

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

DECISION F2018-D-03

October 23, 2018

CITY OF CALGARY

Case File Number 009451

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request dated August 4, 2017, to the City of Calgary (the Public Body). The Applicant requested a review of the time taken by the Public Body to respond. The Public Body acknowledged it had failed to comply within the legislated timelines. It undertook to respond by October 31, 2018.

The Adjudicator found the Public Body had failed to meet its duty under section 11 of the Act. She directed the Public Body to provide her with a copy of the response it provided to the Applicant, and reserved jurisdiction to make any necessary orders in regard to section 11.

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

Cases Cited: AB: Order F2018-14.

I. BACKGROUND

[para 1] On August 10, 2017, the Public Body received a request from the Applicant for access to records. The request was for "All records pertaining to the handling of FOIP request 2015-G-0218 filed by [the Applicant] regarding 2 reports."

[para 2] On August 11, 2017, the Public Body asked the Applicant to clarify the request. The Applicant clarified his request on August 11, 2017 to indicate that he wanted the access request to include all information regarding the Public Body's internal handling of his FOIP request including: i) the Public Body's initial processing of this request, ii) the OIPC's initial review (i.e. mediation) of this request, and iii) the OIPC's Inquiry held for this request. The Applicant also clarified that his request did not include the Public Body's correspondence with the OIPC.

[para 3] On September 7, 2017, the Public Body requested authorization from the OIPC to disregard the request pursuant to sections 55(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"). On April 13, 2018, the Alberta Information Privacy Commissioner issued a decision which required the Public Body to respond the Applicant's request.

[para 4] According to the Public Body, there were a large number of records (approximately 1,900 pages) responsive to the request. As well it said that Order F2018-14 substantially affected the manner in which the Public Body was to process and review the records (by which I presume it meant that the process would be time-intensive). However, the Public Body said that due to an administrative oversight, it did not seek an extension of time in order to respond to the request. It indicated that it continues to process these records in accordance with Order F2018-14 and the Section 55 decision issued by the OIPC (#006490).

[para 5] The Public Body acknowledged it did not provide a response to the Applicant within the legislated timelines set out in the FOIP Act, and apologized for the delay. The Public Body said it expects to provide a response by October 31, 2018.

II. RECORDS AT ISSUE

[para 6] 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 7] The Notice of Inquiry, dated September 18, 2018, 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 8] 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. 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 9] Given the facts provided by the Public Body, and its failure to request an extension of time due to an oversight, I find that the Public Body failed to make every reasonable effort to respond within the timelines set out in section 11 of the Act.

[para 10] As already noted, 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, indicating a response date of October 31, 2018. If I were to order the Public Body to respond, it 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. 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 it fail to provide a response in accordance with its undertaking.

V. 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 cover letter responding to the Applicant when it responds to him. The Applicant may notify me if he does not receive a response by October 31, 2018, and I reserve jurisdiction to make an order in relation to section 11 if the circumstances require it.

Christina Gauk, Ph. D.
Adjudicator and Director of Adjudication