process or under a previous ATIPP request. If they have already been provided under either of these processes, the Applicant should be referred to the relevant records."
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> [para 68] A similar approach was also taken in Ontario Order M-717, in which the adjudicator said: "In my view, in the particular circumstances of this case, the Board is not required to give access to the previously disclosed records for a second time. I find that, with respect to these records, the Board has already fulfilled its obligations under the Act by its previous disclosure". As well, Ontario Order M-860 states: "Provision 2 of this order does not require the Police to make an access decision regarding any records which were included in previous access decisions relating to requests by the appellant. Such records need only be listed in the decision letter or an appendix, with an indication that the record was dealt with previously, and a notation of whether access was granted or not in the previous decision.". See also Ontario Order MO-3696, in which the adjudicator accepted that requested records disclosed in a previous request were not at issue in the review.
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> [para 69] Accordingly, I find that a public body has neither a duty to provide records it has already provided to an applicant a second time, nor to again deny records it has already denied.

[para 27] I adopted these conclusions in Order F2020-13.

[para 28] I understand that despite the fact it had no obligation to do so, the CPS re-provided material it had provided in earlier access requests. While that may be the case, it certainly does not follow that it should have also provided material that it had formerly withheld, or indicated that it was again withholding it, specifying the exceptions it was applying, because that material existed in the FOIP administration file for the purpose of administering the request. Rather, in my view, a public body is no more obliged to 're-withhold' records it has already withheld, than it is obliged to 're-provide' records it has already provided. I presume when the CPS said it had "re-released" all records it had released in earlier requests, both "redacted and unredacted", it meant that it had included the portions of its responses that indicated which records were being withheld and why. This would satisfy the requirement discussed in the foregoing cases to make reference to the records that had earlier been disclosed or withheld. There was, in any event, no obligation either to provide or to again withhold the records on the file that had already been withheld just because unredacted copies existed for administrative purposes in the administration file.

Records, including attachments, the Applicant sent to the CPS documenting reasons for a correction request in CPS File 2016-C-1188; related information that CPS and OIPC sent to her (as referenced in page 29 and following of the 51-page DRFR document) documents/ emails that she sent to the CPS and the OIPC, and that the CPS and OIPC sent to her, that were missing from the folders of documents provided from the administration file relative to her correction request File 2016-C-1188.

[para 29] The CPS responded to the third question set out above as follows:

> As indicated above, the records regarding the OIPC and CPS, would have been deemed non-responsive as this was a personal request and not a General request for information. Records between the OIPC and CPS would not have formed part of the personal information request and would not have been provided as these files are also not a part of the Administration file. Regarding the documents that were provided by the Applicant not being returned, I can not speak to what the Analyst considered regarding that as there are no notes, however CPS does not have a retention on emails. The practice is, once an email is received it is read and then it is up to the discretion of the receiver as to whether it is required for the file. If it is not required, then it is deleted and not retained as part of the file. If it is retained, then it assumes the retention of the file. As the original file has passed its retention, I am unable to determine if those records were part of the original file. I can only view what was provided on this file and as there are no notes on what wasn't provided, I can only assume what was provided was what we had.
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> As the Applicant did not request records regarding the communications regarding the OIPC review, it does not appear that those records were searched for or reviewed. The search on the file indicates that our access request database was searched for previous access requests and then those files were downloaded. As I was not with the section at the time of the release, nor is the Analyst that worked on the file, I can only speak to what was listed on the file as to what was searched and reviewed. The record does not indicate anything further as to what was searched or reviewed. In addition, we no longer have the FOIPNet system, nor do we have access to the full database. As such, I am unable to see if there were any additional notes located within the FOIPNet system pertaining to this file.

