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Regular Mail

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

Your file: 018

Regular Mail

Honourable Doug Schweitzer
Minister
Justice and Solicitor General
424 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Your file: 2017-G-0570

Dear Parties:

**RE: Case File #006614: Confirmation of Inquiry
Extension of Completion Date
Exchange of Information
Options for the Parties**

I have agreed to hold an inquiry into the matter relating to case file #006614. A Notice of Inquiry that will set out the issues for the inquiry and a schedule of dates for the written submissions of the parties will be issued in due course.

Extension of Completion Date

In order to allow sufficient time for this inquiry to be conducted, I am extending the time for completing the review of this matter. The anticipated completion date is now October 8, 2020.

Exchange of information

Parties must generally provide copies to one another of the information they submit for consideration in this inquiry. The contact information shown below is the current address for service this office has for the parties. It will be included on the Notice of Inquiry. If the information is not correct, please complete a *Change of Contact and Address for Service* form that is available on the Forms page on the OIPC web site.

Applicant

Mr. Dennis R. Young
1330 Ravenswood Dr. SE
Airdrie, AB T4A 0P8
Your file: 018

Respondent's Designate

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Coordinators
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The inquiry is not a review of the investigation process already completed by this Office. Therefore the December 5, 2018 letter containing the findings and recommendations of the Senior Information and Privacy Manager that was attached to the Request for Inquiry will not be put before the adjudicator who conducts this inquiry. The Applicant will have an opportunity to submit additional information for the inquiry, in accordance with the dates in the Notice.

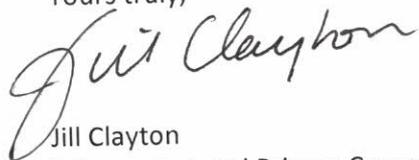
Options for the Parties

Although this matter is now at inquiry, the following options remain open to the parties:

- the Respondent may release additional information that was requested by the Applicant. If the Respondent chooses to do so, it should provide my office with a copy of the letter to the Applicant (or a separate letter) identifying what has been released.
- the Applicant may narrow the issues, or the number of records that remain at issue. If the Applicant no longer requires adjudication of one or more of the issues or no longer wishes to proceed with an inquiry, they should notify the Registrar of Inquiries as soon as possible.

Information regarding the inquiry process, including information about the exchange of inquiry-related documentation, is available on the OIPC web site at www.oipc.ab.ca. See also the attached *Inquiry Procedures* document. You may also contact the Adjudication Unit with general questions on the inquiry process by calling 780-422-6860 or 1-888-878-4044 within Alberta or by sending an email to registrar@oipc.ab.ca.

Yours truly,



Jill Clayton
Information and Privacy Commissioner

cc Ms. Jennifer Stanton/Jennifer Bruce, Justice and Solicitor General [File #: 2017-G-0570]

Enclosure:

Inquiry Procedures

REQUEST FOR INQUIRY TO THE ALBERTA INFORMATION COMMISSIONER

RE: Withholding of 4-pages of Records entitled: "The Local State of Emergency-Mandatory Evacuation Order Police Officer Authorities" written by Peter Mackenzie citing solicitor-client privilege and other responsive records identified in the review conducted by Tara Perverseff. OPIC Review File: 006614 Alberta Justice & Solicitor General File: 2017-G-0570 My File: 018

This Request for Inquiry respectfully submitted by Dennis R. Young – December 31, 2018

Dear Commissioner Clayton:

While Ms. Perverseff's report is probably legally accurate and in accordance with the relevant legislation and legal precedence she reviewed, I maintain she overlooked the main reason for requesting these records in the first place.

THE IMPORTANCE BEHIND THE RELEASE OF THESE RECORDS: REBUILDING TRUST IN THE RCMP AND THE GOVERNMENT AMONG A LARGE NUMBER OF RESIDENTS OF HIGH RIVER AND IN MANY OTHER COMMUNITIES IN ALBERTA WHO MAY QUESTION THE AUTHORITY OF POLICE TO KICK IN THEIR DOORS WHEN AN EVACUATION ORDER IS GIVEN DURING A DECLARED STATE OF LOCAL EMERGENCY!

Without a full airing of the truth including:

1. What led to the RCMP's forced entries into more than 754 High River homes, causing \$2.45 million dollars in damages to 2,210 homes,
2. Why were the forced entries and damages allowed to continue for so many days and weeks and
3. Who ordered the forced entries to happen and why?

There will be dangerous and irreversible consequences when the next major flood occurs in Alberta including:

1. Residents in the flooded communities may refuse to follow an evacuation order or delay evacuating until it is too late.
2. More deaths than occurred in the 2013 are likely to occur in High River and also in other affected communities.
3. More residents and first responders will be placed in danger trying to rescue those that refuse or delay evacuation.
3. Public respect for police, the justice system and the rule of law will continue to be undermined, more than has already occurred, by the mishandling of the investigation of the High River forced entries, unwarranted searches and seizures of High River homes following the 2013 flood and the cover-up of rights violations documents since.

FOUR POLLS OF HIGH RIVER RESIDENTS INDICATE TRUST IS STILL BROKEN

September 9, 2016 - Less than half of High River residents trust the RCMP to protect their homes and property in the event of another emergency evacuation.

<http://dennisryoung.ca/2016/09/10/4th-nfa-high-river-poll-trust-in-the-rcmp-still-broken-three-years-after-flood/>

September 5, 2015 - 48% of High River respondents want the Alberta Premier to call a judicial inquiry

<https://nfa.ca/media-release-poll-shows-half-of-high-river-residents-want-judicial-inquiry/>

March 9, 2015 - 67% of High River respondents do not support RCMP entering their homes in a future emergency

<https://nfa.ca/public-believes-police-actions-at-high-river-unnecessary-3/>

August 7, 2014 - 53% of High River respondents would refuse orders to evacuate their homes in the event of another flood

<https://nfa.ca/poll-of-high-river-residents-shows-a-dismal-lack-of-trust-in-rcmp-2/>

September 26, 2017 - CBC - Why a third of Calgarians disregarded flood evacuation order

Researchers surveyed hundreds of flood-affected residents and were surprised by many of their responses

<http://www.cbc.ca/news/canada/calgary/calgary-flood-evacuation-study-mru-1.4307698>

A SIX-POINT PLAN TO RESTORE TRUST IN THE RCMP IN HIGH RIVER, ALBERTA

The minimum corrective action necessary to restore trust is outlined in the steps below:

1. Conduct an independent, scientifically valid poll of High River residents to determine the validity of the previous polling results and accurately determine the current level of trust in the RCMP and both levels of government among High River residents.
2. Based on the poll results, estimate the number of people in High River who would refuse to evacuate or delay their evacuation in the event of another emergency evacuation order.
3. Without breaching anyone's right to privacy, release all the records on High River rights violations being withheld by the Federal Government and the Government of Alberta.
4. Clearly identify the person or persons directly responsible for ordering the RCMP to (a) kick in doors to High River homes, (b) search High River homes without warrant, and (c) seize private property without warrants.
5. Have the responsible government issue a public apology to the residents of High River for violating their right to privacy, kicking in doors to homes causing \$2.45 million in unnecessary damage to their homes and property, entering their homes without warrants or permission, searching their homes without warrant and seizing their property, again without warrants and the laying of charges as a result of those unlawful searches and seizures.
6. Amend national and provincial emergency legislation, policies and procedures to clarify the step-by-step procedures police and the military are required to follow when forced entries into homes, searches without warrant and seizures of property is justified during emergency evacuations. One example: the recommendations to strengthen the property rights protection in the Alberta Emergency Management Act made by the *Alberta Property Rights Advocate* in his 2013 report.

<https://dennisyoung.ca/2015/09/09/high-river-forced-entries-alberta-property-rights-advocate-reports/>

ARGUMENTS RAISED IN MY REQUEST FOR REVIEW WERE NOT FULLY ADDRESSED

The Commissioner's Inquiry is necessary so that all six points raised in my Request for Review dated August 29, 2017 can be completely explored and addressed.

<https://dennisyoung.ca/2017/08/29/legal-authorities-paper-police-kicking-doors-high-river-still-secret/>

WHY DIDN'T THE CHARTER PROTECT HIGH RIVER HOMES FROM RCMP FORCED ENTRIES AND UNWARRANTED SEARCHES AND UNWARRANTED SEIZURES OF PRIVATE PROPERTY?

This Charter question is one of the most important questions for the Commissioner's Inquiry to address. A question that has never been answered by anyone in any federal department or provincial ministry or by any Minister of the Crown or government official or during the investigation and report by the Commission for Public Complaints Against the RCMP. Does the Crown Council's Legal Authorities Paper being withheld by Alberta Justice and Solicitor General answer this important question? How can the *Alberta Emergency Management Act* supersede the Charter rights of residents to be protected having their doors kicked in and from unlawful search and seizure by the RCMP?

WHO IS THE 'CLIENT' & WHO CAN 'WAIVE PRIVILEGE'?

I need to know the name of the individual who requested from the RCMP their 'legal authority' for the forced entries in High River. The original question was initiated by Alberta Justice Minister and Solicitor General Jonathan Denis, transmitted to and through his two Deputy Minister's, by e-mail dated June 25, 2013 from Deputy Solicitor General Bill Sweeny and ultimately received by RCMP Asst. Commissioner Marianne Ryan who then said she would be requesting the legal advice from Crown Council. It is not clear to me or anyone from your investigation who the actual 'client' was making this request, who received the Crown counsel's response and who was privy to the full text of the Crown counsel paper. Only the 'client' can waive privilege and your Inquiry must narrow it down to: (1) the person who made the request to Crown Council, (2) the person who received the response from Crown Council and (3) the person who has the authority to waive privilege on behalf of the Minister of Justice and Solicitor General. Your Inquiry should provide us with the name the client. Was it Minister Denis who started the ball rolling or the Deputy Solicitor General who e-mailed the Minister's request on to the RCMP or RCMP Asst. Commissioner Marianne Ryan who contacted Crown Council or someone else who made the call and received the four-page response?

HARM V. GOOD CONSEQUENCES?

The Commissioner's Inquiry needs to have access to the records from the Ministry showing why they are going such length to withhold these records that are needed to rebuild trust in the RCMP among a large number of residents in High River and other Alberta communities who are following this case because of what it may mean for their homes in the event of an evacuation order during a State of Local Emergency.

Of the records that would need to be reviewed in Justice and SolGen and probably Municipal Affairs are records that reveal: What harm can come from releasing the records compared with what good can come from releasing the records? Why does Alberta Justice and Solicitor General think that the potential harm is greater than the benefits and are their fears justified?

THE OTHER SUPREME COURT CASE ON 'SOLICITOR-CLIENT PRIVILEGE' NOT CONSIDERED

While Tara Perverseff did cite Order F2017-028 and the November 25, 2016 Supreme Court decision in the Alberta Information and Privacy Commissioner v. University of Calgary, 2016 SSC 53(CanLII), I believe another Supreme Court Decision related to solicitor-client privilege also needs to be considered in your Inquiry. Namely, John Campbell and Salvatore Shirose, Appellants v. Her Majesty the Queen, Respondent. Judgement April 22, 1999. Docket: 25780 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do>

I am not a lawyer but in my review of the above judgement, I believe the following questions need to be addressed in your Inquiry:

Page 11-12 – Paragraph 6 & Page 23,24 – Para. 46,47,48 & Page 29 – Para. 67,68 & Page 30 – Para 70,71

Did the RCMP act in 'good faith' during their door-kicking spree in High River and what role did the four-page forced entries legal authorities Crown counsel paper play in the RCMP's decisions?

Excerpt from Paragraph 46: '*The privilege belonged to the client, and the RCMP joined with the Crown to put forward that position and '...the RCMP accepted legal advice they were given by the Department of Justice and acted in accordance with it.'*

Excerpt from Paragraph 48: '*It appears, therefore, that the only way to resolve the issue of good faith is to order the disclosure of the content of the relative advice. This should be done (for reasons to be discussed) on the basis of waiver by the RCMP.'*

Excerpt from Paragraph 68: '*...the RCMP and their legal counsel chose to rely upon the communication to support their argument of good faith reliance. In doing so, the privilege was waived.'*

Excerpt from Paragraph 70: *'...the existence on non-existence of the asserted good faith depended on the content of that legal advice.'*

Excerpt from Paragraph 71: *'The RCMP and the Crown having done so, however, I do not think disclosure of the advice in question could be fairly withheld.'*

Did the police act in 'good faith' believing that their actions in High River (door-kicking spree, unwarranted searches and seizures) were legal, based in whole or in part on the contents of the forced-entries legal authorities paper being withheld by Alberta Justice and Solicitor General?

Was the advice being withheld by Alberta Justice and Solicitor General legal or illegal?

Page 14 – Paragraph 10 & Page 16 – Para. 20

Was there an 'abuse of process' by the RCMP or government officials in High River and, if so, was the Crown counsel complicit in this abuse of process by the advice given to police in the forced-entries legal authorities paper?

Page 14 – Paragraph 12 & Page 18 – Paras. 26 & 35

According to the report by the Commission for Public Complaints Against the RCMP on the High River firearms seizures following the 2013 flood, RCMP officers did commit acts that were not authorized by the Criminal Code and as such the RCMP officers involved were not prosecuted. Did these officers have 'immunity from prosecution' as it relates to the unauthorized firearms seizures? Was the issue of 'public interest immunity' the legal advice that was given in the forced-entries legal authorities paper being withheld from the public and the residents of High River? How will anyone ever know if the paper is held as a state secret? How will trust be rebuilt amount High River residents if such important legal advice to police is withheld? Should the RCMP have been given immunity from prosecution? Should the victims of the RCMP door-kicking spree and unlawful searches and seizures just take the word of the bureaucrats in Alberta Justice and Solicitor General who have made their nothing-to-see-here decision to withhold these records? Are the bureaucrats in Alberta Justice and Solicitor General's office protecting themselves from the role they themselves played in the Charter rights violations that occurred in High River?

Page 14 – Paragraph 13

As mentioned previously in this submission there were obvious Charter violations committed by police and soldiers in High River. Were the forced entries to High River homes, authorized even though some of the conduct by the RCMP was clearly 'illegal'? Both the Alberta Property Rights Advocate and lawyer, Rick Hemmingson maintain that the actions of the RCMP were not properly authorized.

- (a) The Property Rights Advocate's report maintains that only the Minister could authorize the forced entries of homes – not the RCMP following advice of Crown counsel 'set upon the task of illegal conduct'. <https://dennisyoung.ca/2015/09/09/high-river-forced-entries-alberta-property-rights-advocate-reports/>
- (b) The Rick Hemmingson legal analysis maintains that the emergency laws themselves in place in the province and in High River were not followed. <https://canadafreepress.com/article/who-authorized-rcmp-to-make-warrantless-entires-into-high-river-homes-durin>

Did the forced entries legal authorities paper being withheld play a role in letting the RCMP think their 'illegal conduct was 'authorized at all levels of the RCMP'. If not, the secret Crown counsel paper, who did authorize the illegal conduct (Charter violations, kicking in doors without lawful excuse, searching homes without warrants, seizing property without warrants and then charging people based on those unlawful entries and searches?

Page 14 – Paragraph 14

Was there a 'miscarriage of justice' in High River and what role did the Crown counsel's advice given to police in the forced-entries legal authorities paper play in the RCMP decisions?

Page 16 – Paragraph 18

Did the forced entries legal authorities paper in dispute here lead to the law being applied unequally by the RCMP? One obvious case of the law being applied unequally by RCMP in High River was the forced-entry and unlawful seizure of eleven lawfully secured firearms from Don and Jane White's home. **Excerpt from my column:** *Despite all the White's precautions and notifications to officials including the RCMP, on June 24th the RCMP went directly from the High River Detachment to the White's home, kicked in the front door, searched the home, seized his eleven trigger-locked long-guns (safely stored in accordance with federal firearms regulations) and were back in the detachment with Don's guns in fifty-one minutes. This was documented in a copy of handwritten notes made by RCMP Constable J.C. (Jason) Decoste of the Lloydminster Detachment.* (please contact me for a copy) <https://canadafreepress.com/article/pray-the-rcmp-dont-look-after-your-town-in-a-state-of-emergency>

Despite my writing this article ten months before the publication of the High River report by the Commission for Public Complaints Against the RCMP and me forwarding copies to the Commission's investigators, this incident was not included in their report on the High River firearms seizures.

Page 16 – Paragraph 19 & Page 21 – Para. 39

Section 37 of the RCMP Act states that it is incumbent on every member to maintain the integrity of the law, perform their duties in accordance with the law and to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue. It's obvious that so many unlawful forced entries of High River homes causing \$2.45 million dollars in damage claims being paid out would not have happened had hundreds of RCMP officers been following the duties imposed on them by Parliament in section 37 of the RCMP Act. What role did the force entries legal authorities paper play in authorizing the RCMP's unlawful conduct after June 25, 2013? Paragraph 39 states: *'Parliament has made it clear that illegality by the RCMP is neither part of any valid public purpose nor necessarily "incidental" to it's achievement.'*

Page 22 – Paragraph 41

Excerpt: *'In this country it is accepted that it is for Parliament to determine when in the context of law enforcement, the end justifies means that would otherwise be unlawful.'* Unfortunately for the last five and a half years, there has been a cover up of the Charter rights violated by the RCMP and soldiers in High River. Neither the Alberta Legislature nor the House of Commons have been given the opportunity to examine the all the evidence associated with the Charter rights and human rights violations that occurred in High River following the flood of 2013. Here is a summary I published of the records withheld by the Federal and Alberta Government. <https://dennisyoung.ca/2018/10/22/charter-rights-violations-by-rcmp-in-high-river-still-hidden/> The Commissioner's Inquiry could be the catalyst to get a full legislative examination of what went right and what went wrong in High River, essential to rebuilding of trust in the RCMP and government officials and that Charter rights will take precedence over provincial legislation in the future.

Page 28 – Paragraph 62, 63 & 64

Excerpt from Paragraph 62: *'The RCMP position before the Court was that the decision to proceed with the reverse sting had been taken with the participation and agreement of the Department of Justice. By adopting this position, the RCMP belatedly brought itself within the "future crimes" exception, and put the question of the continued existence of its privilege.'* The Commissioner's Inquiry should examine whether the words 'reverse sting' could be replaced with words 'forced entries' in the case of the High River door-kicking spree, unwarranted entries, unwarranted searches and unwarranted seizures and any resulting charges that proceeded on the basis of these unlawful searches and Charter violations.

Excerpt from Paragraph 63: *'If there had been no waiver of privilege by the RCMP in this case, I would have taken the view that any papers documenting legal advice(or, if there were no contemporaneous documentation, an affidavit setting out the content of the relevant advice) ought to be provided in the first instance by the trial judge. If he or she were satisfied, either on the basis of the documents themselves or on the basis of the documents supplemented by other evidence, that the documented advice could be fairly said in some way to have facilitated the crime, the documents would then be provided to the appellants.'*

Excerpt from Paragraph 64: *'In this case, however, I think the RCMP did waive privilege, as discussed below. The relevant solicitor-client communications that came within the scope of the waiver therefore to be turned*

over directly to the appellants without the need in the first instance of a two-stage procedure involving the trial judge.'

The Commissioner's Inquiry should examine whether the above arguments in Paragraphs 63 and 64 apply to my request for the forced entries legal authorities paper.

Page 31 – Paragraph 73

Excerpt from Paragraph 73: 'Police illegality that is planned and approved within the RCMP hierarchy and implemented in defiance of the legal advice would, if established, suggest a potential systemic problem concerning police accountability and control. The RCMP position on the other hand, that the Department of Justice lent its support to an illegal venture may, depending on the circumstances, raise a different but still serious dimension to the abuse of process proceeding. In either case, it is difficult to assume "the worst" if neither alternative has been explored to determine what "the worst" is. Because the RCMP made a live issue of the legal advice it received from the Department of Justice, the appellants were and are entitled to get to the bottom of it.'

The Commissioner's Inquiry should resolve which alternative was the case with respect to the RCMP door-kicking spree, unwarranted entries, unwarranted searches and seizures and charges that resulted from these unlawful entries, searches and seizures.

SEARCH FOR ADDITIONAL CORRESPONDENCE, E-MAILS, ETC WAS TOO NARROW

The wording of my original request did not ask Alberta Justice and Solicitor General to restrict their search for *'follow-up records, correspondence, e-mails, reports, presentations, meeting minutes, recommendations, etc. etc'* to Peter Mackenzie and the Special Prosecutions Office. It seemed obvious to me that I was asking for a complete search for records in all offices of Alberta Justice and Solicitor General; particularly, the Minister's office, the Deputy Minister's office and especially the office of the Deputy Solicitor General. Your Inquiry should determine why the search for follow-up records was restricted in such a way to exclude records that would help rebuild public trust in the government and the RCMP during life threatening emergencies.