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The Information Commissioner's Report on the Government of Alberta's War on the Public's Right to Access Information

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Matter Commented On: OIPC Investigation Report F2025-IR-01, Investigation into the Government of Alberta's practices respecting access to information

On 8 May 2025, Alberta's Information Commissioner (Commissioner) posted Investigation Report 2025-01 (Report 2025-01). Report 2025-01 is unlike typical Office of the Information and Privacy Commissioner (OIPC) orders that make decisions about particular records requests under the *Freedom of Information and Protection of Privacy Act,* RSA 2000, c F-25 (*FOIP*). Instead, Report 2025-01 relates to how the 27 government departments that make up the Government of Alberta were handling records requests in general. Report 2025-01 concludes that the Alberta government had been applying incorrect interpretations of three sections of *FOIP* to improperly reject records requests (at 3).

The Commissioner's investigation had been ongoing since August 2023, and the Government of Alberta had provided numerous submissions to the Commissioner (at paras 5-10). Report 2025-01 identifies two specific categories of requests that were improperly rejected: requests from the Globe and Mail's 'Secret Canada' investigation into Canadian access to information law seeking to determine how Alberta's *FOIP* system functioned (at paras 2-6) and requests for records about "meetings with representatives of the Canadian Association of Petroleum Producers and/or the Pathways Alliance" (at paras 23, 33, and 37).

Bill 33: *Protection of Privacy Act* and Bill 34: *Access to Information Act*, which will repeal and replace *FOIP* with weaker laws on access to government records, received third reading and royal assent, but those bills have not yet been proclaimed into force and so *FOIP* remains in place (see my comments on the new *Access to Information Act* here and here). The Commissioner noted the Government of Alberta's conduct would not be legal under the new *Access to Information Act* either, and so the report's recommendations will still need to be implemented.

Unlawfully Rejecting Requests and Requiring Requests to be Split or Rescoped

The first purpose of *FOIP* is to provide the public a right of access to government records subject to limited and specific exceptions (*FOIP*, s. 2(a)). *FOIP* is Alberta's version of a 'freedom of information' law, which have become standard for democratic countries, intended to facilitate meaningful democracy by limiting government's ability to keep secrets from the public. Alberta's *FOIP* has long had many problems (See for instance here, here, here, and here).

The first class of violation relied on a bizarre misreading of subsection 7(2) of *FOIP,* which reads: "A request must be in writing and must provide enough detail to enable the public body to identify the record" along with ignoring the duty to assist applicants in subsection 10(1). The Alberta government had invented a bizarre misinterpretation of section 7 of *FOIP*, that allowed government to reject requests that did not meet a level of specificity and scope for the requested records that the Commissioner found was "simply unattainable by an applicant" (at para 64). The Alberta government argued that these requests were not refused, but that the requests never existed at all since they failed to meet the level of detail required by subsection 7(2) (at para 71).

The Commissioner completely rejected the government's interpretation. Subsection 7(2) does not empower public bodies to reject requests or deem requests 'non-requests' for any reason, and the duty to assist applicants in section 10(1) of the Act requires public bodies to assist an applicant in scoping the request in a way that allows the desired records to be identified (at paras 69-70, 74-75). The Commissioner reviewed 34 requests the Government of Alberta had unlawfully rejected on this basis (at para 74).

The Government of Alberta had also refused to process requests unless applicants changed the scope of requests to capture fewer records, agreed to divide requests for several different records into multiple distinct requests (with the additional associated fees) and was "requiring applicants to structure access requests in a manner that enables [the Government of Alberta] to respond to the applicant completely within 30 days." (at paras 75-104) The 30-day timeline for requests is a requirement for government to efficiently process requests, (at para 99) not a limit on the scope of what requesters can ask for. The Commissioner found "Requiring applicants to structure requests in a manner such that they can be responded to within 30 days, is, in my view, unfair and is an attempt to impose a duty on applicants in making their access requests that does not exist in the FOIP Act." (at para 99)

Refusing to Process or Release Information Contained in Databases

Subsection 10(2) of *FOIP* reads:

(2) The head of a public body must create a record for an applicant if
    (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and
    (b) creating the record would not unreasonably interfere with the operations of the public body.

Section 10(2) requires public bodies to provide information from databases in the format requested by information requests (at para 106). The Alberta government had been generally refusing to process requests that asked for information in databases entirely. This unlawful policy obstructed access to most information in government databases (at paras 110-112). The Alberta government justified this policy by ignoring past Alberta OIPC decisions and looking instead to decisions of the B.C. Information Commissioner – and then misreading those B.C. Information Commissioner decisions (at para 121-125). The Government of Alberta argued that *FOIP* had been drafted before databases existed and was not designed to accommodate requests for database information – the

OIPC noted this was false, and that the application of *FOIP* to electronic database information had been the subject of explicit OIPC attention since at least 1996 (at paras 138-139). In one instance where the Government of Alberta applied their bizarre position that *FOIP* does not apply to databases to say no responsive records existed, the Commissioner noted internal e-mails showed government officials discussing that responsive records did in fact exist (at paras 144-145).

The specific recommendations of the report were for the Government of Alberta to: (1) stop refusing requests or requiring them to be rewritten or split up under section 7(2) on the basis they are too broadly worded or complex (at paras 147 and 149); and (2) stop the policy of refusing to use database software to create records from existing information (at paras 148 and 150). In short, the OIPC's recommended the Alberta government to stop using their bad-faith interpretations of *FOIP* and comply with *FOIP* as written and the decades of OIPC decisions describing how to interpret *FOIP*.

Commentary

Respectful and professional language is ordinarily expected and required from government officials. However, in my view, the OIPC's respectful and professional language in Report 2025-01 is inappropriate, as it would leave a reader not familiar with *FOIP* the impression that the Alberta government made major mistakes in statutory interpretation and failed to meet the requirements of *FOIP*. In my view, that is not a defensible explanation of what happened. The interpretations of *FOIP* by the Alberta government ignored decades of OIPC decisions. The interpretations of *FOIP* presented by the Government of Alberta contained absurd errors of statutory interpretations and were not remotely plausible. The Government of Alberta had invented flimsy legal justifications to ignore *FOIP* requests. Pretending these were mistakes instead of deliberate choices is alike to pretending someone simply made a mistake when they parked their car in your living room.

The Alberta government has continually engaged in a systemic attack on *FOIP* and democratic transparency for many years, and the Commissioner's report reveals two targets of illegal Government of Alberta secrecy. The first was records about the Government of Alberta's relationship with the Canadian Association of Petroleum Producers, the second was information on how badly the *FOIP* request system in Alberta was working.

The Government of Alberta's secrecy about their dealing with the oil and gas industry representatives is particularly notable given the Government of Alberta's demanded 'reset' of the Canadian federal structure. As Smith posted to Twitter on May 27th, 2025: "Albertans need to see the federal government reset its relationship with Alberta starting with a clear commitment to work with Alberta to build an oil pipeline to the northwest BC coast as well as repealing the emissions cap, Bill C-69, the tanker ban, and the net-zero electricity regulations." The issues the Government of Albertan is demanding federal government change policy on all seem to be entirely about the oil and gas industry, yet Albertans were kept away from the records of discussions between the oil and gas industry and the government that represents them.

As a concluding note – if you filed a request and had it rejected by the Government of Alberta for any of the unlawful reasons described in Report 2025-01, consider re-filing that request now, before Bill 34 is proclaimed into force and access rights are diminished.

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