[para 30] In the course of my consideration of the third question, I reviewed earlier decisions of this office that related to the Applicant's correction request resulting in CPS File 2016-C-1188. I discovered that on November 9, 2017, the former Commissioner had refused to conduct an inquiry that the Applicant had requested relative to the CPS's response to her correction request, and on July 24, 2019, the Commissioner had also permitted the CPS to disregard particular access requests, including requests that related to or encompassed that correction request. In the latter decision, the Commissioner noted that she had already dealt with the accuracy of the Applicant's personal information in the letter refusing an inquiry relative to the correction request; she then stated: "Despite my decision about accuracy and finding that there was no duty on CPS to ensure that its records contain corrected personal information, the Applicant has continued to systematically make access requests, the end result of which is, by the Applicant's own admission, to determine accuracy and to determine if corrections have been made. In the face of my decision, making access requests for those purposes is clearly an abuse of the right to make those access requests."

[para 31] The Applicant's request for review in the present case was made on October 12, 2017, prior to the Commissioner's decisions just noted, and the associated "Detailed Request for Review" document is the one in which she discusses the materials that were missing from the CPS's response relative to CPS File 2016-C-1188 (the "correction request" file). I note that the Applicant's request for inquiry, which relies on the DRFR document, was made after the Commissioner had reached the conclusions discussed in the preceding paragraph and conveyed them to the Applicant. Despite this, however, the access request in this present case was not directly implicated in the Commissioner's decision, and I believe that given this present access request is not precluded, the Applicant is entitled to have the matter seen to its conclusion.

[para 32] In the DRFR document, the Applicant pointed to a large number of records that she believed ought to exist in the correction request administration file which were not provided to her in the CPS's response to the part of her access request which was for that particular administration file. Most notably, she points to the contents of emails as well as 400 attachments, that she had sent to the CPS to support her contention that records in the CPS files contained correctible errors (a contention that the CPS had accepted).

[para 33] The submission of the CPS set out above relative to the administration file that arose from the correction request deals with these aspects of the access request by saying, first, that some of the records that the Applicant mentions were not responsive because they did not consist of the Applicant's personal information. I have accepted that it was reasonable for the CPS to have interpreted the Applicant's request as one for her "personal information" contained in the administration files for her access requests as that term has been defined and interpreted under the FOIP Act, and to the extent that the records which the CPS located did not consist of such personal information, I agree that the CPS was not required to provide them. (Having said this, however, it would have been necessary for the CPS to locate most or all of the records in the administration files at issue, and to determine which parts of them did and did not consist of or contain her personal information. As well, given the Applicant made a request for review of the CPS's response to her access request, in which the scope of her access request in this regard was an issue, I presume the CPS retained the records it had located in their entirety, both those that consist of personal information and those that do not, and that it will do so until this inquiry has concluded and the period for judicial review has elapsed.)

[para 34] As to the emails and attachments sent by the Applicant to the CPS in support of her correction request, I have noted the CPS said in its response that there is no obligatory retention period for emails (by which it possibly meant to refer to the emails and attachments sent to it by the Applicant in support of her correction request), and that retention or otherwise is discretionary. It appears the CPS is suggesting either that the emails supporting the correction request were not placed on the file for correction request File 2016-C-1188, or they were but were then deleted prior to the access request for the administration files. There is no direct assertion that the materials were deleted, but only a supposition that they must have been since the records were apparently not located on the administration file.

[para 35] I make several observations about the CPS's explanation.

[para 36] First, while I do not have jurisdiction over CPS's record-retention policies, I question a policy under which the format rather than the substance of information would be the primary criterion for determining its retention period, particularly given the advent of electronic modes of conveying information, including by way of email, have commonly replaced paper.

[para 37] Similarly, it seems odd that where emails contain substantive information relative to a correction request, the discretion as to whether they should be retained would have been exercised in favour of deletion rather than inclusion and retention in the administration file for the retention period, particularly if, as seems possible, they included information on which the decision respecting correction was made. (I note such information would also be subject to the retention requirement in section 35(b) of the FOIP Act). I believe it might be useful for the CPS to review the retention policies it described in its submission relative to substantive in contrast to merely transitory information in emails.

[para 38] Further, I note the factors which this office has set out with respect to the way searches should be described, in particular the one that asks public bodies to explain why records do not exist in their possession when there appears a reasonable likelihood that they should exist. This factor seems to apply to materials the Applicant provided in support of her correction request. The requisite explanation would generally call for more information than observing that there is no one currently employed who can say whether, where and how particular records were searched for, and that there are no notes. I believe that relative to access requests, there should be sufficient documentation relative both to searches that were conducted, and to record destruction, to enable public bodies to say more definitively what happened to records that it clearly received from an applicant than was done in the present case. As well, while the database that may have contained the information no longer exists, and the unit that provided the submission may not have access to "the full database", it is not clear from CPS's submission that the information in the original database is no longer housed anywhere, nor whether access to the "full database" may be obtained by some other means.

[para 39] I will accordingly ask the CPS, as part of its duty to assist the Applicant under section 10 of the Act, to consider whether there might be any further sources of information as to what might have happened to the 400 attachments which she sent to CPS to which the Applicant referred, as well as to any other communications she sent to the CPS (which would constitute or contain her 'personal information'). I will ask that it conduct any further searches arising from this consideration that might lead to the materials (including, if possible, obtaining access to the

database discussed above or materials it contains or contained), and to provide a description of any such search to me and to the Applicant. I will also ask that it provide any additional or more fulsome explanation as to why the materials cannot now be located if that is the case, to me and to the Applicant. I understand that the attachments contained an unusually voluminous and unwieldy amount of information, some of which it may not have been reasonable or necessary for the CPS to review in order to make its decision. I also understand the correction request decision was in the Applicant's favour, which may have seemed to make retention less critical from the Applicant's standpoint. However, these facts do not in themselves necessarily constitute a reason for not retaining any of the information.

[para 40] Further in this regard, I also note the CPS says in its most recent submission (of March 26, 2023) that "the original file has passed its retention". I take this to be a reference to correction request File 2016-C-1188. Assuming this to be so, because the correction request was made on August 27, 2016 (and the file was presumably created at that time), and the request for the administration files, including the one related to the correction request, was made less than a year later on June 28, 2017, this comment is difficult to grasp, particularly insofar as the retention period in section 35(b) of the FOIP Act for information that was used to make decisions directly affecting an individual might apply. As well, as the Applicant pointed out in her requests for clarification of the CPS response that she sent to the CPS (to which she referred me in her email of March 19, 2022), it is reasonable to presume that once an access request for information in an administration file is made, the file is preserved at least until such time as all potential stages of the matter have concluded. If that did not happen for the present file, I will ask the CPS to explain to me and to the Applicant why it did not.

[para 41] As to post-correction-request communications between the CPS and the OIPC, I believe the CPS interpreted the request for "Administration files" such that such communications with this office relating to requests for review and inquiries fall outside the "administration file" for the request, and I agree this was a reasonable interpretation. This comment also applies to correspondence about the correction file between the Applicant and the CPS that took place subsequent to the time at which the file was closed by the former Commissioner. In other words, I believe it would be reasonable to interpret "administration file" as referring to materials included in the file during the period in which it was active, in contrast to records documenting subsequent activities relative to the file, for example, such as might involve this office. As well, while communications sent by the Applicant to the CPS might be said to constitute her "personal information", much of the content of communications originating from other sources, including from the CPS, would not consist of the Applicant's 'personal information' within the terms of the Act.

[para 42] I turn to the question, which the Applicant raised in her email to this office of March 19, 2022, of her motivation in making the access requests for her personal information in administration files, related to previous 'FOIP' requests to the CPS, that are the subject of this inquiry. The Applicant has explained, both in the DRFR document, and especially in her email to this office of March 19, 2022, that one of the primary purposes for her requests is to obtain confirmation that the undertakings made by CPS to correct errors in her personal information, in particular, in four documents that make statements about her membership status with the Law Society of Alberta, were met in fact. The Applicant appears to doubt this was done, and she offers as proof that when the CPS responded to the present request for FOIP administration files in part by giving her the same records she had received in response to prior access requests, there

was no change to the records that had contained the erroneous information. She goes on to assert that when former Commissioner Clayton refused to hold an inquiry relative to the correction request, and when she granted the CPS's application to disregard three access requests made subsequent to the present one, as well as any related future requests, that Commissioner Clayton was operating under a misapprehension that the corrections had in fact been made.

