

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-60

December 13, 2022

INDIGENOUS RELATIONS

Case File Number 027741

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Indigenous Relations (the Public Body). The Public Body extended time to respond to the access request under section 14(1)(b) and obtained a further extension to the deadline to respond from the Information and Privacy Commissioner, also pursuant to section 14(1)(b). The Public Body failed to respond to the access request within the extended time period. The Applicant complained that the Public Body failed to comply with section 11 of the Act (time to respond).

The Public Body admitted that it failed to comply with section 11. The Adjudicator ordered the Public Body to respond to the access request in accordance with its remaining duties under the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 11, 14(1)(b), 72; *Interpretation Act*, R.S.A. 2000, c. I-8, s. 22.

I. BACKGROUND

[para 1] On December 15, 2021, an individual (the Applicant) sent an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to Indigenous Relations (the Public Body) for certain information. The Public Body received the access request on December 16, 2021.

[para 2] On December 17, 2021, the Public Body clarified the access request with the Applicant.

[para 3] In its submission, the Public Body states that on January 10, 2022, it notified the Applicant that it was extending the time limit to respond by 30 days, under section 14(1)(b) of FOIP. I note that in a letter to the Applicant, dated March 29, 2022, the Public Body states,

In the letter dated January 10, 2022, we advised you that the response due date for our request was extended to March 7, 2022.

[para 4] On March 2, 2022, the Public Body requested a further extension to the time to reply from the Information and Privacy Commissioner (the Commissioner). A 90-day extension was granted, to June 3, 2022.

[para 5] On March 29, 2022, the Public Body sent another letter to the Applicant informing him of the extension granted by the Commissioner. The Public Body stated that it would make every reasonable effort to respond to the access request by June 3, 2022.

[para 6] On May 30, 2022, the Public Body submitted a second extension request to the Commissioner, but, it was not granted.

[para 7] To date, the Applicant has not received any responsive records from the Public Body. The Public Body states that it has made the access request a priority, and expects to provide a response to the access request in the near future.

[para 8] The Commissioner decided to move the matter directly to inquiry and delegated her authority to conduct the inquiry to me.

II. ISSUES

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

III. DISCUSSION OF ISSUES

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

[para 9] 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 10] Section 14(1)(b) of the Act, under which the Public Body extended time to respond to the access request, 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

...

(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,

[para 11] The Public Body admits that it failed to comply with section 11; I agree.

[para 12] Under section 11, the Public Body had 30 days from December 16, 2021 to respond. Under section 14(1)(b) it was able to extend that deadline for another 30 days. It appears that the Public Body understood that these two provisions allowed it until March 7, 2022 to respond to the access request, which is more than 60 days from December 16, 2021. The Public Body does not explain how it arrived at that conclusion. Nothing in the computation of time provisions in section 22 of the *Interpretation Act*, RSA 2000, c. I-8 seems to account for the discrepancy. Despite this discrepancy, the Public Body obtained a 90-day extension, and did not respond by that time either. Accordingly, the Public Body failed to comply with section 11 of the Act.

IV. 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.

John Gabriele
Adjudicator