

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

DECISION FOIP2025-D-01

September 4, 2025

UNIVERSITY OF ALBERTA

Case File Numbers 010593, 010594, 010595

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), the Applicant made four access requests to the University of Alberta (the Public Body). The Applicant sought review of the Public Body's response to each access request; each review proceeded to the inquiry stage. The first inquiry was discontinued because of the Applicant's failure to participate. The Public Body requested that the remaining inquiries be discontinued on the basis that the Applicant would not participate, and that proceeding would be unfair and an abuse of process.

The Applicant wished the remaining inquiries to continue. Under those circumstances the Adjudicator found that continuing them as prescribed by the FOIP Act would not be an abuse of process or unfair to the Public Body. Even if the Applicant made no further substantial submissions in the inquiries, the inquiry process did not require him to. Since the Applicant remained interested in the outcome, the Adjudicator decided that the remaining inquiries should proceed.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 17(1), 17(5), 56(1), 65(1), 69(1), 70, 71, 71(2); *Public Inquiries Act*, RSA 2000, c, P-39

Cases Cited: *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44; *Malton v Attia*, 2016 ABCA 130; *R. v Oracz*, 2011 ABCA

I. BACKGROUND

[para 1] The Applicant made four access requests to the University of Alberta (the Public Body). Those access requests were assigned case file numbers 009475, 010593, 010594, and 010595. The Applicant requested that the Office of Information and Privacy Commissioner review the Public Body's responses to the access requests. All the access request reviews proceeded to the inquiry stage of the review process.

[para 2] The inquiry for file 009475 (the first inquiry) proceeded ahead of the other three. The Notice of Inquiry for 009475 specified that if the Applicant failed to file an initial submission by the specified deadline, the result could be that the inquiry would not proceed. The Applicant did not file an initial submission, and did not respond to a follow-up letter alerting him that if he did not indicate that he wished to proceed with the inquiry, the inquiry would be discontinued. Subsequently, the inquiry was discontinued on that basis.

[para 3] The Applicant received notice that the inquiry in 009475 had been discontinued. He then sent three e-mails to the OIPC and the Public Body. In the e-mails he advises the OIPC of the following:

- He now suspects the OIPC of participating in a conspiracy with the Public Body and several other named entities, in covering up the murder of thousands of cancer patients';
- The OIPC has no basis to continue repeatedly asking for submissions from him in a harassing manner, when he has already stated that the Public Body has committed fraud and not provided the "necessary documentation";
- It is unacceptable that the OIPC has failed over 5 years to obtain all the documents he has requested; and
- The OIPC should not send him any further requests for submissions as very soon "this is going to be a criminal investigation."

[para 4] In response to the Applicant's e-mails the Information and Privacy Commissioner (the Commissioner) sent a letter to the Applicant informing him that inquiry 009475 remained discontinued.

[para 5] In reply to the Commissioner's letter informing the Applicant that inquiry 009475 remained discontinued, the Applicant sent another e-mail to the OIPC and the Public Body informing the OIPC of the following:

- The drawn-out procedure by OIPC and asking him for resubmissions only works in favor of AHS;
- Closing the file is consistent with conspiracy to cover up the murder of thousands of Albertans and will be reported to the Edmonton Police and the RCMP; and
- The OIPC is a co-conspirator in murder and will be identified as such in books and publications on this matter going forward.

[para 6] As to the Applicant's reference to AHS in the first bullet above, that entity is one that the Applicant believes is also involved in a conspiracy.

[para 7] In light of the Applicant's comments that the OIPC should not request further submissions from him, the Public Body asked me for a status update of the inquiries for files 010593, 010594, 010595 (the remaining access requests). In reply by letter, I informed the Public Body and the Applicant that the inquiries would still proceed. My rationale for proceeding was based upon three points:

- FOIP does not explicitly require the Applicant to make submissions in an inquiry;
- For most of the issues to be considered in the inquiries, under section 71 of the FOIP Act, the Public Body, not the Applicant, carries the burden of proof; and,
- For issues where the Applicant would have the burden of proof, I would consider any failure to make submissions on his part when making my decision.

[para 8] The Public Body then made requests to me and the Commissioner to refuse to conduct the remaining inquiries pursuant to section 70(1)(b) of the FOIP Act. In response, I informed the parties that I saw no material change in the circumstances that would warrant reconsidering my decision that the remaining inquiries would proceed for the reasons given in response to my request for a status update. The Commissioner informed the parties that since the matters had already been confirmed for inquiry by previous Commissioner Clayton and myself as the assigned delegate, she had no jurisdiction to review or overturn what had been decided.

[para 9] Under the above circumstances, I was prepared to proceed with the remaining three inquiries. Issuing Notices of Inquiry for them was delayed while a process by which a claim of

solicitor-client privilege held by a third party over some records might be reviewed was arranged between the Public Body and a third party. Notices of Inquiry have not been issued.

[para 10] The Public Body has now made a request to me to discontinue the remaining inquiries. The basis for that request is that I may discontinue the inquiry as matter of controlling the inquiry process as was the case in file 009475, rather than on an exercise of authority under section 70 of the FOIP Act. I consider that request in this decision.

