

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2023-28

July 6, 2023

TOWN OF IRRICANA

Case File Number 029773

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 the Town of Irricana (the Public Body). The Applicant alleged that the Public Body failed to respond to her access request in time, as required under section 11 of the Act.

The Adjudicator found that the Public Body failed to respond to the access request within the timelines provided for under the Act. While the Public Body complied with section 11(1) regarding one requested record, it failed to comply with regard to the remainder of the requested information. The Adjudicator ordered the Public Body to respond to the 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, 11(1), 72. *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008 s. 11(2)(a).

I. BACKGROUND

[para 1] On November 15, 2022, an individual (the Applicant) requested a copy of the 1998 Irricana Land Use Bylaw (the Bylaw) from the Chief Administrative Officer (the CAO) of the Town of Irricana (the Public Body). At the time, the Applicant did not specify that request was made pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act). The CAO directed the Applicant to request

the Bylaw through its external legal counsel in the event that it was related to ongoing litigation between the parties.

[para 2] Subsequently, the Applicant sought the Bylaw, and five other categories of information, through the Public Body's external legal counsel; she did not obtain them through that process.

[para 3] On January 27, 2023, the Applicant made an access request under the Act, to the Public Body, for the same information she had sought from the Public Body's external legal counsel in November, 2022.

[para 4] On January 28, 2023, the CAO sent an e-mail to the Applicant acknowledging the access request and informing her that it would seek guidance from the Office of the Information and Privacy Commissioner since the request was connected to litigation. In response, the Applicant questioned whether the CAO's message meant that no action had been taken in response to her request for the Bylaw in November. The Applicant refers to the November request as a "FOIP" request in her reply, despite not specifying that it was a request made under the Act when she first requested the Bylaws, or in her request to the Public Body's external legal counsel in November, 2022.

[para 5] On February 8, 2023, the CAO sent the Applicant an e-mail with updated information about the access request. The CAO stated that he had not realized that the November request was made under the Act; if he had he would not have directed the Applicant to external legal counsel. The CAO also informed the Applicant that after searching for the Bylaw, he determined that the Public Body did not pass a land use bylaw in 1998. The CAO struck out the request for the Bylaw where, in his e-mail, he quoted the information that the Applicant sought. I take this to mean that the CAO had determined that no 1998 Land Use Bylaw ever existed. Finally, the CAO informed the Applicant of the applicable \$25.00 fee for the request under section 11(2)(a) of the *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008, and that she could reduce the anticipated costs of processing the request by narrowing the focus of the other categories of information she was seeking.

[para 6] On February 9, 2023, the CAO provided the Applicant with a fee estimate for the costs of processing the request. The Applicant replied the same day. The Applicant narrowed her request to three, more specific categories of information, and no longer sought the Bylaw.

[para 7] On March 11, 2023, the Applicant filed a request for review of the Public Body's handling of her access request. She had not received a response to her request at that time.

[para 8] The Information and Privacy 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] In my view, the proper date from which to calculate whether or not the Public Body complied with section 11 is January 27, 2023. That is the date on which the Applicant explicitly requested information pursuant to the Act. Earlier occasions where the Applicant asked for information without specifying that such requests were made pursuant to the Act would not obligate the Public Body to engage in the access process prescribed in the Act. This is so since the Act does not require public bodies to respond to every request for information or records as though it were a request under the Act. Treating every request for information as an access request under the Act, even where the request does not specify that it is being made under the Act, would restrict public bodies from releasing information in ways not prescribed by the Act.

[para 11] For the reasons below, I find that the Public Body only partially complied with section 11(1).

[para 12] The CAO was able to determine that there were no 1998 Land Use Bylaws and informed the Applicant of the same on February 8, 2023, well within the 30-day time limit prescribed by section 11(1). However, the Applicant has not received any further response to her access request regarding the other information she requested, and the 30-day time limit has long since passed. With the exception of the request for the Bylaw, the Public Body has failed to comply with section 11(1).

[para 13] I note that in its submission, the Public Body provided a status update on the process of responding to the access request, and that it expects to be able to provide a response soon.

IV. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] 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 16] 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