

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2004-019

July 19, 2005

ALBERTA ENVIRONMENT

Review Number 2929

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant submitted a request for information to Alberta Environment (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Applicant asked for access to all file records associated with specific resource companies regarding their relationship with the Public Body.

The Applicant asked the Commissioner to find that the Public Body: (i) did not make every reasonable attempt to assist the Applicant as required by section 10(1) of the Act; (ii) did not comply with the 30-day time limit for response specified in section 11 of the Act, and (iii) did not properly extend the time limits in accordance with section 14 of the Act. The Public Body provided the Applicant with all the records requested but in doing so experienced several delays resulting from the need to obtain additional third party consents and in requiring additional crucial information from the Applicant. The Commissioner found that the Public Body, in responding to the information request of the Applicant, met the requirements of sections 10(1), 11(1) and 14 of the Act.

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10(1), 11(1) and 14.

Authorities Cited: AB: Orders 97-018, 98-002, 99-011, 2000-014, 2001-025 and Investigation Report: 2000-IR-001.

I. BACKGROUND

[para 1] On December 3, 2003 the Applicant submitted a formal access request to Alberta Environment (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act") for the following:

1. Copies of any or all internal correspondence, emails, letters notes, meeting minutes and memoranda regarding [a resource company].
2. Copies of all correspondence (e-mails etc.) sent and received by the Public Body regarding [a resource company].
3. Copies of the spring 2003 Environmental Monitoring Report submitted to Public Body.
4. Copies of any written documentation from the Public Body [to these resource companies].

[para 2] On December 3, 2003, the initial fee was processed and the Public Body contacted the Applicant for clarification regarding the request.

[para 3] On December 4, 2003, the Public Body advised the Applicant regarding receipt of the application and clarified the scope of the search. On December 5, 2003, the Public Body initiated a search for the records and as a result the Public Body, on December 9, 2003, was required again to ask the Applicant for further clarification. On December 10, 2003, the Applicant provided the Public Body with a legal land description and clarification.

[para 4] On December 11, 2003, the Public Body discussed the fee estimate with the Applicant and on December 15, 2003, both parties agreed to a fee estimate.

[para 5] On December 17, 2003, the Public Body advised the Applicant regarding the mailing out of the notices to third parties and that he would be advised of the Public Body's decision by January 16, 2004.

[para 6] On December 17, 2003, one of the third parties provided the Public Body with a verbal consent to disclose.

[para 7] On December 22, 2003, the Public Body sent out another third party notice requesting a response by January 12, 2004.

[para 8] On January 5, 2004, the Applicant was verbally advised that the deadlines for the response to the two (December 17, 2003 and December 22, 2003) third party notices were January 6 and 12, 2004, respectively. The Public Body also advised the Applicant that his request file would be transferred to a FOIP Coordinator for the Public Body after January 12, 2004, as the current assistant would be on leave.

[para 9] On January 15, 2004, the Public Body contacted two notified third parties in order to review the status of the request. Shortly after, the Public Body received the

written consent of the third party to whom the December 17, 2003, notice had been sent and began finalizing the package for release. As it was finalizing the package, the Public Body discovered other relevant information and on January 16, 2004, another third party notice was prepared and sent.

[para 10] On January 16, 2004, the Public Body contacted the Applicant and verbally advised him of the latest third party notice. The Public Body subsequently e-mailed a copy of the letter to the Applicant advising him of the issuance of the third party notice with a response date of February 5, 2004, and that the new date for the decision would be February 15, 2004. As a follow-up, the Public Body sent by surface mail a copy of the e-mailed notification letter to the Applicant.

[para 11] On January 19, 2004, the Public Body received a signed consent for the release of records for the December 22, 2003, third party notice and on January 20, 2004, the Public Body received a signed consent for the release of records for the January 16, 2004 third party notice.

[para 12] On January 22, 2004, while preparing to finalize the release of records, the program area of the Public Body was advised of the discovery of additional photographs relevant to the request.

[para 13] On January 26, 2004, the Public Body was once again preparing for the final release of the package when it discovered two additional photographs not covered by the previous third party notices. On January 26, 2004, two more third party notices were sent out. One written consent was received by the Public Body on January 26, 2004.

[para 14] On January 30, 2004, the Public Body had not received a response on the second third party notice sent out on January 26, 2004. On January 30, 2004, the Public Body sent out by registered mail another third party notice. The response date was set for February 19, 2004 and a decision date of February 29, 2004.

[para 15] On January 30, 2004, the Public Body verbally advised the Applicant of the new third party notices, followed by an e-mailed copy of the letter advising him of the third party notices and the new dates for decisions. A copy of the letter was sent by regular mail to the Applicant on February 2, 2004.

[para 16] On February 11, 2004, the Public Body received the final third party written consent to release the documents and on February 13, 2004, the records package was forwarded for sign off. After completing an internal review, the delegated head signed off on February 26, 2004.

[para 17] The Public Body e-mailed the Applicant on February 27, 2004, advising the Applicant that the Public Body approved access to the records requested.

[para 18] The Applicant requested a review by this office.

II. RECORDS AT ISSUE

[para 19] The records are not directly at issue.

III. ISSUES

[para 20] To better understand the application of the Act, I have re-ordered the issues. The three issues in this inquiry are:

- A. Did the Public Body properly extend the time limit for responding to a request, as authorized by section 14 of the Act? (Originally Issue C)
- B. Did the Public Body comply with section 11 of the Act (time limit for responding)?
- C. Did the Public Body meet its duty to assist the Applicant, as provided by section 10(1) of the Act? (Originally Issue A)

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Public Body properly extend the time limit for responding to a request, as authorized by section 14 of the Act?

[para 21] The submission of the Applicant focuses on the Public Body improperly extending the time for the Public Body to reply to his request for information; therefore, I will address the application of section 14 of the Act.

[para 22] The relevant provisions of section 14 of the Act read:

- 14(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
- (a) the applicant does not give enough detail to enable the public body to identify a requested record,
 - (b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,
 - (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or
 - (d) a third party asks for a review under section 65(2) or 77(3).....
- (3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 30 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 31.

(4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant

- (a) the reason for the extension,
- (b) when a response can be expected, and
- (c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.

[para 23] Under section 14 of the Act, a public body may extend the response time for responding to a request provided it meets the various criteria for the circumstances specified in the section: see Order 2000-014. The Public Body argued that the time for responding to a request was properly extended pursuant to section 14(3) of the Act in that a third party notice was issued pursuant to section 30 of the Act: see Investigation Report 2000-IR-001. Section 30 of the Act addresses the process a public body follows to notify a third party if it intends to provide access to a record: see Orders 97-018 and 2001-025. The Public Body referred to the documentary evidence it provided to support the argument that the extensions complied with the Act.

[para 24] The Public Body further argued that although the series of required third party notices resulted in extended response times, it made every effort to expedite the processing of those notifications. The Public Body telephoned the third parties in an effort to obtain consent as soon as possible and kept the Applicant constantly informed as to the status of the process.

[para 25] The Public Body points out that in response to the Applicant's December 2, 2003 information request, third party notices were issued December 17, 2003, December 22, 2003, January 16, 2004, January 26, 2004 and January 30, 2004. The Applicant was advised of all third party notices (all issued within the timeframe for processing the request as extended by the previous third party notice) and as to when the new date for a decision would be. The Applicant was advised on February 27, 2004 that a decision was made to grant him access to the requested records and as such the decision was made within the 30-day notice period contemplated in section 14 of the Act. I will address the timing for the release of these records in my review of section 11(1)(a) of the Act, below.

[para 26] In addition, the Public Body responded to the concerns the Applicant raised in this Inquiry about the delays the Applicant encountered on previous unrelated information requests involving the Public Body by stating that the concerns raised by the Applicant are not linked to the current review or set of circumstances and have no bearing on the issues being addressed in this Inquiry. I find that these past encounters with the Public Body are not relevant to this Inquiry and therefore I will not consider them.

