

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2016-04

April 11, 2016

LUNDGREN & YOUNG INSURANCE LTD.

Case File Number 002563

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Lundgren & Young Insurance Ltd. (the Organization) pursuant to the *Personal Information Protection Act* (the Act) for his personal information. The Adjudicator found that the Organization did not respond to the Applicant within the time limits set out in section 28 of the Act. Therefore, the Adjudicator ordered them to do so.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 26, 27, 28, and 52.

I. BACKGROUND

[para 1] This inquiry arises from a request for records made by the Applicant via email to the Organization on December 25, 2015. The Applicant subsequently followed up (also by email to a general email account) on February 16, 2016. The Applicant received an automatic reply to both of his email requests which stated:

Thank you for your message.

Your email has been received.

A representative of [the Organization] will be contacting you shortly.

If you would like to contact your broker directly also here is a link to our branch directory [link].

[para 2] The Applicant complains that the Organization has not responded to the access request. The Applicant requested review by the Commissioner of the Organization's lack of response to the access request.

[para 3] On March 17, 2016, the Office of the Information and Privacy Commissioner issued a Notice of Inquiry. I received submissions from the Organization.

II. RECORDS AT ISSUE

[para 4] As the only issue in this inquiry is the time limit for responding to the Applicant's access request, there are no records directly at issue.

III. ISSUE

[para 5] The Notice of Inquiry dated March 17, 2016 state the issue in this inquiry as follows:

Did the Public Body comply with section 28 of the Act (time limit for responding)?

IV. DISCUSSION OF ISSUE

Did the Organization comply with section 28 of the Act (time limit for responding)?

[para 6] In its submission, the Organization states:

1. We did not respond to the communication received from Mr. Sharma, as no notification was received to myself, the Privacy Officer for [the Organization] or to privacy@landy.ca. - the email that is set up to handle this type of inquiry.

2. [The Applicant] was notified previously by [an employee] of our corporation that any email sent to our organization from [the Applicant] was blocked. [The Applicant] did receive an auto reply from an unmonitored email address that his message was received that is provided for clients of [the Organization] and not intended for this purpose. As [the Applicant] is not a client, no further action was taken to this inquiry as no broker attached. We did not receive a copy of this(these) complaint(s) by regular or registered mail or any other means.

3. [The Applicant] was not, and has never been, an employee of [the Organization]. He was a contractor to our organization through contract and all matters relating to his dealings with [the Organization] were dealt with through the terms and conditions of that contract. Any response to these inquiries would have contained this as a response.

[para 7] As indicated in the first line of the quote above, the Organization's submissions state that the Applicant's access request (i.e. communication) was received by the Organization. Its receipt of the Applicant's access request was also indicated by the autoreply he was sent. I have no convincing evidence that the Applicant's email was bounced back or never received despite the fact that the Organization told the Applicant that his emails would be blocked.

[para 8] While the Organization's submissions do not clearly state that *someone* looked at the email and then disregarded it because there was "no broker attached", I doubt that emails from individuals who were not clients or did not have an assigned broker were deleted without someone first making that determination. The Applicant's email was to a general account in which the automated reply says "a representative" (not "your broker") will be in contact and also provides a way the writer can *also* contact their broker directly. This seems to indicate that someone would review emails that were sent to that account, no matter if a broker was noted in them or not as opposed to the emails being automatically directed to a client's assigned broker.

[para 9] Finally, the Organization seems to argue that a proper access request would have to be received by the Privacy Officer and sent either to the designated email set up by the Organization or by letter, registered letter or "any other means". Section 26 of the Act sets out the requirements an applicant must follow to make an access request under the Act. It states:

26(1) A request under section 24(1) or 25(1) must

(a) be in writing, and

(b) include sufficient detail to enable the organization, with a reasonable effort, to identify any record in the custody or under the control of the organization containing the personal information in respect of which the request is made.

(2) An applicant who is requesting access to personal information under section 24(1)(a) may ask for a copy of the record containing the personal information or to examine the record.

[para 10] In order to make an access request under the Act, an applicant must have made a request in writing and include sufficient detail to enable an organization to identify the records the applicant is seeking. There is no requirement that an applicant make a request to a particular person within an organization or that the access request be delivered in a particular way. Therefore, I find that the Applicant has made an access request in accordance with section 26 of the Act and that request was received by the Organization.

[para 11] Once the Applicant's access request was received by the Organization, even if it was not received by the Privacy Officer, the Organization must respond to the Applicant's request in the time limits set out in sections 27 and 28 of the Act.

[para 12] Section 28 of the Act states:

28(1) Subject to this section, an organization must respond to an applicant not later than

(a) 45 days from the day that the organization receives the applicant's written request referred to in section 26, or

(b) the end of an extended time period if the time period is extended under section 31.

(2) An organization is not required to comply with subsection (1)(a) if the time period is extended under section 31.

(2.1) The failure of an organization to respond to a request in accordance with subsection (1) is to be treated as a decision to refuse the request.

(3) If an organization asks the Commissioner under section 37 for authorization to disregard a request, the 45-day period referred to in subsection (1) does not include the period from the start of the day in which the request is made under section 37 to the end of the day in which a decision is made by the Commissioner with respect to giving the authorization.

(4) If an applicant asks the Commissioner under section 46 to review a fee estimate, the 45-day period referred to in subsection (1) does not include the period from the start of the day in which the applicant asks for the review to the end of the day in which the decision is made by the Commissioner with respect to the review.

[para 13] The Organization did not respond to the Applicant within 45 days nor is there any indication that a time period extension was requested under section 31 of the Act. Therefore, I find that the Organization failed to meet its timeline under section 28 of the Act.

V. ORDER

[para 14] I make this Order under section 52 of the Act.

[para 15] I find that the Organization did not respond to the Applicant within the time limit set out in section 28 of the Act. While it is too late for the Organization to now comply with that section of the Act, I order the Organization to respond to the Applicant in accordance with the Organization's remaining duties under the Act.

[para 16] I order the Organization 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