

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-10

January 27, 2017

SERVICE ALBERTA

Case File Number 004352

Office URL: www.oipc.ab.ca

Summary: On June 7, 2016, the Wildrose Party (the Applicant) made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Service Alberta (the Public Body) for “all data field layouts and copies of all standard reports, with standard data files, for the IMAGIS database”. The Applicant explained that the areas of interest were: general ledger, accounts payable, accounts receivable, billing, inventory, asset management, purchasing, budgets, talent acquisition, payroll and benefits administration, and time and labour tracking. The Applicant requested that these records be provided electronically.

On June 8, 2016, the Public Body emailed the Applicant and stated that it could not start its request “until we can clarify internally”. It stated that it would contact the Applicant as soon as possible.

On November 21, 2016, the Applicant requested review by the Commissioner of the Public Body’s failure to respond to its access request within 30 days, as required by section 11 of the FOIP Act (time limit for responding).

At the inquiry, the Public Body argued that it was not under a duty to respond to the Applicant, as the Applicant had not made an access request under the FOIP Act.

The Adjudicator found that the Applicant had made an access request under the FOIP Act. However, the Public Body had not taken reasonable steps to clarify the access request and had abruptly ended its communications with the Applicant without explaining what aspects of its access request were unclear.

The Adjudicator ordered the Public Body to take steps to clarify whether the Applicant was seeking recorded information in the IMAGIS database and to determine, with the assistance of a technical person, whether this information was a record within the terms of the FOIP Act, and not software, and if so, whether it would be possible to create a record of the kind requested by the Applicant.

Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, ss. 1, 6, 7, 10, 11, 72

Authorities Cited: AB: Orders F2004-026, F2011-016

I. BACKGROUND

[para 1] On June 7, 2016, the Wildrose Party (the Applicant) made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Service Alberta (the Public Body) for “all data field layouts and copies of all standard reports, with standard data files, for the IMAGIS database”. The Applicant explained that the areas of interest were: general ledger, accounts payable, accounts receivable, billing, inventory, asset management, purchasing, budgets, talent acquisition, payroll and benefits administration, and time and labour tracking. The Applicant requested that these records be provided electronically.

[para 2] The Public Body replied to the Applicant’s request on June 8, 2016 stating:

This email acknowledges receipt of your email below. Please note that FOIP Services cannot start your request until we can clarify internally. We will contact you as soon as possible.

[para 3] On November 21, 2016, the Applicant requested review of the Public Body’s failure to respond to its access request.

II. ISSUES

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

III. DISCUSSION OF ISSUES

[para 4] Section 11 imposes a duty on a public body to respond to an access request within 30 days of receiving the request. It 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 5] The Public Body acknowledges that it did not respond to the Applicant's access request within the time limit imposed by section 11. However, it argues that it is not required by the Act to respond to the Applicant. It states:

On June 7, 2016, the Applicant emailed the Public Body requesting the following:

"I request copies of all data field layouts and copies of all standard reports, with all standard data fields, for the IMAGIS database. The areas of interest would include but not be limited to:

- General Ledger;*
- A/P;*
- A/R;*
- Billing;*
- Inventory;*
- Asset Management;*
- Purchasing;*
- Budgets;*
- Talent Acquisition;*
- Payroll and Benefits admin;*
- And Time and Labour tracking.*

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

(Appendix 1)

The Applicant did not provide a timeframe for the information sought.

The Public Body acknowledged receipt of the Applicant's email and advised that processing of their request would not commence until internal clarification was conducted. (Appendix 2)

The Public Body submits that the Applicant's request for "copies of all data field layouts and copies of all standard reports, with all standard data fields, for the IMAGIS database" is overly broad and does not constitute a request for records under section 7(2) of the FOIP Act.

Section 2 of the FOIP Act states the purposes of the Act which includes the right of access:

Purposes of this Act

2 The purposes of this Act are

(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,...

When a request for information is made, a public body must respond openly, accurately and completely. This responsibility continues even if the requested records are not subject to the FOIP Act.

In this case, the Public Body acknowledged receipt of the Applicant's email and advised that the Applicant's request was not precise enough and clarification was required before processing could commence.

[para 6] The Public Body argues that the Applicant's access request was not sufficiently clear to engage its duty to respond to the Applicant under section 11. Section 7 of the FOIP Act describes how to make an access request. It states:

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.

(3) In a request, the applicant may ask

(a) for a copy of the record, or

(b) to examine the record.

[para 7] As cited above, the Public Body states:

In this case, the Public Body acknowledged receipt of the Applicant's email and advised that the Applicant's request was not precise enough and clarification was required before processing could commence.

I agree that the Public Body acknowledged receipt of the Applicant's email in its email of June 8, 2016. However, the Public Body did not advise the Applicant that its request was not precise enough or that clarification was required. What the Public Body wrote was:

This email acknowledges receipt of your email below. Please note that FOIP Services cannot start your request until we can clarify internally. We will contact you as soon as possible.

