

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-21

April 8, 2022

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number 024982

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request to Alberta Justice and Solicitor General (Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) dated November 24, 2018. The Public Body extended its time to respond under section 14(1)(b) of the Act, and subsequently sought permission from the Commissioner for a further extension under that Act.

By December 30, 2021, the Public Body had not responded to the Applicant's request and the Applicant requested a review of the Public Body's failure to respond.

The Adjudicator ordered the Public Body to respond to the Applicant's access request as required by the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 14, 72.

Authorities Cited: **AB:** Order F2018-65

I. BACKGROUND

[para 1] The Applicant made an access request to Alberta Justice and Solicitor General (Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) dated November 25, 2018.

[para 2] The Public Body apparently responded to the Applicant by letter dated February 15, 2019, which confirmed the updated scope of the request. I do not have a copy of this letter; however, it was referenced in a later letter from the Public Body to the Applicant dated March 1, 2019. In the March 1 letter, the Public Body informed the Applicant that it was extending its time to respond to his request by 30 days, as authorized under section 14(1)(b) of the Act.

[para 3] The Public Body also provided me with a copy of a letter sent to the Applicant dated April 29, 2019, informing the Applicant that it had sought permission from the Commissioner to extend its time to respond to the Applicant by a longer period, under section 14(1)(b) of the Act. The Public Body did not provide me with any subsequent correspondence in this regard.

[para 4] On December 30, 2021 this Office received a request from the Applicant to review the Public Body's failure to respond to the request.

II. RECORDS AT ISSUE

[para 5] 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 6] The Notice of Inquiry, dated March 17, 2022, 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 7] 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 14 sets out circumstances in which this time can be extended. Section 11 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 8] Section 14 states, in part:

14(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

- (a) the applicant does not give enough detail to enable the public body to identify a requested record,*
- (b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,*
- (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or*
- (d) a third party asks for a review under section 65(2) or 77(3).*

[para 9] In its submission, the Public Body acknowledges that it failed to respond to the Applicant within the time frame set out in section 11 of the Act. The Public Body also states:

The Public Body missed the deadline for which it could extend the time limit for responding to this request under section 14 of the FOIP act; therefore no extension could be taken.

In response to the Notice of Inquiry, the Public Body made this file a priority and is actively processing this request. It expects to be able to respond to the Applicant in the near future.

[para 10] The Public Body must make every reasonable effort to respond to an access request in 30 days, subject to extensions under section 14. Given the expiration of the Public Body's extended deadline, and the Public Body's acknowledgement that it did not comply with section 11 of the Act, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

[para 11] In its submission, the Public Body explains the steps it has taken to respond to FOIP requests more efficiently. It states that these steps "will help to alleviate the back log of late files, however, the impact will not be immediate." It makes the following request regarding its time to comply with this Order:

The Public Body fully expects the adjudicator to issue an Order directing it to respond to this request by a specific date. The Public Body respectfully requests that the above information be taken into consideration, when selecting that date.

[para 12] Past Orders of this Office have addressed the time to comply with Orders; In Order F2018-65 I said:

Regarding the Public Body's request for a date of compliance with this Order, I have addressed similar requests in Orders F2017-68, F2017-69, F2018-28 and F2018-44. The time for complying with an Order is set out in the Act as 50 days (section 74(1)). Even

where a public body has valid reasons for requesting further time to comply, I cannot alter that time limit set out in the Act.

[para 13] In other words, I have no authority under the Act to select a due date for the Public Body's compliance.

V. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. While it is too late for the Public Body to now comply with that section of the Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act.

[para 16] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator