

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER ATIA2026-DEI-01

May 28, 2026

Edmonton Police Service

Case File Number 040992

Office URL: www.oipc.ab.ca

Summary: The Edmonton Police Service (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). During the inquiry, the Public Body stated it no longer relied on section 9(1)(a) but provided submissions supporting a disregard decision under section 9(1)(e). The Commissioner determined that a review of a decision to disregard an access request under section 9 of ATIA must be based on the reasons provided to an applicant by a public body at the time the decision was made, and by failing to notify the Applicant that it had made a decision under section 9(1)(e), the Public Body had not met the requirement of section 9(2)(a).

The Commissioner ordered the Public Body to respond to the Applicant in accordance with its obligations under ATIA.

Statutes Cited: **AB:** *Access to Information Act*, S.A. 2024, c. A-1.4, ss. 2, 9, 13, 14, 59, 64.

Authorities Cited: **AB:** Orders ATIA2025-DEI-01, ATIA2026-TEI-04, FOIP2025-34/ATIA2025-DEI-02, F2025-RTD-02.

Cases Cited: *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198.

Other Sources Cited: OIPC Alberta Practice Note: Late Raising of Discretionary Exceptions – ATIA

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I. BACKGROUND

[para 1] On September 15, 2025, the Applicant made a multi-part detailed request under the *Access to Information Act* (ATIA or the Act) for records relating to a public objection by the Edmonton Police Service (the Public Body) to a Crown plea agreement in the matter of an eight-year-old Indigenous child’s death. The request had five parts, each of which outlined in greater detail the specific information being requested under each heading:

- 1) Records relating to the investigation and Crown’s prosecution of this matter.
- 2) Public Objection and Media Communications
- 3) Historical EPS-Crown Concerns (Systemic and Strategic Issues)
- 4) EPS-Crown Day-to-day Relationship and Practices
- 5) Comparative/Reference Materials

[para 2] The Public Body extended its time to respond on September 17, 2025¹, and on September 25, 2025, the Public Body notified the Applicant it would respond to Parts 1, 2 and 5; that it had disregarded Part 3 under section 9(1)(a), (b), and (e); and that it was considering disregarding Part 4 if the Applicant did not narrow the scope.

[para 3] The Applicant responded the next day, September 26, 2025, noting the Public Body’s application of section 9 to parts of the original request and accordingly revised the previous Parts 3 and 4 of the request into two new narrower items. Additional communications between the parties on October 1 and 2, 2025 confirmed the scope of the revised request.

¹ The Public Body’s time extension decisions under section 16 of ATIA are reviewed in Order ATIA2026-TEI-04.

[para 4] On October 7, 2025, the Applicant was notified that the head of the Public Body (the Head) had decided to disregard the first item of the Applicant's revised request under section 9(1)(a) of ATIA. The Public Body confirmed it would process the second item of the revised request.

[para 5] On December 2, 2025, my office accepted the Applicant's request to review the Public Body's October 7, 2025 decision to disregard the revised access request under section 9 of ATIA. The matter 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. ISSUE: Did the head of the Public Body properly disregard the request as permitted by section 9 of the Act?

Preliminary Issue: Delegation of Authority

[para 6] Section 9(1) of ATIA authorizes the head of a public body to disregard a request under section 7(1) in specific circumstances. The Public Body's decision to disregard the Applicant's request was not made by the head, but by the Information and Privacy Coordinator, therefore I had to confirm that this decision maker had been properly delegated the authority to make the decision. Section 87 of ATIA sets out the head of a public body's power to delegate.

Delegation by head of public body

87(1) The head of a public body may delegate to any person any power, duty or function of the head under this Act, except the power to delegate under this section.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.

[para 7] The Public Body provided a copy of its Delegation Authority Table, dated July 18, 2025. This Delegation Authority Table provides that the Information and Privacy Coordinator is delegated the power to make decisions under section 9 of ATIA. As such, I am satisfied that the decision maker had the proper delegated authority from the head of the Public Body under section 87(1) to make the section 9 decision under review in this inquiry.

