

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-61

December 19, 2022

PUBLIC SAFETY AND EMERGENCY SERVICES

Case File Number 027643

Office URL: www.oipc.ab.ca

Summary: On July 30, 2021, an applicant (the Applicant) made an access request to Public Safety and Emergency Services (formerly Justice and Solicitor General) (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act), for certain information.

On November 4, 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 July 30, 2021, an applicant (the Applicant) made an access request to Public Safety and Emergency Services (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.

[para 2] On August 30, 2021, the Public Body acknowledged receipt of the Applicant's access request and informed him that as his request involved a large number of records, it was

extending the due date to respond to his request by 30 days as permitted under section 14(1)(b) of the Act. The new due date was September 28, 2021.

[para 3] On September 28, 2021, the Public Body sent the Applicant a fee estimate.

[para 4] On November 1, 2021, the Public Body informed the Applicant that an additional extension of 120 days had been granted by the Information and Privacy Commissioner under section 14(1)(b) of the Act (large volume of records). The new due date was February 11, 2022.

[para 5] On March 3, 2022, the Public Body wrote to the Applicant and stated:

Further to our telephone conversation on March 3, 2022, we are returning your cheque in the amount of \$275 (enclosed) for the estimated balance owing, as the final amount may be adjusted once the request is complete. We will communicate what the final amount will be at that time.

[para 6] On November 4, 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 7] 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 8] 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 9] The Notice of Inquiry, dated November 28, 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 10] 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 11] 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 12] 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 13] The Public Body received the Applicant's access request on July 30, 2021. Pursuant to section 11 of the Act, the Public Body's response was due by August 30, 2021. On August 30, 2021, it informed the Applicant that it was taking a 30 day extension to respond to the Applicant under section 14(1)(b) of the Act, due to the volume of records. The new due date was September 28, 2021.

[para 14] On September 28, 2021, the Public Body sent the Applicant a fee estimate.

[para 15] On November 1, 2021, the Public Body informed the Applicant that an additional extension of 120 days had been granted by the Information and Privacy Commissioner under section 14(1)(b) of the Act (large volume of records). The new due date was February 11, 2022.

[para 16] 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 February 11, 2022.

[para 17] On March 3, 2022, the Public Body wrote to the Applicant and stated:

Further to our telephone conversation on March 3, 2022, we are returning your cheque in the amount of \$275 (enclosed) for the estimated balance owing, as the final amount may be adjusted once the request is complete. We will communicate what the final amount will be at that time.

[para 18] On November 4, 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 19] Although the Public Body has corresponded with the Applicant, it has not yet provided the Applicant with a response to his access request as required under sections 11 and 12 of the Act.

[para 20] In its submission, the Public Body stated:

The Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*. The Public Body is actively processing this request.

[para 21] 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 22] As the Public Body has yet to respond to the Applicant, I must order it to respond to the Applicant.

[para 23] 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 24] I make this Order under section 72 of the Act.

[para 25] 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 26] 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