[para 27] The Applicant argued that he found the various third party adjusted notification dates confusing and as the source of the confusion was the Public Body, it should be accountable.

[para 28] I have reviewed how the Public Body processed the information request. I agree that under the Act, the Public Body had to issue numerous section 30 notice letters. The Applicant noted that in one instance the Public Body missed providing him with a copy of the December 22 notification regarding a third party. However, the Public Body did verbally advise the Applicant. The Public Body noted that the oversight of not providing the Applicant with one of the written notices did not affect the extension dates, as subsequent section 30 notifications under the Act were required, and written notifications for these were provided to the Applicant.

[para 29] The Applicant argued that through the unnecessary use of the third party notice provisions, the Public Body improperly extended the time for responding to the Applicant. Section 14(3) of the Act allows the head of a public body, when considering giving access to a record to which third party notifications apply, to extend the time as necessary. The Public Body provided written evidence that it complied with section 14(3) of the Act and with section 14(4) of the Act by advising the Applicant as to the reasons for the extensions and by providing anticipated response dates.

[para 30] I find that the Public Body properly extended the time limits and in doing so complied with section 14(3) of the Act. The Public Body provided evidence that when it identified records as requiring the consent of a third party prior to release it kept the Applicant apprised by telephone, e-mail and mail of the amendments to the timeline. I find that the third party notifications were required in order for the Public Body to comply with the requirements of the Act. I am satisfied that the evidence provided by the Public Body exhibits that it made every effort to expedite the process and to try and obtain the required consents as soon as possible.

[para 31] As for the one instance that the Public Body overlooked providing a written notice to the Applicant, I find that although section 14(4) of the Act does not require that notifications to an applicant be in writing, it is good practice to do so. Providing written notification will reduce, if not eliminate, contests as to what was or was not communicated. In this case the Applicant was not prejudiced or negatively affected by the oversight and therefore this matter does not warrant further consideration. I am confident that as result of this inquiry, the Public Body will make every effort to undertake to change its procedures to ensure that a similar oversight will not recur.

ISSUE B: Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 32] Section 11(1)(a) of the Act reads:

11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 14, or...

[para 33] Section 11(1)(a) of the Act imposes upon a public body a duty to make every reasonable effort to respond to a request within 30 days unless the time is extended under section 14 of the Act: see Order 2000-014. The Public Body argued that it complied with the time limit for responding as the last third party notice, dated January 30, 2004, was followed by a decision dated February 27, 2004. I have already addressed the issue of third party notices and I will therefore focus on the issue regarding the application of section 11 of the Act.

[para 34] The argument of the Applicant is that the Public Body, by producing so many third party notification letters, failed to meet the response limit of 30 days as required by section 11(1) of the Act.

[para 35] In these circumstances, the Public Body provided chronological evidence of events, similar to what I have presented in the Background segment of this Order. This evidence supports the fact that the Public Body made every reasonable effort to respond to the Applicant within 30 days. The evidence shows that while it was performing the searches for the records, the Public Body encountered circumstances, as is common in this type of search, which resulted in a need for clarification with the Applicant, third party consents and additional information. These obstacles, I am satisfied, were beyond the control of the Public Body and as a result it could not meet all the 30-day deadlines. This being the case, the Public Body properly utilized section 14 of the Act to provide for the necessary extensions.

[para 36] I can appreciate the frustration of the Applicant. The Applicant no doubt initiated his request expecting the Public Body to provide a complete response to his request within the 30 days specified in the Act. The delays were unfortunate but looking at the complexity of the material, they are understandable. I have found that section 14(1) of the Act applies in these particular circumstances. Allowing for the evolving and necessary third party notices, coupled with the continuing need for clarification and additional information from the Applicant, I find that the Public Body met the obligation of responding to the request as specified under section 11(1)(a) of the Act. However, I encourage the Public Body to put in place, where possible, a process whereby once a third party consent is received that the records are released to an applicant as soon as it is practicable to do so. Where there are multiple third parties' consents required, the Public Body may consider implementing a process that will allow for the staggered release of portions cleared for release and thereby expedite the process. I am satisfied that the response of the Public Body, which included talking to the Applicant and keeping him constantly updated, confirms that the efforts of the Public Body were reasonable, thorough and comprehensive. I believe that a fair and reasonable person would accept and share this conclusion: see Order 98-002.