II. ISSUE

[para 11] Should the Public Body's request to discontinue the remaining inquiries be granted?

III. DISCUSSION OF ISSUE

[para 12] The Public Body advances four arguments why the remaining inquiries should be discontinued:

- The Applicant has effectively and voluntarily withdrawn as a party and abandoned the inquiries;
- The issues of criminal fraud and conspiracy raised by the Applicant are not within the jurisdiction of the OIPC;
- Continuing the inquiries would be procedurally unfair to the Public Body; and
- Continuing the inquiries would not serve any purpose.

[para 13] The Applicant responded to the Public Body's requests to discontinue these files simply stating, "Please continue the inquiries."

[para 14] Regarding the Public Body's first argument, in view of the above, it is clear that the Applicant has not voluntarily withdrawn or abandoned the remaining inquiries despite his communications with this Office.

[para 15] While correct, the Public Body's second argument does not provide any basis to discontinue the remaining inquiries. While matters of fraud and conspiracy are outside of my jurisdiction, the Applicant has asserted that documents he requested should have been provided to him in response to his access request. That assertion engages the question of whether the Public Body properly responded to his access requests under the FOIP Act, which is a matter within my jurisdiction.

[para 16] I discuss the Public Body's third argument in detail, below. Prior to that, I address its fourth argument.

[para 17] Like its first argument, the Public Body's fourth argument rests upon its assertion that the Applicant has withdrawn from the remaining inquiries. Here the Public Body asserts that the Applicant has effectively withdrawn and has chosen to pursue allegations of criminality with the Edmonton Police Service and RCMP. In light of the Applicant's statement that he wishes the remaining inquiries to continue, I find that is not the case.

[para 18] The Public Body's third argument relates to what would happen should the remaining inquiries proceed without participation from the Applicant. There are two branches to its argument, each of which the Public Body asserts leads to the conclusion that proceeding with the remaining inquiries would be procedurally unfair or amount to an abuse of process. Both branches rest on an inference that considering the Applicant's statements to the effect that he views any requests for submissions as harassment, and that the OIPC has no basis to ask him for submissions, he will not make any submissions or participate at all in the remaining inquiries.

[para 19] It is premature to conclude that the Applicant will not make submissions. Despite his statements to the contrary, when provided the opportunity to make a submission in response to the Public Body's request to discontinue the remaining inquiries, he did. He confirmed his desire that the remaining inquiries should continue, which cleared up in large measure any suggestion that he has abandoned the remaining inquiries. It also demonstrated that he remains interested in the outcomes of the remaining inquiries. Equally brief submissions during the remaining inquiries, simply stating that he will rely on the documents attached to the Notice of Inquiry, which includes his Request for Review, would suffice during inquiry. It is the same standard that applies to any applicant. The Applicant is no doubt aware of the significance of making such a brief submission, since the inquiry into file 009475 was discontinued on the basis of his failure to do so.

[para 20] That the Applicant remains interested in the outcomes is sufficient to deal with the first branch of the Public Body's argument.

[para 21] The first branch of the Public Body's third argument asserts that continuing with the inquiry would be an abuse of process, generally. Citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, the Public Body asserts that since the remaining inquiries concern only the Applicant's personal information, proceeding in his absence would damage the public interest in the administrative fairness of the process to a degree that exceeds damage to the public interest in the enforcement of legislation if the remaining inquiries were halted. Thus, the Public Body argues, the remaining inquiries should not proceed.

[para 22] In light of the Public Body's argument I consider that proceeding absent interest from the Applicant could appear to be an unfair or arbitrary exercise of the Commissioner's power to conduct the inquiry. However, since the Applicant remains interested in the remaining

inquiries, I am satisfied that proceeding will not damage the public interest in administrative fairness.

[para 23] The second branch of the Public Body's third argument asserts that I would effectively be taking the place of the Applicant as a party and acting adverse in interest to the Public Body should the remaining inquiries proceed without the Applicant. Among the decisions it cites in support of its position are those in *Malton v Attia*, 2016 ABCA 130 (*Malton*) and *R. v Oracz*, 2011 ABCA 341 (*Oracz*). Both cases reference the importance of maintaining neutrality as a decision-maker and not "descending into the arena" by advancing arguments not made by parties and creating actual or a reasonable apprehension of bias.

[para 24] The continued interest of the Applicant in the remaining inquiries addresses this branch to some degree. Since it is premature to conclude that the Applicant will not make submissions, it is also premature to conclude that there will be any void caused by his absence for me to step into. I find, though, that the Public Body's concerns are also relevant in the present circumstances, the immediate question being whether to proceed considering the statements already made by the Applicant in respect of this Office. While the Applicant remains interested, there is little, if anything, to indicate that he views the prospective inquiries as legitimate or credible. To the contrary, he has expressed his belief that this Office is complicit in a conspiracy to conceal numerous murders.

[para 25] While the circumstances under which the remaining inquiries may proceed are less than ideal, they would not, and do not, entail "descending into the arena" or bias as concerned the Court of Appeal in *Malton* and *Oracz*.

