

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-22

June 29, 2016

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number 002929

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request dated July 22, 2015, to Alberta Justice and Solicitor General (Public Body) for records relating to his employment. The Public Body corresponded with the Applicant to clarify the request; however, the Public Body has not yet provided a response as required by the Act.

The Applicant requested a review of the time taken by the Public Body to respond.

The Adjudicator ordered the Public Body to respond to the Applicant's access request as required by the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 72.

I. BACKGROUND

[para 1] An Applicant made an access request dated July 22, 2015, to Alberta Justice and Solicitor General (Public Body) for records relating to his employment. Alberta Justice and Solicitor General informed the Applicant that both it and the Alberta Human Rights Commission would respond to his request separately. This inquiry concerns Alberta Justice and Solicitor General's response to the Applicant on its own behalf.

[para 2] The Public Body provided me with copies of email correspondence between it and the Applicant, clarifying the Applicant's request. The email chain indicates that the Applicant provided additional information to the Public Body on July 30, 2015. The Public Body presumably asked for more information, as the Applicant acknowledged another request for information from the Public Body on August 26, 2015. The Applicant answered those questions on February 1, 2016, and the Public Body acknowledged receipt of the answers on February 2, 2016.

[para 3] Copies of emails provided to me by the Applicant show that he requested an update from the Public Body on the progress of his access request by email dated March 4, 2016. By email dated March 8, 2016, the Public Body responded, stating:

The Alberta Justice and Solicitor General (JSG) FOIP Office has received an influx of access to information requests which have, unfortunately, resulted in a number of late files; your two requests #2015-G-0229 and 0230 fall within this category.

We apologize for the delay and thank you for your continued patience regarding this matter. As we are late responding to your requests, any and all fees associated with your requests will be waived.

The file numbers cited above relate to the access request at issue in this inquiry, as well as the related request being answered by the Public Body on behalf of the Human Rights Commission.

[para 4] On April 7, 2016, the Applicant requested a review of the time taken by the Public Body to respond.

[para 5] The email correspondence provided to me by the Public Body shows that it contacted the Applicant on April 13, 2016, to again seek clarification on the request; the Applicant responded on April 26, 2016. This appears to be the last correspondence between the Public Body and the Applicant to date.

II. RECORDS AT ISSUE

[para 6] As the issue in this inquiry relates to the timeliness of the Public Body's response, there are no records at issue.

III. ISSUE

[para 7] The Notice of Inquiry, dated June 2, 2016, states the issue for this inquiry as follows:

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

IV. DISCUSSION OF ISSUE

[para 8] Section 11 of the Act requires a public body to make every reasonable effort to respond to an access request no later than 30 days after receiving the request. Section 11 of the Act states:

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

(b) the request has been transferred under section 15 to another public body.

(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

[para 9] In its submission to the inquiry, the Public Body states:

The Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*.

The Public Body has numerous late files and, in order to be fair to all its applicants, it has been processing them in the order in which they were received. The exceptions to this have been files which were required to be prioritized due to Court dates, etc.

Given the above information, the Public Body made the decision not to request an extension from the Office of the Information and Privacy Commissioner (OIPC) in accordance with section 14 of the Act, as it was expected the OIPC would not approve the length of time the Public Body would require to process the request.

In response to the Notice of Inquiry, the Public Body made this file a priority and is actively processing this request. It expects to be able to respond to the Applicant in the near future.

In excess of 8000 pages of records have been located in response to this request.

...

The Public Body acknowledges that it did not meet the requirements of section 11 of the *FOIP Act*. As it is late in responding to the Applicant, it will waive all fees related to this file.

The Public Body is actively processing this request and expects to be able to respond to the Applicant in the near future.

[para 10] The Applicant's request for review is dated prior to the Public Body's last request for clarification. This is likely because 10 weeks had passed since the Applicant provided a response to the Public Body's last request for clarification.

[para 11] The Public Body must make every reasonable effort to respond to an access request in 30 days. The Public Body states that it extended the time to respond by 30 days, as permitted by section 14(1)(b) on August 26, 2015; however those 30 days have clearly passed.

[para 12] I note that the length of time that has passed since the Applicant's access request is due in part to what appears to be a delay of several months between a request for clarification from the Public Body and the Applicant's response.

[para 13] However, even accounting for the Applicant's own delay, the dates associated with the clarifications show that excessive time passed after the Applicant did respond to the Public Body with clarification. Further, the Public Body admits that it did not comply with section 11 of the FOIP Act. Therefore, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

V. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. While it is too late for the Public Body to now comply with that section of the Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act.

[para 16] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator