

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER FOIP2026-30

OCTOBER 8 ,2026

ENERGY AND MINERALS

Case File Number 027641

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Energy and Minerals (the Public Body) for records pertaining to meetings that took place on May 21, 2019 (one meeting) and January 8, 2020 (two meetings).

The Public Body located 1036 pages of responsive records. A fee was issued and after requesting an extension to reply, the Public Body informed the Applicant that most of the records were not responsive and records that were responsive had already been provided to the Applicant.

The Adjudicator found that the Public Body failed to meet its obligations under section 10 of the FOIP Act by not clarifying the request with the Applicant or providing an explanation on the steps it took, the scope of the search and why the responsive records were not located.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 72

Authorities Cited: **AB:** Orders F2004-026, F2007-029, F2013-18, F2022-47

Cases Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII).

I. BACKGROUND

[para 1] On July 14, 2021, Alberta Energy and Minerals received a request for access to information seeking all Ministry records regarding the following meetings:

All Ministry records related to the following meetings:

1. Dated May 21, 2019 between Grant Sprague (Ministry of Energy) and Benga Mining Limited (Riversdale Resources); and

2. Dated January 8, 2020 between Yihong Wang (Ministry of Energy) and [Individuals] (Benga Mining Limited/Riversdale Resources).

- *Please include the following key terms in your search for records: Australia, Benga, Blairmore, Crowsnest, Eastern Slopes, Rinehart, Grassy Mountain, Joint Review Panel, JRP, Livingstone, MD Ranchland, open-pit, Riversdale, Hancock, HPPL, Westslope cutthroat trout.*
- *Relevant record holders include: Sonya Savage (Minister of Energy), Dale Nally (Associate Minister of Natural Gas and Electricity); Grant Sprague Page 2 (Deputy Minister); Doug Lammie (Assistant Deputy Minister); Erin Gregg (Assistant Deputy Minister), Wade Clark (Assistant Deputy Minister), [Roxanne] Leblanc (Assistant Deputy Minister), Yihong Wang, Jerry Bellikka, Andrea Smotra, Kelsea Laurence, Scott Hierath, Karen Ramkhelawan, Brendalee Gardner, Filip Palasz, Nicholas Welch, Audrey McConnell, Paul Tsounis, Patricia Hoyland, Colleen Kneller, Meliza Myrick, Craig Watt, Christine Lazaruk, Yohong Wang, Tyler Donnelly, Maria Salvador, Jill Weiss, Karen Henderson, Derek Volker, Brock Ellis, Darcee Andrews, Julie Lussier, Ben Coleman, Lisa Elliott, Michael Moroskat, Jennifer Gallant, Melissa Mbarki, and Cindy Veroba. For all searches, include the following records: social media platform messages, including Signal, Telegram, WhatsApp, Facebook and Instagram on mobile devices, text messages on mobile devices, physical or electronic calendar appointments, call logs, chats, video or audio recordings or other records from any video calling or office messaging platforms (including but not limited to Microsoft Teams, Skype and Zoom), voicemail messages from phone, outlook, or video calling applications, physical mail or records, electronic mail and attachments, or electronic records in any form (pdfs, excel sheets, word documents, zip folders, etc).*

[para 2] On August 30, 2021, this request was clarified/narrowed to the following:

- a) *Dated May 21, 2019, between Grant Sprague (Ministry of Energy) and Benga Mining Limited (Riversdale Resources). Time period: April 1, 2019 to September 16, 2021*
- b) *Dated January 8, 2020, between Yihong Wang (Ministry of Energy) and [Individuals] (Benga Mining Limited/Riversdale Resources). Time period: February 1, 2020 to September 16, 2021.*
- c) *Dated January 8, 2020, between Wade Clark (Ministry of Environment and Parks) and [Individuals] (Benga Mining Limited / Riversdale Resources). Time period: February 1, 2020 to September 16, 2021.*