[para 8] This email could reasonably be interpreted as suggesting that the FOIP Manager who wrote the email intended to ask her colleagues whether it was possible to provide a copy of the IMAGIS database and would contact the Applicant as soon as she obtained the information. The reference to "we" and "clarifying internally" suggests it was a group of people -- of which the FOIP Manager was a member -- that would engage in "internal clarification". The term "internal" suggests that the clarification would take place among members of the Public Body. The Applicant is not a member of the Public Body, and would therefore not engage in the Public Body's internal clarification process. I am at a loss to understand why the Public Body considered that its email of June 8, 2016 informed the Applicant that its request was not clear enough and that further clarification was necessary.

[para 9] I also note that the Public Body provided a Senior Information and Privacy Manager's findings regarding a previous access request made by the Applicant for a copy of the IMAGIS database. This letter states:

[...] it has been determined that the information cannot be provided without more narrow [sic] parameters in place. Furthermore, the information the Applicant is looking for is available in mediums outside of the IMAGIS database and in order to get accurate and complete data, the access request should not be limited to content in the IMAGIS database.

I am unable to agree with the Public Body that this letter has any bearing on the issue before me. It is unclear who made the determination to which the Senior Information and Privacy Manager refers in her letter. Moreover, it is not clear from the letter what the specific issue was that she was attempting to settle. It appears that both parties were satisfied with the recommendation that the scope of the access request be changed to include information sources other than IMAGIS. In this case, the Applicant's request relates to fields in the IMAGIS database. The recommendation in the Senior Information and Privacy Manager's letter would therefore not serve to settle this matter.

[para 10] In Order F2004-026, former Commissioner Work noted that public bodies may have to clarify access requests in some circumstances in order to meet the duty to assist. He said:

Finally, in its oral submission, the Applicant argued that the Public Body failed in its duty to assist by failing to clarify with the Applicant what it meant by "implementation" in the context of its original request. The Public Body suggested it did not do this because it assumed that it already understood the request. It explained that it thought it would not be reasonable for the Applicant to ask for the numbers of records that would be involved on the other understanding (that the request included all records in 2003 created by the Public Body relative to Bill 27 after the Bill's passage - which the Public Body described as "11 cubic feet of records"). While I have some sympathy with the Public Body's point, I have also been advised by the parties that the Applicant has since clarified this aspect of the request, which suggests that clarification was possible, and that there is indeed some further information relative to this aspect that is being sought. Thus I agree that the Public Body should have asked for clarification as to the part of the request that was ambiguous in its wording, rather than relying on its assumption, and that its failure to take this step was a failure to assist the Applicant.

[para 11] In Order F2011-016, the Adjudicator considered previous orders of this office commenting on the duties of public bodies to interpret access requests reasonably. He said:

The Applicant submits that the Public Body was too restrictive in its interpretation of the information that he requested and therefore overlooked responsive records. Previous Orders of this Office have said that a record is responsive if it is reasonably related to an applicant's access request and that, in determining responsiveness, a public body is determining what records are relevant to the request (Order 97-020 at para. 33; Order F2010-001 at para. 26). The Applicant argues that applicants should be given some latitude under the Act when framing their access requests, as they often have no way of knowing what information is actually available. I note Orders of this Office saying that a broad rather than narrow view should be taken by a public body when determining what is responsive to an access request (Order F2004-024 at para. 12, citing Order F2002-011 at para. 18).

In that order, the Adjudicator found that Alberta Health Services had taken too restrictive an approach in its interpretation of the kinds of information requested by the applicant. As a result, the Public Body had failed to meet its duty to assist the applicant, because it had not searched for the records the applicant had requested.

Because the Public Body took an overly restrictive view of the information that the Applicant was seeking, in view of both the wording of his initial access request and the clarification subsequently provided by him, I find that the Public Body did not adequately search for responsive records and therefore did not meet its duty to assist the Applicant under section 10(1) of the Act. I intend to order it to conduct another search for responsive records, bearing in mind the scope of the information that the Applicant actually requested, as discussed above.

[para 12] As discussed above, past orders of this office have held that the duty to assist an applicant includes taking steps to clarify an access request. In this case, it is not entirely clear whether the Applicant is seeking the data in the IMAGIS database, or the software that manipulates the data in the IMAGIS database. Under section 1(q) of the FOIP Act, recorded information, or data, is a record; software is not. An access request may be made for data, but not software. At the same time, if a public body can create a record from a database, using its usual hardware and software, and doing so would not interfere with its operations, then section 10(2) requires it to make such a record.

[para 13] The access request is clear; what is not clear is whether the Applicant has requested data or software. As the Public Body has not asked the Applicant questions as to whether it is the data in the database, or its software it is seeking, or sought advice from its computer technicians as to whether it would be possible to produce records of the kind requested by the Applicant, but not the software, in order to respond to the Applicant, I find that it has not made reasonable efforts to respond to the Applicant within 30 days of receiving the access request.

IV. ORDER

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

[para 15] I find that the Public Body has failed to meet its duty to make all reasonable efforts to respond to the Applicant within 30 days of receiving the access request.

[para 16] I order the Public Body to comply with its duty to assist the Applicant under section 10(2) by taking steps to clarify whether the Applicant was seeking recorded information in the IMAGIS database and to determine, with the assistance of a technical person, whether this information is a record within the terms of the FOIP Act, and not software, and if so, whether it would be possible to create a record of the kind requested by the Applicant.

[para 17] I further order the Public Body to notify me within 50 days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator