

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2025-20

May 16, 2025

CITY OF EDMONTON

Case File Number 018848

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Edmonton (the Public Body). The Applicant sought questions asked during a recertification interview conducted by Lifemark, on behalf of the Public Body's Disabled Transit Services (DATS) section. The Applicant also sought a copy of a letter sent to her by DATS. The Applicant argued that the Public Body failed to meet its duty under section 10(1) of the FOIP Act, since it did not provide the letter or all interview questions in response to her access request.

The Adjudicator found that the Public Body conducted a reasonable search for records as required under section 10(1). The Public Body was not required to inquire with Lifemark whether it had any responsive records, since the Public Body demonstrated that it had received those records from Lifemark as required by the contract under which Lifemark performed the recertification interviews.

The Adjudicator found that the Public Body had not fully met its duty under section 10(1) since it appeared that all records it had intended to provide to the Applicant were not received by the Applicant when the Public Body responded to the access request. The Adjudicator ordered the Public Body to provide the missing records to the Applicant.

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

Orders Cited: AB: 97-006, 2000-030, F2004-008, F2007-029

I. BACKGROUND

[para 1] On or around April 27, 2020 the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act), to the City of Edmonton (the Public Body). The Applicant sought access to the following information:

A copy of ALL the Interview questions asked at the last DATS Recertification Interview I attended – there was a standard questionnaire, that made up the majority of questions asked, that LifeMark, the third party interviewer hired asked me and everyone as well as around 5 or so extra questions I was asked – a copy of ALL those questions. As well, a copy of the letter I mailed out requesting me to phone and setup the mandatory recertification interview in the first place.

Time Frame: January 1, 2014 to January 1, 2017

[para 2] “DATS” stands for “Disabled Transit Services”, which is a section within the Transit Branch of Public Body’s Citizen Services Department. Recertification interviews were part of a process of recertifying existing DATS registrants following changes to the DATS application process.

[para 3] The Public Body sourced Lifemark for its DATS recertification pilot project. Lifemark booked recertification interviews, conducted the interviews, and provided information about the interviews back to the Public Body’s DATS office.

[para 4] The Public Body summarized the access request as follows:

- Copy of all interview questions asked at the last DATS Recertification Interview I attended
- Copy of the letter mailed out requesting me to phone and setup the mandatory recertification

Time period: January 1, 2014 to January 1, 2017

[para 5] The Applicant does not take issue with the Public Body’s summary of the access request.

[para 6] On May 27, 2020 the Public Body provided the Applicant its response to the access request, by letter. The Public Body attached 22 pages of responsive records, a number of pages the Applicant now disputes. In the letter, the Public Body informed the Applicant that it could not locate any records regarding a letter sent to the Applicant requesting a telephone call to set up the recertification interview.

[para 7] Shortly after, the Applicant e-mailed the Public Body about the records provided in response to her access request. The Public Body framed the subject of the Applicant’s e-mail inquiries as follows:

- That the provided records did not answer your original request scope. This includes all interview questions asked by Lifemark and the form letter mailed out to set up the recertification interview; and
- That the application form has nothing to do the DATS Recertification Interview.

[para 8] On June 1, 2020, the Public Body sent the Applicant another letter in respect of her e-mails; it stated:

We can confirm that all of the DATS Recertification Interview questions, specifically all questions asked by Lifemark, were included as part of our response to your request 2020-P-0234 that was provided on May 27, 2020 (see pages 16 – 22). Regarding your request for a copy of the letter that was mailed out requesting that you setup the mandatory recertification, please see the additional information that was included in our May 27, 2020 response letter:

- No records were located regarding a letter mailed out requesting you to phone and set up the mandatory recertification. The program area indicated that you were not requested to recertify, but instead you sent in a form on your own.
- We acknowledge that the DATS Application Form provided in response to your FOIP request on pages 1 - 11 is non-responsive to the scope of your request and apologize for any inconvenience.

