

Alberta rejects requests for data on freedom of information system a second time

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The Alberta government is doubling down on a decision to withhold basic data about records it has previously released under its freedom of information law – a move that could have far-reaching consequences for transparency and accountability within the province.

For the second time, the province has rejected a series of access requests from The Globe and Mail that were filed as part of the Secret Canada project, a continuing investigation into the country's broken freedom of information regime. In its refusals, the Alberta government has taken a policy position that could limit its access obligations in the future.

Specifically, the province is testing the extent to which it is legally required to assist the public in accessing public records, as well as the extent of its obligations to provide select data from government datasets.

“It’s really frustrating and tremendously disappointing,” said Jill Clayton, Alberta’s former information and privacy commissioner, who retired in 2022. “I know there are people in government who want to release this information and be helpful – but that’s not universal.”

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FOI laws, sometimes known as access to information laws or right to information laws, exist at all levels of government. They are intended to promote transparency by allowing people to request access to documents held by public institutions.

In 2022, the Alberta government rejected nearly two dozen FOI requests sent by The Globe as part of one component of the Secret Canada project: a national audit designed to measure government performance on access and transparency.

Three months ago, Alberta Premier Danielle Smith promised to investigate the government's decision to issue those rejections.

The Globe's requests sought copies of data columns contained in the internal system the government uses to track FOI requests it receives, including the dates requests were received and completed, summaries of the requests, and their dispositions (for example, whether information was released or withheld).

The Globe sent identical requests to every ministry and department in Canada at the territorial, provincial and federal levels – more than 250 in total.

Only Alberta ministries refused to provide the information.

When The Globe first reported on Alberta's rejections in June, Ms. Smith said it was her understanding that The Globe's requests had been processed "in the middle of a leadership transition," and during a time when there had been "a lot of upheaval" in government.

"I have asked my deputy minister to look into the process about what went wrong there. I can follow up with you to give you some answers. I don't have the answers for you today," Ms. Smith said at the time. "We have

to have open, transparent government and I do believe in the process of freedom of information. ... I'm hopeful we'll be able to solve the problem.”

But in August, after The Globe sent a second round of FOI requests to Canadian public institutions for updated data, the Alberta government again rejected the requests. Ms. Smith's office did not respond to multiple requests for comment.

In both sets of rejection letters, the Alberta government took the position that “no records” exist – even though the province uses an FOI tracking system.



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There are two legal issues at the core of this dispute: what constitutes an existing record, and to what extent the government is required to help the public access information.

Alberta has said that providing the requested data would require it to create a record, because from the perspective of the government's legal team the information “doesn't exist exactly in the format that you

requested,” Maureen Towle, the province’s assistant deputy minister of data, privacy and innovation, told The Globe in June.

In other words, downloading only select data from the tracking system would mean creating a new record.

But Alberta’s FOI legislation addresses this point, under a section titled “duty to assist.” This section says a public institution “must create a record” if the original is in electronic format, if the manipulation can be done “using its normal computer hardware and software and technical expertise” and if creating the record would not “unreasonably interfere with the operations” of the institution.

The Alberta government refused to tell The Globe what software it uses to manage FOI requests, citing security concerns. But two former FOI analysts and one current analyst – the people who work within public institutions to fulfill access requests – said the province uses a program called Amanda. The Globe is not naming them because they were not authorized to speak publicly.

The Globe sent a copy of the FOI wording used in the Secret Canada project to Granicus, which sells the Amanda software. Company spokesperson Sharon Rushen confirmed that the Amanda software would allow for the requested information to be extracted.

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In a statement to The Globe, Alberta government spokesperson Andrew Hanon reiterated the province’s position that it would not complete The Globe’s FOI requests, because doing so would require creating a new record.

However, in a contradiction of Alberta's apparent position that downloading the data would unreasonably interfere with the government's operations, Mr. Hanon said the province is prepared to provide the requested information, but only under a separate, informal process reserved for requests from media outlets.

This process is completely separate from the FOI system, meaning it is not subject to the strict requirements and obligations specified in access laws. This also means that if a regular citizen – not The Globe – attempted to obtain the same information, the government's current legal position would still prevent the information from being released.

Ms. Clayton, the former information commissioner, said Alberta's conduct is concerning.

“For some reason it seems they want to be testing the limits to the legislation, and my reaction is ‘Why?’ That is contrary – in itself, in my view – to the spirit of the legislation. The legislation is about providing access. That is supposed to be the default,” she said.

Alberta Official Opposition Leader Rachel Notley said it's clear that the province's United Conservative Party government has work to do on access and transparency.

“Alberta, as a starting point, should follow the law and not be an outlier and trying to find loopholes to not follow the law,” she said. “The strength of our democracy rests on the ability of individual citizens to be able to hold government accountable. And to do that, you need facts.”

The Globe has filed an appeal with Alberta's current Information and Privacy Commissioner.

With a report from Alanna Smith

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