

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2023-21

May 24, 2023

CITY OF EDMONTON

Case File Number 029753

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), which was clarified on April 27, 2022.

By March 23, 2023, the Public Body had not completely 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, 14, 30, 31, 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), which was clarified on April 27, 2022.

[para 2] With its initial submission, the Public Body provided a timeline relating to this request. It states that by letter dated May 18, 2022, the Public Body informed the Applicant it was extending its time to respond by 30 days, per section 14(1)(b) of the Act. The new deadline for the Public Body's response was stated to be June 20, 2022.

[para 3] By letter dated June 16, 2022, the Public Body advised the Applicant that it was seeking permission from the Commissioner to extend its deadline by a further 60 days. The Commissioner granted permission for this extension, with a new deadline of August 17, 2022.

[para 4] By email dated August 5, 2022, the Public Body advised the Applicant that it was seeking permission from the Commissioner to extend its deadline, which was granted. The new deadline was October 17, 2022.

[para 5] By email dated October 13, 2022, the Public Body advised the Applicant that it was seeking permission from the Commissioner to extend its deadline; this extension was also granted. The new deadline was January 16, 2023. The Public Body also advised the Applicant in its October 13 email, that it was conducting third party consultations with respect to its "first response package".

[para 6] By letter dated December 15, 2022, the Public Body notified the Applicant that the access request contained information that may affect the interests of a third party. The Public Body stated that it would be providing the third party with an opportunity to make representations about disclosure of the records, and would make a decision by January 13, 2023.

[para 7] By letter dated January 13, 2023, the Public Body notified the Applicant that, with respect to its first response package, it had decided to grant partial access to records. It notified the Applicant that the third party had 20 days to request a review of this decision by this Office.

[para 8] By letter dated February 3, 2023, the Public Body informed the Applicant that it received notice from this Office that the third party had requested a review of the Public Body's decision to provide access. As such, the Public Body was extending its time to provide its first response package (pages 1-965) to the Applicant, under section 14(1)(d) of the Act.

[para 9] By email dated January 13, 2023, the Public Body advised the Applicant that it was seeking permission from the Commissioner to extend its deadline to respond to the remainder of the Applicant's request. By email dated February 3, 2023, the Public Body notified the Applicant this request was denied by the Commissioner. The Public Body stated that it continues to process the request, and anticipates providing an update on the second response by March 30, 2023.

[para 10] On March 23, 2023, the Applicant requested a review review of the Public Body's failure to respond to the request.

II. RECORDS AT ISSUE

[para 11] 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 12] The Notice of Inquiry, dated April 26, 2023, 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 13] 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 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 14] Section 14 of the FOIP Act, referred to in section 11(1)(a), authorizes the Public Body to extend the time for responding to an access request. It 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).

[...]

(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 [...]

[para 15] Section 31, to which section 14(3) refers, states:

31(1) Within 30 days after notice is given pursuant to section 30(1) or (2), the head of the public body must decide whether to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) 21 days after the day notice is given, and

(b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision, including reasons for the decision, to the applicant and the third party.

(3) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (2) must state that the applicant will be given access unless the third party asks for a review under Part 5 within 20 days after that notice is given.

(4) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (2) must state that the applicant may ask for a review under Part 5.

[para 16] The Public Body must make every reasonable effort to respond to an access request in 30 days, subject to time extensions under section 14. In this case, the Applicant's request was clarified and finalized on April 27, 2022. The Public Body extended its time to respond on its own, and obtained permission from the Commissioner for several additional extensions. The Public Body's final extension was to January 16, 2023.

[para 17] Some responsive records are subject to a request for review made to this Office (specifically, records in the first response package). Those records cannot be released to the Applicant, pending the outcome of that process.

[para 18] 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 (at para. 23).

[para 19] Given the expiration of the Public Body's extended deadlines, 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 20] The Public Body's explanation of the responsive records indicates that many of the records will require third party consultations. Where 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 that information at issue until such time as that review is complete.

[para 21] However, it is also not clear from the information before me that *all* of the responsive records contain information relating to the third party.

[para 22] 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).

[para 23] Records that do not contain information relating to the third party are not awaiting a decision from a third party regarding whether to request a review of the Public Body's decision; nor are they awaiting the results of any review requested by a third party. As such, there is no reason for the Public Body not to provide those records to the Applicant, subject to the application of exceptions (or to have done so already). If there are responsive records that do not contain information relating to a third party and the Public Body has not provided the Applicant with a response with respect to those records, it is obliged to do so.

V. ORDER

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

[para 25] 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 obligations under the Act.

[para 26] 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