



## **HIGH PROFILE ATI CASES ACROSS CANADA**

### **Alberta**

**Case summary:** Edmonton Police Commission ordered to release information relating to the dismissal of complaints under section 43(11) of the Police Act.

**Order Number:** F2008-021

**Date:** July 16, 2009

**Document URL:** <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2442>

**Summary:** An Adjudicator with the Office of the Information and Privacy Commissioner has ruled that the Edmonton Police Commission should release details of dismissals made under section 43(11) of the Police Act, but that any names and personally identifying information contained in those records must be severed.

The Criminal Trial Lawyers Association had requested access to records relating to the dismissal of complaints under section 43(11) of the Police Act, but the Edmonton Police Commission withheld the information under exceptions in the Freedom of Information and Protection of Privacy Act (FOIP).

Following an inquiry into the matter, the Adjudicator determined that it would be an unreasonable invasion of privacy of third parties to disclose information about them such as names and other information that would serve to identify them. However, the Adjudicator decided that disclosure of opinions and views, withheld by the Public Body as personal information, would, in this case, illustrate the conduct giving rise to a complaint that was dismissed, and therefore disclosure would be desirable for the purpose of subjecting the operation of section 43(11) to public scrutiny.

She ordered the Edmonton Police Commission to sever information that could identify individuals from the records, and to release the remainder of the records, other than three records to which section 24(1)(a) (advice) applied. The Adjudicator also required the Edmonton Police Commission to reconsider how it had exercised its discretion to withhold certain information under section 27 (privileged information) of FOIP.

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**Case summary:** Alberta Finance and Enterprise - Government Department ordered to release credit card information

**Order Number:** F2008-014

**Date:** July 2, 2008

**Document URL:** <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2281>

**Summary:** Information and Privacy Commissioner, Frank Work, has ordered Alberta Finance and Enterprise to disclose information regarding the use of a government credit card by a former employee, ruling the department did not properly withhold certain information.

A request had been made under the Freedom of Information and Protection of Privacy Act (FOIP) to Alberta Economic Development (now Alberta Finance and Enterprise). The Applicant requested information regarding the personal expense records of a former employee while he was using a government credit card. The applicant also requested correspondence between several named cabinet ministers and employees regarding the expense records. The Public Body chose to withhold the information as being non-responsive or an unreasonable invasion of privacy under section 17 of FOIP.

Following an inquiry into the matter, the Commissioner ruled the department did not properly withhold records as being non-responsive or under section 17. The Commissioner found that section 17 did not apply to Ministerial approval stamps of the former Minister of Economic Development, the date stamps and the former employee's name, dates and the amount of personal expenditures on the government owned credit card statements. The Commissioner has ordered the Public Body to disclose that information.

In a separate inquiry into a related matter, the Commissioner also found that Alberta Finance and Enterprise did not properly withhold a portion of the records as non-responsive or pursuant to section 17. In particular, the Commissioner found that section 17 did not apply to several pieces of internal government memoranda and to the former employee's name, dates and amount of the former employee's personal expenditures on the government credit card that were found within credit card statements. The Commissioner ordered Alberta Finance and Enterprise to disclose that information.

The Commissioner also ruled that section 17 does apply to vendor names, vendor locations and other transaction identifiers found in the credit card statements. He ruled that disclosure of that information would be an unreasonable invasion of the former employee's privacy, and the Commissioner has ordered the Public Body not to disclose that information.

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**Case summary:** Alberta Employment and Immigration ordered to release survey results

**Order Number:** F2008-008

**Date:** June 6, 2008

**Document URL:** <http://www.oipc.ab.ca/downloads/documentloader.ashx?id=2211>

**Summary:** Alberta Employment and Immigration (formerly Alberta Human Resources and Employment) has been ordered to release the full results of a survey conducted on employment standards in Alberta, by an Adjudicator with the Office of the Information and Privacy Commissioner.

An individual requested the questions and results of a public opinion telephone survey. The Public Body refused access, citing exceptions under the Freedom of Information and Protection of Privacy Act (FOIP). Those exceptions included discretionary exceptions and advice to officials.