Discussion of the Public Body's Decision under section 9(1)

[para 8] In Order ATIA2025-DEI-01, I provided an overview of section 9 of ATIA, and incorporate that discussion herein.²

[para 9] In its September 25, 2025 decision, the Public Body stated it had disregarded Part 3 of the Applicant's original September 15, 2025 request under sections 9(1)(a), (b), and (e) of ATIA. The

² Order ATIA2025-DEI-01 at paras 6 – 19.

Public Body also indicated that Part 4 would be disregarded under section 9 if the Applicant did not narrow its scope.

[para 10] The Applicant responded on September 26, 2025, narrowing the scope of Parts 3 and 4 of the original request to two items as follows:

We note your invocation of *ATIA*, s. 9(1) to reject:

Part 3 – Historical EPS-Crown Concerns (Systemic and Strategic Issues); and
Part 4 – EPS-Crown Day-to-Day Relationship and Practices.

To address your stated concerns, we hereby narrow the scope of these parts to records that relate to the substance of the specific claims by [two named individuals] in their statements, positions or actions in this matter including:

1. Internal assessments, memoranda, or communications demonstrating their understanding of or beliefs about the plea agreement, prosecutorial discretion, or systemic concerns;
2. Any records considered, explicitly referenced or cited during the preparation of the letters by [two named individuals] to ADM [name redacted], [name redacted]'s media conference, or related internal decisions.

This limited scope reflects the core of our initial request, which was always intended to obtain the records underpinning EPS' public statements and actions.

[para 11] The Public Body responded on October 1, 2025 requesting additional clarification regarding the narrowed scope of the Applicant's request:

With respect to the proposed narrowed scope of your request regarding Parts 3 and 4, it is our understanding that your request for "...*prosecutorial discretion, or systemic concerns*", is specifically in the matter of the "*plea agreement*" for the case in question. Please clarify.

[para 12] The Applicant responded the next day, October 2, 2025. With respect to the request for clarification on the scope of the request, the Applicant stated:

Your letter also suggests that our request for records regarding "prosecutorial discretion, or systemic concerns" relates specifically to the plea agreement in the case at issue. That is incorrect. As stated in our request and supported by the transcript we enclosed, the request for 10 years of historic records arises from the public statements of [name redacted], Acting Executive Director of EPS Legal and Regulatory Services, who described "close to a decade of consistent efforts by EPS to communicate serious ongoing justice system concerns" to senior Crown officials.

Accordingly, our request for records of prosecutorial discretion and systemic concerns is not confined to the plea agreement in the single case, but relates to EPS' broader systemic advocacy over the past decade, as articulated by [name redacted].

[para 13] On October 7, 2025, the Public Body issued its decision to disregard Parts 3 and 4 of the Applicant's access request as follows:

With respect to Parts 3 and 4, specifically concerning “...prosecutorial discretion, or systemic concerns”, based on your clarifications in your letter of 2025 October 02, we are disregarding this portion of your request and are invoking section 9 of the Alberta ATIA.

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,

We will process the part of your request concerning paragraph number 2 as quoted below from your letter of 2025 September 26 (attached):

“2. Any records considered, explicitly referenced or cited during the preparation of the letters by [two named individuals] to ADM [name redacted], [name redacted]’s media conference, or related internal decisions.”

[para 14] The Applicant requested a review by my office of the Public Body’s October 7, 2025 decision to disregard item #1 of the revised request and this matter was expedited to an inquiry.

[para 15] During the inquiry, the Public Body stated it was no longer relying on section 9(1)(a) (or 9(1)(b)) for the purposes of the inquiry. As such, I have no evidence or submissions before me upon which I can find the Public Body properly disregarded the request under section 9(1)(a) of the Act. The Public Body provided detailed submissions on the application of section 9(1)(e), which are discussed below.

Application of section 9(2)

[para 16] Section 9(2) of ATIA states:

9(2) Where the head of a 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.*

[para 17] Section 9(2) requires that an applicant be told the reasons for the decision to disregard the request and that the applicant may request a review. As quoted above, a review of the head of a 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 18] The Public Body’s detailed submissions in this inquiry focused exclusively on the application of section 9(1)(e) to the Applicant’s request. Section 9(1)(e) of ATIA provides that a public body may disregard a request where “the request is otherwise overly broad or incomprehensible”.

[para 19] The issue with the Public Body’s submissions on section 9(1)(e) are that it did not rely on or refer to this provision in its October 7, 2025 decision to disregard a portion of the narrowed request. It referred only to section 9(1)(a). This issue is complicated by the fact that the Public Body did rely on section 9(1)(e) when it disregarded Part 3 of the original request on September 25, 2025. Therefore, I must first determine whether the Public Body can rely on section 9(1)(e) for its decision to disregard. To assist in making this determination, I will consider whether the Applicant’s narrowed request might be considered essentially the same request, such that, potentially, the Public Body’s reasons for its original decision could still apply, or, if the narrowed request changed sufficiently to constitute a new request with a different scope from the original.

[para 20] Part 3 of the Applicant’s original September 15, 2025 access request was as follows:

3. Historical EPS-Crown Concerns (Systemic and Strategic Issues)

The following requested records relate to [name redacted]’s statements at the September 2025 press conference, including that EPS’ objection letter was “a culmination of close to a decade of consistent efforts by EPS to communicate serious ongoing justice system concerns... [including] many attempts to bring concerns to Assistant Deputy Ministers, Chief and Deputy Crown Prosecutors, and other senior justice officials”, and that “[w]e have exhausted every consultation and collaborative step in our effort to achieve better public safety and a better criminal justice system.”

All records from 2015 to the present documenting EPS concerns about prosecutorial practices, litigation risk, or systemic justice issues, with an emphasis on patterns, trends, and policy-level matters including:

- a. External communications with Crown or senior justice officials:
 - i. Communications, correspondence, meeting notes, briefing materials, and memoranda with the Alberta Crown Prosecution Service (including Chief and Deputy Chief Crown Prosecutors), Assistant Deputy Ministers of Justice, and other senior justice officials, including correspondence from the ADM supporting regular discussions relating to EPS’ expressed concerns about prosecutorial decision-making, litigation risk assessments, plea agreements, or systemic issues in the administration of criminal justice;
 - ii. Strategic or policy-level discussions, submissions, or advocacy, regarding prosecutorial practices, oversight, proposed reforms, or legislative changes;
 - iii. Relating to EPS’ view that the relationship with the Crown lacked adequate communication or respectful professional collaboration, or its perception of patterns of prosecutorial leniency or risk aversion;
 - iv. Any records in which EPS sought or received feedback from the Crown on withdrawn charges, stayed files, or unsuccessful prosecutions, including instances where EPS sought information to improve future investigations and

including instances where EPS sought or received feedback regarding judicial commentary on its investigations or investigators;

- v. Records of meetings, presentations, or correspondence in which EPS raised systemic concerns about the prosecution service, including but not limited to submissions to Alberta Justice officials about the adequacy of prosecutorial practices, advocacy for reforms to Crown practices or oversight mechanisms, or consultations on proposed policy changes or legislative reforms tied to the EPS-Crown relationship.

b. Internal EPS records and communications:

- i. Tracking analysis, or statistical summaries of recurring disputes with the Crown over plea negotiations, charge reductions, withdrawals or stays, or trial conduct or strategies;
- ii. Analysis of legal or reputational risks associated with plea agreements or case handling, including the adequacy of consultations with investigators, case assessments, or recommendations to or from EPS Legal Services regarding the conduct of prosecutions;
- iii. Internal EPS assessments that “every other option” to raise concerns with the Crown or government officials had been exhausted, including briefing notes, summaries of prior unsuccessful attempts, correspondence showing EPS’ frustrations, or other internal considerations demonstrating systemic or strategic decision-making;
- iv. EPS’ view that the relationship with the Crown lacked adequate communication or respectful professional collaboration;
- v. Briefing notes, memoranda, position papers, or reports circulated among the Chief, Deputy Chiefs, Legal Services, or executive officers.

