

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-15

March 10, 2022

KENSINGTON BUSINESS REVITALIZATION ZONE

Case File Number 022125

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access to information request under the *Freedom of Information and Protection of Privacy Act* (the Act). The access request was initially made to the City of Calgary, which transferred it to the Kensington Business Revitalization Zone (the Public Body). The Public Body failed to respond to the access request within the timelines set in section 11(1) of the Act. The response to the access request was delayed by uncertainty over whether the Act applied to the Public Body and logistical difficulties.

The Adjudicator found that the Public Body is a public body under the Act, and that it failed to meet the timelines in section 11(1). Since the Public Body responded to the access request during the Inquiry, the Adjudicator did not order it 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. 1(i), 1(i)(i), 1(i)(xii), 1(j), 1(j)(iii), 1(p), 1(p)(vii), 11, 14, 72; *Municipal Government Act*, R.S.A. 2000, c. M-26 ss. 50, 51; *Business Improvement Area Regulation*, AR 93/2016 s. 5(2)(d).

I. BACKGROUND

[para 1] On May 21, 2021, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the City of

Calgary. The access request specifically sought records from the Director of the Kensington Business Revitalization Zone (the Public Body). Accordingly, on May 21, 2021, the City of Calgary transferred the access request to the Public Body.

[para 2] On July 12, 2021, having not received any records in response to his access request, the Applicant filed a request for review with this Office. The Information and Privacy Commissioner moved this matter directly to Inquiry to address the question of the timeliness of the Public Body’s response.

II. ISSUES

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

III. DISCUSSION OF ISSUES

[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] The Public Body admits that it failed to comply with section 11. It points to several extenuating circumstances that played a role in that turn of events.

[para 5] Upon receipt of the access request, the question of whether the Act applies to the Public Body, as a business revitalization zone, arose. Before acting on the access request, the Public Body obtained a legal opinion on that question, and concluded that it does. I agree that it does.

[para 6] Sections 50 and 51 of the *Municipal Government Act*, R.S.A. 2000, c M-26 (the MGA) permit a city council to create business improvement areas which are governed by incorporated boards¹. Sections 50 and 51 of the MGA state,

50 A council may by bylaw establish a business improvement area for one or more of the following purposes:

¹ “Business Improvement Area” is the current terminology under the MGA. At the time when the Public Body was created, the term used in the MGA was “Business Revitalization Zone.” The Public Body’s name, per bylaw 56M2016 is “Kensington Business Improvement Zone.”

(a) *improving, beautifying and maintaining property in the business improvement area;*

(b) *developing, improving and maintaining public parking;*

(c) *promoting the business improvement area as a business or shopping area.*

51(1) A business improvement area is governed by a board consisting of members appointed by council under the business improvement area bylaw.

(2) The board is a corporation.

[para 7] Pursuant to section 5(2)(d) of the *Business Improvement Area Regulation*, AR 93/2016, the City of Calgary also establishes the board for the Public Body.

[para 8] As stated by the Public Body, the City of Calgary enacted several bylaws that created the Public Body pursuant to sections 50 and 51 of the MGA. As explained by the Public Body,

The Public Body is a non-profit society incorporated pursuant to the *Societies Act*, RSA 2000, c S-14 (the "*Societies Act*"), established by City of Calgary Bylaw 23M85 (repealed) and continued on pursuant to Bylaw 56M2016, signed November 28, 2016.

[para 9] As a corporation created by a municipality, the Public Body is a public body under the Act. The definition of "public body" in section 1(p) of the Act includes a "local public body" in subsection 1(p)(vii). "Local Public Body" is defined in section 1(j) which includes "a local government body" in subsection 1(j)(iii). "Local Government Body" is defined in section 1(i) and includes a municipality in subsection 1(i)(i), and any corporation created or owned by a municipality (or any other body referred to in sections 1(i)(i) through (xi) in subsection 1(i)(xii). Subsection 1(i)(xii) also stipulates that all members or officers of the local public body must be chosen or appointed by a body referred to sections 1(i)(i) through (xi). In this case, all of the members of the board of governors of the Public Body are appointed by resolution of the Calgary City Council. Accordingly, the Public Body is a public body under the Act.

[para 10] After determining that it is a public body, the Public Body faced logistical difficulties in responding to the access request. The Public Body has only one staff employee, its Executive Director, and no staff at all dedicated to responding to access requests. The Public Body eventually retained legal counsel to assist with processing the request. In the course of this Inquiry, the Applicant finally received a response to it.

[para 11] While there were extenuating circumstances that delayed the response to the access request, section 11(1) of the Act applies regardless. A public body's ability to extend time to respond to an access request is set out in section 14 of the Act, which does not appear to have been engaged by the Public Body in this case. I find that the Public Body failed to comply with section 11 of the Act.

IV. ORDER

[para 12] I make this Order under section 72 of the Act.

[para 13] 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.

John Gabriele
Adjudicator
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