

## **Canada – Alberta Civil Servant Could Face Charges Over Doctored Evidence**

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Alberta civil servant could face charges over doctored evidence: Prosecutor asked to evaluate potential case

BYLINE: Charles Rusnell and Karen Kleiss, The Edmonton Journal

EDMONTON - In an unprecedented move, the province's information commissioner has asked a special prosecutor to determine whether an Alberta government employee should be charged for deliberately trying to mislead a public inquiry by submitting doctored evidence.

Commissioner Frank Work took the extraordinary action this week based on evidence uncovered by a private investigator in a seven-month investigation.

Work ordered the investigation after a forensic audit by PriceWaterhouseCoopers confirmed someone altered an e-mail, which government lawyers then entered as evidence in a public inquiry into Alberta Infrastructure's handling of a Freedom of Information request by The Edmonton Journal.

Ottawa researcher Ken Rubin, an acknowledged expert in freedom-of-information legislation, said he doesn't know of another case in which a freedom-of-information commissioner has taken such action. "This is definitely groundbreaking," Rubin said Tuesday. "It could set a national precedent."

It isn't known who tampered with the e-mail, but the information commissioner's office has told The Journal an "individual" is now being represented by lawyer David Jones.

The government's lawyers, all from Alberta Justice, have been replaced by a private lawyer, Kent Davidson.

Alberta Justice's special prosecutor's office in Calgary will decide whether there is enough evidence for a charge, but it's not known if the evidence to be considered falls under the provincial freedom of information act, the Criminal Code or both.

Simon Renouf, The Journal's lawyer, has already contended that the section of the freedom-of-information law that says a person cannot willfully mislead the commission has been breached.

Guilt or innocence on such a charge is determined by a provincial court judge, who may levy a fine under the freedom-of-information act of up to \$10,000.

Renouf also contends a criminal charge may be considered in this case. The Supreme Court of Canada in 1995 found that section 139 of the Criminal Code, obstruction of justice, may be applied to a wide range of administrative and disciplinary hearings, he said.

The commission declined to comment on which sort of charge or charges the prosecutors have been asked to review.

Infrastructure spokesman Bart Johnson said no one from the department has been suspended relative to the investigation.

This latest development marks another unexpected turn in the fight waged by The Journal for the public's right to timely access to documents that show how the government of Premier Ralph Klein uses its publicly funded fleet of aircraft.

The Journal made its freedom-of-information request on June 2, 2004, about a month after Klein publicly stated his government would screen requests to see the government's flight logs and arbitrarily decide whether to provide the media and opposition parties access to that information.

"If they tell us what they are looking for, then maybe we'll accommodate them," Klein said on May 4, 2004.

A week before that, under pressure from the Opposition Liberals, Klein had invited anyone interested in the flight logs to go through them.

But after Journal reporters and the Liberals accepted Klein's offer, and found information that embarrassed the premier, access to the documents was abruptly cut off.

After six months of wrangling and nearly \$900 in fees, The Journal gained access to 17 months of flight logs for the government's fleet of four aircraft on Nov. 24, 2004 -- two days after the provincial election.

In March 2005, the newspaper published a four-part series that revealed a lack of accountability and waste in the taxpayer-funded Air Transportation Service. The stories triggered a policy review and an audit by the auditor general that confirmed many of The Journal's findings.

In a public inquiry that started that month, The Journal argued that Alberta Infrastructure intentionally delayed the release of the flight logs until after the Nov. 22, 2004 provincial election for political reasons.

The e-mail in question was written on Nov. 12, 2004, by an Infrastructure employee. The version Alberta Infrastructure submitted to the public inquiry reads in part: "You are reminded that the records MUST be released on or before Nov. 25, and no further extensions are possible."

But The Journal received a different version of the same e-mail as part of a separate, followup freedom-of-information application that asked for all documents related to how Infrastructure processed the newspaper's original information request. That e-mail reads: "You are reminded that the records MUST be released on or after Nov. 25, and no further extensions are possible."

The second e-mail is identical, but for one word: It says the records should be released after the election -- not before, as in the version Alberta Infrastructure's lawyers submitted.

The public inquiry was suspended in May pending the investigation. It's not known when it will resume.

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