

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-32

August 27, 2021

REGIONAL MUNICIPALITY OF WOOD BUFFALO

Case File Number 022184

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made an access request to the Regional Municipality of Wood Buffalo (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) on April 28, 2021. The Applicant submitted an amendment to his access request to the Public Body on April 29, 2021. The Public Body acknowledged receipt of the access request on April 29, 2021. Subsequently, the Public Body informed the Applicant that it was extending the time to respond to the access request under section 14(1)(b) of the Act to July 1, 2021.

On July 6, 2021, this Office received a request for review from the Applicant, as he had not yet received a response by the Public Body as required by the Act.

The Adjudicator found that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 14, and 72.

Orders Cited: AB: Orders F2007-012, F2007-017, F2016-36, F2017-30, F2019-08, F2019-16.

I. BACKGROUND

[para 1] On April 28, 2021, an individual (the Applicant) made an access request to the Regional Municipality of Wood Buffalo (the Public Body) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act).

[para 2] On April 29, 2021, the Applicant submitted an amendment to his access request to the Public Body.

[para 3] On April 29, 2021 the Public Body sent an acknowledgment of the request to the Applicant and informed the Applicant that it would provide a response on or before Monday, May 31st (as May 29th was on a weekend).

[para 4] Subsequently, the Public Body informed the Applicant that it was extending the time to respond to the Applicant by another 30 days pursuant to section 14(1)(b) of the Act. It advised the Applicant that the new response date for the Applicant's FOIP request was Thursday, July 1, 2021.

[para 5] On July 2, 2021, the Public Body apologized to the Applicant for the delay in processing the Applicant's request and provided the following update to him on the status of its response:

We have been swamped with a record number of requests lately and it has been extremely overwhelming for us to respond to all within our typical timeline. The municipality recognizes this challenge and is responding appropriately by making arrangements for additional staffing for the FOIP Office. Having said that, we have commenced action on your request and will provide you with records as soon as we are able, although I regret to say that we are unable to provide a specific date when that would happen.

[para 6] On July 6, 2021, this Office received a request for review from the Applicant, as he had not yet received a response by the Public Body.

[para 7] The Commissioner decided to move the matter directly to inquiry and delegated her authority to conduct the inquiry to me.

[para 8] On August 4, 2021, the Public Body provided a copy of the letter it sent to the Applicant in which the Public Body responded to the Applicant's request. The Public Body enclosed responsive records with the letter to the Applicant.

II. RECORDS AT ISSUE

[para 9] 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 10] The Notice of Inquiry, dated July 28, 2021 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 11] Section 11 of the Act requires a public body to make every reasonable effort to respond to an access request not 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 12] Section 11(1)(a) requires a public body to make every reasonable effort to respond to an access request not later than 30 days after receiving it unless that time limit is extended under section 14. The Public Body extended its time to respond by another 30 days, pursuant to section 14(1)(b) of the Act. The Public Body did not seek a further extension of time from the Commissioner under section 14 before the 30 day extension it took under section 14(1)(b) expired.

[para 13] In its submission dated August 18, 2021, the Public Body told me that records search memos were sent out to respective municipal departments and officials on April 29th, requesting that searches be conducted, and responsive records retrieved and forwarded to the FOIP Unit on or before May 11th.

[para 14] The Public Body explained that the FOIP Unit was working on numerous requests at the material time, all of which were received in very close proximity to one another, including one involving over 60,000 emails. It stated:

- While we neglected to provide a definitive date for records release in our referenced email of July 2nd, the reality is that we were unable to provide an accurate date given the unprecedented volume of requests being addressed at the material time.
- As has already been communicated to the applicant, the Municipality apologizes for the delay in providing the requested records. The delay was caused by the heavy workload and volume of records being dealt with, and not as an attempt to deny access to the records as alleged by the applicant.

- All records were provided to the applicant on August 4th, and FOIP request # 2021-13 is now complete.
- As a public body, our goal is to provide applicants access to records within the legislated timelines and we always regret occasions when we fail to accomplish this which our track records show to be few and far between.

[para 15] The evidence before me is that the Public Body acknowledged receipt of the Applicant's amended access request on April 29, 2021, and provided its response on August 4, 2021. The response was outside of the 30 days permitted under section 11 and the 30 day extension taken by the Public Body pursuant to section 14(1)(b) of the Act.

[para 16] In Order F2007-012, the adjudicator made the following comments regarding section 11 of the Act:¹

[para 32] Section 11 of the Act requires the head of a public body to make every reasonable effort to respond to the applicant not later than 30 days from the date of receipt of an access request. If a public body can demonstrate that it made every reasonable effort to respond to a request within the time limit, but failed due to circumstances beyond its control, the public body would not be in breach of section 11.

...

[para 36] Although the Public Body did not respond to the Applicant's access request within the time limit contemplated by section 11, if the Public Body can demonstrate it took all reasonable steps to respond to the access request within the time limit, it would not be in breach of section 11, despite missing the time limit.