[para 21] The Public Body disregarded the above quoted access request on September 25, 2025. The Applicant responded the next day, revising the scope of the disregarded Part 3 and Part 4 to the following:

To address your stated concerns, we hereby narrow the scope of these parts to records that relate to the substance of the specific claims by [two named individuals] in their statements, positions or actions in this matter including:

- 1. Internal assessments, memoranda, or communications demonstrating their understanding of or beliefs about the plea agreement, prosecutorial discretion, or systemic concerns;
- 2. Any records considered, explicitly referenced or cited during the preparation of the letters by [two named individuals] to ADM [name redacted], [name redacted]’s media conference, or related internal decisions.

This limited scope reflects the core of our initial request, which was always intended to obtain the records underpinning EPS’ public statements and actions.

[para 22] The Public Body argues in its submission that the reframing of the original request “did not reflect a true narrowing of the issues encompassed by Categories 3 and 4, which had already been determined to be overbroad”. The Public Body relies on paragraphs 11 – 15 and 25 - 29 of its affidavit, which restate the facts and further states, at paragraph 15:

The September 25 and October 1 inquiries about the scope of [the Applicant's] request were made in good faith with an intention to reach a reasonably framed request. However, the outcome of [the Applicant's] October 2 [sic] was to confirm that there had been little movement on the 10-year time frame of the request or on the far-reaching request for "internal assessments, memoranda, or communications" about the "prosecutorial discretion" or "systemic concerns" in the relationship between EPS and the Crown.

[para 23] The Public Body further argued at paragraphs 26 -28:

Narrowed Category 1: In my interpretation, "all internal assessments, memoranda, or communications" within EPS over a ten-year period potentially engages the records of every division, branch, section, unit, team and member within EPS. The qualifying characteristic of "demonstrating [two redacted names'] understanding of or beliefs about the plea agreement, prosecutorial discretion or systemic concerns" effectively engages any connection at all – whether on specific files or on broader issues – with the Alberta Crown Prosecution Service. The further clarification offered by the requestor on October 2, 2025 simply confirmed the breadth of the request by targeting "EPS' broader systemic advocacy over the past decade". I interpret this language as including records (EPS-wide) demonstrating any reflection of or engagement with the stated issues

I do not interpret Narrowed Category 1 as seeking only documents relied on by [two names redacted]. This would be entirely redundant of Narrowed Category 2. Among the nearly 25,000 pages already being processed and the further records still being collected on this request, the targeted categories already include the materials relied on and considered by [two named individuals] for the purposes of any letters, public comments, or actions related to the underlying plea deal. The clearer framing of Narrowed Category 2 makes it more clearly identifiable and feasible for processing.

In other words, Narrowed Category 1 did not truly narrow the request initially made in Categories 3 and 4.

[para 24] The Applicant provided submissions regarding the extent to which it had narrowed the request on September 26, 2025. The Applicant argues the Public Body has mischaracterized its narrowing of the request and states the narrowed request is limited to "records demonstrating or informing the understanding of [two named individuals] in relation to their specific public statements in September 2025" and it does *not* (contrary to the Public Body's position), broadly encompass "all records over a ten-year period that merely touch on prosecutorial discretion or systemic concerns, without regard to whether the records were actually within the knowledge of [the two named individuals]".