When mediation between the parties failed, an inquiry was set. The Adjudicator determined that all but one of the survey questions were part of a statistical survey, and under the terms of FOIP, a Public Body may not withhold the information. The Adjudicator reviewed the remaining question and determined it did not reveal advice, and therefore was not exempt.

The Adjudicator has ordered Alberta Employment and Immigration to release the entire survey results to the applicant.

**British Columbia:**

**Investigative Report:** Ministry of Environment, Ministry of Forests and Range

**Date:** January 22, 2008

**Document URL:**

[http://www.oipc.bc.ca/orders/investigation\\_reports/InvestigationReportF08-01.pdf](http://www.oipc.bc.ca/orders/investigation_reports/InvestigationReportF08-01.pdf)

**Summary:** The University of Victoria Environmental Law Clinic, on behalf of a group of eight environmental organizations, brought a complaint against three ministries alleging that there was a system-wide pattern of acting to frustrate environmental groups seeking records under the *Freedom of Information and Protection Act* (“FIPPA”). The groups alleged that there were routine delays in responding to access requests, excessive censoring of records, excessive and unreasonable fees and frequent and unjustified denials of fee waivers. Any one of these allegations, if proven, would be a violation of the section six of FIPPA’s duty to assist applicants. A preliminary investigation determined that while the complaint against the Ministry of Forests was not substantiated, there was some basis for the allegation of systemic problems with requests made to the Ministry of Environment. The parties met and developed a mutually acceptable action plan to resolve the complainants concerns.

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**Report:** Timeliness of Government’s Access to Information Responses

**Date:** Report for Calendar Year 2008

**Document URL:** [http://www.oipc.bc.ca/investigations/reports/F08-35580\\_Calendar\\_2008\\_Report\\_Card\(Feb\\_2009\).pdf](http://www.oipc.bc.ca/investigations/reports/F08-35580_Calendar_2008_Report_Card(Feb_2009).pdf)

**Summary:** For over a decade now, successive administrations have failed to tackle the chronic problem of delay in provincial government ministry responses to access to information requests under the *Freedom of Information and Protection of Privacy Act*. My attempts and the attempts of the OIPC staff over more than a decade to advocate for change and resolve the challenge of delay have not succeeded overall.

This cannot continue, which is why this report foreshadows what will become annual reports, on a fiscal-year basis, grading government’s timeliness in responding to access to information requests. This report does not assign grades to individual ministries, but it does give a clear overview of what can only be described as an unacceptable pattern of government-wide failure to respond to access requests in as timely a fashion as it should. In fact, this report shows that in a significant number of cases—almost one third—government is in breach of its legal obligations to respond in the times set under the *Freedom of Information and Protection of Privacy Act*.

**Manitoba**

**Case summary:** City of Winnipeg

**Date:** May 12, 2009

**Document URL:** N/A

**Summary:** Under The Freedom of Information and Protection of Privacy Act (FIPPA), the applicant requested access to the Winnipeg Police Service policy on the use of Tasers or other electro-muscular disruption devices. The City of Winnipeg refused access to the record, based on the exception provisions that disclosure could reasonably be expected to harm a law enforcement matter and harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement. The Ombudsman found that the cited exceptions did not apply to all of the withheld information. The City of Winnipeg reconsidered its decision and released the information to which an exception did not apply.

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**Case summary:** Manitoba Health and Healthy Living

**Date:** May 12, 2009

**Document URL:** N/A

**Summary:** Under The Freedom of Information and Protection of Privacy Act (FIPPA), the applicant requested access to the Terms of Reference of the HPV (Human Papillomavirus) Immunization Program Working Group. Manitoba Health and Healthy Living granted partial access to the responsive record (the Working Group's "Operational Framework"), withholding the names of two third parties who were former members of the Working Group. The public body cited the exception that release would be an unreasonable invasion of a third party's privacy, noting that a relevant circumstance in considering harm is that the disclosure would be inconsistent with the purpose for which the personal information was obtained. The Ombudsman determined that releasing the names would not be inconsistent with the purpose for which their names were obtained because the individuals were representing their organizations at that time. Further, disclosing names of former members of a working group of the department would not be an unreasonable invasion of privacy as they represented the agencies that were asked to be part of a public body working group. The public body reconsidered its decision and granted full access to the record.

