

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2024-44

December 16, 2024

UNIVERSITY OF ALBERTA

Case File Number 015552

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 the University of Alberta (the Public Body) for records containing any information relating to action taken by the Public Body regarding four complaints he had made.

The Public Body searched for and located responsive records. It severed some information from them under section 24 (advice from officials) and as “non-responsive”. The Applicant questioned whether he had received all responsive records and also sought review of the Public Body’s severing decisions.

Prior to the inquiry, the Public Body decided to provide the records it had located to the Applicant in their entirety. The inquiry proceeded on the issue of whether the Public Body had met its duty to assist the Applicant by conducting a reasonable search for responsive records.

The Adjudicator found that the Public Body had conducted a reasonable search for responsive records and had met its duty to assist the Applicant. The Applicant found that the records the Applicant pointed to as not having been provided were not records he had requested.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 24, 72

Case Cited: AB: Order F2007-029

I. BACKGROUND

[para 1] In an email dated January 31, 2018, the Applicant submitted an access request to the University of Alberta (the Public Body), stating:

In essence, over the period 2012 – 2016 misconduct charges were leveled against 4 individuals Dr. [C], Dr. [WD], Dr. [SD] and Ms. [F]. This effort is to establish what action, if at all, was initiated by the [the Public Body] in response to my complaints. The matter was brought to the attention of the top administration of the [the Public Body] including the Chancellor and the Vice-Chancellor. Documents could be in the form of meeting notes or correspondence exchanged between individuals listed above and the offices, the complaint was addressed to which included, Office of the Chair, AFNS Department, Office of the Dean, ALES Faculty, Office of the Dean, FGSR, Office of the Vice-Chancellor, [the Public Body] and Office of the Chancellor, University of Alberta.

[para 2] The Applicant attached a series of email threads to his access request that had been sent to various senior members of the Public Body outlining complaints he had made regarding the following:

- Being refused a research grant in 2015;
- Rescheduling of an adjudication of post-doctoral fellowship in 2015;
- Attempts to stall or delay his completion of his academic program in 2014 in order to prevent the Applicant from applying for assistant/associate professor positions in 2014;
- Refusal to reinstate graduate stipend in 2013 and 2014; and
- Reduction in graduate stipend in 2012.

[para 3] In a letter dated February 20, 2018, the Public Body outlined its understanding of the scope of the access request as being:

“Records that show what action, if any, the university took in response to your complaints of misconduct by the following individuals [...]

The search should include records held by those individuals, or by the following offices:

- Faculty of Agricultural, Life and Environmental Science - Office of the Dean;
- Department of Agricultural, Food and Nutritional Science Department - Office of the Chair;
- Faculty of Graduate Studies & Research - Office of the Dean;
- Offices of the Chancellor ([RY] at the time of the emails) and the Vice-Chancellor;
- Office of the President;
- Office of the Provost;
- Chair of the Board of Governors ([DG] at the time of the emails);
- Office of the Vice-President (Research) (including emails sent to and from Dr. [B] and [AK] at the time); and
- Office of the Dean of the Faculty of Engineering.

The time period is January 1, 2012 - December 31, 2016.”

[para 4] The Applicant confirmed that the scope of the access request was as stated by the Public Body. He did not indicate he was seeking other categories of records.

[para 5] The Public Body released 43 pages of records noting that information was severed under sections 24(1)(a) and (b) and as nonresponsive. The letter lists the individual offices which were searched for responsive records. The letter further indicates that the Public Body was awaiting records from the Faculty of Agricultural, Life and Environmental Science (FALES) and would follow up with the Applicant once these were processed.

[para 6] In a letter dated June 29, 2018, the Public Body informed the Applicant that it had completed the search and had been unable to locate any further records.

[para 7] The Applicant requested a review by the Information and Privacy Commissioner (the Commissioner) of the Public Body's response to his access request and its decisions to sever information from the records. The Commissioner agreed to review the issues of whether the Public Body had met the duty to assist by conducting a reasonable search for responsive records, whether it was authorized to withhold information from the Applicant under section 24, and whether it had properly withheld information from the Applicant as "non-responsive".

[para 8] In its initial submissions for the inquiry, the Public Body stated that it was no longer withholding any information from the Applicant and had provided the records it had located in response to the access request in their entirety. As a result, the only remaining issue for inquiry is whether the Public Body met its duty to assist the Applicant.

II. ISSUE

ISSUE A: Did the Public Body meet its obligations required by section 10(1) of the Act?

[para 9] Section 10(1) of the FOIP Act creates a duty to assist applicants. It 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 10] Past orders of this office have interpreted the duty to assist as including the duty to conduct a reasonable search for responsive records.

[para 11] In Order F2007-029, the Commissioner made the following statements about a public body's duty to assist under section 10(1):

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).

