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## Let's Talk About Access to Information in Alberta Part Two: Alberta's Policy on Wildlife Rehabilitation

By: Shaun Fluker and Drew Yewchuk

**Policy Change Commented On:** [Alberta Orphan Black Bear Cub Rehabilitation Protocol, April 2018](#)

In April 2018, Alberta Environment and Parks revised its wildlife rehabilitation policy to allow for the rehabilitation of black bears less than one year old. This change allows for the rehabilitation of orphaned black bear cubs in Alberta, an activity that has been prohibited since 2010 when Alberta implemented a policy change that heavily limited wildlife rehabilitation. Under the new policy, orphaned or injured black bear cubs and several other species have typically been [euthanized by wildlife officers](#). Injured or orphaned wildlife with the good fortune of being found in the national parks might be spared this fate because of federal policy which is more accommodating to the interests of wildlife. For example, orphan bear cubs found in a washroom in Banff were sent to be rehabilitated [outside of the province](#). The Public Interest Law Clinic at the University of Calgary had been working with a person interested in challenging Alberta's prohibitive wildlife rehabilitation policy, and after the policy change for orphaned black bear cubs in April of 2018, we filed a freedom of information request under the *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25 \(FOIP Act\)](#) seeking to learn more about this policy shift. In December 2018 we received the disclosure materials, and this post explains what we learned as part of our ongoing series about using the access to information process in Alberta.

### The Statutory Framework for Wildlife Rehabilitation

The legislative framework for wildlife rehabilitation in Alberta consists primarily of a few command and control provisions in the *Wildlife Act*, [RSA 2000, c W-10](#). Sections 7 to 9 of the *Wildlife Act* makes all wildlife in the province the property of the Crown, subject to a few exceptions. Section 55 makes it an offence for a person to possess wildlife without a licence issued by state officials:

55(1) Subject to this Act, a person shall not be in possession of a wildlife or controlled animal.

(2) Subject to this Act, a person may have a wildlife or controlled animal in the person's possession

(a) if and to the extent that the person is authorized by a permit to do so,

(b) on a fur farm if that possession is reasonably incidental to the operation of that farm, or off the farm if that possession is reasonably necessary for its operation,

(c) in the case of dead wildlife, if

(i) the Minister has transferred it to the person under section 9, or

(ii) the wildlife has been hunted in accordance with this Act and the requirements of section 8(1)(b), (c) and (d) have been or are being met in relation to it.

...

(3) Except as prescribed, a person shall not be in possession of an animal that is not a subject animal and that was imported into Alberta unless it was lawfully acquired in and lawfully exported from a jurisdiction outside Alberta.

Section 55(2)(a) is the provision which enables possession of wildlife for the purpose of rehabilitation. Sections 77, 78 and 80 in the *Wildlife Regulation*, [Alta Reg 143/1997](#), set out authority for the Minister to issue a wildlife rehabilitation permit:

### **Wildlife rehabilitation permit – eligibility**

**77** The Minister may issue a wildlife rehabilitation permit to an adult resident, a business corporation or a society that

(a) proposes to operate a wildlife rehabilitation facility in accordance with a wildlife rehabilitation facility plan approved in accordance with [section 78](#), and

(b) at the time of applying for the permit or renewal of the permit, meets those standards concerning facilities and husbandry that are prepared by the Alberta Wildlife Rehabilitators Association, adopted by the Minister and available for inspection by the public in the Department’s Fish and Wildlife Policy Branch in Edmonton.

### **Zoo and wildlife rehabilitation permit plans**

**78(1)** A person applying for a zoo or a wildlife rehabilitation permit, whether initially or on a renewal, must apply to the Regional Head of Wildlife Management for approval of a written plan authorizing the activities referred to in [section 79](#) or [80](#) respectively.

**(2)** A plan for a wildlife rehabilitation facility must

(a) name a veterinarian whose services will be available to care for the animals held in the facility, and

- (b) to the extent, if any, required by the Regional Head of Wildlife Management, include requirements as to the records or reports, or both, referred to in [section 151](#).