- *For all searches, include the following key terms in your search for records: Australia, Benga, Blairmore, Crowsnest, Eastern Slopes, Rinehart, Grassy Mountain, Joint Review Panel, JRP, Livingstone, MD Ranchland, open-pit, Rinehart, Riversdale, Hancock, HPPL, Westslope cutthroat trout.*
- *For all searches, relevant record holders include: Sonya Savage (Minister of Energy), Dale Nally (Associate Minister of Natural Gas and Electricity); Grant Sprague (Deputy Minister); Doug Lammie (Assistant Deputy Minister); Erin Gregg (Assistant Deputy Minister), Wade Clark (Assistant Deputy Minister), [Roxanne] Leblanc (Assistant Deputy Minister), Yihong Wang, Jerry Bellikka, Andrea Smotra, Kelsea Laurence, Scott Hierath, Karen Ramkhelawan, Brendalee Gardner, Filip Palasz, Nicholas Welch, Audrey McConnell, Paul Tsounis, Patricia Hoyland, Colleen Kneller, Meliza Myrick, Craig Watt, Christine Lazaruk, Yohong Wang, Tyler Donnelly, Maria Salvador, Jill Weiss, Karen Henderson, Derek Volker, Brock Ellis, Darcee Andrews, Julie Lussier, Ben Coleman, Lisa Elliott, Michael Moroskat, Jennifer Gallant, Melissa Mbarki, and Cindy Veroba.*
- *For all searches, include the following records: social media platform messages, including Signal, Telegram, WhatsApp, Facebook and Instagram on mobile devices, text messages on mobile devices, physical or electronic calendar appointments, call logs, chats, video or audio recordings or other records from any video calling or office messaging platforms (including but not limited to Microsoft Teams, Skype and Zoom), voicemail messages from phone, outlook, or video calling applications, physical mail or records, electronic mail and attachments, or electronic records in any form (pdfs, excel sheets, word documents, zip folders, etc).*

Time Period: from May 15, 2020 to September 16, 2021

[para 3] The Public Body conducted a search for records and estimated that there were approximately 1036 pages of responsive records and issued a fee estimate of \$517.05

[para 4] On November 30, 2021, the Public Body considered the request (EN000-2021-G-53) abandoned after not receiving a response to the fee estimate from the Applicant and closed the file.

[para 5] On December 16, 2021, the Applicant resubmitted their request (EN000-2021-G-67) from July 14, 2021, and on December 17, 2021, they amended the scope as follows:

All Ministry records regarding the following meetings:

- a) Dated May 21, 2019, between Grant Sprague (Ministry of Energy) and Benga Mining Limited (Riversdale Resources). Time period: April 1, 2019 to September 16, 2021*
- b) Dated January 8, 2020, between Yihong Wang (Ministry of Energy) and [Individuals] (Benga Mining Limited/Riversdale Resources). Time period: February 1, 2020 to September 16, 2021.*
- c) Dated January 8, 2020, between Wade Clark (Ministry of Environment and Parks) and [Individuals] (Benga Mining Limited / Riversdale Resources). Time period: February 1, 2020 to September 16, 2021.*

- For all searches, include the following key terms in your search for records: Australia, Benga, Blairmore, Crowsnest, Eastern Slopes, Rinehart, Grassy Mountain, Joint Review Panel, JRP, Livingstone, MD Ranchland, open-pit, Rinehart, Riversdale, Hancock, HPPL, Westslope cutthroat trout.*
- For all searches, relevant record holders include: Sonya Savage (Minister of Energy), Dale Nally (Associate Minister of Natural Gas and Electricity); Grant Sprague (Deputy Minister); Doug Lammie (Assistant Deputy Minister); Erin Gregg (Assistant Deputy Minister), Wade Clark (Assistant Deputy Minister), [Roxanne] Leblanc (Assistant Deputy Minister), Yihong Wang, Jerry Bellikka, Andrea Smotra, Kelsea Laurence, Scott Hierath, Karen Ramkhelawan, Brendalee Gardner, Filip Palasz, Nicholas Welch, Audrey McConnell, Paul Tsounis, Patricia Hoyland, Colleen Kneller, Meliza Myrick, Craig Watt, Christine Lazaruk, Yohong Wang, Tyler Donnelly, Maria Salvador, Jill Weiss, Karen Henderson, Derek Volker, Brock Ellis, Darcee Andrews, Julie Lussier, Ben Coleman, Lisa Elliott, Michael Moroskat, Jennifer Gallant, Melissa Mbarki, and Cindy Veroba.*
- For all searches, include the following records: social media platform messages, including Signal, Telegram, WhatsApp, Facebook and Instagram on mobile devices, text messages on mobile devices, physical or electronic calendar appointments, call logs, chats, video or audio recordings or other records from any video calling or office messaging platforms (including but not limited to Microsoft Teams, Skype and Zoom), voicemail messages from*

phone, outlook, or video calling applications, physical mail or records, electronic mail and attachments, or electronic records in any form (pdfs, excel sheets, word documents, zip folders, etc).

