

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-32

June 30, 2022

CITY OF EDMONTON

Case File Number 026195

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request to the City of Edmonton (Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) dated April 26, 2021. The Public Body extended its time to respond under section 14(1) of the Act.

By June 1, 2022, 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, 12, 14, 16, 17, 72.

Authorities Cited: AB: Orders F2011-003, F2013-37

I. BACKGROUND

[para 1] The Applicant made an access request to the City of Edmonton (Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act) dated April 26, 2021. The Public Body states that this request was clarified on April 30, 2021.

[para 2] The Public Body states that it informed the Applicant on May 27, 2021, that it was extending its time to respond to the request by 30 days, under section 14(1)(b) of the Act. The Public Body communicated with the Applicant regarding its progress on the request on June 30, July 29, September 3, October 26, and December 2, 2021, as well as May 18, 2022. None of these communications involved a response to the Applicant under section 12 of the Act.

[para 3] On June 1, 2022, the Applicant requested a review review of the Public Body's failure to respond to the request.

II. RECORDS AT ISSUE

[para 4] 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 5] The Notice of Inquiry, dated June 2, 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 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. 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 7] 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 8] 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 states that it has begun to conduct its third party consultations anew, “as a significant amount of time has elapsed since the Public Body first reached out to third parties regarding the Applicant’s Request” (submission, at para. 11).

[para 9] 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 10] In its submission, the Public Body states (at para. 12):

The Public Body will endeavor to meet the prescribed timelines under the Act in respect of the reprocessing of the Applicant’s Request in accordance with sections 30 and 31 of the Act and will notify both the Applicant and OIPC. Pending no third party request for review, a response will be provided on August 16, 2022.

[para 11] If a third party requests a review by this Office of any decision made by the Public Body to disclose information relating to the third party, the Public Body cannot disclose the information at issue until such time as that review is complete.

[para 12] That said, in Order F2011-003, former Commissioner Work found that the FOIP Act does not permit a public body to cease processing an access request pending the outcome of a review of the application of section 16(1) (see also Order F2013-37). The same would be true of a review of the application of section 17(1). Therefore, the Public Body can provide a final response under section 12 with respect to any records not subject to a third party request for review.

V. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] 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 15] 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