[...]

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) [now 10(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 what has been done.

[para 12] From the foregoing, I understand that the duty to assist also has an informational component. A public body must conduct a reasonable search and inform the applicant of what has been done.

[para 13] The Public Body provided a detailed account of its search, the areas searched, and the names of the employees who conducted the search. It also explained how it interpreted the access request and how the search was conducted. It explained the steps it took to clarify the kinds of records that would be responsive to the access request with the Applicant.

[para 14] The Applicant and the Public Body discussed the scope of the access request in emails. The Applicant confirmed that he was seeking records that would document any actions taken by the Public Body in relation to complaints he had made with regard to four employees. The Applicant stated his purpose was the following:

This effort is to establish what action, if at all, was initiated by the University of Alberta in response to my complaints.

[para 15] Prior to the inquiry, the Applicant provided descriptions of the kinds of records he considered to be responsive to the access request but did not receive. The Public Body addressed each category of records in its submissions, stating:

Any documentation that can establish the nature of the deliberations that must have taken place between the Chair and the Dean / Associate Dean of the ALES faculty in support of the denial would be helpful.

Response: This does not appear to have been originally considered by the IPO as being within scope and was not included within the original clarified scope. However, [an employee of the Public Body] did [conduct] a further search of these non-responsive records and was able to locate some pages of records that included the keyword of "Report of Invention (ROI)". However, none of these records "show what action, if any, the university took in response to [] complaints of misconduct" and also involve individuals who were not identified in the scope of the request. Therefore, in [the employee's] opinion, these records were correctly identified as non-responsive.

Email correspondence between [Dr. D,] then Associate Chair AFNS Department, [Dr. C] and [Ms. F,] program administrator who were present at the January 2012 meeting where I was informed, I should leave with MSc whether I liked it or not.

Response: In reviewing the non-responsive records there are some emails relating to the issue of termination from the program but not all involve the named individuals and again, the records do not indicate “any actions” taken. The majority of these emails were sent to the Applicant or are from the Applicant himself.

Details of the academic credentials of the candidates who got hired for the RA positions should help establish any external influence.

Response: The request at issue is a personal information request submitted by the Applicant. These records would not be within the scope of the Applicant’s request the information requested is not the personal information of the Applicant. This information would very likely be information withheld under section 17 of the FOIP Act in consideration of section 17(4)(d),(f).

Details of the academic credentials of the three applicants who received the Alberta Innovates grant in 2015 from the Faculty of Engineering, should help established that considerations other than academic were at work.

Response: The request at issue is a personal information request submitted by the Applicant. These records would not be within the scope of the Applicant’s request the information requested is not the personal information of the Applicant. This information would very likely be information withheld under section 17 of the FOIP Act in consideration of section 17(4)(d),(f).

Any document highlighting the reason provided by Dean [B.] of the FALES faculty justifying the functioning of two polymer science programs at the AFNS department would help. Information on the amount and source of funding made available to [Dr. C.] for his polymer science program in 2012, 2014, 2016 would be useful.

Response: The request at issue 2018-005 is a personal information request submitted by the Applicant. These records would not be within the scope of the Applicant’s request the information requested is not the personal information of the Applicant. This statement does not relate to the overall subject matter scope of the request as agreed upon between the IPO and the Applicant (see above). The Applicant did not include this description in his access request.

[para 16] I find that the access request was for records relating to the Public Body’s response to complaints the Applicant had made regarding four representatives of the Public Body. I agree with the Public Body that none of the records the Applicant indicates were not provided are responsive to the access request as the Applicant framed it and subsequently clarified it. The records the Applicant now indicates he wants are unrelated to any steps the Public Body might have taken to address the Applicant’s complaints regarding its representatives. Again, the access request was for records containing information about the steps the Public Body took in relation to the Applicant’s complaints as reflected in the emails he attached to his access request.

[para 17] The Commissioner sent the issue of the Public Body’s response to the Complainant’s access request to inquiry. The only question I may decide is whether the Public Body met its duty to assist the Applicant in relation to the access request he actually made. The Public Body has established it conducted a reasonable search for the records the Applicant originally requested. It has also established that it met the

informational component of the duty to assist by keeping the Applicant informed as to what had been done, where it had searched and what it located.

[para 18] I find that the Public Body has established that it conducted a reasonable search for records responsive to the Applicant's access request as he framed it. I will therefore confirm that the Public Body met the duty to assist under section 10. If the Applicant wishes to obtain records of the kind he now states he is seeking, those records would be the subject of a new access request.

III. ORDER

[para 19] I make this Order under section 72 of the Act. I confirm that the Public Body met its duties to assist the Applicant as required by section 10(1) of the FOIP Act.

Teresa Cunningham
Adjudicator
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