

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-24

July 10, 2026

ENERGY AND MINERALS

Case File Number 024806

Office URL: www.oipc.ab.ca

Summary: An Applicant made a request to Energy and Minerals (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act), for records involved in preparing the new Alberta Coal Policy.

The Public Body responded to the Applicant, granting access to part of the requested records with information withheld under sections 24(1)(a), (b) and (g) of the FOIP Act. The Public Body also removed some information as non-responsive.

The Applicant requested an inquiry into the Public Body's decision to withhold information as non-responsive.

The Adjudicator determined that all the information withheld as non-responsive is responsive to the Applicant's request. The Adjudicator ordered the Public Body to make new decisions regarding access to most of the information, and ordered the Public Body to disclose some information to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 6, 71, 72, *Access to Information Act*, S.A. 2024, c. A-1.4, s. 101

Authorities Cited: AB: Orders F2009-025, F2018-75, F2022-20, F2024-32, FOIP2025-34/ATIA2025-DEI-02

Cases Cited: *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198, *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2025 ABCA 163

I. BACKGROUND

[para 1] An Applicant made a request to Energy and Minerals (the Public Body) dated September 27, 2021, under the *Freedom of Information and Protection of Privacy Act* (FOIP Act or the Act), which was subsequently split into two requests. This inquiry relates to the following request:

All records involved in the preparing of the new Alberta Coal Policy, showing considerations for the new Alberta coal policy, or showing discussions about the new Alberta coal policy, including but not limited to, email, texts, meeting notes, agendas, commentary, drafts, revisions or policy notes. This should also include any directives made by the Minister of Energy to the Ministry regarding the development of a new coal policy. Please exclude submissions made to the Coal Policy Committee., correspondence with the Coal Policy Committee, or records showing the scheduling of meetings with the Coal Policy Committee. Time Period: February 1, 2021 to September 30, 2021

[para 2] On December 13, 2021, the Public Body responded to the access request, granting access to part of the records requested and withholding some information under sections 24(1)(a), 24(1)(b)(i) and 24(1)(g) of the Act. In addition, it removed some information which it stated was not responsive to the access request.

[para 3] The Applicant requested a review of the Public Body's decisions. The Commissioner authorized a Senior Information and Privacy Manager to try and settle the matters under review. During this process, the Applicant withdrew their request for review relating to the Public Body's search for records, and accepted the Public Body's application of sections 24(1)(a), (b)(i), and (g) to information on page 11. The Public Body also released information it had previously withheld on page 14.

[para 4] However, the Public Body's decision to remove information as non-responsive was not settled with respect to information on pages 1-13 and 15. The Commissioner agreed to conduct an inquiry into this issue.

II. RECORDS AT ISSUE

[para 5] The records at issue consist of the information removed from the records at issue as non-responsive to the Applicant's request, on pages 1-13 and 15.

III. ISSUES

[para 6] The issues for this inquiry were set out in the Notice of Inquiry dated April 29, 2026, as follows:

1. Is the information in the records responsive to the Applicant's access request?
2. Does the Applicant have a right of access under section 6(2) to the information in pages 1-13 and 15 withheld as non-responsive?

IV. DISCUSSION OF ISSUES

1. Is the information in the records responsive to the Applicant's access request?

[para 7] The Public Body withheld information in pages 1-13 and 15 as non-responsive to the Applicant's request.

[para 8] The Public Body is not required to provide access to records that have not been requested by the Applicant. However, 'non-responsiveness' is not an exception to the right of access created by section 6 of the Act (see Order F2009-025). Where a record is comprised of separate and distinct portions, it may be appropriate to withhold those portions that are not responsive to the applicant's request.

[para 9] Past Orders address how public bodies should properly characterize information in a record as non-responsive. Order F2018-75 states (at paras. 55-58):

Separate items of information in a record cannot be viewed out of context of the record as a whole when determining if they are separate and distinct from the remaining record...

