

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

DECISION F2017-D-02

September 29, 2017

CITY OF CALGARY

Case File Number 005882

Office URL: www.oipc.ab.ca

Summary: On February 24, 2017, the Applicant wrote a letter to the City of Calgary (the Public Body). She addressed the letter to the Mayor, the City Manager, the City Auditor and the FOIP Coordinator. She began her letter by indicating that she was writing in response to a letter she had received from the Public Body's FOIP Coordinator on January 12, 2017, and as a former employee. In the first three pages of the letter, she discussed prior access requests she had made under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). However, at the bottom of the fourth page, she indicated that she was making an access request for records. The Public Body did not respond to this letter and the Applicant requested review of the Public Body's failure to respond to her access request.

The Public Body informed the Adjudicator and the Applicant that it now realized that the letter of February 24, 2017 was an access request and it had begun processing it as of September 7, 2017. It indicated that it would waive the initial fee.

The Adjudicator decided not to make an order, because making an order would mean that the Public Body would be required to delay its response by 45 days in accordance with section 74(2) of the FOIP Act. However, she reserved jurisdiction to make an order in relation to the timing of the Public Body's response if it became necessary to do so.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 72, 74

I. BACKGROUND

[para 1] On February 24, 2017, the Applicant wrote a letter to the City of Calgary (the Public Body). She addressed the letter to the Mayor, the City Manager, the City Auditor and the FOIP Coordinator. She began her letter by indicating that she was writing in response to a letter she had received from the Public Body's FOIP Coordinator on January 12, 2017 and as a former employee. In the first three pages of the letter, she discussed prior access requests she had made. However, at the bottom of the fourth page, she wrote:

Information I request of The City of Calgary – directly and under Alberta FOIP

Also, please provide me with the following – this is a direct request as well as under Alberta FOIP:

- a) List of information that should be retained in an employee's official employee file in The City of Calgary Human Resources Corporate Records Centre.
- b) The City of Calgary's Employment Policy that is referred to in the Exhibit #37 (of my January 6, 2017 letter, 57 pages & 62+ Exhibits) that is my email dated August 31, 2015 to [the supervisor who terminated me] containing the completed first probationary review form with my comments on it and on the back the probationary review "Probationary / Permanency Status Review and Recommendations" and "Instructions for Use" and that states: "The following is excerpted from The City of Calgary Employment Policy (Section 3108)"
- c) The costs to The City of Calgary concerning my requests for information from October 2015 to the current date.
- d) The costs to The City of Calgary concerning requests for information by the Applicant referred to in Alberta OIPC Order F2016-58 and Alberta OIPC Order F2015-25 (including Request for Review, two inquiries, other) by year to the current date.
- e) The costs to operate The City of Calgary FOIP Office by year for 2014, 2015, and 2016 – with number of staff (full-time and part-time, separately indicated).
- f) The City of Calgary's updated FOIP Statistics: the number of requests received and completed by The City of Calgary by month for 2015, 2016 and 2017 (to date) – with the number of requests completed within 30 days and numbers of reviews by Alberta OIPC. Why isn't this available at The City Online web site [...]?

Given my letter above, I would consider any delay past 30 days by The City of Calgary to be inappropriate.

The Applicant also provided correspondence between this office and the Public Body regarding her previous access requests as attachments to this letter.

[para 2] The Public Body did not respond to the access request portion of the Applicant's letter of February 24, 2017.

[para 3] On May 12, 2017, the Applicant requested that the Commissioner review the Public Body's failure to respond to her request for information in the letter of February 24, 2017.

[para 4] The Commissioner referred the Applicant's request to inquiry.

[para 5] On September 7, 2017, the Public Body contacted the Applicant and this office by email and stated:

The FOIP Office did not understand the applicant's letter of February 24, 2017 to be a request to access information under the Freedom of Information and Protection of Privacy Act (FOIP Act). The applicant has several open OIPC reviews regarding previous FOIP requests, and the FOIP Office believed the February 24, 2017 letter was connected with those reviews. Although the applicant is familiar with the City's forms and processes for submitting a FOIP request, she did not complete the City's standard form, nor submit the standard \$25.00 fee for a general request for information.

It is now evident that the applicant considered her February 24, 2017 letter to be a request to access information. To address this misunderstanding, the FOIP Office will immediately begin processing the applicant's request as if it had been received on September 7, 2017. The FOIP Office will also waive the initial \$25.00 fee associated with this request. We hope these actions will resolve the matter.

II. ISSUE

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

[para 6] 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. 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 7] In its submissions, the Public Body acknowledges that it did not respond to the access request portion of the Applicant's correspondence. However, it explains that it did not understand that the letter of February 24, 2017 was a new access request. It has begun processing the access request, now that it realizes the Applicant intended a portion

of her correspondence to be an access request. It has also taken the step of waiving the \$25 application fee for processing the request.

[para 8] Having reviewed the Applicant's letter of February 24, 2017, I am able to understand why the Public Body did not understand that it was intended to be an access request. The first three and a half pages of the letter refer to and comment on the Public Body's FOIP processes, the manner in which it processed her previous access requests, and also make reference to her employment with the Public Body. It may have been the case that the FOIP unit assessed the letter as a complaint and determined it best for one of the other parties to whom the letter was addressed to respond to it, rather than to respond itself. I suggest to the Applicant that for future access requests, it may be helpful to either use a public body's access request forms, or to clearly mark the front of correspondence as an access request, to avoid the possibility that a public body may not understand correspondence to be an access request.

[para 9] That being said, the access request portion of the request was clearly marked in the letter of February 24, 2017 and the letter was not so lengthy as to make it overly difficult to identify the access request portion. It was therefore incumbent on the Public Body to respond to the access request. The Public Body has acknowledged that it has not yet met its duty to respond to the Applicant, and has begun processing the access request. It has also taken the additional step of waiving the \$25 fee.

[para 10] The Public Body has begun processing the Applicant's request of February 24, 2017. Given that it is treating September 7, 2017 as the date it received the request, the Applicant can expect its response in by October 9, 2017. However, if I were to order the Public Body to respond, the Public Body would be required by section 74(2) of the FOIP Act not to comply with my order until a period of 45 days has passed. The earliest the Public Body could respond in the event I made an order would be approximately November 20, 2017. I have therefore decided not to make an order at this time, to enable the Public Body to finish processing the access request and to respond to the Applicant, as this will enable the Applicant to receive a more timely response. However, I will reserve jurisdiction to make an order in this case should the time taken to process this request exceed the 30 days mandated by the FOIP Act.

III. INTERIM DECISION

[para 11] I have decided not to make an order disposing of the issue for inquiry at this time. However, I require the Public Body to provide me with a copy of its response to the Applicant when it makes it, and I reserve jurisdiction to make an order in relation to section 11 if the circumstances require it.

Teresa Cunningham
Adjudicator