This request excludes duplicate records, emails duplicated in the final/longest string, and records that were sent by, or received by the Applicant, including email correspondences they were cc'd on.

[para 6] The Public Body issued its fee estimated based on the estimate it had generated for EN000-G-2021-G-53. On January 4, 2022, the Applicant paid a \$258.53 deposit towards the fee estimate.

[para 7] On January 10, 2022, the Public Body extended the time for responding under section 14(1)(b) of the FOIP Act, citing the large number of documents it had to process for the request. The revised due date was March 7, 2022. On March 2, 2022, this office granted a request for an extension due to the large volume of records to be processed. The revised due date was June 3, 2022.

[para 8] On May 13, 2022, the Applicant was informed by the Public Body that the majority of the 1036 pages of the records did not pertain to the three specified meetings. Furthermore, with the elimination of duplicate records, i.e. email strings and records already sent and received by the Applicant, there were no responsive records for the request. On May 26, 2022, the deposit of \$258.53 was refunded.

[para 9] Subsequently, the Applicant asked for a review by this office. The Senior Information Privacy Manager (SIPM), who mediated the review, recommended that the Public Body conduct a second search for records.

[para 10] The Public Body informed the Applicant that another search was conducted, and no responsive records were located.

[para 11] The SIPM asked the Public Body what wording was used when the searches were conducted; specifically, the SIPM wanted to clarify if the request was paraphrased from the original request. The Public Body confirmed that the request was sent to the program areas using precisely the same language as was suggested by the Applicant.

[para 12] The Applicant requested a review of the Public Body's response.

[para 13] The Commissioner agreed to conduct an inquiry into whether the Public Body met its duty to assist the Applicant by conducting an adequate search for records.

II. ISSUES

[para 14] The issue in this inquiry is:

Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the FOIP Act? In this case, did the Public Body conduct an adequate search for the records requested by the Applicant and respond openly, accurately and completely?

III. DISCUSSION OF ISSUES

[para 15] Section 10 of the FOIP Act establishes a public body's duty to assist. It states, in part:

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 16] Order F2007-029 sets out the evidence a public body should provide when the adequacy of its search is at issue:

[para 46] The Public Body has the onus to establish that it has made every reasonable effort to assist the Applicant, as it is in the best position to explain the steps it has taken to assist the applicant within the meaning of section 10(1).

[...]

[para 49] Consequently, to meet the duty to assist an Applicant, a Public Body must inform the Applicant of all records in its custody or under its control that are responsive to the request, whether access will be granted to those records and when access will be given...

[para 50] Previous orders of my office have established that the duty to assist includes the duty to conduct an adequate search for records. In Order 2001-016, I said:

In Order 97-003, the Commissioner said that a public body must provide sufficient evidence that it has made a reasonable effort to identify and locate records responsive to the request to discharge its obligation under section 9(1) (now 10(1)) of the Act. In Order 97-006, the Commissioner said that the public body has the burden of proving that it has fulfilled its duty under section 9(1) (now 10(1)).

Previous orders... say that the public body must show that it conducted an adequate search to fulfill its obligation under section 9(1) of the Act. An adequate search has two components: (1) every reasonable effort must be made to search for the actual record requested and (2) the applicant must be informed in a timely fashion about what has been done.

[...]

[para 66] In general, evidence as to the adequacy of a search should cover the following points:

- 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 17] In F2013-18, the Adjudicator stated:

[para 9] ...Whether the duty to conduct a reasonable search for responsive records is met is, in some cases, dependent on the manner in which a public body interprets an applicant's access request. If a public body adopts an overly narrow interpretation of an access request, it may fail to search for records otherwise falling within the scope of the request. If it interprets an access request overly broadly, it may spend time and expense locating records that an applicant has not requested.

[para 18] In F2004-026, the former Commissioner commented on a public body's duty to clarify an access request in order to meet its duty to assist:

[para 30] Finally, in its oral submission, the Applicant argued that the Public Body failed in its duty to assist by failing to clarify with the Applicant what it meant by "implementation" in the context of its original request. The Public Body suggested it did not do this because it assumed that it already understood the request. It explained that it thought it would not be reasonable for the Applicant to ask for the numbers of records that would be involved on the other understanding (that the request included all records in 2003 created by the Public Body relative to Bill 27 after the Bill's passage - which the Public Body described as "11 cubic feet of records"). While I have some sympathy with the Public Body's point, I have also been advised by the parties that the Applicant has since clarified this aspect of the request, which suggests that clarification was possible, and that there is indeed some further information relative to this aspect that is being sought. Thus I agree that the Public Body should have asked for clarification as to the part of the request that was ambiguous in its wording, rather than relying on its assumption, and that its failure to take this step was a failure to assist the Applicant.

[para 19] In the case before me the Public Body submitted that it sent the request to search and retrieve responsive records to seven business areas: Communications, Deputy Minister and Minister Offices, Energy Operations, Energy Policy, Ministry Services, and Strategy and Market Access. The business areas were instructed to search for records with the specific request wording from the Applicant, using keyword searches and platforms as follows:

- “For all searches, include the following key terms in your search for records: Australia, Benga, Blairmore, Crowsnest, Eastern Slopes, Rinehart, Grassy Mountain, Joint Review Panel, JRP, Livingstone, MD Ranchland, open-pit, Rinehart, Riversdale, Hancock, HPPL, Westslope cutthroat trout.”
- “For all searches, include the following records: social media platform messages, including Signal, Telegram, WhatsApp, Facebook and Instagram on mobile devices, text messages on mobile devices, physical or electronic calendar appointments, call logs, chats, video or audio recordings or other records from any video calling or office messaging platforms (including but not limited to Microsoft Teams, Skype and Zoom), voicemail messages from phone, outlook, or video calling applications, physical mail or records, electronic mail and attachments, or electronic records in any form (pdfs, excel sheets, word documents, zip folders, etc).”

[para 20] The Public Body conducted a second search as recommended by the SIPM. The SIPM did not recommend an alternate manner of searching, rather the SIPM suggested searching again to provide greater certainty that records were not missed in the original search. That search did not yield any responsive records.

[para 21] The Applicant submitted that the Public Body failed its duty to assist by:

- (i) failing to conduct searches that were adequately designed or capable of supporting the conclusion that no responsive records exist;
- (ii) failing to justify the scope and methodology of its searches, particularly in respect of the second search; and
- (iii) failing to provide any reasonable explanation for the absence of records that would ordinarily be expected to exist in the circumstances. Notably, the Public Body itself anticipated that the Request would yield a large volume of records, as reflected in its decision to extend the response timeline to provide a complete response.

[para 22] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), Manderscheid, J confirmed that there was an informational component to the duty to assist:

[42] 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 mine)

[43] 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 23] The Public Body bears the burden of proof to show that it has met its duty to assist under the FOIP Act. For the reasons outlined below, I find the Public Body did not meet its duty to assist.

[para 24] In Order F2022-47, the Adjudicator addressed the situation in which the Applicant provided suggestions for how a Public Body could search for records.

[para 13] The Applicant suggested means by which the Public Body could conduct the search for the requested records, presumably because the Public Body informed him that it was unable to search without a topic. I believe that the Applicant's suggestions as to how the Public Body might conduct a search were provided as examples as to how public bodies normally conduct searches for information such as emails and were not requirements that would render information nonresponsive if the search were not conducted as he described.

[para 25] In its submissions the Public Body stated:

The business areas were instructed to conduct their search for records based on the keyword searches and various platforms noted by the Applicant in the scope of the request.

...

The business areas confirmed that they conducted their search for records based on the keyword searches and various platforms that had been provided by the Applicant in the scope of the request.

[para 26] The Public Body indicated that it provided the relevant areas with the specific wording of the request and the search terms. No further information is provided by the Public Body with respect to whether it further defined the search parameters or if it narrowed the

search to only those records that had the suggested key words that were suggested by the Applicant.

[para 27] Furthermore, the Public Body did not indicate how Boolean connectors (AND, OR, NOT etc) were used to retrieve the documents. Additionally, it is not clear if the Public Body only searched for records related to the three meetings that had any or all the suggested search terms.

[para 28] The Public Body has not argued that the Applicant's suggested search terms were not sufficient or that the Applicant should have provided better search terms. The Applicant requested records pertaining to three meetings that took place; it is unclear if a general search was done for those three meetings or if the search was narrowed to the suggested search terms.

[para 29] The Applicant provided search terms to the Public Body and specified the platforms to search for records, but as this office has stated in previous orders, the Public Body is in the best position to search for records using additional search terms and criteria. The Public Body did not provide any information on how it interpreted the request and the reasons behind that interpretation, nor did it indicate if it did use its own set of search parameters beyond what the Applicant provided.

[para 30] Furthermore, the Public Body has not provided any details of the second search it conducted. Searching for records in the same manner as the first search is not necessarily going to yield a different result.

The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.

[para 31] The Public Body submitted that it did not search off-site storage areas as record retention and disposition schedules were not applicable for the time frame of the requested records.

[para 32] The Public Body sent the request to seven business areas with the ministry; it does not state why these areas were chosen and why others were excluded.

Who did the search?

[para 33] The Public Body did not provide any information on whether all seven business areas fully responded. Was there sufficient response within those business areas? These are questions that the Public Body has not addressed but must address to confirm the adequacy of its search.

Why the Public Body believes no more responsive records exist than what has been found or produced?

[para 34] I find that the absence of any record of the meetings is curious, especially the Sprague meeting. I question why there is no evidence that these meetings took place. Why were there no records in an internal calendar, such as Outlook?

[para 35] I note that the Sprague meeting date fell within the timeframe of that aspect of the request. The timeframe of the request for the Wang and Clark meetings fell after the meetings took place. The fact that the timeframe for the request for records pertaining to the second and third meetings occurred after the meetings took place could be a factor in why responsive records were not located. I can only speculate on the reason; the Public Body is in the best position to provide an explanation as to the reason why records were not located for these two meetings within the time frames specified.

[para 36] In the present case, the Public Body retrieved 1036 pages of records, a majority of which were not responsive. My question is, why was there such a large cache of documents retrieved only for them not to be relevant? I understand that some of the documents that were relevant were duplicates and according to the Applicant's own criteria those were excluded.

[para 37] The Public Body did not provide any information on how it interpreted the request and the reasons behind that interpretation. The Public Body seems to have exclusively used the Applicant's suggested search terms; is this the reason over 1000 pages of records were located, but were deemed unresponsive to the request because they did not connect back to the three meetings? Could there be responsive records that relate to the meetings, but the Public Body did not expand its search to include those because it narrowly interpreted the request to records containing the specified keywords and did not seek clarification?

[para 38] Clarification should have been sought for the dates, especially the ones that fell almost a month after the meetings took place. Additionally, clarification as to what extent the Applicant wanted those search terms to be used. Did the Applicant want records incorporating all those search terms, or just some of them? Or was it the case that it simply wanted records relating to the meetings and the terms used by the Public Body did not matter to it at all?

[para 39] Given the ambiguity as to the dates of the meetings and the search terms suggested by the Applicant, it was necessary for the Public Body to clarify the access request with the Applicant.

[para 40] I am left with more questions than answers and this is why past Orders (F2004-026, F2013-18) of this office have imposed a duty on the Public Body to clarify the request and additionally, provide information as to its interpretation of the request to show that it has met the duty to assist.

[para 41] I find that the Public Body did not fulfill its duty to assist under section 10 of the FOIP Act.

[para 42] I am going to order the Public Body to provide a more thorough explanation of why responsive records were not located. Its response should address the points set out in Order F2007-029 regarding its search. Specifically, I would like the Public Body to answer the following questions:

Did the Public Body provide additional clarification or instructions to the business units other than the wording of the Applicant's request? If so, what were those instructions?

Could there be records that relate to the meetings, but the Public Body did not expand its search to include those because it interpreted the request to records containing some or all of the keywords provided? If yes, is this what the Applicant intended by including the keywords?

Why was there such a large cache of unresponsive documents initially retrieved?

Why were there no records in an internal calendar, such as Outlook?

Did all the business units respond to the call for records?

What if anything did the Public Body do differently when the second search was conducted?

[para 43] I will retain jurisdiction to review the Public Body's response to ensure that it has met its obligations under section 10 of the FOIP Act.

V. ORDER

[para 44] I make this Order under section 72 of the FOIP Act.

[para 45] I order the Public Body to comply with its duty under section 10 of the FOIP Act. The Public Body must explain the steps taken to locate records and explain why it believes they do not exist, as set out above.

[para 46] I will retain jurisdiction over the matter until I am satisfied that the Public Body has met its obligations under section 10 of the FOIP Act.

[para 47] 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.

Pam Gill
Adjudicator