Information must be considered in the context of the record as a whole, in determining whether it is separate and distinct from the remainder of the record. In the case of a personal information request like the Applicant's, in order to withhold portions of a record as non-responsive, the Public Body must consider whether that portion contains the Applicant's personal information *or* whether that portion provides context to the remainder of the record that *is* the Applicant's personal information.

An example of 'separate and distinct' might be distinct emails in an email chain. Another example relates to police officers' notebooks, which often contain notes on unrelated incidents on a single page. In response to an access request for police records relating to one incident, the part of the

notebook page that relates to a different incident might be non-responsive. Another example is where a personal note is added to a work email, such as a note referencing a medical absence, holiday or so on. Where that personal note does not have any relation to the remainder of the email or to the access request, it might be non-responsive.

[para 10] In its submission, the Public Body describes the information in the records at issue as follows (at page 3):

The 15-page records package include documents from meetings with Indigenous communities during the Coal Policy Engagement process, emails, and a Coal Policy Engagement and Review that discussed other plans as well. As the majority of this information did not relate to preparing the new Alberta Coal Policy specifically, only small portions of these records were identified as responsive to this request.

[para 11] The Public Body states that pages 1-3 and 4-10 relate to Indigenous Community Engagement and not the preparation of a new coal policy; it states that it identified one responsive bullet point on each of pages 2 and 9, which were disclosed to the Applicant.

[para 12] The Public Body states that the emails on pages 11-13 “contain pieces of information that did not specifically relate to preparing the new Alberta Coal Policy.”

[para 13] Lastly, the Public Body states that page 15 is the last page of the Coal Policy Engagement and Review document “that speaks to another plan and its implications.” The Public Body states that this plan “does not specifically relate to preparing the new Alberta Coal Policy” but was included in the records at issue “to complete the Coal Policy Engagement and Review document that begins on page 14.”

[para 14] Pages 1-3 appear to be minutes from a meeting. The Public Body disclosed to the Applicant one bullet point containing the phrase “coal policy”. However, the remainder of the meeting minutes relate to this single bullet point, and cannot be said to be separate and distinct. I find that these pages are responsive in their entirety.

[para 15] Pages 4-7 similarly appear to be meeting minutes. The Public Body disclosed to the Applicant one paragraph containing the word “policy”. This particular paragraph does not contain the word “coal” at all. It is unclear how this paragraph is responsive unless the whole document itself relates to “coal policy” such that the Public Body determined that the word “policy” in this particular paragraph meant to indicate “coal policy”. In any event, having reviewed the document it is clear that it is responsive to the Applicant’s request and does not contain any separate and distinct portions.

[para 16] The top of page 11 consists of one email that was provided to the Applicant with discrete items of information withheld as non-responsive. The whole email is responsive to the request.

[para 17] The bottom of page 11 and page 12 consist of an email withheld in its entirety. The email at the top of page 11 is responding to this email. As the email at the top of page 11 is responsive, and relates to the same topic as the email on the bottom of page 11 to page 12, the latter email is also responsive.

[para 18] Page 13 consists of one email that was provided to the Applicant with discrete items of information withheld as non-responsive. The whole email is responsive to the request.

[para 19] Pages 14-15 comprise a memo-type document. Page 14 was provided to the Applicant in its entirety and page 15 was withheld in its entirety. This document relates to one topic; the information on page 15 is not separate and distinct from the information on page 14. I find that the information on page 15 is responsive.

2. Does the Applicant have a right of access under section 6(2) to the information in pages 1-13 and 15 withheld as non-responsive?

[para 20] This issue addresses whether the Public Body should be ordered to disclose the information withheld as non-responsive to the Applicant, or whether it should be given an opportunity to reprocess those records.

[para 21] In its submission, the Public Body asked for an opportunity to re-assess the information withheld as non-responsive to determine if any exceptions in the *Access to Information Act* (ATIA) apply (at page 4):

During processing of the original General file in 2021, the approach at that time was to parse out information from the records that was deemed non-responsive to the request scope.