[para 17] The Public Body did not meet the timelines for responding under the Act. The question is whether, despite missing the time limit, the Public Body made every reasonable effort to respond to the access request within the time limit under section 11 of the Act.

[para 18] In its email to the Applicant on July 2, 2021, the Public Body stated "We have been swamped with a record number of requests lately and it has been extremely overwhelming for us to respond to all within our typical timeline. The municipality recognizes this challenge and is responding appropriately by making arrangements for additional staffing for the FOIP Office".

[para 19] In its submission, the Public Body stated that the delay in providing the requested records to the Applicant "was caused by the heavy workload and volume of records being dealt with".

[para 20] A number of Orders of this Office have considered similar reasons given by public bodies for failing to meet the timelines under the Act. In Order F2016-36, the adjudicator stated:

¹ See as well, Order F2007-017 at paragraph 37, where the adjudicator stated "Notwithstanding the Public Body's failure to meet the 30 day time limit, section 11 states that if a Public Body made a reasonable effort to meet the deadline, it will not breach that section."

[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.

[para 21] In Order F2017-30, the adjudicator stated:

[para 8] The Public Body's submission to this inquiry states:

During the processing of this file [the Public Body] received over 2087 access requests and the Advisor processing this file was assigned 298 requests for processing.

Many factors have contributed to the delay in responding to this applicant. A combination of a significant increase in FOIP requests, larger than usual volumes of records, in addition to staff turnover, are some examples of this delay.

[The Public Body] is committed to completing this request as quickly as possible and will continue to update the applicant with regards to the status of this request.

[para 9] Section 14 of the Act states:

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 much 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).*

(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request 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.

(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 reasons 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 10] The Public Body did not provide me with any evidence that it exercised its options under section 14. I therefore find the Public Body was to respond to the Applicant within 30 days of receipt of the deposit for fees (March 11, 2016). I find it failed to do so.

[para 11] I find the Public Body has failed to meet its obligations under section 11 of the Act.

[para 22] In Order F2019-08, the adjudicator stated:

[para 6] In its submission, the Public Body states that the employee handling the Applicant's request began processing the Applicant's request, and located 1148 pages of responsive records. However, the employee went on extended leave in near the end of 2018, before the request was completed. The Public Body also states that it has experienced other staffing shortages in early 2019, but has taken steps to mitigate the shortage. The Public Body further states that the Applicant's request has been given priority, and that it expects to respond by March 22, 2019.

[para 7] The Public Body must make every reasonable effort to respond to an access request in 30 days. The Public Body extended its time to respond by another 30 days, as permitted under section 14(1) of the Act. That 30-day extension presumably would have expired around the end of October 2018; no further time extensions appear to have been granted. Therefore, the Public Body's response to the Applicant's request is several months overdue. That said, the Public Body expects to respond to the Applicant by the end of this month.

[para 8] Given the dates above, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act. It follows from this finding that I will order the Public Body to respond in accordance with the Act. The date the Public Body expects to respond to the Applicant falls well within the time to comply with this order.

[para 23] In Order F2019-16 the adjudicator stated:

[para 15] To be clear, it is possible for a public body to *both* fail to meet its timelines *and* have made every reasonable effort to meet them. However, the public body must show what steps it took to meet its timelines. In this case, the Public Body has told me the reasons why it didn't meet its timelines, but did not tell me the steps it took to try to do so.

[para 24] The Public Body did not respond to the Applicant within the timelines under the Act.

[para 25] The evidence before me is that at the time the Applicant made his access request, the Public Body did not have adequate staff to respond to the Applicant within the legislated timelines due to the increased volume of access requests and the volume of records it was currently dealing with, and it could not tell the Applicant when it would be able to respond to his access request.

[para 26] Except for telling me that it sent out the records search memos to respective municipal departments and officials on April 29th, requesting that searches be conducted, and responsive records retrieved and forwarded to the FOIP Unit on or before May 11th, the Public Body did not give me any information on what efforts it made after this to respond to the Applicant's access request within the timelines under the Act.

[para 27] Section 14 of the Act, which has been reproduced under paragraph 21 above, sets out the situations where a public body may ask the Commissioner for more time under the Act to respond to a request. This section can be used where appropriate to assist a public body in managing its timelines for responding to access requests.

[para 28] While the Public Body informed me that at least one of the access requests it was dealing with at the same time as the Applicant's access request involved more than 60,000 emails, it did not tell me what steps it took during the material time to manage its workflow, including whether it asked the Commissioner for an extension to respond to any of the access requests it received during the material time.

[para 29] I find that the Public Body has not provided me with enough information about the steps it took to try and respond to the Applicant's access request within the timelines under the Act in order for me to conclude that it made every reasonable effort to respond to the Applicant's access request within the time limit set out in section 11 of the Act.

V. ORDER

[para 30] I make this Order under section 72 of the Act.

[para 31] I find that the Public Body did not make every reasonable effort to respond to the Applicant within the time limit set out in section 11 of the Act. As the Public Body has now responded to the Applicant's access request, it is not necessary for me to order the Public Body to respond to the Applicant under the Act.

Carmen Mann
Adjudicator
/ah