

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2025-22

June 25, 2025

ELK ISLAND SCHOOL DIVISION

Case File Numbers 025617, 026360, 026363, and 026366

Office URL: www.oipc.ab.ca

Summary: The Applicant made four access requests to the Elk Island School Division (the Public Body) for personal information about himself and his daughter. In its responses to the access requests, the Public Body withheld some information under sections 17 and 27 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act or the Act). The Applicant was concerned that responsive records were missing as he did not receive duplicate records or records that he had sent to the Public Body.

The Adjudicator determined that the Public Body met the search component of its duty to assist but not the informational component under section 10(1) of the Act. The Adjudicator ordered the Public Body to provide the Applicant with a list of records located for each of the requests and indicate if they were previously provided.

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

Authorities Cited: **AB:** Orders F2007-029, F2020-13, **BC:** Order F13-16

Cases Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII)

I. BACKGROUND

[para 1] The subject of this inquiry is the four access requests made by the Applicant and the Public Body's responses to the requests:

025617: September 2, 2021

"...records, information, and correspondence etc. in the possession of or under the control of [named individual]. This is a personal information request for [name of daughter]." The time period for the request is "2015-01-01 — Now".

026360: December 10, 2021

"...records, information, and correspondence etc. in the possession of or under the control of [named individual]. This is a personal information request for myself". The time period for the request is September 1st, 2021 to December 31st, 2021.

026363: October 1, 2021

"records, information, and correspondence, etc. in the possession of or under the control of [named individuals]. This is personal information request for [name of daughter]." The time period for the request is "Aug 1 2020 - Now".

and

"records, information, and correspondence, etc. in the possession of or under the control of [named individuals]. This is personal information request for myself." The time period for the request is "Aug 1 2020 - Now".

026366: September 15, 2021

"records, information and correspondence, etc. in the possession of or under the control of [named individual]. This is a personal information request for [name of daughter]." The time period for the request is "01/01/2015 — Now".

and

"records, information and correspondence, etc. in the possession of or under the control of [named individual] This is a personal information request for myself." The time period for the request is "01/01/2015 — Now".

[para 2] The Public Body's responses to the access requests were as follows:

- i. 025617: 16 pages of records
- ii. 026360: 5 pages of records
- iii. 026363: 7 pages of records
- iv. 026366: 7 pages of records

[para 3] The Applicant raised the following concerns with the responses; that he did not receive a reply, that he was refused access to some of the information, and, that the search was incomplete.

[para 4] Mediation dealt with the following issues:

1. Did the Public Body meet its duty to the Applicant by conducting an adequate search for responsive records as provided by section 10(1) of the Act?
2. Does section 17(1) of the Act apply to the information in the records?
3. Did the Public Body properly apply section 27(1) of the Act to the information in the records?

[para 5] After mediation, Issue 1 was the only concern the Applicant had left and he phrased it as follows:

I received correspondence from this Body in the past that does not show up in their FOIP package. The dates of the correspondence in question are Sep 22, Oct 13, Oct 27, Dec 14, Dec 20, Jan 11.

[para 6] In his submissions the Applicant stated that he was asked to specify the year of the correspondence that was missing as indicated in the above paragraph. He indicated that the years are 2019, 2020, 2021 and 2022, he also stressed that he was not limiting his concerns to these years.

[para 7] The Applicant requested an Inquiry stating that the Public Body "has not done an exhaustive, or even a thorough, search, as the legislation requires."

II. ISSUE: Did the Public Body meet its duty to the Applicant by conducting an adequate search for responsive records as provided by section 10(1) of the Act?

III. DISCUSSION OF ISSUE

[para 8] The duty to assist is stated in section 10 of the FOIP Act 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 9] Order F2007-029 discusses a public body's duty to assist:

[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 49] Consequently, to meet the duty to assist an Applicant, a Public Body must inform the Applicant of all records in its custody or under its control that are responsive to the request, whether access will be granted to those records and when access will be given...

[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 about what has been done.

[...]

[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 10] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), Manderscheid, J confirmed that there was an informational component to the duty to assist:

[42] 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):

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 mine)

[43] Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University’s rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, its reasons for concluding that no more responsive records existed.

[para 11] From the foregoing, I understand that the Public Body not only has the onus of establishing that it conducted an adequate search; it must also fulfil the informational component of the duty to assist, as the Public Body must explain what it has done.

[para 12] The Applicant has submitted 26 access requests for personal information for himself and another individual between January 2021 and June 2022. The Public Body has argued that while fulfilling the various requests, it noted there were duplicate records and that in its response to the Applicant it stated, “records or communications sent directly to you or received from you, duplicate records, and records previously disclosed to you may be excluded.”

[para 13] For each of the Applicant’s requests, the Public Body provided the steps taken to search for the responsive records. It included information as to who was tasked with the search (IT department and the employee involved), the mode of the search, key words used for searching through emails, subject lines and bodies of the messages. The Public Body also provided the direction given to the person searching: to search for and provide “any responsive documents, notes, recordings, text messages, inter-office chat, social media posts, and voicemails.”

[para 14] The Public Body gave an explanation by request number as to why it believes more records were not available:

- 025617- The counsellor’s regular practice is to maintain only brief log notes about students.
- 026366 - Most of the responsive records had already been provided to the Applicant as part of the numerous other requests for access to information submitted since January 2021.
- 026363 - Other than the documentation the *Student Record Regulation* requires for the official student record, typically teachers do not keep student anecdotal records nor other documentation from year to year.
- 026360 - The student was no longer a student for the records’ time period.

[para 15] The Public Body explained the steps that it took to locate responsive records, how the searches were conducted and why more records were not available. While I find that the Public Body conducted an adequate search, I find that it did not fulfil the informational component of its duty to assist.

[para 16] I can appreciate that the Public Body did not want to provide records that had previously been provided. This is supported by previous orders of this office (see Order F2020-13), the approach in BC Order F13-16 has been accepted:

[33] 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.

[para 17] At paragraph 68 of Order F2020-13, the Adjudicator states:

[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.

[emphasis mine]

[para 18] I agree with the approach as stated in paragraphs 16 and 17. Instead of the generic statement such as the one described in paragraph 12 of this order, the Public Body ought to have informed the Applicant when records were previously provided (see bolded sentence above). By taking this step, the Public Body can show the results of its efforts to search for records and the Applicant is not left wondering if information is missing.

[para 19] By listing the previously provided records in the decision letter, the Public Body fulfills its duty to respond to the Applicant, openly, accurately and completely.

IV. ORDER

[para 20] I make this Order under section 72 of the Act.

[para 21] I order the Public Body to provide the Applicant with a list of records located for each of the Applicant's requests (025617, 026360, 026363 and 026366), and indicate if they were previously provided to the Applicant.

[para 22] I order the Public Body to notify me in writing within 50 days of being given a copy of this Order, that it has complied with it.

Pam Gill
Adjudicator
/kh