

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-28

September 14, 2026

PUBLIC SAFETY AND EMERGENCY SERVICES

Case File Number 008591

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), the Applicant made an access to information request to Public Safety and Emergency Services (the Public Body, formerly Justice and Solicitor General) for information regarding assaults on correctional officers and a related lockdown at the Edmonton Remand Centre. The request explicitly included CCTV recordings. The Public Body did not locate any CCTV recordings and withheld information under sections 17, 20, and 24 of the FOIP Act in response to the access request. Section 20 was not an issue at inquiry. Whether the Public Body met the duty to assist under section 10(1) was considered.

The Adjudicator found that the Public Body improperly withheld some information under sections 17 and 24 and did not properly exercise discretion to withhold information under section 24. The Adjudicator ordered the Public Body to disclose information improperly withheld and to reconsider its exercise of discretion.

The Adjudicator found that the Public Body failed to meet its duty under section 10(1) of the FOIP Act since it never accounted for the requested CCTV recording in its response to the access request. The Adjudicator ordered the Public Body to conduct a search for CCTV recordings.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 1(n)(viii), 17(1), 17(2), 17(3), 17(4), 17(4)(g)(ii), 17(5), 20, 20(1)(k), 20(1)(m), 24(1)(a), 24(1)(b), 24(1)(d), 72.

Authorities Cited: AB: Orders 96-006, F2007-022, F2008-012, F2008-028 F2009-026, F2010-031, F2018-36, F2023-05, F2019-17, H2008-03

Cases Cited: *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44; *Edmonton Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10; *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89

I. BACKGROUND

[para 1] On January 2, 2018, the Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act) to Justice and Solicitor General, which has since been reorganized. Public Safety and Emergency Services (the Public Body) is the public body that inherited the matter.

[para 2] The Applicant sought the following information in the access request:

1. All records as defined by section 1(q) that relate to the basis for the claims by AUPE and ERC CPOs and the unauthorized lockdown of prisoners by ERC CPOs, the response to that by ERC Management and the Solicitor General's department, the agreement between AUPE and the Government in response and the ongoing process in response, including minutes of the bi-weekly Health and Safety Committee meetings (the parts that relate to this issue);
2. All records relating to the claimed eight assaults and assaults of almost one every day for the past couple of weeks on CPOs by prisoners, including CCTV recordings and what actions, if any, were taken against the responsible prisoners;
3. For the past three years, records relating to what actions were taken against prisoners, including criminal prosecution, as a result of prisoners assaulting ERC CPOs, including the results of those actions and, where no action was taken, as claimed by AUPE President Guy Smith, records relating to that;
4. The location where each of these alleged assaults took place and whether evidence of the alleged assault was captured by CCTV recording;
5. In regard to each of the alleged assaults, any records relating to prisoner complaints about the circumstances of the alleged assaults on CPOs.

[para 3] The Applicant included several news articles that relate to and/or inform the particulars of the documents requested in the access request. The news articles reference a lockdown at the Edmonton Remand Centre (The ERC as referred to in the access request) and contain quotes about the conditions at the ERC from the former head of the Alberta Union of Provincial Employees, Guy Smith.

[para 4] The Public Body located 108 pages of responsive records. It provided the records to the Applicant, with information withheld under sections 17(1), 20(1)(k) and (m), and 24(1)(a), (b) and (d) of the FOIP Act. The Public Body did not locate any CCTV recordings.

[para 5] The Applicant requested a review of the Public Body's decisions from this Office. Following investigation and mediation, the Public Body reconsidered its application of section 20 to information in the records and disclosed significant portions of it to the Applicant. The Applicant continued to seek review of the Public Body's decision to withhold information under sections 17(1) and 24(1) of the FOIP Act. The matter proceeded to inquiry.

[para 6] Multiple affected third parties were identified and invited to participate in the inquiry, but none did.

II. RECORDS AT ISSUE

[para 7] The records at issue are those from which the Public Body withheld information under sections 17(1) and 24(1) of the FOIP Act. Particular pages are discussed as required throughout the order.

Note on page numbers of records

[para 8] The Public Body provided to me a copy of the redacted records it sent to the Applicant and an unredacted copy identifying what information was withheld from the former. The page numbers between them differ owing to the presence of one non-responsive record in the unredacted copy: page 65. References to page numbers in this order refer to the page numbers on the copy of the records sent to the Applicant. The non-responsive page does not need to be considered since no information was withheld from it under section 17(1) or 24(1).

