

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2023-22

May 25, 2023

UNIVERSITY OF CALGARY

Case File Number 030129

Office URL: www.oipc.ab.ca

Summary: On January 24, 2023, an applicant (the Applicant) made an access request to the University of Calgary (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act), for certain information.

On April 26, 2023, 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, 15, 72 and 74.

I. BACKGROUND

[para 1] On January 24, 2023, an applicant (the Applicant) emailed his access request to the University of Calgary (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 January 26, 2023, the Public Body informally acknowledged receipt of the Applicant's access request. On January 30, 2023, the Public Body formally acknowledged

receipt of the Applicant's access request and asked certain questions to clarify the Applicant's access request. The Public Body received clarification of the Applicant's access request on February 2, 2023.

[para 3] On April 26, 2023, 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 4] 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 5] 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 6] The Notice of Inquiry, dated April 28, 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 7] 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 8] 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 9] 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 10] Section 11 of the Act requires a public body to respond to an applicant not later than 30 days after it receives the applicant's access request, unless that time limit is extended under section 14, or the request has been transferred under section 15 to another public body.

[para 11] The Applicant submitted his access request to the Public Body on January 24, 2023. On April 26, 2023, 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] In its submission, the Public Body stated:

The Applicant filed a request for his personal information on January 24, 2023. The University of Calgary acknowledges that, due to the high volume and complexity of the records requested, we have been unable to complete the processing of the request within the time limit for responding. We have been working diligently on the request since receiving it and have provided updates to the Applicant regarding the large scope, volume and complexity of the review, as per the correspondence contained in the record before the OIPC in this proceeding. We continue to use our best efforts to process the request and release the records available to the Applicant under the *Act* as soon as possible.

[para 13] There is no evidence before me that the Public Body took a 30 day extension on its own under section 14, or that it asked and received permission from the Commissioner to extend the deadline for it to respond to the Applicant for a longer period of time under section 14.

[para 14] 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 15] 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 has not met the time limit under the Act for responding, I find that the Public Body failed to comply with the time limits set out in the Act.

[para 16] As the Public Body has yet to respond to the Applicant, I must order it to respond to the Applicant.

[para 17] 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 18] If the Applicant is not satisfied with the response he receives from the Public Body, such as the application of any exceptions under the Act the Public Body might apply to withhold responsive information, the Applicant may submit a new request for review to this Office identifying the issues he would like this Office to review with respect to the Public Body's response.

V. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] 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 21] 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 provided a response to the Applicant as required by this Order.

Carmen Mann
Adjudicator