[para 9] On June 4, 2020, the Applicant requested a review of the Public Body’s response to her access request. Investigation and mediation failed to resolve the issues. On May 17, 2022, the Applicant requested that this matter proceed to inquiry. The Information and Privacy Commissioner confirmed an inquiry and delegated to me the power to conduct the inquiry.

II. ISSUES

[para 10] The issue addressed in this decision is as follows:

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

III. DISCUSSION OF ISSUES

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

[para 11] Section 10(1) states 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 12] The two parts of the duty to assist in section 10(1) were set out in Order F2004-008 at para. 32:

- Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of FOIP?
- Did the Public Body conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(1) of FOIP?

[para 13] The burden of proof falls on the Public Body to demonstrate that it met its duty under section 10(1). (See Order 97-006). A public body must provide the Commissioner with sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request. (See Order 2000-030). Former Commissioner Work, Q.C. described the general points that a public body's evidence should cover in Order F2007-029 at para. 66:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 14] The Applicant asserts that the Public Body failed to locate or provide the letter requesting her to call and set up the recertification interview, as well as all of the interview questions asked of her. Regarding the former, the Applicant argues that the Public Body admits that it sends such letters by reference to its recertification notice process. As described by the Public Body, it sends the letter in the event that Lifemark is unsuccessful in arranging an interview.

[para 15] Regarding the latter, the Applicant describes that she saw two sets of pages containing interview questions: one containing "generic" questions, to use the Applicant's term, and the other containing five questions composed by a DATS employee, which were personalized for her. The Applicant recalls some of the types of things that generic questions and personalized questions inquired into. She states generic questions are questions such as, "What are your hobbies?" and came from a sheet of about 25 questions that are regularly asked of DATS clients. In contrast, the Applicant states that the personalized questions concerned, for example, information about locations where the Applicant had or had not used DATS services.

[para 16] The Applicant further asserts that the Public Body did not send 22 pages of records to her with its response letter. The Applicant states that upon reopening what she described as the “FOIP file”, the page numbers on the responsive records jump from 11 to 16, leaving a total of 18 pages, and pages 12 – 15 unaccounted for. Of those 18 pages, only page 18 is said by the Applicant to contain interview questions.

[para 17] The Public Body described its efforts to locate records in response to the access request in an affidavit sworn by its Supervisor for Paratransit Client Services (the Supervisor). The Supervisor’s previous role with the Public Body was Registration Coordinator/Team Lead for Eligibility and Registration for Paratransit Client Services. According to the Applicant, while in that role the Supervisor was responsible for the Lifemark recertification interviews.

[para 18] The Supervisor conducted the Public Body’s search for records. The locations searched were the Applicant’s DATS profile, the Applicant’s physical file, and the Public Body’s Trapeze system (Trapeze). Trapeze is a database that records work performed on a DATS user’s file, and logs activity in an associated user “Certification Log.” The Certification Log notes occasions when a letter is pulled or printed. The Public Body reviewed the certification log associated with the Applicant as part of its search for records.

[para 19] In addition to its initial search for records, the Public Body twice searched for further records during the investigation/mediation stage of the review process, finding nothing.

[para 20] The Public Body’s reasons for believing that no other responsive records exist are as follows:

- i. The Public Body keeps all records of this nature in the Relevant Area;
- ii. All related documents created by Lifemark for DATS recertification interviews were contractually required to be given to DATS within 30 days of an interview being conducted;
- iii. As noted by the Applicant in their Inquiry Submissions, The records provided by Lifemark would document the information needed to make a decision and *may not be a complete transcript of the entire conversation* between the consultant and the Applicant. If questions were asked but not recorded they would not form a record;
- iv. Both sides of the Interview questionnaire form were checked for notes, and any pages that included notes were sent to the Applicant in the First Batch;

- v. All pages of the Interview questionnaire form are included. Though all five questions on pages 19 and 20 of the First Batch are not all filled out, the pages following it are, which reasonably indicates that no other notes were taken; and
- vi. The Public Body performed three thorough searches of the Relevant Area, as described in paragraph 17 above.