III. ISSUES

[para 9] The issues set out in the Notice of Inquiry are:

- 1. Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?**

2. **Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information/record(s)?**

[para 10] In the course of the inquiry the following issue was added:

3. **Did the head of the Public Body meet the duty to assist the Applicant as provided by section 10(1) of the Act (duty to assist applicants) with respect to the request for CCTV recordings?**

IV. DISCUSSION OF ISSUES

1. **Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?**

[para 11] The Applicant has clarified that he is not seeking telephone numbers of Government of Alberta employees or third parties or names, photographs or other identifying information of inmates. Accordingly, I will not consider that information and it may remain withheld. The pages on which other information was withheld under section 17(1) of the FOIP Act are:

Pages: 12, 13, 50, 51, 61, 106, 107, and 108.

[para 12] Section 17(1) applies to personal information. "Personal Information" is defined in section 1(n) of the FOIP Act as follows:

(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 13] The application of section 17(1) is informed by sections 17(2) through (5). Sections 17(2) and (3) are not relevant here. Section 17(4) prescribes presumptions against disclosure while section 17(5) contains a non-exhaustive list of factors to consider when applying sections 17(1) and (4). Those sections state:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

...

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment or educational history,

(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,

(e.1) the personal information consists of an individual's bank account information or credit card information,

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party,

or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 14] The Public Body did not specify if it applied any presumptions against disclosure under section 17(4). Nevertheless, since section 17(1) is a mandatory exception to disclosure, I will consider whether any presumptions under section 17(4) apply. The Public Body made arguments in respect of general circumstances under section 17(5) and argued that disclosure of personal identifiers is not required for the purposes of promoting accountability or transparency. The Public Body did not identify any circumstances under section 17(5) that weigh in favour of disclosure. The Applicant did not address section 17(4), (5) or the Public Body's arguments in respect of general circumstances under section 17(5).

[para 15] I first consider pages 12, 13, 106, 107, and 108. All of these pages contain charts detailing assaults on staff at the ERC. On pages 12 and 13 two columns were withheld under section 17(1); three columns on pages 106, 107, and 108 were withheld.

[para 16] The left column on pages 12 and 13 and the two right-most columns on pages 106, 107, and 108 consist of inmate names and other information that could identify an inmate. As the Applicant is not interested in that information, it will remain withheld.

[para 17] The right column on pages 12 and 13 and the left-most column on pages 106, 107, and 108 lists the units at the ERC where assaults took place. In combination with the information in the other redacted columns on these pages, it might have constituted the personal information of inmates by revealing what units they were on or housed in at the ERC. The names of some units indicate something personal about an inmate housed there; for example, locations with names suggesting that medical services are offered there would indicate an inmate had medical issues. However, divorced from the identifying information in the columns that will remain redacted, the information is “de-identified” and is no longer about any identifiable inmate; thus, it ceases to meet the definition of “personal information” under the FOIP Act (See, for example, Order F2008-012, H2008-03 at para. 71, Order F2010-031 at paras. 25 & 36, and F2023-05 at para. 98). This information should be disclosed to the Applicant.

[para 18] The information withheld under section 17(1) on pages 50 and 51 consists of names and pictures of people who made posts on Facebook about a meeting regarding the lockdown. The images appearing in the body of the e-mail composed by an employee of the Public Body are referred to as posts from Facebook therein. Each name and picture is associated with a comment which has already been disclosed to the Applicant along with the rest of the e-mail.

[para 19] The presumption against disclosure in section 17(4)(g)(ii) applies to the names redacted on pages 50 and 51. Revealing those names will reveal that those people have Facebook accounts, and in some cases will reveal their opinions. The fact that a person has a Facebook account is information about an identifiable individual and is therefore personal information under section 1(n). The opinions, which are not about other individuals, are expressly recognized as personal information in section 1(n)(viii).

[para 20] The Applicant has not made any arguments that any factors, enumerated or otherwise, under section 17(5) weigh in favour of disclosure; neither has the Public Body identified any. I do not see any self-evident circumstances to that effect. Accordingly, the presumption against disclosure in section 17(4)(g)(ii) applies, and I find that the Public Body has properly withheld personal information on pages 50 and 51.

[para 21] Information withheld under section 17(1) on page 61 consists of a telephone number and names. The names are of public body employees. The Applicant does not seek the telephone number, so it may remain withheld.