[para 43] The concerns stated here are not directly related to the matter at hand, which is to decide whether the CPS failed to locate or inappropriately withheld information in its possession that is responsive to the present access request. However, I believe it is useful to point out to the Applicant that when records exist in a FOIP administration file that relates to an earlier access request, it makes sense to preserve them intact in that file as a mechanism for preserving the file's history. When an applicant makes a correction request relative to records in a public body's files (copies of which happen to have been made and collected in FOIP administration files for the purposes of administering earlier access requests), it would make sense to make the corrections to those records as they exist in their original file location, rather than as they exist as copies in the FOIP unit administration files. This is because changes to the latter records would corrupt the files' historical integrity, and could make it difficult or impossible to determine what had been disclosed or withheld, what considerations would have been relevant to these decisions, and so on. I recognize that this consequence would not result from annotations rather than corrections, but in this case I understand the FOIP unit agreed to make corrections. Furthermore, the records in the FOIP administration file remain there and do not serve the same kinds of purposes as records in CPS investigation files. (In this regard, I do not agree with the Applicant that providing her and this office with the records from FOIP administration files, provided earlier, a second time, entails "publication" of the information in the sense that provision of this material to her could have any prejudicial consequences for her.)

[para 44] Accordingly, it seems likely to me that the undertaking by the CPS FOIP unit to make the corrections was in fact met for the files as they existed in their original locations, but that when the CPS responded to the request for access to the administration files for the earlier access requests, the original documents previously disclosed were provided in their original form, so as to fulfill the typical purpose in disclosing the contents of access request administration files, of shedding light on the decisions that were made as to the disclosure or withholding of records.

[para 45] However, the Applicant stated in her March 19, 2022 email that to her knowledge, these corrections have not been made, pointing to the fact that when the records were provided to her a second time in this access request, they did not contain the corrections. It appears she continues to hold this belief.

[para 46] I have noted that section 36(7) of the FOIP Act requires a public body to notify a requestor that a correction has been made. It may be arguable that the response letter from the CPS to the Applicant undertaking to make the corrections could be said to have fulfilled the requirement of section 36(7). In any event, this is not an issue in the present case, and therefore I do not have jurisdiction (and without representations and/or evidence on this question from the parties, no basis) for requiring the CPS to advise or again advise the Applicant as to whether the corrections the CPS undertook to make were made in fact in the files as they existed in their original locations. Nor do I know whether these files still exist in those locations.

[para 47] However, providing the Applicant with information about this question, and any supporting evidence, could resolve this aspect of her concerns. Given this issue was not part of the present inquiry, I raise this course of action as a suggestion only.

IV. ORDER

[para 48] I make this Order under section 72 of the Act.

[para 49] I uphold the CPS's interpretation of the Applicant's access request as having been confined to her "personal information" as that term has been defined and interpreted under the FOIP Act.

[para 50] I uphold the CPS's decision not to provide the Applicant with information that it had withheld in previous access requests; nor is it required to re-state the basis on which such information was previously withheld.

[para 51] I direct the CPS, as a function of its duty to assist the Applicant under section 10, to consider whether there are any further sources of information available to it as to what happened to the 400 attachments which she sent to CPS, as well as to any other communications she sent to the CPS in support of her request for correction in File 2016-C-1188. I further direct it to conduct any further search arising from this consideration that could reasonably lead to the location of such materials, and to provide a description of any such search to me and to the Applicant. If it is not reasonable to conduct such a further search, I direct that it provide any additional or more fulsome explanation as to why the materials should not be searched for now if that is the case, including about the database or databases in which the information may have been housed, or if no such explanation is available, why there is no further information about this question, to me and to the Applicant.

[para 52] I direct the CPS, as a function of its duty to assist the Applicant under section 10, to explain to the Applicant and to me the retention policy that applies to records relating to the correction request that gave rise to CPS File 2016-C-1188, and how the information relative to this request was dealt with under the policy.

[para 53] I further order the CPS to notify me and the Applicant, in writing, within 50 days of receiving a copy of this Order, that it has complied with it.

Christina Gauk, Ph.D.
Adjudicator and Director of Adjudication