**New Brunswick**

Not available

**Newfoundland and Labrador**

**Access Report:** Department of Labrador and Aboriginal Affairs

**Date:** April 3, 2009

**Document URL:** <http://www.oipc.gov.nl.ca/pdf/Report2009-005.pdf>

**Summary:** The Applicant applied under the Access to Information and Protection of Privacy Act (the "ATIPPA") for access to the briefing notes of the Department of Labrador and Aboriginal Affairs (the "Department") which were prepared for the House of Assembly, 46th General Assembly - First Session 2008. The Department granted access to a portion of the records and severed other portions citing section 20 of the ATIPPA. The Commissioner found that some information was appropriately severed under section 20; however, section 20 was not applicable to most of the information for which it was claimed. A large portion of the severed information was factual information as provided for under section 20(2)(a) and other severed information did not reveal advice and recommendations. Therefore, it was found that this information could not be withheld under section 20(1)(a). The Commissioner recommended release of all information that had not previously been disclosed to the Applicant with the exception of the information protected from release by section 20(1)(a).

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**Access Report:** Memorial University of Newfoundland

**Date:** January 22, 2009

**Document URL:** <http://www.oipc.gov.nl.ca/pdf/Report2009-002.pdf>

**Summary:** The Applicant applied to Memorial University under the Access to Information and Protection of Privacy Act (the "ATIPPA") for access to her own personal information that was contained in a report of an investigation into the employment experience of a named assistant professor (the "Katz Report"). In the copy of the Katz Report provided to the Applicant, the vast majority of information was redacted in accordance with section 30. Other information had been redacted in accordance with section 21. Memorial argued that this Office's position that the ATIPPA created a bias in favour of disclosure would lead to "unsupportable interpretations of the Act's definitions."

The Commissioner disagreed with this argument and found that there is indeed a presumption in favour of disclosure inherent in the ATIPPA. The legislation is meant to promote disclosure of information while allowing the protection of personal information where it is appropriate to do so. Public bodies must, as a general rule, provide access to information and only protect what is absolutely necessary, rather than deny access and only disclose what is absolutely necessary. The Commissioner determined that section 21 was applicable to some information contained in the records. Further it was also determined that section 30 is not applicable to some of the information for which it was claimed. For example, the Commissioner found that section 30 does not apply to that information which the Applicant supplied to Memorial (for example, quotes from her own correspondence to Memorial or from Memorial to her) because in this situation, there can be no "disclosure" of the information. Further, the Commissioner found that generally, wherever the Applicant's name appears in the Katz Report, she is entitled to

this information, as it is clearly her own personal information. The Commissioner also found that names of employees of Memorial, where they are used in connection with their position or functions as employees, should also be disclosed in accordance with section 30(2)(f).

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**Access Report:** Executive Council

**Date:** January 12, 2009

**Document URL:** <http://www.oipc.gov.nl.ca/pdf/Report2009-001.pdf>

**Summary:** The Applicant applied to Executive Council under the Access to Information and Protection of Privacy Act (the "ATIPPA") for access to the subject lines for all e-mails to and from seven people in the Premier's Office for a one month period and the subject lines for all emails exchanged between two other individuals for the period January 1, 2005 to 31 December, 2005. Executive Council refused the Applicant's request in accordance with sections 8(2) and 10(1)(b) of the ATIPPA. The Commissioner found that while section 8(2) did not apply, section 10(1)(b) did apply. The number of the e-mails encompassed by the request was initially estimated to be about 70,000. However, when Executive Council was asked to substantiate this estimate and had the Office of the Chief Information Officer track the volume of e-mails received by the individuals named in the request (or alternatively, the volume of e-mails of the person now occupying the position of a named individual where the named individual no longer worked in Executive Council) the number of e-mails encompassed by the request was over 119,000. At a rate of 500 e-mails per day, it would take about 8 months to process the request. The Commissioner found that this was an unreasonable interference with the operations of Executive Council.

