



Commissariat
à l'information
du Canada

Office of the
Information Commissioner
of Canada

Gatineau, Canada
K1A 1H3

PROTECTED A

Mr. Dennis R. Young
1330 Ravenswood Drive SE
Airdrie AB T4A 0P8

NOV 23 2018

Subject: **Our file:** 3215-00273
 Institution's file: A-2014-05939
 Your file: 084

Dear Mr. Young:

I am writing to report to you the results of our investigation of your complaint, made under the Access to Information Act (the Act), against the Royal Canadian Mounted Police (RCMP).

Background

On August 26, 2014, the RCMP received your request for the following:

Please provide (1) A copy of the 'legal authorities' ... 'paper from Crown counsel' referred to in the attached e-mail by Marianne RYAN that was prepared 'to give out to our folks speaking to the media for their reference in speaking to this issue to the public'; (2) Copies of the materials provided to RCMP officers speaking to the media regarding the legal authorities for the forced entries and firearms seizures in High River; and (3) Copies of all the follow-up communications responding to Bill SWEENEY's question: 'What legal authority do the police rely upon to forcibly enter private property in the flood stricken area.'

On May 1, 2015, the RCMP responded to your request, withholding all responsive information pursuant to subparagraph 16(1)(a)(ii) of the Act.

On May 13, 2015, you complained to our office about the RCMP's response.

Investigation

During our investigation, we carefully considered your representations, as well as the representations made by the RCMP, pertaining to the issues you raised in your complaint. We also reviewed and thoroughly analysed all responsive records that were withheld.

We questioned the RCMP's decision to exempt all responsive information from disclosure based on subparagraph 16(1)(a)(ii) of the Act. We are of the view that this information does not meet the criteria to be withheld under that provision, as subparagraph 16(1)(a)(ii) permits the withholding of records prepared in the course of a lawful investigation pertaining to the enforcement of a Canadian or provincial law. The RCMP did not substantiate those criteria.

As a result of our intervention, the RCMP reconsidered its use of exemptions and agreed to release information to you. It provided the following supplementary responses to your request:

- April 6, 2017: 4 pages of media lines, pertaining to part (2) of the request; and,
- August 24, 2017: 154 pages of media materials, pertaining to part (2) of the request.

In February 2018, you informed our investigator, Ari Daigen, that you now wished only to focus on the exemptions applied to records responding to parts 1 and 3 of your request. Consequently, the RCMP provided a third supplementary release of information to you:

- October 10, 2018: approximately 200 pages of records (including those previously released), pertaining to all three parts of your request.

In its October 10, 2018 supplementary response, the RCMP ceased relying on subparagraph 16(1)(a)(ii) of the Act to withhold information. The RCMP has however continued to withhold some portions of the records at issue, now relying on paragraph 13(1)(c), subsection 19(1) and section 23 of the Act.

The following are our views on the exemptions applied to the records identified in your representations of February, 2018:

Section 13(1)(c)

Paragraph 13(1) of the Act is a mandatory, class-based exemption that requires, subject to subsection (2), that the head of a government institution refuses to disclose any record requested under the Act that contains information that was obtained in confidence from the government of a province or an institution thereof; however, subsection 13(2) allows disclosure of such information if the government, organization or institution from which the information was obtained:

- (a) consents to the disclosure; or
- (b) makes the information public.

Our investigation determined that the information now withheld under paragraph 13(1)(c) was received from the government of Alberta, and was intended to be confidential. Our investigation also determined that neither of the exceptions described in subsection 13(2) are applicable: the provincial government that provided this information does not consent to its disclosure, nor has it made that information public.

Subsection 19(1)

Subsection 19(1) of the Act is a mandatory, class-based exemption. This exemption requires the head of an institution to refuse to disclose a record that contains “personal information” as defined in section 3 of the *Privacy Act* unless disclosure is authorized pursuant to subsection 19(2) in the following circumstances:

- (a) consent has been received from the person to whom it relates;
- (b) the information is publicly available; or,
- (c) the disclosure is in accordance with section 8 of the *Privacy Act*.

Our investigation determined that the material now withheld under subsection 19(1) is personal information, and that none of the exceptions described in subsection 19(2) of the Act apply. We are therefore satisfied that the RCMP has properly withheld this information.

Section 23

Section 23 of the Act, which permits the withholding of materials subject to solicitor-client privilege, was applied concurrently to the same records that were withheld under paragraph 13(1)(c). Since we are satisfied that the RCMP applied paragraph 13(1)(c) in accordance with the Act, we have not found it necessary to determine whether refusal to disclose the same information could also be justified under section 23.

As a result of all of the above, we are now satisfied that the exemptions have been properly applied to the records at issue in your complaint.

Conclusion

We now consider your complaint to be well-founded and resolved.

Having now received the report of our investigation, section 41 of the Act provides that you may apply to the Federal Court for a review of the Royal Canadian Mounted Police’s decision to deny you access to requested records. Such an application should name the Minister of Public Safety and Emergency Preparedness as respondent and it must be filed with the Court within 45 days of receiving this letter. Should you wish to proceed to the Federal Court, we suggest you contact the

Court's Registry Office nearest you. Their locations are listed on the Court's website at www.fct-cf.gc.ca or you may call the Court's toll free phone number at 1-800-663-2096.

Please take note that the Information Commissioner's report of the results of her investigation is not subject to judicial review under any provision of the Act and that the Information Commissioner shall not be named as a respondent in an application under section 41 of the Act. A copy of section 41 is enclosed for your convenience.

Yours sincerely,



Jennifer Schofield
Director, Investigations

c.c.: Access to Information and Privacy Coordinator
Royal Canadian Mounted Police

Encl. (section 41)

Access to Information Act

Loi sur l'accès à l'information

REVIEW BY THE FEDERAL COURT

Review by
Federal Court

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.
R.S. 1985, c. A-1 s.41.

RÉVISION PAR LA COUR FÉDÉRALE

Révision par la
Cour fédérale

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.
L.R. 1985, ch. A-1, art.41.



Airdrie, Alberta
October 29, 2018

MY FILE: 084

Ms. Suzanne Legault
The Information Commissioner of Canada
30 Victoria Street, 7th Floor
Gatineau, Quebec
Ottawa, Ontario
K1A 1H3

Dear Ms. Legault:

Re: EXEMPTIONS COMPLAINT- RCMP ATIP FILE: A-2014-05939

Please find attached the summary of my four-year quest to get a copy of a Crown Counsel document to answer a question vital to the rebuilding of trust in the RCMP and government among the residents of High River and by extension reassuring residents of any town (policed by the RCMP) concerned about what the RCMP might do to their homes and property when a State of Local Emergency is declared. I will send a copy of this letter to your Investigator Ari Daigen so you have access to the documents made available in hyperlinks in this letter.

The vital question asked of RCMP Asst. Commissioner Marianne Ryan on behalf of Alberta Justice Minister Jonathan Denis on June 25, 2013 was: *“What legal authority do the police rely upon to forcibly enter private property in the flood-stricken area?”* The answer to the Minister and his staff was provided in an Alberta Crown Counsel Paper entitled: *“The Local State of Emergency-Mandatory Evacuation Order Police Officer Authorities”*

As you can see from the attached summary, the RCMP has used the past four years and various exemptions under the *Access to Information Act* to keep this important legal authorities paper out of my hands and, therefore, out of the public domain. What most everyone wants to know is: **Why is withholding vital evidence in the High River forced entries investigation and protecting the reputation of the RCMP more important than rebuilding trust in the RCMP when emergency evacuations are ordered in High River or elsewhere?**

While you only have authority to rule on the validity of the exemptions (see list below) used by the RCMP to withhold the text of this Crown Counsel paper, I need the results of your investigation before I can apply to the Federal Court under section 41 to review the whole matter.