[para 26] In *Oracz*, the Court of Appeal did not find that the trial judge "descended into the arena." It did make a cautionary note at paragraph 7, stating, "...It is essential that trial judges not descend into the arena. It always preferable for the trier of fact and the adjudicator of law to leave to the parties or their counsel the initiative to advance legal and factual arguments. Our system of criminal justice is premised on an adversarial model. Judicial inquests are not part of the process..."

[para 27] In *Malton*, the Court of Appeal found that a trial judge committed a litany of errors in conducting the trial. Among those errors was the trial judge's independent development and application of an alternate scenario for liability and damages apart from what was pled by the plaintiffs, finding and awarding increased costs for misconduct during trial without alerting the defendants to that possibility, incorrectly assuming the defendants' request to appeal a preliminary ruling was a ploy, imputing malicious conduct on the part of defendants' failure to properly disclose documents without a basis, and accusing the defendants of unethically failing to identify a binding Alberta authority through legal research. The trial judge also made numerous critical remarks about the defendants during trial. In view of trial judge's conduct, the

Court of Appeal found a real concern that the trial judge was predisposed against the defendants, and that the trial was procedurally unfair.

[para 28] There is no conduct similar to that in *Malton* occurring in the remaining inquiries. The Public Body's argument is that by merely proceeding under the circumstances, the process will be procedurally unfair or be perceived to be unfair. That is not the case.

[para 29] The Public Body recognizes that I am not a judge. What is further to that point is that the Commissioner is an Officer of the Legislature, rather than judge or a court. Under the FOIP Act, the Commissioner has considerable latitude to peer into public bodies' practices in respect of access requests, including through inquiry, which is itself prescribed by the FOIP Act and not undertaken on behalf of an Applicant.

[para 30] The Applicant's right to make a request for review of a response to an access request appears in section 65(1) of the FOIP Act. Section 69(1) of the FOIP Act provides that such requests, where not settled by mediation and/or investigation, must proceed to inquiry. In this case, requests to the Commissioner under section 70 to refuse to conduct the remaining inquiries have been made and were unsuccessful. The remaining inquiries thus continued as the FOIP Act requires, not out of advancing a case on behalf of the Applicant case by either the Commissioner or myself as her delegate.

[para 31] The inquiry process itself differs significantly from the adversarial process of a criminal proceeding, or even a civil proceeding, for example, in tort. It is not unusual for the decision-maker in an inquiry to ask questions of a party. Under section 56(1) of the FOIP Act, as the Commissioner's delegate, I am granted the powers, privileges, and immunities of a commissioner under the *Public Inquiries Act*, RSA 2000, c P-39 when conducting an inquiry. In short, there is an inquisitorial aspect to the process. As a neutral decision-maker, such inquiries are made of my own motion as part of the process, and not on behalf of the Applicant. This is so regardless of the Applicant's opinions or beliefs about this Office or whether he makes further substantive submissions.

[para 32] The Applicant's opinions and beliefs are of the sort that indicate a lack of faith in the review process, but do not affect the process itself. The inquiry process is carried out the same regardless of any party's opinion about it, good or bad. The only remarkable facet of this case in that regard is that the Applicant has expressly stated his opinions in the inquiry process.

[para 33] Regarding the prospect of receiving no further substantial submission from the Applicant, that may turn out to be the case. Even if so, it will not make a difference to the fairness of the process.

[para 34] The Applicant has already provided a written Request for Review. As such, I need not fill in any blanks about his concerns about the responses to his access requests. As in any

inquiry, the remaining inquiries may proceed with that document as the only substantive submission from the Applicant. In cases where even that document provides little in the way of specific challenges to a public body's response to an access request, my function remains the same: to review the responses to access requests with an eye for whether a public body complied with the FOIP Act when it prepared and provided them to an applicant. Doing so will usually concern whether the Public Body has established compliance with the FOIP Act.

[para 35] Section 71 of the FOIP Act generally places the burden on the Public Body to demonstrate compliance. Where the Public Body has the burden, it, and not the Applicant, is the one that must advance a case. Where the Public Body meets its burden, the lack of challenges from the Applicant will mean that there is nothing to rebut that conclusion.

[para 36] In instances where the Applicant has the burden, for example with respect to disclosure of third party personal information per section 71(2), that is taken into account when considering whether the Public Body complied with the FOIP Act.

[para 37] Absent submissions from the Applicant, my role where the Applicant rather than the Public Body has the burden is to review whether the Public Body took the steps it must as required by the FOIP Act. For example, where third party personal information is withheld under section 17(1), my role would include reviewing that information to see if it is actually third party personal information as defined by the FOIP Act, to which section 17(1) applies. It would also include reviewing whether the Public Body applied presumptions against disclosure under section 17(4), and weighed factors under section 17(5), as FOIP requires it to do when withholding such information. At no point, however, do I invent or advance alternate scenarios or legal theories with the aim of undermining the Public Body's explanations.

[para 38] In view of the above, I find that there is no bias, reasonable apprehension of bias, or abuse of process in continuing the remaining inquiries at this time.

V. DECISION

[para 39] My decision is that the remaining inquiries, file numbers 010593, 010594, 010595, will proceed.

John Gabriele
Adjudicator