[para 25] Having reviewed both the original and narrowed request and the parties' positions, I find the revised request narrows the scope from the original request. While it is for the same 10-year period, the narrowed request is only for those records that were actually within the knowledge of two specified individuals in relation to the public statement that was made. This is a significant difference from the original request that very broadly requested a potentially massive number of records, both internal and external to the Public Body generally relating to "concerns about prosecutorial practices, litigation risk, or systemic justice issues, with an emphasis on patterns, trends, and policy-level matters".

[para 26] The Applicant's position is that the Public Body, at inquiry, seeks to justify a different decision than the one it made on October 7, 2025, which is the decision under review.

[para 27] I agree. ATIA sets out the process for a public body to disregard a request: the head of a public body (or delegate) may make a decision to disregard a request and then notifies the applicant of the decision and the reasons for making it. An applicant may request an independent review of that decision. In this case, following the Public Body's initial decision to disregard part of the original request, the Public Body and the Applicant continued to have good faith discussions in an effort to narrow the scope of the request. These discussions resulted in a new narrowed request and a new decision from the Public Body on October 7, 2025 to disregard the narrowed request. The Public Body notified the Applicant the request had been disregarded only under section 9(1)(a). Therefore, the Public Body cannot now rely on its previous decision to apply section 9(1)(e) to the original request when it made a new decision regarding the revised and narrowed request.

[para 28] A decision to disregard an access request under section 9(1) of ATIA can be distinguished from a public body's decision to rely on a different statutory exception to disclosure during a review by my office. A decision to disregard an access request is a final decision (subject to review by my office) that ends an applicant's quasi-constitutional access rights in a summary matter, whereas the late application of discretionary exceptions occurs in the context of providing a response to an access request. While there are some limited and specific circumstances under which my office may consider permitting the late raising of a discretionary exception to access when reviewing a public body's decision, this may be done during a review of a public body's response to an access request, not where a public body has summarily disregarded an applicant's right of access under section 9 of ATIA.³

[para 29] It is unfair to an applicant if the basis of a public body's decision to disregard their request becomes a moving target. ATIA sets out strict and brief timelines. When a public body makes a decision to disregard an access request, an applicant has 60 business days to assess the decision and decide whether to request a review under section 59(2)(a)(i). Strict time limits also apply to my office's completion of reviews under ATIA. Allowing a public body to change its reasons for disregarding an access request during the expedited inquiry process would introduce delay and confusion.

[para 30] When the Public Body made its October 7, 2025 decision to disregard a portion of the Applicant's narrowed request under section 9(1)(a), this was a decision to deprive the Applicant of its quasi-constitutional rights. The Public Body is obligated to put its "best foot forward" in making its case for its decision to disregard an applicant's access request, which it has not done here.⁴ The Public Body's decision was to disregard the Applicant's access request under section 9(1)(a). Because it changed its mind after making this decision during the course of this inquiry, the reasons

³ OIPC Alberta Practice Note: Late Raising of Discretionary Exceptions – ATIA available at www.oipc.ab.ca.

⁴ *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198 at para 21 (rev'd 2025 ABCA on an unrelated ground). See also: F2025-RTD-02 at para 18.

provided by it only pertain to its decision to rely on section 9(1)(e), which, as I have stated, it cannot do at this stage.

[para 31] Consequently, because there is no evidence before me from the Public Body as to its authority to disregard the Applicant's request, I find that it has not made its case for its reliance on this section. Given this, I need not consider whether it met the other requirements under section 9 in disregarding the Applicant's request.

III. ORDER

[para 32] The issue before me is "Did the head of the Public Body properly disregard the request as permitted by section 9 of the Act?" For the reasons provided above, I find the Public Body is not authorized to disregard the Applicant's request under section 9 of the Act.

[para 33] In accordance with my authority under section 64 of ATIA, I dispose of this issue by making the following order:

- a) I order the Public Body to respond to the Applicant in accordance with its obligations under section 14 of ATIA.
- b) I further order the Public Body to notify me in writing, within 50 business days of being given a copy of this Order, that it has complied with it.

Diane McLeod
Information and Privacy Commissioner