

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2023-32

July 13, 2023

CALGARY POLICE SERVICE

Case File Number 020744

Office URL: www.oipc.ab.ca

Summary: On March 22, 2021, the Calgary Police Service (the Public Body) received an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) from an applicant (the Applicant), for certain information.

On April 20, 2021, the Public Body informed the Applicant that it was extending the deadline to respond to the Applicant pursuant to section 14(1)(b) of the Act, due to a large number of records to be searched and processed.

On April 20, 2021, the Applicant requested this Office review the Public Body's decision to extend the time to respond to his access request under section 14(1)(b) of the Act.

The Adjudicator found that the Public Body properly extended the time limit for responding to a request as authorized by section 14(1)(b) of 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, and 72.

I. BACKGROUND

[para 1] On March 22, 2021, an applicant (the Applicant) emailed an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the Calgary Police Service (the Public Body) for the following information:

Any and all records and internal emails, and the final outcome for the complaint I had filed against [Constable] in October 2015. Also, I need a copy of any internal police record keeping systems, notebook notes, reports, recordings, tickets, made about me by [Constable].

I also require a copy of every time my name was queried since 2006 up to and including the present time, in the Calgary Police Service record keeping systems, including PIMS, [MICROFICHE] and CIPC, and by what officers it was queried and the grounds and reasons it was queried.

Time Frame: 2015 – current time

[para 2] In the cover email dated March 22, 2021 to which he attached his access request, the Applicant stated:

Please look through [Constable]'s email inbox (sent, received, drafted and deleted) with respect to any emails about me. Please also look through his 2015 notebooks and any other note books.

[para 3] After he emailed his access request, the Applicant sent a further email to the Public Body on March 22, 2021 clarifying his initial access request as follows:

Also, when I say complaint, I refer to the professional standards complaint I lodged against [Constable] in October 2015. I wish to receive the final outcome for such complaint i had filed against [Constable]. I was told to apply for this foip request by [employee], calgary police service officer. Thanks.

[para 4] On April 20, 2021, the Public Body responded to the Applicant and stated, in part:

Your request for records relating to [Constable], among other things, was received by the Calgary Police Service on March 22, 2021.

Normally, the Calgary Police Service responds to a request for information within 30 days of receiving the request. However, the Act provides that a public body may extend this time limit under certain circumstances.

In this case, your request requires a large number of records to be processed which could not be accomplished without unreasonably interfering with the ongoing operations of the Calgary Police Service. In order to ensure that we locate and provide all responsive records to you, we require some additional time. An extension of 30 days is being placed on your request. As such, the new date for response to your request is May 21, 2021.

This extension has been made in accordance with s. 14(1)(b) of the Act. If you have any questions or concerns about the extension, please feel free to contact me.

You may also make a complaint to the Privacy Commissioner . . .

[para 5] On April 20, 2021, the Applicant submitted a Request for Review to this Office advising that he had received notice from the Public Body that the response due date for his request had been extended and he disputed the need for the extension.

[para 6] The Commissioner authorized a Senior Information and Privacy Manager to investigate and attempt to settle the matter. At the conclusion of the process, the Applicant was not satisfied, and on January 28, 2023, he requested an inquiry.

[para 7] The Commissioner agreed to conduct a written inquiry and delegated her authority to conduct it to me.

II. RECORDS AT ISSUE

[para 8] As the issue in this inquiry relates to whether the Public Body properly extended the time limit for responding to a request as authorized by section 14 of the Act, there are no records at issue.

III. ISSUE

[para 9] The Notice of Inquiry, dated May 31, 2023, states the issue for this inquiry as follows:

Did the Public Body properly extend the time limit for responding to a request as authorized by section 14 of the Act?

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] 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 14] The Public Body received the Applicant's access request on March 22, 2021. Pursuant to section 11, the Public Body had until Wednesday, April 21, 2021 to respond to the Applicant, unless it extended the time on its own initiative pursuant to one of the subsections of section 14, or transferred the request under section 15 to another public body, before the expiry of this initial deadline.