Not available

**Nova Scotia**

### **Closed during Mediation:**

The Public Body and Applicant worked together, during face-to-face meetings, direct emailing and through the Review Office to resolve the issue of fee waiver to the satisfaction of both parties during the Mediation stage. The Applicant narrowed the vast scope of the initial access request to focus on internal documents only and agreed to pursue other documents through other organizations. This resulted in the Public Body being willing to exercise its discretion to waive fees to the remainder. The Applicant provided the Public Body with letters of support to show that the issue was one of public interest and the release of the documents would benefit more people than just the Applicant.

### **Closed by Review Report:**

1. The Applicant requested a copy of a Departmental manual. The Public Body granted access to part of the manual but claimed that the release to the remainder would harm the effectiveness of investigative techniques or may endanger the safety of an individual. In some other jurisdictions, this type of manual is posted to the Internet, however in those jurisdictions, the FOIPOP Act specifically requires it. A Review Report was issued which found that the Public Body did not provide sufficient evidence that the harm would result and recommended the disclosure of the entire manual. The Public Body accepted this recommendation.

2. The Applicant requested access to personal records. The majority of the Records were released, however the issue of outstanding emails was brought to Review. The Public Body indicated in its decision letter that the retrieval of the responsive emails was going to take three more weeks and would be forwarded once it was complete. Once the Review file was being investigated, it was discovered that the Public Body had not yet started the retrieval and said that it would take three continuous weeks once it started, as some of the emails were on backup tapes, and based on this they then decided that they did not have to process the request under the Act. A Review Report was issued which found that the Public Body was required to provide the Applicant with access to any emails that were on the current system, including those that would be found in an archive, and that the emails found on backup tapes are not considered a responsive record, as they exist for system recovery purposes only.

If you have any questions about these summaries, please contact Carmen Stuart, Acting Mediator/Investigator, Nova Scotia Freedom of Information and Protection of Privacy Review Office, 902-424-6982.

**Nunavut**

**Review Recommendation:** 08-046

**Date:** Annual Report 2008-2009

**Document URL:**

[http://www.info-privacy.nu.ca/en/files/Annual\\_Report\\_08\\_09\\_English.pdf](http://www.info-privacy.nu.ca/en/files/Annual_Report_08_09_English.pdf)

**Summary:** In this case the Applicant was not satisfied with the response that he had received to a request for information he had made regarding the calculation of bonuses paid to those in management positions a particular government department for a particular year. He had asked for information showing how the bonuses were calculated.

The response received included two copies of a spread sheet with everything but the headings and the information which related to the Applicant blacked out. He received no correspondence or notes which might indicate what factors went into the calculation of the bonuses or even how his particular bonus had been set.

The Information and Privacy Commissioner noted that, by definition, a bonus is something granted for extra effort or a job well done and, even when a bonus is given as a result of a contractual provision, there is normally a discretion to be exercised, which would generally involve some discussion or an exchange of information between those responsible for making those decisions. In her opinion, it was not surprising; therefore, that the Applicant was skeptical about the thoroughness of the search for records when no documents were discovered that would suggest such discussions took place.

Although the Information and Privacy Commissioner was satisfied that there was a bona fide search for the records requested, she was not convinced that the search was as thorough as it should have been, particularly in terms of the search of electronic records. She pointed out that the effectiveness of a search for electronic records will be limited by the search parameters entered. The Information and Privacy Commissioner recommended that the search for records be redone with expanded search parameters. The recommendation was accepted in part.

**Ontario**

**High Profile Appeals:** Halton Catholic District School Board

**Order:** MO-2358

**Date:** 2008 Annual Report

**Document URL:** <http://www.ipc.on.ca/images/Resources/ar-08e.pdf>

**Summary:** This appeal involved a request from a parent for access to educational materials that were distributed to his son's class during a two-month absence when the family was required to be out of the country. The Halton Catholic District School Board initially provided the requester with a fee estimate of \$372, which was subsequently amended to \$380.40, to cover the cost of its search time and photocopying of responsive records.

