

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-01

January 14, 2022

HEALTH

Case File Number 023626

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Health (the Public Body) for studies, reports, statistics or other relevant information used to drive the decision to make mask wearing mandatory for children in school settings. The Public Body did not respond to the access request within statutory time limits. The Adjudicator ordered the Public Body to respond to the access request.

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

I. BACKGROUND

[para 1] On August 10, 2020, the Applicant made an access request to Health (the Public Body) for the following records:

All studies, reports, statistics or other relevant information used to drive the decision by government of Alberta to make mask wearing mandatory for children in school settings.

[para 2] The Public Body did not respond to the Applicant. On August 18, 2021, the Commissioner received the Applicant's request for review of the Public Body's failure to respond to the access request. The Commissioner referred the matter directly to inquiry.

II. ISSUE

Did the Public Body meet its duty to the Applicant as provided by section 11 of the Act (time limit for responding)?

[para 3] 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 4] Section 11 of the FOIP Act deems a failure to respond to an access request within 30 days, or an extended period permitted by the Act, to be a refusal to give access to requested records.

[para 5] In its submissions, the Public Body acknowledged that it has not responded to the Applicant. It explained that it has difficulty staffing its office, in part because of the training required for new employees who must be versed in both the FOIP Act and the *Health Information Act* and in part due to attrition. The Public Body has experienced an increase in access requests, given its role in managing the COVID-19 pandemic in Alberta. At the same time, despite its efforts to staff its FOIP office adequately, it continues to lack the employees it needs to respond to the increased volume of access requests. I acknowledge that the causes of the Public Body's difficulties in staffing its offices and processing access requests are likely multifactorial.

[para 6] The Public Body asked that I not make an order as it is currently processing the Applicant's access requests and anticipates being able to respond soon. However, the Public Body did not provide an anticipated date for its response. As the Public Body has not responded to the Applicant's access request, and as it has a mandatory duty to respond to the Applicant within the time limits set out in section 11, I must make an order under section 72 of the FOIP Act directing the Public Body to respond to the Applicant.

III. ORDER

[para 7] I make this order under section 72 of the Act.

[para 8] I order the Public Body to respond to the Applicant as required by section 11 of the FOIP Act.

[para 9] I order the Public Body to inform me with fifty days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator
/kh