

SECRET CANADA

Alberta's information watchdog opens systemic probe into ministries' handling of access requests

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Alberta's access watchdog has launched a systemic investigation into the provincial government's handling of freedom of information requests after reporting by The Globe and Mail's Secret Canada project.

Provincial ministries were notified in mid-August that the Office of the Information and Privacy Commissioner (OIPC) had launched a sweeping review into potential non-compliance with two sections of Alberta's Freedom of Information and Protection of Privacy Act. Both sections touch on the extent to which public officials are required to help people locate and obtain public records.

Notification letters sent to each ministry highlighted reporting from the Secret Canada project – an investigation into the country's broken freedom of information (FOI) regime – including a story that detailed apparent attempts by the government to limit its obligations under the provincial access law.

Nicky Gocuan, the press secretary for the Minister of Service Alberta and Red Tape Reduction, told The Globe in an e-mail that the province is “fully co-operating” with the OIPC probe and that they “look forward to seeing the results of the review. We will not be commenting further at this time.”

The OIPC investigates complaints about access and privacy concerns in Alberta. The vast majority of issues are dealt with individually, but the commissioner can also launch systemic investigations. Only a handful of systemic reviews involving access-law compliance have been executed in recent years.

“Your articles published in June were certainly a catalyst in the investigation being started,” said Chris Stinner, the OIPC’s director of investigations. He added that the probe will examine additional complaints as well, which he could not discuss. “There were other applicants similar to yours, as well as other concerns our office has identified.”

Mr. Stinner said he was limited in what else he could share about the file, as it is a continuing investigation.

Alberta’s appeals body has order-making powers, meaning the OIPC can compel government to release records if it is found that the public institution acted improperly. The commissioner also has the power to compel public officials to participate in the investigation.

FOI laws exist across Canada and around the world. They enshrine into law the principle that people have a right to know how their tax dollars are being spent, how their elected officials are governing and how their public institutions are being run. FOI legislation provides a legal framework for people to access public records that have not otherwise been released.

But The Globe’s reporting has found that public institutions across the country are routinely breaking these laws by improperly withholding information, violating statutory time limits and claiming “no records” exist, when in fact they do.

In June, The Globe reported that the Alberta government was testing the limits of its FOI law, by rejecting nearly two dozen FOI requests filed as part of the Secret Canada project. The requests were filed in 2022 for a national audit designed to measure Canadian jurisdictions’ performance on access and transparency. The

Globe sent more than 250 requests to every department and ministry in Canada – provincial, territorial and federal – seeking access to basic data from each institution's internal FOI tracking system.

Only Alberta refused.



It's your right to know

Accessing information in Canada has been too difficult for too long. [Explore Secret Canada](#), a database of FOI requests and a resource for learning how to submit your own

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All 22 Alberta ministries claimed that “no records” existed – even though officials acknowledged using an FOI tracking system. The province claimed that in order to provide the requested information, it would need to “create a record,” which officials argue the law does not require them to do. (At issue is the fact that, technically, downloading information from a database, creates a new record.)

Maureen Towle, the province's assistant deputy minister of data, privacy and innovation, told The Globe in June that because the information “doesn't exist exactly in the format that you requested,” from the perspective of the government's legal team, Alberta was not required to provide it.

However, section 10(2) of Alberta's FOI act explicitly states that 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. This section is called the “duty to assist,” which is one of the areas being examined in the OIPC systemic investigation.

To address the government’s apparent position that creating a record would “unreasonably interfere with the operations” of the institution, The Globe sent a copy of its FOI wording to Granicus, which sells the software that Alberta uses to track FOIs. Company spokesperson Sharon Rushen confirmed that the Amanda software would allow for the requested information to be extracted.

The other area being reviewed by the OIPC concerns section 7(2), which states: “A request must be in writing and must provide enough detail to enable the public body to identify the record.” Mr. Stinner declined to comment on what prompted this aspect of its investigation.

One aspect that will likely be examined is the extent to which FOI requesters must specifically ask for a particular public record, versus using more general language. For example, this would be the difference between requesting a certain report on a government policy by name, compared with asking for any reports dealing with a particular subject.

Last week, The Globe reported that the Alberta government had rejected a second round of Secret Canada FOI requests that sought access to updated data. Ministries relied on the same reasoning. In doing so, the government doubled down on a policy position that could limit its obligations in the future. The Globe filed an appeal with the OIPC in September.

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