

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-41

September 14, 2022

JUSTICE AND SOLICITOR GENERAL

Case File Number 025691

Office URL: www.oipc.ab.ca

Summary: On May 9, 2021, Justice and Solicitor General (the Public Body) received an access request from an applicant (the Applicant) under the *Freedom of Information and Protection of Privacy Act* (the Act).

On January 25, 2022, the Applicant requested a review by this Office, indicating that the time limit for responding to the request under the Act had expired and the Public Body had not provided a response.

The Adjudicator found that the Public Body did not comply with section 11 of the Act. The Adjudicator ordered the Public Body to respond to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 12, 14, 72 and 74.

I. BACKGROUND

[para 1] On May 9, 2021, Justice and Solicitor General (the Public Body) received an access request from an applicant (the Applicant) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) for certain information.

[para 2] On January 25, 2022, the Applicant requested a review by this Office, indicating that the time limit for responding to the request under the Act had expired and the Public Body had not provided a response.

[para 3] The Commissioner decided to move the matter directly to inquiry and delegated her authority to conduct the inquiry to me.

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 August 19, 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 not 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 7] In its submission in this inquiry, the Public Body provided a chronology of the steps it had taken to process this request. In particular, I note that the Public Body advised that on July 15, 2021, it requested a time extension from the Commissioner (under section 14) and the Commissioner denied the Public Body's request.

[para 8] The Public Body acknowledged in its submission that it did not comply with section 11 of the Act.

[para 9] The Public Body advised that it had made this file a priority and was actively processing it and expected to be able to respond to the Applicant in the near future. In its chronology of the steps it had taken, the Public Body advised that the "File is in record

processing stage. Public body consultation is required with eight (8) other public bodies. These are currently underway.”

[para 10] The Public Body also advised that as it was late in responding, it would refund the Applicant’s fee deposit.

[para 11] The Public Body has acknowledged that it did not comply with section 11 of the Act. As the Public Body has not yet responded to the access request within the time set out in section 11 of the Act, I find that the Public Body did not comply with section 11 of the Act.

[para 12] As the Public Body has not responded to the access request, I must make an order directing the Public Body to respond to the Applicant.

[para 13] Section 12 of the Act sets out what a public body must tell an applicant in a response under section 11. It states:

12(1) In a response under section 11, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or part of the record is refused,*
 - (i) the reasons for the refusal and the provision of the Act on which the refusal is based,*
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant’s questions about the refusal, and*
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of

- (a) a record containing information described in section 18 or 20, or*
- (b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party’s personal privacy.*

[para 14] The Public Body has advised that the file is in the record processing stage and that it is currently consulting with eight other public bodies.

[para 15] Section 74(1) of the Act provides that subject to subsection (2), not later than 50 days after being given a copy of an order of the Commissioner, the head of a public body concerned must comply with the order.

[para 16] Accordingly, subject to section 74(2), the Public Body must make a decision about whether to grant access to responsive records, including the records that are the subject of its consultations with the eight other public bodies, and inform the Applicant of its decision in its response not later than 50 days after being given a copy of this order.

V. ORDER

[para 17] I make this Order under section 72 of the Act.

[para 18] 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. The Public Body's response is to include its decision on whether to give access to the records that are the subject of its consultations with the eight other public bodies.

[para 19] I further order the Public Body to notify me and the Applicant in writing, not later than 50 days after being given a copy of this Order, that it has complied with the Order.

Carmen Mann
Adjudicator