

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-59

November 30, 2022

JUSTICE

Case File Number 027807

Office URL: www.oipc.ab.ca

Summary: On September 2, 2020, an applicant (the Applicant) made an access request to Justice (formerly Justice and Solicitor General) (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act).

On June 22, 2022, the Applicant requested a review by this Office, indicating that the time limit for responding to the access request under the Act had expired and the Public Body had not provided a response.

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, 72 and 74.

I. BACKGROUND

[para 1] On September 2, 2020, an applicant (the Applicant) made an access request to Justice (formerly Justice and Solicitor General) (the Public Body) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) for certain information. The Applicant requested a fee waiver from the Public Body on the basis that the records were in the public interest.

[para 2] On October 2, 2020, the Public Body extended the time to provide a response to the Applicant by an additional 30 days under section 14(1)(b) of the Act, due to the volume of records. The new due date was November 2, 2020.

[para 3] On October 5, 2020, the Public Body denied the Applicant's request for a fee waiver.

[para 4] On October 30, 2020, the Public Body requested permission from the Commissioner under section 14 of the Act to further extend the time to respond to the Applicant. On November 19, 2020, the Commissioner granted the Public Body a 90 day extension. The new due date was February 1, 2021.

[para 5] On January 29, 2021, the Public Body sent a second time extension request under section 14 of the Act to the Commissioner, for an additional 90 days. On March 4, 2021, the Commissioner granted the second extension of 90 days. The new due date was May 3, 2021.

[para 6] On March 19, 2021, the Public Body sent a letter notifying the Applicant of the second time extension granted by the Commissioner.

[para 7] On April 30, 2021, the Public Body sent a third time extension request under section 14 of the Act to the Commissioner, for an additional 90 days. On May 10, 2021, the Commissioner granted the third extension of 90 days. The new due date was August 3, 2021.

[para 8] On July 30, 2021, the Public Body provided the Applicant with a fee estimate.

[para 9] On August 27, 2021, the Applicant requested a fee waiver and provided additional information and rationale for the fee waiver request.

[para 10] On September 28, 2021, the Public Body informed the Applicant that it was granting her application for a fee waiver and that she could expect a response on or before September 29, 2021 unless the time limit was extended under section 14 of the Act.

[para 11] On June 22, 2022, the Applicant requested a review by this Office, indicating that the time limit for responding to the access request under the Act had expired and the Public Body had not provided a response.

[para 12] 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 13] 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 14] The Notice of Inquiry, dated November 4, 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 15] 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 16] Section 12(1) of the Act sets out what a public body must include in its response. 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 it is refused,*
 - (i) the reasons for the refusal and the provision of this 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.*

[para 17] Section 14 of the Act states:

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).*

(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other.

(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 30 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 31.

(4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant

- (a) the reason for the extension,*
- (b) when a response can be expected, and*
- (c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.*

[para 18] The Public Body took an initial 30 day extension under section 14(1)(b) of the Act, due to the volume of records. It then made three time extension requests to the Commissioner under section 14, to extend the time to respond to the Applicant.

[para 19] In its third time extension request, made on April 30, 2021, the Public Body asked the Commissioner for permission to extend the time for responding to the Applicant by an additional 90 days. On May 10, 2021, the Commissioner granted the Public Body's third time extension request for 90 days. The new due date for the Public Body to respond to the Applicant was August 3, 2021.

[para 20] On July 30, 2021, the Public Body provided the Applicant with a fee estimate.

[para 21] On August 27, 2021, the Applicant requested a fee waiver and provided additional information and rationale for the fee waiver request.

[para 22] On September 28, 2021, the Public Body informed the Applicant that it was granting her application for a fee waiver and that she could expect a response on or before September 29, 2021 unless the time limit was extended under section 14 of the Act.

[para 23] The Public Body did not make any further requests for permission from the Commissioner under section 14 to extend the time to respond to the Applicant. Accordingly, the Public Body's response to the Applicant was due by September 29, 2021.

[para 24] Although the Public Body has corresponded with the Applicant, it has not yet provided the Applicant with a response to her access request as required under sections 11 and 12 of the Act.

[para 25] In its submission, the Public Body stated:

In response to the Notice of Inquiry dated November 4, 2022, the Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*.

The Public Body has made this file a priority and is actively processing it and expects to be able to respond to the Applicant in the near future.

[para 26] Given that the time limit for the Public Body to provide a response to the Applicant under the Act has expired, and the Public Body has not provided a response to the Applicant, and the Public Body has acknowledged that it did not comply with section 11 of the Act, I find that the Public Body failed to comply with the time limits set out in the Act.

[para 27] As the Public Body has yet to respond to the Applicant, I must order it to respond to the Applicant.

[para 28] 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.

V. ORDER

[para 29] I make this Order under section 72 of the Act.

[para 30] I find that the Public Body failed to 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 31] 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