(3) The Regional Head of Wildlife Management may approve the plan submitted under subsection (1) in writing.

(4) A plan approved under subsection (3) may be amended with the approval of the Regional Head of Wildlife Management.

### **Wildlife rehabilitation permit – entitlements**

**80** A wildlife rehabilitation permit authorizes its holder

- (a) to operate, on land specified in the permit being
  - (i) land in a Metis settlement, or
  - (ii) other land that is not public land,

a wildlife rehabilitation facility primarily for the purpose of rehabilitating injured, diseased or orphaned wildlife or any other wildlife that is not fully capable of surviving in the wild, and

- (b) to possess live wildlife for that purpose,

in accordance with the plan approved in relation to such a permit pursuant to [section 78](#).

The *Wildlife Act* does not obligate the government to rehabilitate injured or orphaned wildlife, including members of an endangered species.

In 2010, the Province enacted a very restrictive policy for wildlife rehabilitation permits under this legislative framework. This policy explicitly stated that permits would not allow the rehabilitation of some species, including bighorn sheep, mountain goats, wolves, black bears more than 12 months of age, grizzly bears, and cougars. The inclusion of grizzly bears on this no-rehabilitation list is remarkable (but not surprising) given that in the same year the Alberta government designated the grizzly bear as an endangered species in the province. The 2010 policy allows for the rehabilitation of some wildlife species, but only with the prior written approval from a designated official with Alberta Environment and Parks and only in accordance with an approved protocol. Species on this list include elk calves, lynx, bobcats, and black bear cubs less than 12 months of age. Alberta Environment and Parks effectively made this ‘maybe rehabilitate’ list into a prohibited list by failing to approve the required rehabilitation protocols.

The wildlife rehabilitation policy is difficult to find or access – the lists of species permitted for rehabilitation are normally only found as an appendix to a wildlife rehabilitation licence when it is granted to a facility. The rehabilitation restrictions are not in any readily available public documents. It is not quite a government secret – wildlife rehabilitation facilities have the information and can freely share it, but Alberta Environment and Parks does not advertise that if you find an injured or orphaned grizzly bear cub, their response will be to euthanize it.

### **The Freedom of Information (FOIP) Process**

In this case, the Clinic used a FOIP request to seek records that showed how a government made a policy decision and what caused the delay in releasing a protocol. This is an example of what FOIP requests can be used for – when an identified decision has been made, a FOIP request with a limited timeframe and related to a particular decision can bring back a meaningful record of a reasonable size.

The FOIP request was submitted to Alberta Environment and Parks on May 14, 2018, requesting “all records, including policies (formal or informal), instructions, and internal communications created after April 1st, 2017 relating to the development, design, or release of the wildlife rehabilitation protocol for Black Bears that was released on April 18th, 2018, or the development of a new Wildlife Response Guide for Black Bears.” On June 8, 2018, we received a letter taking a 30 day extension to deal with the large volume of records. On June 21, 2018 we received a fee estimate for \$210.60 (see [here](#) for an earlier post with a discussion of Alberta’s FOIP fee estimate process – note that this FOIP was ‘FOIP A’ on the table in that post.) The client accepted the fee and paid a deposit.

Then there was an extension for the FOIP reply while a third party was contacted about their potential business interest in the record (see section 30 of the *FOIP Act*), a fire at the Environment and Parks FOIP office location, and a centralizing re-organization of Alberta FOIP offices. The response was completed on November 29, 2018, for a final fee of \$180.71 – there were ultimately only 231 responsive records, and the FOIP office had initially estimated there would be 600. After Alberta Environment and Parks received the remaining amount owing, we were provided with a record on December 12, 2018. The process in this case, from request to record delivery took about 210 days. While some of the delays in this FOIP process were not routine (the office fire especially), people considering using this process should be aware that most requests run well over the 30 day timeframe described in the *FOIP Act*.

