

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into A Complaint  
Regarding the Extension of Time for Responding to a Request  
By A Public Body**

**May 16, 2000**

**Office of the Auditor General**

**Investigation #1863**

**The Complaint**

On March 30, 2000, the Complainant wrote to the Information and Privacy Commissioner requesting an investigation on “an apparent breach” of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) by the Office of the Auditor General (the “Public Body”).

The Complainant claimed the Public Body’s extension of the time limit for responding to the Complainant’s access request was not in accordance with the provisions of the FOIP Act. In addition, the Complainant expressed concerns that the time limits to respond have expired and the Public Body has released no information. The Complainant requested an investigation pursuant to section 51(1)(d), 51(1)(i), and 51(2)(b) of the FOIP Act.

**The Commissioner’s Authority to Investigate**

The FOIP Act authorizes the Commissioner to conduct investigations on his own initiative to ensure compliance with any provision of the FOIP Act (section 51(1)(a)) or in response to complaints (section 51(2)).

Section 51(1) of the FOIP Act outlines the general powers and responsibilities of the Commissioner. Under the sections raised by the Complainant, the Commissioner may:

- Hear comments from the public concerning the administration of the FOIP Act (section 51(1)(d)); and
- Bring to the attention of the head of a public body any failure by the public body to assist applicants under section 9 of the FOIP Act (section 51(1)(i)).

However, as this investigation is in response to a complaint, it is therefore pursuant to section 51(2) of the FOIP Act.

## Issues

The issues before this investigation are:

1. Did the Public Body extend the time limit for responding to the Complainant's request in accordance with section 13 of the FOIP Act?
2. Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely as provided by section 9(1) of the FOIP Act?

### **Issue #1: Did the Public Body extend the time limit for responding to the Complainant's request in accordance with section 13 of the FOIP Act?**

The Complainant requested an investigation under section 51(2)(b) of the FOIP Act, which states

*51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that*

*(b) an extension of time responding to a request is not in accordance with section 13*

### **What are the time requirements for responding to an access request?**

Section 10(1) of the FOIP Act requires that a public body make every reasonable effort to respond to a request not later than 30 days after receiving it. However, the 30-day time limit for response may be extended by:

1. An additional 30 days by the head of the public body, or a longer period with the Commissioner's permission (section 13(1)).

Under section 13(1) of the FOIP Act, the head of a public body may extend the time limit for response by an additional 30 days, for a response time of 60 days in total. An extension period granted under section 13(1) that is longer than the additional 30 days (60 days in total) requires the Commissioner's permission.

2. A period of time as approved by the Commissioner under section 13(2).

Section 13(2) allows the head of a public body to extend the 30-day time limit for response if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other. An extension pursuant to section 13(2) requires the Commissioner's permission regardless of the length of the extension.

3. A period of time necessary to enable the head of a public body to comply with the requirements of section 30 as set out under section 13(3).

The length of the extension is for the period of time necessary to enable the head of the public body to comply with the requirements of section 30. There is no requirement for the public body to seek the Commissioner's permission for an extension under section 13(3).

**How did the Public Body respond to the Complainant's access request?**

On January 17<sup>th</sup>, 2000, the Complainant applied to the Public Body under the FOIP Act for access to information.

The Public Body attempted to contact the Complainant to clarify the scope of the access request. As the Complainant did not return the Public Body's calls, the Public Body left messages with the Complainant's staff.

On February 4<sup>th</sup>, 2000, the Public Body spoke with a staff member of the Complainant's office ("the Staff Member"). During the discussion, the Staff Member clarified and narrowed the scope of the Complainant's access request.

The Public Body wrote to the Complainant on February 7<sup>th</sup>, 2000 to confirm its understanding of the Complainant's access request based on the discussion with the Staff Member. The letter by the Public Body also notes:

*"...The Freedom of Information and Protection of Privacy Act also requires the Auditor General to notify third parties referred to in the documentation you have requested, and consider their business and privacy interests. This may cause some delay in our response to you..."*

The Public Body contacted the Staff Member on February 9<sup>th</sup>, 2000 to determine whether certain records would be of interest to the Complainant. The Staff Member responded on behalf of the Complainant on this matter.

On February 18<sup>th</sup>, 2000, the Public Body wrote to the Complainant to:

1. Confirm the scope of the Complainant's access request based on the further clarification provided by the Staff Member on February 9<sup>th</sup>; and
2. Advise that the time limit for response to the Complainant's access request would be extended to enable the Public Body to comply with requirements of section 30 of the FOIP Act.

On March 28<sup>th</sup>, 2000, the Public Body wrote to the Complainant to advise of its decision to grant full access to most and partial access to the remainder of the records requested. The Public Body also advised the Complainant that the third parties had 20 days to ask the Commissioner to review the Public Body's decision to release information. The Complainant was advised that if the third parties did not request a review, the records requested would be released on April 18<sup>th</sup>, 2000.

The Public Body released the records requested on April 18<sup>th</sup>, 2000.

**Under what provision of section 13 of the FOIP Act did the Public Body extend the 30-day time limit for response?**

In the letter to the Commissioner, the Complainant wrote that the head of the Public Body had no legal authority to extend the time beyond a second 30 days and that no extension had been granted by the Commissioner's office under section 13(1)(c).

Section 13(1)(c) states:

*13(1) 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 if*

*(c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record,...*

However, I found that the Public Body's extension was granted under section 13(3) of the FOIP Act and not under section 13(1)(c). Section 13(3) states:

*13(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 29 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 30.*

In its letter dated February 7<sup>th</sup>, 2000, the Public Body advised the Complainant that the FOIP Act requires that the Public Body notify third parties referred to in the documentation requested.

On February 18<sup>th</sup>, 2000, the Public Body wrote to the Complainant:

*"... I asked the Auditor General to extend the time for the OAG to respond to your request "for 30 days or such other time as may be 'necessary to enable [him] to comply with the requirements of section 30 of the Act.'". He agreed, and a copy of the memorandum documenting the time extension is attached...."*

The memorandum attached to the letter is an internal memorandum dated February 15<sup>th</sup>, 2000 from the Auditor General, who is the head of the Public Body, states:

*"Pursuant to section 13 of the Freedom of Information and Protection of Privacy Act (hereinafter, the Act), I hereby extend the time for responding to the FOIP request received in the office on January 17, 2000 for 30 days or such other time as may be "necessary to enable [me] to comply with the requirements of section 30 of the Act".*

The Public Body's February 18<sup>th</sup>, 2000 letter to the Complainant does not indicate the specific subsection under section 13 that is applied for the extension. However, the reference to the need for compliance with the requirements of section 30 is in accordance with section 13(3).

**Did the Public Body's extension comply with the requirements of section 13(3) of the FOIP Act?**

An extension under section 13(3) may be for "the period of time necessary to enable the head to comply with the requirements of section 30".

Under section 29(1)(a) of the FOIP Act, when a public body is considering giving access to a record that may contain information that affects the interests of a third party, the public body must give written notice to the third party. The requirements of the notice to the third party are set out under section 29(3) of the FOIP Act.

Section 30(1) requires a public body to make a decision regarding whether or not to grant access within 30 days after notice to the third party is given. However, the public body cannot make a decision until it has received a response from the third party or the time period given to the third party to respond has elapsed (note: section 29(3)(c) requires a public body to give a third party 20 days after notice is given to either provide written consent to the disclosure or make representations as to why disclosure should not be granted).

Under section 30(2) of the FOIP Act, the public body must provide written notification to the applicant and the third party of its decision to deny or grant access, including reasons for the decision.

If the decision is not to grant access, the public body must advise the applicant that he/she may ask the Commissioner to review the public body's decision (section 30(4)).

If the decision is to grant access (as is the case here), the public body must advise the applicant that access will be provided unless the third party asks the Commissioner to review the public body's decision (section 30(3)). Note: the public body discloses no information at this time – this is simply a notification of decision to grant access.

The third party must request the review within 20 days of the public body's written notice of its decision to grant access (section 30(3)). The public body will disclose the records at issue if it does not receive notice from the Office of the Information and Privacy Commissioner that the third party has requested a review within the specified time limits.

Therefore, the maximum amount of time to complete the process under section 30 (if the public body decides to grant access and the third party does not submit a request for review to the Commissioner) is 50 days:

- Public Body has 30 days after notice to third party is issued to render a decision; and
- The third party has 20 days upon receipt of the Public Body's decision to request a review from the Commissioner.

The 50-day period can be shortened if the third party consents to disclosure or provides representation to the Public Body prior to the expiry of the 20-day period specified under section 29(3)(c).

In its February 18<sup>th</sup>, 2000 letter, the Public Body advised the Complainant that the time limit for response would be extended "for 30 days or such other times as may be necessary" to enable the Public Body to comply with the requirements of section 30 of the FOIP Act. In my view, the Public Body's extension is in accordance with section 13(3) of the FOIP Act.

**Did the Public Body's notification of extension comply with section 13(4) of the FOIP Act?**

When extending the time limits for response pursuant to section 13 of the FOIP Act, a public body must notify applicants of the following:

1. the reason for the extension (section 13(4)(a));

2. when a response can be expected (section 13(4)(b)); and
3. that the applicant may make a complaint to the Commissioner about the extension (section 13(4)(c)).

In its February 18<sup>th</sup>, 2000 letter, the Public Body advised the Complainant that the extension was required to enable the head of the Public Body to comply with the requirements of section 30. Therefore, the reason for the extension was given. I believe the Public Body's notification to the Complainant is in accordance with section 13(4)(a). However, the Public Body may wish to indicate the specific subsection that is being applied under section 13 i.e. subsection (1), (2) or (3) for its future correspondence. This will minimize the risk of confusion for an applicant.

The February 18<sup>th</sup>, 2000 letter indicated the extension was for "30 days or such other time as may be necessary" to enable the Public Body to comply with the requirements of section 30 of the FOIP Act. Subsequently, the Public Body advised the Complainant in writing on March 28<sup>th</sup>, 2000 that full access to most and partial access to the remainder of records requested would be released on April 18<sup>th</sup>, 2000. The release would be dependent upon whether the third party requested the Commissioner review the Public Body's decision to grant access. In my opinion, the Public Body complied with the requirements of section 13(4)(b) of the FOIP Act in informing the Complainant when a response can be expected.

Both the February 18<sup>th</sup>, 2000 and March 28<sup>th</sup>, 2000 letters indicated the Complainant may ask the Commissioner to review the Public Body's decision to extend the time limits for response and any other actions of the Public Body that relates to the Complainant's access request. This is in compliance with section 13(4)(c) of the FOIP Act.

Therefore, I find that the Public Body's notification of the extension to the Complainant was in accordance with the provisions of section 13(4) of the FOIP Act.

**Issue #2: Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely as provided by section 9(1) of the FOIP Act?**

The Complainant had identified section 51(1)(i) of the FOIP Act as an issue. Under section 51(1)(i), the Commissioner has a duty to bring to the attention of the head of a public body any failure by the public body to assist applicants under section 9 of the FOIP Act. Since this investigation proceeds as a result of a complaint, the investigation is under section 51(2)(a) of the FOIP Act, which provides:

*51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that*

*(a) a duty imposed by section 9 has not been performed.*

Section 9(1) of the FOIP Act reads:

*9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.*

### **What are the Complainant's concerns?**

It appears that the Complainant may have some concerns that the Public Body did not make reasonable effort to assist the Complainant and to respond to the Complainant openly, accurately, and completely as provided by section 9 of the FOIP Act.

During the investigation, I attempted to contact the Complainant for clarification on this issue. However, the Complainant did not return my calls.

The FOIP Act grants individuals a right of access to records. However, applicants have a responsibility to identify what records they wish to access. In Order 97-006, the Commissioner wrote:

*[7.] ...there is a requirement on the Applicant under section 7 to provide sufficient clarification of its request to enable the Public Body to locate the appropriate records...*

In my opinion, the principle that a requestor has a responsibility to clarify what they are seeking is applicable to when an individual files a complaint. In other words, a complainant has a responsibility to clarify what are the issues of concern.

The Complainant was specific with respect to the complaint regarding the Public Body's extension of the time limit. However, the Complainant provided no information regarding the matter of how the Public Body failed to assist the Complainant as set out under section 9 of the FOIP Act.

In the absence of additional information from the Complainant, the investigation proceeded on the information that was before this office:

- Upon receipt of the request for access, the Public Body attempted to contact the Complainant to clarify the scope of the access request.
- The Public Body wrote to the Complainant confirming its understanding of the Complainant's access request based on discussions with the Staff Member.
- The Public Body advised the Complainant in writing regarding the progress on its processing of the access request.
- The extension to the time limit for response was in accordance with section 13 of the FOIP Act, and the notification of the extension to the Complainant met the requirements of section 13(4).
- The Public Body appeared to comply with the notifications to parties and time lines provided under section 29 and section 30 of the FOIP Act.
- The Public Body notified the Complainant of its decision to grant access and informed the Complainant of the third parties' right to request a review. The Public Body advised the Complainant that the records would be released on April 18<sup>th</sup>, 2000 if no third party made a request for review. The records were released on April 18<sup>th</sup>, 2000.

The Public Body advised that the Complainant's request was the first request it received under the FOIP Act. The Public Body's practice is to disclose as much information as possible outside the FOIP Act. In the letter to the Complainant dated February 7<sup>th</sup>, 2000, the Public Body referenced different avenues of access available to the Complainant outside of the FOIP Act. The letter states:

*"...As an Officer of the Legislature, the Auditor General is in the business of accountability and has and will continue to provide full accountability....for the operations of his Office..."*

*"...The Auditor General will provide to you as quickly as possible, all of the information that you seek, to the extent that he is authorized by law to do so..."*

I found no evidence to suggest that the Public Body failed to assist the Complainant as provided under section 9 of the FOIP Act. Therefore, I cannot make any recommendations to the Commissioner under section 51(2)(a).

### **Closing Comments and Recommendations**

The Public Body was authorized to extend the time limits for response to the Complainant's access request under section 13(3) of the FOIP Act. The time period of extension was in accordance with section 30 of the FOIP Act. Although the Public Body's notification of extension met the requirements of section 13(4), the Public Body may wish to consider citing the specific subsection when notifying applicants of extensions under section 13 of the FOIP Act.

I found no evidence of any failure by the Public Body to assist the Complainant as provided under section 9 of the FOIP Act.

Based on the findings of this investigation, I recommend that this case be closed and no further action be taken.

Submitted by,

Marylin Mun  
Portfolio Officer