Adjudicator Bernard Morrow examined whether the fee charged by the board was in accordance with the requirements of section 45(1) and Regulation 823 under the Municipal Freedom of Information and Protection of Privacy Act. In the order, he initially reduced the amount of the fee to \$123.20 on the basis that some aspects of the search fee were inappropriate and not in compliance with the requirements of section 45(1) and the regulation. Later in his order, the adjudicator expressed concern about the board's decision to require a parent to file an access request under the Act in order to obtain access to records which would have been provided to his son free of charge had he not been absent from school. He went on to state that, "I find the board's refusal to simply provide these materials as part of the child's education, to the best of its ability, to be unreasonable and inconsistent with the board's duties as a provider of public education.

This course of conduct has imposed an unnecessary administrative burden on the [parent], since he had to make a request under the Act, followed by an appeal. The processing of this unnecessary appeal has also consumed significant resources of this office." Accordingly, Adjudicator Morrow disallowed the fee in its entirety and ordered the board to provide the records to the parent without a fee.

## **Prince Edward Island**

Not available

## **Québec**

## NEWS FROM THE COMMISSION D'ACCÈS À L'INFORMATION DU QUÉBEC

Attached you will find the French and English versions of the information pamphlet concerning the activities of the Commission d'accès à l'information. This publication is also available on the Commission's website at the following addresses:

**French version:**

[http://www.cai.gouv.qc.ca/06\\_documentation/01\\_pdf/depliant2-2out.pdf](http://www.cai.gouv.qc.ca/06_documentation/01_pdf/depliant2-2out.pdf)

**English version:**

[http://www.cai.gouv.qc.ca/06\\_documentation/01\\_pdf/depliantCAI-ang-imprimablepourweb.pdf](http://www.cai.gouv.qc.ca/06_documentation/01_pdf/depliantCAI-ang-imprimablepourweb.pdf)

You will also find a decision rendered by the Commission which we considered interesting and which has been summarized for you. This decision was rendered in January 2009 and concludes that a confidential clause cannot thwart the right of access. You will find from reading the decision that the applicant's name has been masked. Under the Act respecting access to information and the protection of personal information, the decisions rendered by the Commission are public. However, following comments made by the applicants for access who were worried about seeing their name circulate on the Web, the Commission, like other administrative tribunals, agreed to make its decisions available on the Internet anonymous.

Moreover, regarding access to information, mediation activities were developed in the past year at the Commission, allowing acceleration of the review process for requests for access to information. The number of mediators has been increased and they have all benefited from training and obtained accreditation from the Québec Bar in this matter.

This year, the Commission was involved in the "Rendez-vous avec la justice" activities by participating in the Salon Visez Droit, organized by the Québec Bar. The Commission took the opportunity to inform the public about its role and the rights and obligations of each party regarding access to information and protection of personal information.

The Commission's efforts to promote transparency also include interventions and guest speaking activities with various departments and agencies throughout the year.

Enjoy your reading and have a good Right to Information Week.

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**Decision :** L. S. v. Ville de Windsor, CAI 07 19 87

**SOQUIJ:** 2009 QCCAI 12

**Date:** January 14, 2009

CAI website:

[http://www.cai.gouv.qc.ca/07\\_decisions\\_de\\_la\\_cai/01\\_pdf/2009/janvier/071987ja09.pdf](http://www.cai.gouv.qc.ca/07_decisions_de_la_cai/01_pdf/2009/janvier/071987ja09.pdf)

**Summary of the decision**

In this case, the applicant wishes to obtain the details of an agreement entered into between Ville de Windsor and its Director General to terminate her employment relationship. This agreement contains a clause to the effect that the transaction must remain confidential and not be disclosed to anyone in any manner whatsoever.

In the first place, the Commission d'accès à l'information concludes that the agreement contains information regarding the salary of the Director General and consequently is public under the Act respecting access to documents held by public bodies and the Protection of personal information and must be released.

Then, the Commission expressed the opinion that the confidentiality clause is not opposable to the applicant. Indeed, none of the restrictions set out in the Act respecting access to documents held by public bodies and the Protection of personal information allows Ville de Windsor to refuse access to the agreement.

A promise of confidentiality made to a person regarding the information contained in a document cannot suffice to justify a refusal of access. The Act respecting access to documents held by public bodies and the Protection of personal information is public order legislation and a party cannot be exempted from it simply by agreement.