[para 22] While the names on page 61 are those of Public Body employees, they appear and are used in a personal manner and not in the context of the performance of employment duties. As such, they are the personal information of the individuals named. The names appear with information that would be the employees' employment history information if they the employees were identified in conjunction with it. However, the employment history information has not been disclosed to the Applicant since the Public Body withheld it separately from the names under section 20, which is not an issue in this inquiry.

[para 23] Under the above circumstances, while the names of Public Body employees appear in a personal context, revealing only the name will not reveal anything other than that they are Public Body employees. This sort of information has been considered to lack a personal dimension and not be personal information, or else disclosure of it does not amount to an unreasonable invasion of third-party personal privacy (Order F2008-028 at para. 56, Order F2009-026 at paras. 14 to 17). Accordingly, I will order the Public Body to disclose these names on page 61.

2. Did the Public Body properly apply section 24(1) of the Act (advice from officials) to the information/record(s)?

[para 24] The Public Body withheld information under sections 24(1)(a), (b), and (d) from the following pages:

Pages: 25, 28, 29, 30, 31, 32, 33, 38, 41, 42, 53, 54, 55, 60, 61, 62, 63, 69, 72, 75, 76, 79, 80, 82, 96, 101, and 102.

[para 25] Information on pages 60 and 61 was withheld under section 20 as well as section 24. Since section 20 is not an issue in this inquiry, the information will remain redacted, and I do not need to consider the Public Body's decision to withhold information under section 24 from pages 60 and 61.

[para 26] Sections 24(1)(a), (b), and (d) of the FOIP Act state:

24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,

(b) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council,

...

(d) plans relating to the management of personnel or the administration of a public body that have not yet been implemented,

...

[para 27] The scope of information captured under sections 24(1)(a) and (b) was summarized in Order F2019-17 at paras. 161-166, as follows:

In previous orders, the former Commissioner has stated that the advice, proposals, recommendations, analyses or policy options under section 24(1)(a) should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (See Order 96-006, at p.9)

In Order F2013-13, the adjudicator stated that the third arm of the above test should be restated as "created for the benefit of someone who can take or implement the action" (at paragraph 123).

In Order F2012-06, the adjudicator stated, citing former Commissioner Clark's interpretation of "consultations and deliberations", that

It is not enough that records record discussions or communications between employees of a public body; rather, a consultation takes place only when the individuals listed in section 24(1)(b) are asked for their views regarding a potential course of action, and a deliberation occurs when those individuals discuss a decision that they are responsible for, and are in the process of, making. (At para. 115)

In Order F2012-10, the adjudicator clarified the scope of section 24(1)(b):

A consultation within the terms of section 24(1)(b) takes place when one of the persons enumerated in that provision solicits information of the kind subject to section 24(1)(a) regarding that decision or action. A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply so as to

protect the final decision, but rather, the process by which a decision maker makes a decision. (At para. 37)

Further, sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held on a particular topic (and not the *substance* of the advice or consultations) cannot generally be withheld under section 24(1) (see Order F2004-026, at para. 71).

Bare recitation of facts or summaries of information also cannot be withheld under sections 24(1)(a) or (b) unless the facts are interwoven with the advice, proposal, recommendations etc. such that they cannot be separated (Order 2007-013 at para. 108, Decision F2014-D-01 at para. 48). As well, neither section 24(1)(a) nor (b) apply to a decision itself (Order 96-012, at paras. 31 and 37).

[para 28] I agree with the Adjudicator in Order F2019-17.

[para 29] Upon reviewing the redactions, it appears that the Public Body applied sections 24(1)(a), (b), and (d) to information not covered under any of those sections. With respect to sections 24(1)(a) and (b), it withheld information that consists of final decisions rather than the substance of advice or deliberations.

[para 30] With respect to section 24(1)(d), while information withheld under this section consists of plans relating to the management of public body employees, it appears that at the time of the access request, those plans had already been implemented despite the Public Body's assertion to the contrary. I reach this conclusion based upon information on page 21 of the records that clearly states that some of the management changes planned were implemented immediately on December 15, 2017. The access request was made later, on January 2, 2018. Accordingly, those plans cannot be withheld under section 24(1)(d). Advice, consultations and deliberations about those plans may still fall under the ambit of sections 24(1)(a) and (b).