Although the Public Body views this information as non-responsive to the Applicant's request scope, the Public Body respectfully requests the opportunity to re-assess the previously withheld non-responsive material to determine if any exceptions under Division 2 of the *Access to Information (ATI) Act* apply at this point in time in 2026.

[para 22] The Applicant argues that the Public Body should not be granted an opportunity to apply new exceptions to access (at paras. 4-5):

4. The public body incorrectly used "non-responsive" to remove the surrounding context from the requested information despite the clear explanations from the OIPC about the correct use of "non-responsive". Public bodies should stay current on settled interpretation of access laws so as to avoid endless re-litigation of these same questions.

5. The public body has had years to review and assess this information to check if any other exceptions to disclosure apply. The public body should not be given further opportunities to delay the process by adding new exceptions at this late stage in the process.

[para 23] In Order F2024-32, the adjudicator considered when it may be appropriate to permit a public body to review responsive records or portions of responsive records that had been withheld as non-responsive, rather than ordering the public body to disclose those records to the applicant. In that case, the public body had withheld certain columns or rows of information in a spreadsheet that was otherwise responsive. The adjudicator found (at paras. 36-37):

In cases where a public body has not reviewed records to determine whether exceptions apply, it may be appropriate to allow the public body the opportunity to review the records to determine whether there is a public interest in withholding information they contain. In this case, the Public Body clearly reviewed the information in the records to determine whether exceptions apply to it. Further, its submissions in relation to section 25 include the information it labelled as non-responsive. It has made arguments as to the potential consequences of disclosing the debts and outstanding balances owing to government by industry members. Again, debts owing by industry members is the substance of the information the Public Body labelled as “non-responsive”.

I conclude that the Public Body reviewed the records it labelled as “non-responsive” and made submissions regarding them in relation to its application of section 25 of the FOIP Act. It cannot be said in this case that the public interest requires giving the Public Body further opportunity to determine whether an exception to disclosure in the FOIP Act applies. For this reason, I have decided to order disclosure of the information the Public Body argued was nonresponsive.

[para 24] This issue was considered more recently by the Alberta courts, with respect to Order F2022-20. In that Order, the adjudicator considered whether records withheld as non-responsive were in fact responsive to the applicant’s access request. In that case, the applicant had requested records that discuss the rescission of the 1976 coal policy, or exceptions to the coal policy. The records and information withheld as non-responsive were of a similar nature to many of the records in this case. Specifically, the records in Order F2022-20 were multi-page documents with most of the information withheld as non-responsive, and only specific portions that mention the rescission of the coal policy being processed as responsive. The adjudicator determined that the information withheld as non-responsive was responsive to the request, and ordered the public body to include those records in a new response to the applicant.

[para 25] This Order was subject to judicial review. In *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198 the Court addressed the adjudicator’s order with respect to the records that the adjudicator had determined were responsive to the request:

[35] I am further asked to remit the records back to the Public Body for further processing if I order the production of the non-responsive portions. By this, I understand that having failed to

establish that the records were non-responsive, they wish the opportunity to claim other statutory exceptions. I expressly decline this request. I will address this issue further, but I will not allow this Public Body the opportunity to compound the inordinate delay they have created.

[para 26] This portion of the Court's decision was appealed to the Alberta Court of Appeal. The Court of Appeal overturned this portion of the King's Bench decision in *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2025 ABCA 163, stating (at para. 5):

...when redacted information is determined to be responsive or relevant to a FOIPP information request, those records should generally be remitted back to the public body involved for review to see if any statutory exceptions apply before being released to the public.

[para 27] In my view, this Court of Appeal decision can be read consistently with Order F2024-32. The records at issue in Order F2022-20, and therefore at issue in the Court of Appeal decision, were largely withheld as non-responsive. In such cases, a public body has likely not undertaken a line-by-line review of the records, or portions of the records, that were withheld as non-responsive. It is appropriate to permit the public body an opportunity to properly apply the Act, after conducting a line-by-line review of the records.