- 13 (1)** Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained in confidence from (c) the government of a province or an institution thereof
- 16 (1)** The head of a government institution may refuse to disclose any record requested under this Act that contains (a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to (ii) the enforcement of any law of Canada or a province

16 (2) The head of a government institution may refuse to disclose any record requested under this Act that contains information that could reasonably be expected to facilitate the commission of an offence, including, without restricting the generality of the foregoing, any such information

23 The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege.

41 Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

While I wait to receive the results of your investigation, I hope that clearer heads will prevail among our political leaders and they will choose do the right thing and release this Crown Counsel paper that should have been released as a part of the investigation undertaken by the Commission for Public Complaints Against the RCMP between 2013 and 2015.

Yours sincerely,

[Original signed by]

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cc The Right Honorable Justin Trudeau, Prime Minister of Canada
The Honourable Andrew Sheer, Leader of the Official Opposition
The Honourable Rachel Notley, Premier of Alberta
The Honourable Jason Kenney, Leader United Conservative Party of Alberta
RCMP Commissioner Brenda Lucki
[United Nations High Commissioner for Human Rights - Human Rights Council Branch](#)

**‘LEGAL AUTHORITIES PAPER’ USED IN HIGH RIVER FORCED ENTRIES?
FOUR YEARS OF RCMP STONEWALLING
By Dennis R. Young – October 19, 2018**

AUGUST 19, 2014 ATIP REQUEST 084 - RCMP FILE: A-2014-05939

[“Please provide \(1\) A copy of the ‘legal authorities . . . paper from Crown counsel’ referred to in the attached e-mail by RCMP Asst. Commissioner Marianne Ryan that was prepared ‘to give out to our folks speaking to the media for their reference and confidence in speaking to this issue to the public’; \(2\) Copies of the materials provided to RCMP officers speaking to the media regarding the legal authorities for the forced entries and firearms seizures in High River; and, \(3\) Copies of all the follow-up communications responding to Bill Sweeney’s question: ‘What legal authority do the police rely upon to forcibly enter private property in the flood stricken area?’”](#)

[May 13, 2015 – Filed a complaint with the Office of the Information Commissioner of Canada](#) disputing the RCMP exempting the documents in its entirety due to court proceedings citing section 16(1)(a)(ii) of the *Access to Information Act*. **(16 (1)** The head of a government institution may refuse to disclose any record requested under this Act that contains **(a)** information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to **(ii)** the enforcement of any law of Canada or a province]

[April 12, 2017 – Filed a follow-up complaint based on the RCMP release of 4-pages of Media Lines](#)

Once again, the RCMP refused to release the Crown Counsel legal authorities paper citing *Access to Information Act* section 16(1)(a)(ii) [enforcement of any law of Canada or a province]. Excerpt from my letter: “The RCMP High River door-kicking spree was not a ‘law enforcement’ operation it was a ‘search and rescue’ mission. It didn’t become a ‘law enforcement operation’ until the RCMP started unlawfully entering High River homes.”

[September 14, 2017 Filed another missing records complaint:](#) Excerpt from my letter: “*What does the Alberta Crown counsel legal authorities paper say that will be so embarrassing or legally damaging to the RCMP that they have been going to such lengths over the last three years to keep it a state secret? What are they hiding, who are they protecting and why?*”

October 4, 2018 – Received an e-mail from the Investigator at the Office of the Information Commissioner of Canada advising: *The text of the legal authorities paper is being withheld under both paragraph 13(1)(c) (information received in confidence from the government of a province), and section 23 (solicitor-client privilege). My office intends to accept the exemption under 13(1)(c), without passing judgment on whether section 23 also applies. I replied asking for clarification: The RCMP have never used these two exemptions before and if he has proof that the paper was received in confidence?*

[October 18, 2018 – LOCAL STATE OF EMERGENCY - MANDATORY EVACUATION: ORDER POLICE OFFICER AUTHORITIES.](#) Received 202-page response exempting the entire Alberta Crown Counsel legal authorities paper citing *under both paragraph 13(1)(c) (information received in confidence from the government of a province), and section 23 (solicitor-client privilege).*