

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER FOIP2025-34/ATIA2025-DEI-02

November 28, 2025

University of Calgary

Case File Number 040196

Office URL: www.oipc.ab.ca

Summary: The University of Calgary (the Public Body) made a decision to disregard the Applicant's access request under section 9(1)(a) of the *Access to Information Act* (ATIA), stating that providing a response would unreasonably interfere with its operations.

A preliminary issue arose during the inquiry as to which statute applied: the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) or the *Access to Information Act* (ATIA). The access request was made when the FOIP Act was in force, but the initial fee was not paid by the Applicant until after the FOIP Act was repealed and ATIA came into force. Under the transitional provision of ATIA, the FOIP Act applies. The Commissioner ordered the Public Body to process the Applicant's access request in accordance with the FOIP Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 7, 11, 72; *Access to Information Act*, S.A. 2024, c. A-1.4, ss. 9, 101.

Cases Cited: *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51; *Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227; *Medovarski v Canada (Minister of Citizenship and Immigration)*; *Rizzo & Rizzo Shoes Ltd, Re*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27; *York Condominium Corporation No 382 v Jay-M Holdings Limited*, 2007 ONCA 49.

I. BACKGROUND

[para 1] On June 3, 2025, the Public Body received a request for access to information from the Applicant. On June 11, 2025, the *Freedom of Information and Protection of Privacy Act* (the FOIP Act or FOIP) was repealed and the *Access to Information Act* (ATIA) came into force. On June 12, 2025, the Applicant paid the initial fee for the access request.

[para 2] On July 29, 2025, the Public Body issued a decision under ATIA. The decision stated the request had been received on June 12, 2025 under ATIA. It further stated that responding to the access request “would unreasonably interfere with our operations under Section 9(1)(a) of the Act [ATIA].”

[para 3] The Applicant requested that my office review the Public Body’s decision. The issue for review was confirmed on September 17, 2025 and proceeded directly to inquiry without mediation or investigation, as is my office’s standard practice under ATIA when considering whether a public body properly disregarded an access request as permitted by section 9 of ATIA.

II. PRELIMINARY JURISDICTIONAL ISSUE: Which Act Applies: The FOIP Act or ATIA?

[para 4] Although the Public Body relied on ATIA to make its decision, the timing of this case raises a preliminary jurisdictional issue as to the applicable legislation. As noted above, the FOIP Act was repealed on June 11, 2025 when ATIA came into force. This access request straddles that timeline: it was made on June 3, 2025, when the FOIP Act was in force, but the Applicant did not pay the initial fee until June 12, 2025, after the FOIP Act was repealed and ATIA was enacted.

[para 5] As such, it is necessary to look to the principles of statutory interpretation to determine the governing legislation. The guiding rule of statutory interpretation is that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”¹

[para 6] Part 5, section 101 of ATIA contains transitional provisions as follows:

101(1) In this section, “former Act” means the Freedom of Information and Protection of Privacy Act.

(2) Notwithstanding the repeal of the former Act,

¹ *Rizzo & Rizzo Shoes Ltd, Re*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21, 154 DLR (4th) 193., citing Elmer Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at p. 87.

- (a) *a person designated as the head of a public body for the purposes of section 1(f)(ii) of the former Act continues as the head of the public body for the purposes of this Act until a new person is designated as the head of the public body for the purposes of section 1(h)(ii) of this Act.*
 - (b) *A person or group of persons designated as the head of a local public body under section 95(a) of the former Act continues as the head of the local public body under this Act until a new person or group of persons is designated as the head of the local public body under section 98(a) of this Act.*
 - (c) *a request made in accordance with section 7 of the former Act prior to the coming into force of this Act will be dealt with by a public body in accordance with the former Act as it read immediately before the repeal of the former Act, and*
 - (d) *the former Act as it read immediately before its repeal continues in effect and applies*
 - (i) *to a review, inquiry or investigation if the matter, decision, disclosure, act or failure to act that is the subject of the review, inquiry or investigation occurred before the repeal of the former Act, and*
 - (ii) *subject to subsection (3), to an offence committed under the former Act before the repeal of the former Act*
- (3) *A prosecution under the former Act of an offence committed under that Act before the repeal of the former Act may be commenced in accordance with section 95(3) of this Act.*