[para 28] However, Order F2024-32 also discusses another situation that was not before the Court of Appeal: records in which a public body has parsed sentences and paragraphs, and withheld discrete items of information in the sentences and paragraphs as non-responsive. The Court of Appeal discussed *documents* that were withheld as non-responsive, and the general approach of remitting those *records* back to a public body for review. The Court of Appeal did not discuss remitting discrete items of information, as this situation was not before it.

[para 29] In such situations, it is clear that the public body has already undertaken a line-by-line review of those records (or portions of records). In other words, the head of the public body or their delegate already closely reviewed the relevant information; the head (or their delegate) had the opportunity to apply an exception to access found in sections 16-29 of the FOIP Act but did not. I agree with the adjudicator in Order F2024-32 that it is not in the public interest to permit the public body yet another opportunity to withhold information now. In my view, that decision has already been made.

[para 30] In this case, the Public Body withheld many pages in their entirety as non-responsive, or has withheld most of a record that was several pages long but disclosed a discrete item of information, such as a single bullet point, that referred to preparing a new coal policy. The remaining information was withheld as non-responsive.

[para 31] Following the Orders and cases above, as I have found that this information is responsive, I will order the Public Body to review this information and process it in accordance with the FOIP Act. Should the head of the Public Body, or their delegate, decide to apply any

discretionary exceptions to access, in exercising their discretion the head or delegate must consider the delay in providing a proper response to the Applicant. The Public Body should explain to the Applicant how it exercised discretion to withhold the information.

[para 32] In some cases, the Public Body withheld discrete items of information in the records as non-responsive. On the top half of page 11, the Public Body withheld the following items of information in an email otherwise identified as responsive:

- the subject line;
- name of an attachment;
- one full sentence; and
- part of another sentence.

[para 33] On page 13 the Public Body withheld the following items of information in an email otherwise identified as responsive:

- part of the subject line;
- part of the title of an attachment; and
- part of a sentence.

[para 34] In these cases it is clear that the Public Body reviewed these records or these portions of records on a line-by-line basis, in order to identify these discrete items of information as non-responsive. The head of the Public Body (or their delegate) has therefore had an opportunity to apply any appropriate exception to access to this information but did not. Following the rationale discussed above, as I have found that this information is responsive, I will order the Public Body to disclose this information to the Applicant.

Act to be applied

[para 35] The Public Body has referenced ATIA in its request to reprocess the records. As the Applicant points out, ATIA is not the applicable legislation; rather, the transitional provisions of ATIA state that the FOIP Act remains the applicable legislation.

[para 36] On June 11, 2025, the *Freedom of Information and Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) was repealed and replaced with the *Access to Information Act*, S.A. 2024, c. A-1.4 (ATIA or the Act). Commissioner McLeod explained the working of the transitional provisions of ATIA in Order FOIP2025-34/ATIA2025-DEI-02 (at paras. 6-9, footnotes omitted):

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,*
- (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.*

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. 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.

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.

Similar considerations apply to section 101(d) of ATIA. 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 37] As the Applicant made their access request in September 2021, their access request remains subject to the FOIP Act. Therefore, the Public Body must continue to process the request in accordance with the FOIP Act and not ATIA.

V. ORDER

[para 38] I make this Order under section 72 of the Act.

[para 39] I find that the information withheld by the Public Body as non-responsive is responsive to the Applicant's access request.

[para 40] With the exception of the email at the top of page 11 and the email on page 13, I order the Public Body to review the information that was withheld as non-responsive but that I have found to be responsive, make a new decision regarding access under the FOIP Act, and provide a new response to the Applicant as discussed at paragraph 31 of this Order.

[para 41] I order the Public Body to disclose the information withheld in the first email at the top of page 11 and the email on page 13 to the Applicant, per paragraphs 32-34 of this Order.

[para 42] 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.

Amanda Swaneek
Adjudicator