[para 31] In view of the above, I find that the following information was improperly withheld under sections 24(1)(a), (b), and/or (d) by reason that it is information not captured under those sections:

- Information withheld under section 24(1)(a) on page 31 and the same information withheld on page 33
- The first and third bullet points in the middle block of information withheld under sections 24(1)(a) and (b) on Page 41 and the information withheld under section 24(1)(a) starting at the bottom of the page and concluding on page 42, as well as the same information appearing on pages 101 and 102.

[para 32] The remainder of the information withheld under sections 24(1)(a), (b), and (d) is information captured under those sections.

Exercise of Discretion

[para 33] Since section 24(1) is a discretionary exception to disclosure, I must consider whether the Public Body properly exercised discretion to withhold information under it.

[para 34] Exercising discretion was considered in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (*Ontario Public Safety and Security*). Numerous orders of this office have confirmed that the reasoning therein is applicable to the exercise of discretion under the Act. At paragraph 71 of *Ontario Public Safety and Security*, the following factors were identified as relevant to the question of whether or not a public body has properly exercised its discretion:

- the decision was made in bad faith
- the decision was made for an improper purpose
- the decision took into account irrelevant considerations
- the decision failed to take into account relevant considerations.

[para 35] In exercising discretion, a public body must balance both public interest and private interests (*Ontario Public Safety and Security* at paras. 47 and 48). Private interests are those of requestors, citizens, and affected third parties, in contrast to employees of public bodies who create records in their role as representatives of a public body (Order F2018-36 at para. 232).

[para 36] In *Edmonton Police Service v Alberta (Information and Privacy Commissioner)*, 2020 ABQB 10 (*EPS*), at para. 416, Justice Renke elaborated on what *Ontario Public Safety and Security* requires, as follows:

What *Ontario Public Safety and Security* requires is the weighing of considerations “for and against disclosure, including the public interest in disclosure:” at para 46. The relevant interests supported by non-disclosure and disclosure must be identified, and the effects of the particular proposed disclosure must be assessed. Disclosure or non-disclosure may support, enhance, or promote some interests but not support, enhance, or promote other interests. Not only the “quantitative” effects of disclosure or non-disclosure need be assessed (how much good or ill would be caused) but the relative importance of interests should be assessed (significant promotion of a lesser interest may be outweighed by moderate promotion of a more important interest). There may be no issue of “harm” in the sense of damage caused by disclosure or non-disclosure, although disclosure or non-disclosure may have greater or lesser benefits. A reason for not disclosing, for example, would be that the benefit for an important interest would exceed any benefit for other

interests. That is, discretion may turn on a balancing of benefits, as opposed to a harm assessment.

[para 37] With regard to consideration of harmful effects of disclosure, Justice Renke stated, at para. 420:

...In my view, that is the implication of the *Ontario Public Safety and Security* passages quoted above. A public body is entitled to show that disclosure could have other adverse effects (whatever those might be) – but the public body must indicate what those adverse effects are and that the negative consequences of disclosure outweigh the interests in the disclosure, the “interest in open government.”

[para 38] When exercising discretion, public bodies should also consider the particular purpose of the exception to disclosure being considered. The purpose of section 24 in general was described by former Commissioner Clark in Order 96-006 as follows:

...When I look at section 23 [now section 24] as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, “looking bad” or appearing foolish if their frank deliberations were to be made public.

[brackets added]

[para 39] Regarding section 24(1)(d), the Adjudicator in Order F2007-022 stated, at para. 45,

As the notes indicate that these records relate to a personnel matter, it appears that the Public Body is relying on section 24(1)(d), which permits a public body to withhold records that could reveal plans relating to the management of personnel or the administration of a public body that have not yet been implemented. This provision recognizes that a public body’s ability to manage personnel and administration would be compromised if information about its plans was released prior to implementation.

[para 40] The Public Body explained its exercise of discretion as follows:

Disclosure of this information would not merely reveal factual content. It would expose the internal reasoning processes of decision-makers, including their assessments of risk, preliminary strategies, and evolving policy considerations. This would undermine the ability of officials to engage in candid and effective deliberations. If internal advice and consultations of this nature were routinely subject to disclosure, officials would reasonably be more guarded in their communications, thereby impairing the quality of internal decision-making and policy development.

The expectation of harm in this case is reasonable and well grounded. The records concern sensitive operational and security matters in a correctional environment. Disclosure could also compromise the effectiveness of internal management strategies and inhibit open discussion of future risks and responses.