[para 7] Transitional provisions are enacted to catch those who fall between the cracks created by two pieces of legislation. They ensure that these individuals are not left in legal limbo, uncertain of rights and with no applicable law.² Sections 101(2)(c) and (d) of ATIA answer the question of which statute applies. Pursuant to section 101(2)(c) of ATIA, a request made in accordance with section 7 of the FOIP Act prior to the coming into force of ATIA will be dealt with by a public body in accordance with FOIP. The grammatical and ordinary meaning of this provision refers to the date on which an access request is made. Essentially, if a request was made in accordance with the FOIP Act, while it was still in force, then the FOIP Act applies.

[para 8] The modern approach to statutory interpretation requires considering the object of the provision and the intention of the Alberta Legislature. On its face, it is clear that the transitional provision in section 101 of ATIA is meant to provide a clear delineation as to which Act applies, the FOIP Act or ATIA, on the basis of the date on which an access request was made.

² *Medovarski v Canada (Minister of Citizenship and Immigration); Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 17.

[para 9] Similar considerations apply to section 101(d) of ATIA.³ The FOIP Act continues to apply to a review, inquiry or investigation if that matter, decision, disclosure or failure to act that is the subject of the review, inquiry or investigation occurred before the repeal of FOIP. The grammatical and ordinary meaning of this provision is that the FOIP Act applies to my office's reviews, inquiries and investigations of matters that occurred before the repeal of FOIP. If a request was made under the FOIP Act, the FOIP Act will apply to my office's review of that request.

[para 10] This request was made on June 3, 2025, while the FOIP Act was still in force, which means the FOIP Act applies. As I find that the FOIP Act is the governing statute, I must consider whether the Public Body met its obligations under FOIP. Section 7 of the FOIP Act sets out the requirements of a valid access request. It states:

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.

(3) In a request, the applicant may ask

(a) for a copy of the record, or

(b) to examine the record.

[para 11] I have reviewed the June 3, 2025 access request. The Applicant made the request to the Public Body believed to have custody or control of the record. The request was in writing, on the Public Body's own access to information form and confirmed it was for a copy of the record. The request is for high school mark cut-offs for specified faculties for the years 2020 – 2024 with a specific example of what was being requested. I find there was sufficient detail in the request to enable the Public Body to identify the requested records. Therefore, I find the request was made in accordance with section 7 of the FOIP Act.

[para 12] The Public Body had initially considered the request to be made under ATIA because the initial fee required by the Regulation was not paid until June 12, 2025, after the repeal of FOIP and the coming into force of ATIA.⁴ However, for the reasons provided above, the

³ *York Condominium Corporation No 382 v Jay-M Holdings Limited*, 2007 ONCA 49 at para 32.

⁴ Initial fees for access requests for non-personal information are governed similarly under both the repealed FOIP Act and ATIA. Both section 11(2)(a) of the repealed FOIP Regulation (186/2008) and section 13(2)(a) of the ATIA Regulation (133/2025) require an initial fee of to be paid by an applicant when a request for non-personal information is made. Both of these Regulations address the timing of processing a request, in that the initial fee is to be paid before a request can be processed (section 11(3) of the FOIP Regulation and section 13(3) of the ATIA Regulation).

requirement for an initial fee to process an access request does not affect the application of the transitional provision of section 101 of ATIA and it does not affect whether an access request has been made under section 7 of the FOIP Act. Therefore, the date of the payment of the initial fee under the Regulation is irrelevant to the question of which Act applies. The relevant date is the date the access request was made, June 3, 2025, when the FOIP Act was still in force.

[para 13] I find that the FOIP Act is the governing legislation pursuant to section 101(2)(c) of ATIA. I find the request was made under the FOIP Act and must therefore be processed by the Public Body in accordance with the FOIP Act. Pursuant to section 101(2)(d) of ATIA, the FOIP Act also applies to my review of the Public Body's response.

III. DISCUSSION OF ISSUE: Did the Public Body comply with section 11 of the FOIP Act?

[para 14] The Notice of Inquiry, dated September 22, 2025, set out the issue for inquiry as "Did the head of the Public Body properly disregard the request as permitted by section 9(1)(a) of the Act [ATIA]?"

[para 15] For the reasons provided above, I have determined that ATIA does not apply and as I have found that the access request complies with the terms of section 7 of the FOIP Act, my review must also proceed under FOIP. As such, the issue for review is whether the Public Body complied with section 11 of the FOIP Act (time limit for responding).

[para 16] It is clear that at the time of the request, the Public Body believed that ATIA applied and responded accordingly. When I requested additional submissions from the parties on the preliminary issue of jurisdiction, the Public Body conceded that the FOIP Act applied and confirmed it would reconsider the Applicant's request in accordance with FOIP and without regard to section 9 of ATIA. As such, there is no need for further submissions from the parties.

[para 17] Section 11 of the FOIP Act requires a public body to make every reasonable effort to respond to an access request not later than 30 days after receiving the request. Section 11 states:

11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 14, or

(b) the request has been transferred under section 15 to another public body.

(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to a record.

[para 18] The request was not for the Applicant's personal information. The part of the FOIP Act Regulation (186/2008) that governs fees for non-personal information requests and is relevant to this case is as follows:

11(1) This section applies to a request for access to a record that is not a record of the personal information of the applicant.

(2) An applicant is required to pay

(a) an initial fee of \$25 when a non-continuing request is made, or

(b) an initial fee of \$50 when a continuing request is made.

(3) Processing of a request will not commence until the initial fee has been paid.

[para 19] Therefore, under section 11(2) of the FOIP Act Regulation (186/2008), the Applicant was required to pay an initial fee. Although the access request was received on June 3, 2025, the Applicant did not pay the required fee for a general information request until June 12, 2025. As such, pursuant to section 11(3) of FOIP Act, the Public Body was not required to process the request until the fee had been paid.

[para 20] Accordingly, subject to any time extensions under section 14, or transfers under section 15, the Public Body should have provided a response by July 14, 2025. I note the Public Body's statement that it will reconsider the request in accordance with the FOIP Act, and I confirm that it is required by section 11 of the FOIP Act to do so.

IV. ADDITIONAL COMMENTS: Section 9 of ATIA

[para 21] I have found that the Public Body should have processed the Applicant's request under the FOIP Act and had no authority under section 9 of ATIA to disregard the request. However, even if I am wrong that the FOIP Act applies, I find there would be no difference in the outcome of this inquiry for the reasons set out below.

[para 22] The head of a public body's authority to disregard an access request is set out in section 9 of ATIA, which states:

9(1) The head of a public body may disregard a request made under section 7(1) if

(a) responding to the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make a request because the request has been made repeatedly or in a systematic nature,

- (b) *the request is abusive, threatening, frivolous or vexatious or is made in an abusive or threatening manner*
 - (c) *the information the request relates to has already been provided to the applicant, or has been made available to the public under section 90 or 91,*
 - (d) *despite receiving further information from an applicant under section 7(3), the request does not meet the requirements of section 7(2)(c) because the public body does not have information that is sufficiently clear to enable the public body to locate and identify the record within a reasonable time with reasonable effort, or*
 - (e) *the request is otherwise overly broad or incomprehensible.*
- (2) *Where the head of the public body has disregarded a request, the applicant must be told*
- (a) *the reasons for the decision to disregard the request, and*
 - (b) *that the applicant may ask for a review of that decision under Part 3.*
- (3) *The public body must notify the applicant that the applicant's request has been disregarded within 30 business days after the public body receives the request.*
- (4) *Despite subsection (3), if the applicant's request is being disregarded under subsection (1)(d), the public body must notify the applicant that the applicant's request has been disregarded within 30 days after receiving the applicant's response to the public body's request for further information under section 7(3).*