**Case Summary:** Ministry of Justice and Attorney-General

**Report:** F-2008-002

**Date:** 2008-2009 Annual Report

**Document URL:** [http://www.oipc.sk.ca/Annual\\_Report\\_2008-2009.pdf](http://www.oipc.sk.ca/Annual_Report_2008-2009.pdf) (page 39)

**Summary:** A request for copies of any minutes of meetings from the Funeral and Cremation Services Council (Council) was submitted to the Superintendent of Funeral and Cremation Services (Superintendent) at the Consumer Protection Branch, an agency of the Department of Justice. The Department of Justice responded that it did not have such a record in its possession. The issue under review was whether the responsive record, even if not in Justice's possession, was nonetheless in its control.

The focus of the analysis was on section 5 of The Freedom of Information and Protection of Privacy Act (FOIP). I found that, of the factors recognized in other jurisdictions, none existed in this case to render the Council's records under the control of Justice. I further found that The Funeral and Cremation Services Act (FCSA) created a system whereby the Council operates independently from Justice in its management of the licensees under the FCSA, and that the Superintendent acts largely as an oversight body. This involves the consideration of appeals from Council decisions and other matters that pertain to the administration of the FCSA. As such, I found that it is not reasonable for meeting minutes of the Council to be considered to be under the control of Justice.

The Ministry advised our office that it decided to follow our recommendation and take no further action on the request for access.

**Case Summary:** Department of Health and Social Services (H&SS), Public Service Commission (PSC), Department of Highways and Public Works (H&PW)

**Title:** What to Keep, What to Throw Away

**Date:** Annual Report 2008

**Document URL:**

<http://www.ombudsman.yk.ca/pdf/OIPC%20AR%202008%20IPC%20E%20web.pdf>

**Summary:** Max, a government employee, attended a meeting about his employment. Representatives of the PSC, H&SS (his employer) and the union were all in attendance. At the conclusion of the meeting, Max was told he would receive a letter confirming their discussions. He never did. He then made requests to each of the departments involved, for access to all records specifically related to the meeting.

H&SS responded that no records were found in relation to the meeting, while the PSC granted records, but did not include any records related to the meeting. Max complained to the Commissioner about whether either department had done an adequate search. He knew there were records of the meeting because he had been there.

The investigation process involved discussions with the departments about what constitutes an adequate search for records. Both departments then conducted internal reviews seeking to understand why records related to the meeting had not been found. Each department also conducted a thorough records search.

H&SS discovered that a notebook containing notes of the meeting had existed but that the notebook was now missing. The department considered the notebook to be a transitory record, meaning it was only of temporary value and could be destroyed.

H&SS acknowledged that a letter confirming the discussions at the meeting was never sent to Max. It also advised the Commissioner of the steps it was taking to provide better training to its employees about transitory records, their proper use and their destruction. The Commissioner accepted the review and explanation and asked H&SS to report that information to Max.

Soon after, the PSC advised our office that it had found more records, some of which related to the meeting. Upon review, those records documented sensitive employment and personal information and confirmed what Max remembered had been discussed and decided at the meeting. The PSC also advised that it had treated the notes taken at the meeting as transitory records and destroyed them.

Following the investigation and based on information from both departments, the Commissioner determined that the records of the meeting were not transitory records and that the personal information contained in those records should therefore have been properly protected against loss or destruction in accordance with the ATIPP Act.

Further investigation into the systemic problem in properly identifying transitory records included a review of government records management policies as well as the departmental guidelines of PSC and H&SS. The Commissioner found that the

Government Records Scheduling Policy regarding disposal or shredding of records did not clearly explain how to properly distinguish between transitory and substantive records. The internal department guidelines led to further confusion.

The Commissioner recommended revision of those guidelines.

Highways and Public Works has responsibility for government Records Management and the ATIPP Act. The Commissioner informed H&PW of this case and recommended changing the Government Records Scheduling Policy to comply with the ATIPP Act. All three public bodies accepted and implemented the Commissioners findings and recommendations.

Max's case helped raise awareness within government about handling employment records and clarified the definition, use and destruction of transitory records.