

April 24, 2014

Jill Clayton  
Alberta Information & Privacy Commissioner  
410, 9925-109 St.  
Edmonton, AB  
T5K 2J8

Commissioner Clayton,

I am writing to you today on behalf of the Canadian Taxpayers Federation (CTF) requesting that the Office of the Information and Privacy Commissioner (OIPC) investigate whether or not there has been a violation of the *Freedom of Information and Privacy (FOIP) Act*.

On September 17, 2012, I filed a request on behalf of the Canadian Taxpayers Federation under the FOIP Act for the expense claims of Health Minister Fred Horne and former Health Minister Ron Liepert, in addition to most other members of the cabinet at that time and several other former members of the cabinet.

After a long conflict with the government, Alberta Health Services (AHS) finally released the information to me on December 14<sup>th</sup>, 2012.

On April 23, 2014, a [CBC investigation](#) by Charles Rusnell and Jennie Russell revealed that Health Minister Fred Horne and his press secretary, Bart Johnson had direct access to the AHS records two months before they were released to the CTF and me.

Rusnell and Russell obtained documents through the requests under the FOIP Act revealing a [talking-points memo dated December 11, 2012](#) titled "Former Health ministers expenses released." This document presents Health Minister Horne with a defence to possible issues that the CTF may have had with the expense claims.

Three days later, the expense claims requested under the FOIP Act were released to the CTF.

The CTF believes that this may constitute a violation of the [Freedom of Information and Privacy Act](#).

Section 40(1)(h) of the FOIP Act states,

A public body may disclose personal information only...to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member.

We interpret this to mean that public officials inside of the department are legally authorized to share the identity of a requester under the FOIP Act only if it is necessary for the proper discharge of the information to the requester. That is, on a “need to know” basis.

Normally, these people consist of solely the FOIP coordinator of the public body, but may include a small number of non-political public servants in some circumstances.

As the documents obtained by the CBC clearly show, those at the highest *political* level of government were made aware of the full contents of the CTF’s request, and that the CTF was the requester. As I am the Alberta Director of the CTF and its sole spokesman in the province, it stands to reason that this effectively names me personally.

It is our view that under the Act, politicians and their staff being briefed about information being released and who was requesting it, is not necessary for the information to be released.

As stated previously, I filed the request for information on September 17, 2012, but did not receive the information until December 14, 2012.

Section 14(1) of the FOIP Act states that,

The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner’s permission, for a longer period...


- (a) the applicant does not give enough detail to enable the public body to identify a requested record,
- (b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,
- (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or
- (d) a third party asks for a review under section 65(2) or 77(3).

The public body repeatedly requested time extensions in order to assemble all of the documents requested, however the documents obtained by the CBC show that they were already assembled and provided to political staff by October 2012, two months earlier. This potentially constitutes a second, breach of the FOIP Act.

As such, the CTF requests that the OIPC investigate to determine whether or not one or two violations of the act did indeed occur.

Thank you for your work and your attention to this issue.

Truly,

A handwritten signature in blue ink, appearing to read "Derek Fildebrandt".

Derek Fildebrandt  
Alberta Director  
Canadian Taxpayers Federation