### **The Contents of the FOIP Record**

The record returned by the FOIP request consisted of around 213 pages of records, mostly e-mails between Alberta Environment and Parks employees, and drafts of the black bear rehabilitation policy and a request for a ministerial decision on whether to consult with wildlife rehabilitation groups about the protocol. One of the more interesting e-mails was an e-mail from an Environment and Parks biologist on April 18, 2017 saying:

I've finally been tasked with revising our policy to include the rehabbing of black bear cubs. It's been a long time coming and takes a political maelstrom to make it happen, but here we go.

The “political maelstrom” likely refers to the public attention created by the execution of a number of orphan bears by Fish and Wildlife officers. Although it is very hard to get a public outcry for complex and large scale ecological problems, the public was not happy with [news stories about](#) baby bears being killed. Baby bears are quite photogenic. A little over a year later, on March 31, 2018, a Deputy Minister passed along instructions from the Minister to implement the policy change right away, ending with:

Really was quite surprised to see the note saying we would have a new policy but not implement until 2019, and don't think that is workable.

This isn't really that complicated, a host of other jurisdictions do it already, so we don't need to reinvent the wheel, so to speak.

The FOIP return also contained a jurisdictional scan of other provinces done by Alberta Environment and Parks that showed only two provinces explicitly did not allow or perform bear rehabilitation (Nova Scotia and Manitoba, and Manitoba had already stated they intended to allow bear rehabilitation soon). The 2010 change meant that Alberta allowed much less wildlife rehabilitation than other comparable jurisdictions, despite having privately operated rehabilitation centers in the province ready and willing to do the work.

The record (along with other records the Clinic has received) shows a fair amount of discussion about what to share with the public and when and how. On one hand, it can be irritating to see the government carefully craft the message that gets out to the public about what they are doing, and on the other hand it is good to see that the government is very concerned about public opinion and the popularity of their conduct. The way around this messaging control by government bodies is, of course, FOIP requests – one reason why it would be nice if FOIP requests were completed faster. FOIP requests, despite their limitations, can provide interesting insight into how government ministries work.

The FOIP record, although it provided useful information about Alberta Environment and Parks' decision-making process, is less useful because it contains large blocks of redactions made under sections 24(1)(a) and (b) of the *FOIP Act*, which read:

### **Advice from officials**

**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...

The record is shot through with redactions made under these sections. The [FOIP guidelines](#) indicate that section 24(1)(a) is meant to “to allow for candour during the policy-making process, rather than providing for the non-disclosure of all forms of advice” and that “The exercise of discretion regarding this type of advisory information should be based on the impact the disclosure can reasonably be expected to have on the public body’s ability to carry out similar internal decision-making processes in the future.” It seems, based on the FOIP returns we have seen, that these discretionary exceptions are used to remove information that might cause trouble for the government body in question. The policy justification for these redactions in the FOIP guidelines does not seem compelling, and this exception is a major obstacle to a more effective access to information system in Alberta.

## Conclusion

The policy for wildlife rehabilitation in Alberta appears to be based more on inertia than a scientific consideration of the effectiveness of rehabilitation.

Note that the dispute about the rehabilitation of wildlife in Alberta is not closed. From what the Clinic has been able to discern, a number of the rehabilitation protocols are still missing – so some species that Alberta Environment and Parks agrees should be rehabilitated cannot be, including fox, elk calves, lynx, and bobcats. Further, species including grizzlies and cougars are still on the list of species that Alberta Environment and Parks will not allow to be rehabilitated. The ban on grizzly rehabilitation is especially troubling given that grizzlies are a species at risk that has been [extirpated from most of their historical range in Alberta](#). Under the *Species at Risk Act*, [SC 2002, c 29](#), the ‘prairie population’ of grizzly bears was considered distinct from the northwestern population and designated extirpated in 1991. In 2012, the population of grizzly bears that still exists in northwestern Canada was combined with the prairie population (which consisted of no bears) into a single unit and designated “special concern”.

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