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Freedom of Information: Brokering Access for Records on Oil and Gas Liability Management at the AER

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Matter Commented On: [“A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability”](#)
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This blog post is a companion to “A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability”, a research paper Martin Olszynski, Shaun Fluker, and I wrote for the School of Public Policy. The paper describes the decades of regulatory failure in Albertan policy on inactive and orphan oil and gas wells and identifies the core deficiencies in the regulatory approach. This post provides a summary of the *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#) (*FOIP*) access brokering process with the Alberta Energy Regulator (AER) for the records obtained for writing that paper. Altogether, more than 1,500 pages of records were obtained through *FOIP*, although that includes a large number of duplicated pages. The documents cited in the research paper are attached to the paper as an appendix.

The Freedom of Information Request Process

Request 2022-G-0035

Request 2022-G-0035 was sent to the AER on 12 October 2022, requesting “[a]ll records (including background information and communications with external parties) relating to the decision to change the information included in the monthly Liability Management Reports, starting with the November 2019 report.”

Records were released on 15 November 2022, consisting of 41 pages and a PowerPoint presentation. After discussion with the *FOIP* office, a further seven responsive pages were processed and released on 22 December 2022. The records have extensive redactions claimed by the AER under *FOIP* section 24, which allows public bodies to withhold information that would reveal “advice from officials”. An appeal with the Office of the Information Commissioner is scheduled for completion by 18 June 2024.

Request 2023-G-0001

Request 2023-G-0001 was prompted by the lack of justification or explanation for the cancellation of the 1997 Long-Term Inactive Well Program (LTIWP) in published AER documents. The LTIWP was intended to run 5 years, from 1997 to December 2002, but the AER suddenly cancelled the LTIWP in October 2000. Despite this, the AER publicly reported the program had been reasonably successful, and rising numbers of long term inactive wells continued to be an issue after the program was cancelled. Request 2023-G-0001 was sent to the AER on 9 January 2023, requesting “[a]ll records of information, advice, and recommendations that led to the decision to cancel the Long Term Inactive Well Program with Informational Letter 2000-04. I am interested in the entire surrounding context for the regulatory change, including all discussion of the LLR assessment program.”

On 17 January 2023, the AER informed me they had no records responsive to the request. I requested a full explanation of how the search was conducted and why records no longer existed, on the basis that a person filing a *FOIP* request is entitled to this information (see *Re Justice and Solicitor General*, [OIPC Order F2021-24](#) at para 10). On 9 February 2023, the AER provided me one responsive record (the record was marked 2019-G-0004, meaning it had been previously released as part of an earlier *FOIP* request filed in 2019), and an explanation of the search that read in part:

Our SRO has completed a thorough and extensive search of all our master indexes and collections of indexes, which will include all records that are stored in an offsite facility and found one record, a memorandum letter (see attached) along with a box that may contain more information, that I will be going through early next week. The SRO searched by Inactive well program, Inactive, Informational letter, Letter, 2000-04, LLR assessment, LLR, Lock, McCrank, Dilay, Berg, & McGee.

On 28 February 2023, the AER informed me that the box contained no further records related to the request. I pursued the issue and filed another FOI request.

Request 2023-G-0015

I then requested the “Contents of the box of records obtained and searched by [AER FOIP Analyst] on February 27-28th, 2023.”

The AER began processing the request on 13 March 2023, and released the records on 19 April 2023. The box contained 1,284 pages of records from the Regulator’s Well Steering Committee and Orphan Fund Advisory Committee from 1995-2004. The records were divided into 5 volumes, not marked, with non-sequential page numbers or the volume number on the page (meaning there are 5 different pages marked as page 10 in the record). Because the exception to disclosure for ‘advice from officials’ expires after 15 years, 2023-G-0015 has very few redactions, and only a few pages were withheld under solicitor-client privilege. These records provided useful insight into the regulation of closure liabilities from 1995-2004, which we discuss in our paper.

Commentary

The process for obtaining documents relevant to this paper is one example of how accessing records using *FOIP* can be a strange process (for a longer discussion, see Alex Luscombe, Kevin Walby, And Randy K. Lippert, “[Brokering Access Beyond the Border and in the Wild: Comparing Freedom of Information Law and Policy in Canada and the United States](#)” (2017) 39:3 Law & Policy 259). *FOIP* can resemble a complicated legalistic version of ‘go fish’. Obtaining useful records is possible, but requires persistence, a great deal of flexibility, and thorough knowledge of *FOIP*.

The results of these requests for records, along with [my other request relating to the orphan levy](#), highlight the problem of *FOIP*’s exception to disclosure for internal government advice less than 15 years old (*FOIP*, s 24). The explanatory documents for recent decisions are redacted, and records relating to decisions more than 15 years old will often be incomplete due to failures to retain and organize documents. The tradition of secrecy in Westminster style bureaucracy is keeping Albertans from understanding their government and helping government evade scrutiny and, ultimately, accountability for their decisions.

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