

Airdrie, Alberta
July 31, 2019

FOIP Request Number: 2015-G-0268
Applicant File Number: 010
OPIC Inquiry Number: 004838

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Dear Jennifer Stanton and Karen Hesson:

Re: *Freedom of Information and Protection of Privacy (FOIP) Act*
Inquiry Number: 004838 – Initial Submission

Please find enclosed my Initial Submission (Applicant) in respect to the above Inquiry.

For your convenience I have also made a copy of my submission available at this link on my website:
<https://dennisryoung.ca/wp-content/uploads/2019/08/Commissioners-Inquiry-Case-004838-Applicants-Submission-July-31-2019.pdf>

Sincerely,

[Original signed by]

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Enclosures: Initial Submission and Supporting Documentation

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(the FOIP Act/the Act)

COMMISSIONER'S INQUIRY CASE #004838

Dennis R. Young
The Applicant

-and-

Alberta Justice and Solicitor General
The Public Body/Respondent

INITIAL SUBMISSION OF
DENNIS R. YOUNG
July 31, 2019

(to be Exchanged Amongst the Parties)

"For governments to fully realize the promise of open government and deliver on the principles of openness and transparency, strategies must be in place to ensure not only data but information is proactively disclosed." Canadian Open Data Summit - Mark Diner, Chief Advisor, Open Government, Government of Alberta - June 2017

TABLE OF CONTENTS

- A. **Background**
- B. **Arguments & Questions for the Inquiry**
- C. **Lifting the Veil of Secrecy**

A. **BACKGROUND**

1. **Duty to Assist Applicant:** The head of a public body must make every reasonable effort to assist applicants, and to respond to each applicant openly, accurately and completely. The public body's obligations under section 10(1) continue throughout the request process.

Section 10(1) Every reasonable effort is an effort which a fair and rational person would expect, or would find acceptable (IPC Order 98-002). [TAB 1]

<https://www.servicealberta.ca/foip/documents/chapter3.pdf>

2. On **May 5, 2014** I filed my first FOIP request into the RCMP door-kicking spree, warrantless entries, searches of and seizures from of High River homes following the 2013 flood. Alberta Justice and Solicitor General File: 2014-G-0180 – My FOIP File: 002.

WORDING OF MY REQUEST: *"For the period from June 20, 2013 to July 1, 2013, please provide copies of all e-mails, text messages, communications, warrants, warrant applications and correspondence in response to the questions and requests from the RCMP and any and all direction and advice given to the RCMP by either Minister or other officials in the ministry, related to the warrantless search of more than 4,000 High River homes (including kicking in of*

approximately nineteen hundred doors) and the seizure without warrants of hundreds of firearms, ammunition, magazines, other weapons, stolen goods, drugs and contraband in June and July of 2013.

On **August 29, 2014**, I filed a missing records complaint with the Office of the Information Commissioner. On **July 14, 2015**, Elaine LeBuke, Senior Information and Privacy Manager issued the results of her Request for Review File: F8655 stating: *“In my opinion, the Public Body: did not meet its duty to the Applicant, as provided by section 10(1) of the Act, as it did not meet the second part of the test for conducting an adequate search for responsive records.”* Page 4 states: *“The Public Body said it cannot confirm the existence of this Crown Paper. The Public Body stated the Applicant may make a new request specifically for the Crown paper; however, the Public Body also suggested the Applicant make a request to the RCMP for this record.”* In the fourth paragraph of page 5 of Ms. LeBuke’s report she stated: *“I recommend to the Applicant to submit another access request for the specific records he believes are missing from his request or wants to obtain from the Public Body, e.g. records related to the Commission’s findings that are in the custody or under control of the Public Body, or records related to the Sheriffs, or a copy of the Crown paper, etc.”*

I did file another FOIP request as recommended by Ms. LeBuke (this one that is now subject to this inquiry) [TAB 2] and an ATIP request with the RCMP (see details in item 4 below). <https://dennisryoung.ca/wp-content/uploads/2019/07/Review-of-High-River-Justice-File-2014-G-0180-July-14-2019.pdf>

3. On **September 2, 2014**, I filed my second FOIP request into the Provincial Declaration of Emergency in High River, minutes of meetings attended by the Minister and all records regarding the forced entries, searches, seizures, legal opinions, etc. Alberta Justice and Solicitor General File: 2014-G-0335 – My FOIP File: 005. **WORDING OF MY REQUEST:** *“Reference is being made to the forced entries, unwarranted searches and seizures of firearms, ammunition, magazines, bows, knives, etc, etc in High River, Alberta that occurred between June 20, 2013 and July 13, 2013. For the period from June 20, 2013 to present, please provide: (1) Copies of all meeting minutes, documents, reports and correspondence regarding the Provincial Declaration of Emergency that was declared for High River on or about June 28, 2013; (2) Copies of all meeting minutes the Minister attended concerning the High River forced entries, searches, seizures, damage claims and compensation; and, (3) Copies of all correspondence, letters, e-mails, reports, advice, legal opinions, sent to the Minister and copies of the replies sent by the Minister or on the Minister's behalf. Note: In the event, a standard reply was sent to one or more correspondents, one copy of the Minister's standard reply will suffice.”*

After filing delay complaints with the Office of the Information Commissioner about the slow response by Alberta Justice, I finally received a response on November 28, 2016. As with my earlier FOIP request, the records provided from the Public Body failed to mention the existence of any legal opinion, Crown paper or legal authorities paper found in their search of their records and I filed another Request for Review on **January 15, 2017**.

On **March 22, 2019** Marie Paturel, Senior Information and Privacy Manager stated on page 11 of her Letter of Findings, *“However, though it maintains a thorough search was conducted, the Public Body has failed to detail how this search was conducted by FOIP contacts in the respective division(s)/office(s). Without this information I cannot determine whether the Public Body has conducted an adequate search under section 10(1).”* As a result, I filed another

Request of Inquiry on **April 9, 2019**. [TAB 3] <https://dennisyoung.ca/2019/04/11/third-high-river-request-for-inquiry-submitted/>

4. On **August 19, 2014**, I filed an Access to Information Act request with the RCMP (ATIP File: A-2014-05939) requesting a copy of the ‘legal authorities paper from Crown counsel.’ On May 1, 2014, I received a response from RCMP exempting in all records in their entirety.
On **May 13, 2015**, I filed my first complaint with the Office of the Federal Information Commissioner challenging the complete exemption of the records requested citing the documents requested were the subject of an investigation and court proceedings.
<https://dennisyoung.ca/wp-content/uploads/2018/10/Info-Comm-Complaint-RCMP-Exempted-in-Entirety-A-2014-05939-May-13-2015.pdf>
On **April 12, 2017**, I filed a follow-up complaint based on the RCMP release of four pages of ‘media lines’. Once again, I disputed the withholding of the legal authorities paper citing the records were exempt due to an investigation. <https://dennisyoung.ca/wp-content/uploads/2018/10/Info-Comm-RCMP-High-River-A-2014-05939-April-15-2017.pdf>
On **August 24, 2017**, the RCMP released 154 more pages of records. On September 14, 2017, I filed another missing records complaint.
On **October 18, 2018** I received a 202-page response from the RCMP exempting the contents of the Alberta Crown Counsel legal authorities paper entitled: “*LOCAL STATE OF EMERGENCY – MANDATORY EVACUATION ORDER: POLICE OFFICER AUTHORITIES*” citing section 13(1)(c) that the information was received in confidence from the government of a province. <https://dennisyoung.ca/wp-content/uploads/2018/10/RCMP-ATIP-Response-High-River-Legal-Authorities-Paper-A-2014-05939-Oct-10-2018.pdf> [TAB 4]
On **November 23, 2018**, Federal information commissioner released their findings on my complaint defending the RCMP decision to withhold the Crown paper under 13(1)(c) that the information was received in confidence from the government of a province. [TAB 5] <https://dennisyoung.ca/2018/11/28/high-river-rights-violation-paper-still-a-secret/>
5. On **June 27, 2017** the Investigator with the Office of the Federal Information Commissioner advised me of the exact title of the Alberta Crown paper: “*LOCAL STATE OF EMERGENCY – MANDATORY EVACUATION ORDER: POLICE OFFICER AUTHORITIES*” and I filed my FOIP request 018, Alberta Justice and Solicitor General file 2017-G-0570.
On **July 28, 2017** Alberta Justice replied advising the record was being withheld under section 27(1)(a) ‘privileged information’. <https://dennisyoung.ca/2017/08/05/high-river-legal-authorities-paper-withheld-from-public-media/> [TAB 6]
6. Four telephone polls of High River residents have been conducted showing a high level of distrust in the RCMP and by extension government officials who share responsibility for the RCMP door-kicking spree and subsequent Charter violations that occurred. [TAB 7] <https://dennisyoung.ca/wp-content/uploads/2017/09/FOUR-POLLS-OF-HIGH-RIVER-RESIDENTS-Updated-Sept-30-2017-1.pdf>
7. The most recent FOIP response from Alberta Municipal Affairs, the government ministry responsible for administration of the Emergency Management Act shows a disconnect and refusal to accept any responsibility for fixing the broken trust with the RCMP that exists among a large number of High River residents and the dire consequences for residents and first responders should this level of broken trust continue to exist when another emergency evacuation order

