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CLIENT BULLETIN

OIPC REQUIRES PUBLIC BODIES TO DISCLOSE NON-RESPONSIVE INFORMATION

Two recent decisions of the Office of the Information and Privacy Commissioner have called into question the practice of many public bodies in how they treat non-responsive information located within records that are responsive to an access to information request (Orders F14-32 and F14-31). In both cases, the public body had redacted excerpts from responsive records on the basis that such excerpts were not responsive to the request and, therefore, outside of the scope of request.

In both Orders, the Adjudicators concluded that the public bodies could not withhold these excerpts simply on the basis that they were outside of the scope of the access to information requests. As stated by the Adjudicator in Order F14-32, "... public bodies must provide access to the information in the responsive records even if the information itself is not responsive to the request, unless the information can be withheld under an exception to disclosure in FIPPA."

The Adjudicators were clear that public bodies were still entitled to withhold any information in the out of scope information that fell within the scope of exceptions to disclosure in Part 2 of FIPPA. From a practical perspective, this means that public bodies are required to disclose both the responsive and non-responsive contents of records responsive to access to information requests in the same manner, unless they can justify withholding the contents under Part 2 of FIPPA. It would be extraordinary if public bodies were required to also specifically justify the severing of these non-responsive contents under Part 2, but this may well be the implication of these decisions.

We are not aware of whether either public body will appeal these Orders but will keep clients apprised of any future appeals.

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