ISSUE C: Did the Public Body meet its duty to assist the Applicant as provided by section 10(1) of the Act?

[para 37] Section 10(1) of the Act reads:

10(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.

[para 38] Section 10(1) of the Act imposes a broad general duty upon public bodies to assist applicants. Specifically the section addresses the manner in which a public body responds to a request. How a public body meets its duty to assist will vary according to each particular fact situation associated with each particular request: see Order 99-011.

[para 39] The Applicant complained that the Public Body, by taking so long to completely respond to his request, failed to meet its duty under section 10(1) of the Act and, as a result, the Public Body did not make every effort to respond openly, accurately and completely to his request. The Applicant argued that his initial access request was not broad or complex and that he provided the Public Body with as much detail as required. The Applicant believed that the Public Body should have been familiar with the information he provided and therefore capable of narrowing the scope of his request, if the Public Body thought it necessary to do so.

[para 40] The primary concern of the Applicant was that the Public Body, by changing the notification dates, failed to provide the Applicant with proper assistance and in so doing promoted confusion resulting in the inability of the Public Body to meet regulatory deadlines. The Applicant therefore argued that the confusion caused by the Public Body resulted in an inaccurate and incomplete response to his request.

[para 41] The Public Body argued that a review of the background information shows that the Public Body responded almost immediately and did so in an open, accurate, and complete manner. The Public Body noted that the initial request was expansive requiring a review of a large volume of complex materials and that the request linked to an open investigation that the Public Body was performing at the time and consequently complicated the response.

[para 42] As I have noted in the previous two Issues, the Public Body provided sufficient evidence that during the process of responding to the request, the Public Body contacted the Applicant for clarification regarding details as to specific addresses related to his request. The Public Body advised the Applicant that the initial request was for records relating to a large project covering a sizeable amount of land. The initial search by the Public Body identified three pages of various Public Body approvals, resulting in the Public Body asking the Applicant to provide legal land descriptions in order to expedite and focus the search. Upon clarification the Public Body discovered that the project involved the construction of two pipelines in a corridor extending a distance exceeding 400 kilometers. The Public Body provided evidence that once the Applicant

provided the more specific information requested, it was able focus its collection of the requested records.

[para 43] The Public Body argued, and I have accepted their argument, that the Applicant's request was for records that were subject to mandatory third party notices and that the Public Body promptly utilized e-mail, fax, registered mail and telephone in asking the Applicant to clarify the request, review the fee estimates and in contacting the third parties. Further, the Applicant was constantly kept apprised by the Public Body of the progress of processing the request.

[para 44] The chronology I have set out in the "Background" in this Order shows that the Public Body was diligent in its responsibilities to the Applicant. The Public Body was in regular communication with the Applicant as to the status of the response and provided evidence of doing so in an open, accurate and complete fashion. Understandably the Applicant is not pleased that the Public Body had to come back to him for clarification and additional information. However, I accept that with this particular type of energy sector request, it is not always possible from the outset to perform an accurate search for records without requiring clarification and additional information from an applicant or third parties.

[para 45] I find that the Public Body was open, accurate and complete in its response and clearly made every reasonable effort to promptly communicate with and assist the Applicant. Therefore, I find that the Public Body met its duty to the Applicant as provided by section 10(1) of the Act.

V. ORDER

[para 46] I make this Order under section 72 of the Act.

[para 47] I find that the Public Body properly extended the time limits for responding to the request, as authorized by section 14 of the Act.

[para 48] I find that the Public Body complied with section 11 of the Act (the time limit for responding).

[para 49] I find that the Public Body met its duty to the Applicant, as provided by section 10(1) of the Act.

Frank Work, Q.C.
Information and Privacy Commissioner