becomes necessary. Municipal Affairs stated: *'In addressing the following part of your scope: "whether or not the corrective action restored trust in the RCMP among the High River residents who suffered the consequences of those mistakes", the ministry did not locate any responsive records in their custody and/or control as the ministry would not undertake an assessment of the relationship between the RCMP and residents of High River. The actions taken by the RCMP in High River during the flood response and any resulting corrective actions that the RCMP may have taken in response to those actions would be under their jurisdiction and records relating to this matter should be requested from the RCMP.'* [TAB 8] <https://dennisryoung.ca/2019/07/09/foip-damage-claims-documents-regarding-high-river-forced-entries/>

B. ARGUMENTS & QUESTIONS FOR THE INQUIRY

1. The Public Body failed in its duty to assist the Applicant by: (a) providing the information necessary for an applicant to exercise his or her rights under the Act; (b) clarifying the request, if necessary; and (c) performing an adequate search for records.

QUESTION #1: The e-mail that started it all dated June 25, 2013 has Asst. RCMP Commissioner Marianne Ryan responding to Alberta Justice ADM Bill Sweeney states: *"You do raise a good point on communicating the legal authorities we are using and on that point, we will get something on paper from Crown counsel tomorrow morning to give to our folks speaking to the media for their reference and confidence in speaking to this issue to the public"* <https://dennisryoung.ca/wp-content/uploads/2017/08/Bill-Sweeneys-e-mail-Ryan-June-25-2013-001.pdf>

From this statement it appears that the RCMP expected the Crown paper on June 26, 2013 before they issued their 'media lines'. Given the personal and professional relationship between Marianne Ryan and Bill Sweeney (a former RCMP Commanding Officer for the Province of Alberta) the key question for the inquiry is: Did Marianne Ryan share a copy of the Crown paper and media lines with Bill Sweeney and did he in turn share it with his Deputy Minister and Minister as requested?

QUESTION #2: What date was the Crown paper in question first recorded as being received by ADM Bill Sweeney and the Public Body?

QUESTION #3: Did Bill Sweeney and other officials in office of Justice and the Solicitor General know about the existence of the Crown paper before they responded to me on December 6, 2016? If they did, why did they fail to reveal this fact to me?

