

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2016-36

September 13, 2016

ALBERTA ENVIRONMENT AND PARKS

Case File Number 002847

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Environment and Parks (the Public Body) pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) for all briefing notes, memos, ministerial orders, ‘advice to minister’ notes related to key oil and gas issues.

The Adjudicator found that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. Therefore, the Adjudicator ordered them to do so.

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

I. BACKGROUND

[para 1] On September 29, 2015, the Applicant made an access request to Alberta Environment and Parks (the Public Body) pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act) for all briefing notes, memos, ministerial orders, ‘advice to minister’ notes related to key oil and gas issues. Specifically, the request stated:

I request all briefing notes, memos, ministerial orders, ‘advice to minister’ notes related to key oil and gas issues.

If minister or deputy minister is not the correct title, please use the equivalent term for your organization.

I also request all records related to this request to be provided electronically, including the final record and correspondence.

[para 2] On October 6, 2015, the Public Body responded and confirmed that it had received the access request and would attempt to process the request in the time allotted by the Act. It also stated that the request had been clarified and that certain keywords would be searched.

[para 3] On October 21, 2015, the Public Body provided a fee estimate to the Applicant and requested half of the estimate as a deposit. The Public Body stated that the processing of the Applicant's request had ceased pending the receipt of the deposit. The Applicant requested a fee waiver from the Public Body which was denied on December 2, 2015. On December 8, 2015, the Applicant paid the fee deposit.

[para 4] On April 27, 2016, the Office of the Information and Privacy Commissioner received a Request for Review from the Applicant. On July 13, 2016, the Office of the Information and Privacy Commissioner issued a Notice of Inquiry. On August 5, 2016, I received an extension request from the Public Body and allowed it until August 19, 2016 to provide its submissions. I received submissions from the Public Body.

II. ISSUE

[para 5] The Notice of Inquiry dated July 13, 2016 states the issue in this inquiry as follows:

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

III. DISCUSSION OF ISSUE

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

[para 6] 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 7] The Public Body acknowledges that it has missed the deadline imposed by section 11. It states that this was not intentional and was caused by an increased workload due to a decrease in staffing, the number of internal and external consults associated with the request and the scope of the request. It further submitted:

After speaking with the applicant, a release of part of the records in a two part signoff process has been agreed upon. The first part of this process will involve records where consults have already been obtained and no objection to release has been identified under FOIP. These records will be immediately submitted to the ADM's office for release approval. The second part of this process will involve records where consults with program areas have yet to be obtained. With respect to these records, the AEP FOIP office will immediately follow up with the program areas to determine whether or not responsive records can be released to the applicant. Any responsive records which are identified as produceable (*sic*) will then be forwarded for ADM approval.

[para 8] I understand that the scope of the request, and lack of resources with which to process the volume of requests received by the Public Body are serious issues the Public Body has to deal with when attempting to respond to this specific access request. I also appreciate that the Public Body is now working with the Applicant in an attempt to get him records in a timely manner. While I sympathize with the predicament in which the Public Body currently finds itself, section 11 of the Act sets out a statutory obligation which has not been met. Therefore, I find that the Public Body has breached section 11 of the Act.

IV. ORDER

[para 9] I make this Order under section 72 of the Act.

[para 10] 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 11] I 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 it.

Keri H. Ridley
Adjudicator