Essentially, the withheld information falls squarely within the scope of section 24(1)(a), (b), and (d) of the FOIP Act. Disclosure could reasonably be expected to reveal advice, recommendations, analyses, consultations, deliberations, and unimplemented management plans developed by and for the Public Body.

[para 41] I find that the Public Body has not established that it properly exercised discretion; my conclusion is essentially the same as the one I reached in Order F2022-22 at para. 33 also considering exercise of discretion under sections 24(1)(a), (b), and (d). The Public Body has only considered possible negative effects of disclosure without considering the interest in open government, the interests of the Applicant in receiving the information, or benefits of disclosing or withholding information. I also note that its assertions that disclosure may make officials more guarded is a general assertion that may be applied to any information captured under sections 24(1)(a), (b), and (d) without reference to the specific information withheld in this case. Accordingly, I will order the Public Body to reconsider its decision to withhold information under section 24(1).

3. Did the head of the Public Body meet the duty to assist the Applicant as provided by section 10(1) of the Act (duty to assist applicants) with respect to the request for CCTV recordings?

[para 42] This issue is limited to CCTV recordings and does not engage the Public Body's broader search for other types of records.

[para 43] Section 10(1) of the FOIP Act states:

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 44] The duty in section 10 includes a duty to conduct a reasonable search for records responsive to an access request. CCTV recordings are explicitly mentioned in the access request and would be responsive records.

[para 45] The inquiry initially did not proceed with section 10 as an issue since it appeared that the only issues remaining after mediation/investigation were the application of sections 17(1) and 24(1). However, the Applicant explicitly raised the issue of missing CCTV recordings in the Request for Inquiry and mentioned the matter in the Applicant's initial submission. The Applicant stated that he may not be remembering what had happened at

investigation/mediation but did not believe the Public Body had explained the absence of CCTV recordings.

[para 46] In light of the Applicant's submission and prior to adding section 10 as an issue, I asked the Public Body if it had ever located any CCTV recordings in response to the access request, and if any CCTV recordings would still be available at the time of inquiry. I also asked the Public Body if it had any information about how, if at all, the matter of CCTV recordings was addressed through the OIPC review process.

[para 47] The Public Body stated that no CCTV recordings were located during the search for records in response to the access request.

[para 48] Regarding the current availability of any possible CCTV recordings, the Public Body explained that the normal retention and destruction schedule would typically see such footage retained for 30 days, with an exception for footage related to Incident Reports which would be kept for four years provided there was no pending litigation or access to information requests. The final disposition for any recordings that met the criteria for investigation would be to archives. The Public Body asserted that it is not able to conduct a search for records as they would have been "dispositioned" per the retention schedule.

[para 49] The Public Body had no information to provide regarding whether the matter of CCTV recordings was addressed through the review process.

[para 50] In light of the Public Body's answers to my questions, I added section 10 to the inquiry. It does not appear that the matter of CCTV recordings has yet been addressed. As well, it appears that such footage could reasonably be expected to exist in an archive either as a result of the review of the Applicant's access request, or in archives as information that met criteria for investigation. While the Public Body did not explain those criteria, I can see from the records that the matter of the lockdown was subjected to significant scrutiny and an investigation seems probable. When deciding to add section 10 as an issue I noted that the Public Body stated that it could not search for records and alerted to it the fact that in the absence of any particulars as to why that was the case, more information was needed in order to explain why. In its submission on this issue, the Public Body did not provide further particulars of its inability to search for further records.

[para 51] The Public Body was able to identify the individuals involved in the original search for records and the departments and/or offices involved in the search. The Public Body asserts that owing to the passage of time, it was not able to identify specific databases, program areas, off-site locations, and physical sites that were searched. The Public Body argues that those who conducted the search were subject-matter experts on the topic of the records and were obligated and would have conducted an adequate search to locate and retrieve responsive records. The Public Body did not explain what qualifications those involved in the search had

that makes them experts in the topic of records. Given the narrow scope of this issue, which is restricted to CCTV recordings, and the fact that CCTV recordings were explicitly requested in the access request, it does not seem to me that any expertise is relevant in any event. It is a practical matter, easily within the understanding of a layman to search for CCTV recordings when they are explicitly requested.

[para 52] The Public Body states that given the time lapse, the “program areas” which would have had the records confirmed that no responsive records exist other than what was located 8 years ago.

[para 53] The Applicant notes that the Public Body has not clarified whether CCTV recordings existed eight years ago at the time of the access request, and if they did, what became of them. The Applicant asserts that the Public Body’s response demonstrates a continuing breach of section 10 of the FOIP Act.

[para 54] Prior to considering whether the Public Body complied with section 10(1), I address the effect of delay on the Public Body’s ability to respond to this issue. The Public Body did not specifically argue that has been prejudiced by delay; however, since the delay was largely caused by administrative lag at this Office, I consider delay as a function of my responsibility as the decision-maker in this matter to provide a fair proceeding.

[para 55] In *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (*Blencoe*) the Supreme Court acknowledged that delay may amount to an abuse of process where it impairs a party’s ability to meet the case before them, for example where evidence is no longer available, has been lost, or where key witnesses have passed away (*Blencoe*, at paras. 101-102). I find that such concerns do not arise in this case. While the Public Body asserts that owing to the passage of time it cannot now confirm which locations it searched for records, it had a duty at the time it responded to the access request to account, in some way, for the requested CCTV recordings.

[para 56] In *University of Alberta v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 89, the Court found that the duty to assist reasonably includes, as part of its informational component, a public body's reasons for concluding that no more responsive records exist than what is has located. The Court said at paragraphs 42 and 43:

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 in original]

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 57] In this case, the Applicant specifically requested CCTV recordings showing evidence of assaults on CPOs "for the past couple of weeks." That period of time appears to be in reference to a statement made by Guy Smith, quoted in one of the articles the Applicant included in the access request, and reproduced in the Applicant's explanatory text in the access request itself. The proper "past couple of weeks" are the couple of weeks leading to the lockdown of the ERC, which, according to articles included with the access request, took place on December 15, 2017, less than three weeks from the date on which the access request was made on January 2, 2018. That time frame is significant since it is close enough to the "past couple of weeks" that even CCTV recordings that were not later preserved for longer than 30 days as a result of an incident report or investigation would still have been in existence. While it is not the case in every case that such an explanation is required in order to meet the duty to assist to respond openly, accurately, and completely, the Public Body had a duty to inform the Applicant of why no CCTV recordings were located or provided in response to the access request. It seems that there should have been some, but whether there were CCTV recordings was never even mentioned.

[para 58] As it relates to the matter of prejudice caused by delay, I cannot find that the Public Body is prejudiced since it had a duty to explain the absence of CCTV recordings at the time of the access request and failed in that duty. It should have had an explanation on hand from the beginning. As well, the Public Body's assertion that there are no records available today appears to be based on the mere passage of time and did not involve a new search or a search of archives.

[para 59] Considering the submission made by the Public Body on this issue, I agree with the Applicant that it falls short of showing that the Public Body met its duty under section 10 with respect to CCTV recordings. From the beginning, there has been no explanation of how, if at all, CCTV recordings, or the lack thereof if that is the case, were involved in the search. I will order the Public Body to conduct a search for CCTV recordings.

V. ORDER

[para 60] I make this order under section 72 of the FOIP Act.

[para 61] I order the Public Body to disclose the information in the right column withheld under section 17(1) on pages 12 and 13, and the left-most column on pages 106, 107, and 108.

[para 62] I order the Public Body to disclose the names of Public Body employees withheld under section 17(1) on page 61.

[para 63] I order the Public Body to disclose the following information improperly withheld under section 24(1):

- Information withheld under section 24(1)(a) on page 31 and the same information withheld on page 33.
- The first and third bullet points in the middle block of information withheld under sections 24(1)(a) and (b) on page 41 and the information withheld under section 24(1)(a) starting at the bottom of the page and concluding on page 42, as well as the same information appearing on pages 101 and 102.

[para 64] I order the Public Body to reconsider its decision to withhold information under sections 24(1)(a), (b), and (d), taking into account the approach to exercising discretion set out at paragraphs 33 through 39 of this order.

[para 65] I order the Public Body to conduct a search for CCTV recordings as requested in the access request, including archives which may hold such information. In order to meet the informational component of the duty to assist under section 10(1) of the FOIP Act, I order the Public Body to provide details of its search to the Applicant including, but not limited to the following points which are recognized in numerous orders as generally establishing that a proper search has been conducted:

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 66] I 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.

John Gabriele
Adjudicator