QUESTION #4: Did they also withheld this same information from Sinclair Watson, Senior Information and Privacy Manager with the Office of the Information Commissioner during the conduct of his review?

QUESTION #5: If the Public Body felt the main problem with my request was that records regarding the Crown Paper were not in their possession within the time frame of my request (June 25, 2013 to July 31, 2013) then why did they consider it was unnecessary to suggest I 'clarify' my request? Was the Public Body 'fair and reasonable' in making this determination?

QUESTION #6: In the Public Body's Initial Submission I. Background, Item 5 [Tab 2] Richard Mark's letter dated December 6, 2016 states: *"Please note nothing in this correspondence*

constitutes a waiver of privilege.” What is the point of making this statement? What privileged information is he referring to? Ultimately, the Public Body eventually withheld the Crown paper in response to my subsequent request by declaring it was privileged information (FOIP request 018, Alberta Justice and Solicitor General file 2017-G-0570). If the Public Body was going to withhold the Crown paper under the privileged information exemption, why go to such extremes to keep the existence of the paper a secret in response to my previous FOIP requests?

QUESTION #7: Has the Public Body withheld records that reveal any federal or provincial political involvement or interventions by the RCMP in Alberta or Ottawa to keep the existence and/or content of this Crown paper be held in confidence?

2. **QUESTION #8:** Where are the records showing the Alberta Government directed the RCMP not to disclose the contents of the Crown paper entitled: *“LOCAL STATE OF EMERGENCY – MANDATORY EVACUATION ORDER: POLICE OFFICER AUTHORIES”*?
3. Reference is being made the Public Body Response to the Issue Item 14 which states: *Further follow-up by the FOIP Office was made to the Public Security Division on December 2, 2016, Bill Sweeney, ADM Public Security Division responded directly to the request: “The RCMP never did provide us with a legal opinion with respect to the authority that they relied upon to seize firearms in High River. The only written communications that I am aware of are the e-mails we have provided” [In response to previous FOIP access requests].*

This is not what Justice Minister Denis asked of his Deputy Minister who then forwarded it on to his ADM Bill Sweeney. The e-mail record referred to by the Public Body shows that Justice Minister Denis wasn’t asking about the legal authority for the RCMP firearms seizures. He asked his Deputy Minister: *“What legal authority do the police rely upon to forcibly enter private property in the flood-stricken area?”* There would have no gun seizures had the RCMP not forcibly entered 754 High River homes resulting in 2,210 damage claims being filed with the RCMP in High River and a payout of \$2.45 million by taxpayers.

QUESTION #9: Was the reason the search for records by the Public Body came up with no records or records recorded as ‘non-responsive’ because they were searching for records involving firearms seizures rather than the legal authorities question Minister Denis specifically asked about the RCMP’s authority to kick in the doors to High River homes, unlawful entries that resulted in the ensuing unwarranted searches and seizures and Charter violations?

QUESTION #10: Odd isn’t it that police only forcibly entering homes in High River but not in any of the 30 other Alberta communities that were flooded out in 2013?

QUESTION #11: Did the actions and responses by the Public Body comply with the principles of openness and transparency adopted by the Government of Alberta?

C. LIFTING THE VEIL OF SECRECY

As of July 30, 2019, 2,780 persons have signed my petition asking the Premier of Alberta to call a judicial inquiry into the High River Forced Entries and the Charter rights that were violated in the

days and weeks that followed the flood in 2013. <https://www.change.org/p/premier-of-alberta-call-a-judicial-inquiry-into-the-high-river-forced-entries>

This inquiry is the final step before I can file an application for a judicial inquiry in provincial court. I fail to see how insisting that this Crown paper is privileged information takes priority over rebuilding trust in the RCMP and emergency management officials among High River residents and resident of other Alberta communities who fear the RCMP may treat their homes and their rights with such utter disregard should they be ordered to evacuate in an emergency. It's time for the Alberta Government to lift the veil of secrecy, waive privilege and make this legal authorities Crown paper public.