[para 23] A decision under section 9 of ATIA must be made by the head of a public body or evidence must be provided to prove the head of the public body delegated the authority to make section 9 decisions to the decision maker.⁵ The decision in this case was made by a Senior Specialist in Access and Privacy, not the head of the Public Body. As such, in a review of a section 9 decision made by anyone other than the head of a public body, a copy of the delegation of power by the head to the decision maker under section 87 of ATIA is required. Although it was requested, the Public Body did not provide a copy of the necessary delegation. I would have drawn a negative inference from the Public Body's failure to provide evidence of the delegation to the decision maker. Accordingly, had ATIA applied to this matter, I would have found that the decision maker had no jurisdiction to make a decision under section 9.

⁵ *Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227 at paras 84, 126, and 141.

[para 24] In addition, there are two parts to section 9(1)(a).

- 1) First the head of a public body (or the head's delegate) must determine that responding to the request would either:
 - i) unreasonably interfere with the operations of the public body
or
 - ii) would amount to an abuse of the right to make a request.

AND

- 2) Second, the head of a public body (or the head's delegate) must determine that because either:
 - i) the request has been made repeatedly
or
 - ii) the request has been made in a systematic nature

that the first part applies.

That is, in order to disregard an access request under section 9(1)(a), the head must determine that both the first and the second parts of this provision apply.

[para 25] A head of a public body (or the head's delegate) cannot decide that section 9(1)(a) applies *only* if responding to the request would unreasonably interfere with the operations of the public body. There must also be a link to the second part of section 9(1)(a), that is, there must also be a finding that the request has either been made repeatedly or in a systematic nature. In this case, the decision maker stated only that responding would unreasonably interfere with the public body's operations, and there was no reference to the second mandatory requirement of section 9(1)(a), that the request was either made repeatedly or in a systematic nature. Therefore, the decision was not made in accordance with the criteria of section 9(1)(a).

[para 26] Further, the requirements of section 9(2) must also be met if the head of a public body makes a decision under section 9(1). Section 9(2) requires that the applicant must be told the reasons for the decision to disregard the request and that the applicant may request a review. It is not sufficient for the head of a public body to simply cite a provision, or a portion of a provision under section 9(1). Reasons are required. An applicant must be told *why* the head of a public body decided that a provision of section 9(1) applied, not just that a provision was applied. If no reasons are provided for the decision, then the decision does not comply with the clear requirements of the provision. In this case, the Public Body cited only a portion of section 9(1)(a) and provided no reasons for its decision.

[para 27] A review of the head of the public body's decision to disregard an access request, is exactly that, a review of the decision that was made and the reasons provided to an applicant. It is not an opportunity for a public body to provide *ex post facto* justification for the decision that was made. A public body may provide additional evidence to support the head's decision under section 9(1), but the review must focus primarily on the decision and reasons provided under section 9(2) of ATIA at the time the applicant was notified of the decision.

[para 28] Section 9(3) is a mandatory timeline requirement. Unless section 9(4) applies, the applicant must be notified of the public body's decision within 30 business days.

[para 29] In conclusion, even if ATIA did apply to this request, I would have found that the Public Body did not properly disregard the request as permitted by section 9(1)(a) and I would have ordered it to respond in accordance with its duties under ATIA.

IV. ORDER

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

[para 31] I find the Public Body failed to respond to the Applicant within the time limit set out in section 11 of the FOIP Act. While it is too late for the Public Body to now comply with that section of the Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's duties under the FOIP Act.

[para 32] I further order the Public Body to notify me and the Applicant in writing, within 50 days of receiving a copy of this Order, that it has complied with it.

Diane McLeod
Information and Privacy Commissioner
/dr