[para 21] Considering the above, I find that the Public Body conducted an adequate search for records as is its duty under section 10(1) of the FOIP Act. The Supervisor had access to the relevant areas and databases wherein it keeps records related to the Applicant's DATS information, which included records from the Lifemark recertification interview. Though the Public Body admitted that pages 1 – 11 of the records provided to the Applicant were non-responsive, the remaining pages appear to be of the type the Applicant was seeking, and include documents from the recertification interview. There is no evidence before me that responsive records would be held in any other location or area at the Public Body. Through these actions, the Public Body has made the reasonable efforts required under section 10(1).

[para 22] In reaching the above conclusion, I have considered that the Public Body did not inquire with Lifemark whether it had any responsive records. In my view, the Public Body was not required to make such an inquiry in the circumstances of this case. Lifemark was contractually required to provide documents from the recertification interview to the Public Body, and it appears that it did so given the presence of notes from the interview in the records provided to the Applicant.

[para 23] The information provided by the Public Body also addresses the Applicant's specific arguments made in this inquiry.

[para 24] Regarding the Applicant's argument that the Public Body failed to locate and provide to her a letter requesting that she call to arrange her Recertification Interview, the Public Body's position since responding to the access request has been that it never sent such a letter, since the Applicant initiated the recertification process on her own. The Certification Log associated with the Applicant does not indicate that such a letter was sent. Even if there was, I am satisfied that the Public Body's efforts to locate it meet the duty under section 10(1) of the FOIP Act.

[para 25] Regarding the Applicant's argument that she did not receive all of the "generic" interview questions, it appears that she did. As described by the Public Body, its response to the access request included all pages of the interview questionnaire form as pages 16 - 22; as stated in its e-mail to the Applicant of June 1, 2020, those pages included "all questions asked by Lifemark." The Applicant acknowledged receipt of those pages, and confirmed that they "involved" her FOIP request. While I recognize that the Applicant maintains that some of these questions are missing, there does not appear to any other records containing such questions.

[para 26] Regarding the Applicant's argument that she did not receive records which included the personalized interview questions, what appears to be the case is that the

Public Body located such records and intended to send them to the Applicant, but, for unknown reasons, they never made it to the Applicant.

[para 27] The Public Body is certain that it sent 22 pages of responsive records to the Applicant, having verified the same in August 29, 2023 by reviewing the batch of records sent to the Applicant in its response to the access request. The Public Body's index of records indicates that pages 12 and 13 of the records provided to the Applicant contained interview questions that were not part of the formal recertification interview conducted by Lifemark, but were asked of the Applicant nonetheless. That description could easily refer to the personalized questions that the Applicant recalls from her interview.

[para 28] Just as the Public Body is certain it sent all 22 pages; the Applicant is certain that she never received pages 12 - 15. The absence of those pages from the Applicant's copy of the responsive records appears to explain the Applicant's insistence that she did not receive the personalized questions in response to her access request, since pages 12 and 13 appear to be the ones that contain those questions. Based upon what I have been told by the parties in this inquiry, the probable conclusion is that what the Public Body intended to send to the Applicant somehow did not reach her intact, with the result that pages 12 – 15 were omitted.

[para 29] As it appears to be the case that the Applicant did not receive pages 12 – 15 from the Public Body, the Public Body's duty under section 10(1) to respond completely remains unfulfilled in respect of those pages, which should be provided to the Applicant.

IV. ORDER

[para 30] I make this Order under section 72 of the FOIP Act.

[para 31] I find that the Public Body met its duty to the Applicant as provided by section 10(1) of the FOIP Act, except for pages 12 – 15.

[para 32] I order the Public Body to provide pages 12 – 15 of the responsive records to the Applicant.

[para 33] I further order the Public Body to notify me in writing within 50 days of receiving a copy of this Order that it has complied with the Order.

John Gabriele
Adjudicator
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