[para 15] On April 20, 2021, the Public Body responded to the Applicant and informed him that it was extending the deadline to respond to him by an additional 30 days to May 21, 2021 as permitted by section 14(1)(b) of the Act, as his request required a large number of records to be processed. It also informed him that he could make a complaint about the extension to the Commissioner, which he did.

[para 16] The Public Body included all of the information required pursuant to section 14(4) of the Act in its time extension notice to the Applicant, and gave the notice prior to the expiration of the initial 30 day deadline under section 11.

[para 17] In his Request for Review, the Applicant stated, in part:

I don't believe that an extension is in fact justified, and I believe that this matter could be resolved and the information provided to me within the next couple of days.

[para 18] In his Request for Inquiry, the Applicant stated:

I believe that the initial decision maker, erred, including in fact, law and/or a mix of fact and law, misconstrued the available evidence, and no other reasonable decision maker, given the particulars would reach the same conclusion based on the available information, nor do I believe that the law was properly applied to the facts on the relevant issues at hand, and therefore, the reached final conclusion may be flawed, and requires that a fresh pair of eyes review this entire matter. For example, the public body is known to have a penchant for requesting strategic adjournments while blaming such alleged resource issues on other factors, which are neither my problem or the OIPC's problem. In addition, the public body admitted that there existed a large number of records, but the records applicable, if any, were not large as within the meaning of that definition. In further addition, the public body did not specify exactly how responding earlier may have contravened with the public body's operations. Other concerns, grounds and reasons exist or may exist.

[para 19] In its submission, the Public Body explained how the expansive time frame the Applicant specified he wanted searched for responsive records, and the numerous locations it had to search to locate responsive records, meant a large number of records had to be searched.

[para 20] Additionally, the Public Body encountered the following challenges in searching for and obtaining certain records requested by the Applicant that were going to impact its ability to respond within the original 30 day deadline under section 11 of the Act:

We were delayed in receiving records from the Officer as it turned out the Officer was on leave and we needed to obtain them through Human Resources, which takes longer to do and if the Officer still has the notebooks, we are limited in our ability to obtain them until the

Officer returns or leaves the Service. In this case, it was confirmed for us on April 20, 2021, from Human Resources, that we were going to be unable to contact the officer to request records due to the nature of their leave. We then needed to conduct a different search to see if we could obtain any of the records for the time period indicated on the request, of 2015 to March 22, 2021. In addition, we had received the records from Professional Standards from the 2015 investigation, which involve several records requiring review to determine what would be responsive to the access request.

[para 21] The Public Body submitted:

Given the need to expand the search for records, the volume of records to review and the large search that needed to be reviewed, the Analyst determined an extension was required to properly respond to the Access Request. The extension was sent on April 20, 2021, indicating to the Applicant that due to the large volume of records to review, additional time was needed. The decision on the amount of time required had several factors, it was unknown as to how many records would be located in the extended search if any; it was unknown the number of searches that needed to be reviewed, given that the review of the audit is more difficult as the Analyst has to ensure the search was on the correct person. Lastly, the volume of records to be reviewed from the Professional Standards Section impacted this as well. The Applicant had a wider range of types of records that needed review. It was decided that if the review went faster then we could respond before the 30 days but it would cause undue annoyance for the Applicant if we provided a [shorter] timeline and then had to add to it for a second time.

[para 22] The Public Body provided the following explanation on how responding to the Applicant's access request within the original 30 days would have unreasonably interfered with the operations of the Public Body:

The Access & Privacy Section of the Calgary Police Service has the largest volume of personal access requests administered under the FOIP Act. Each Analyst has a workload of anywhere between 35-50 Access requests of various types at any given time. Each Analyst's workload is constantly monitored to ensure that no one Analyst is overburdened with large requests. The Analyst assigned to this request had an abnormally large volume of requests assigned to them at 56 within the timeframe of this request. The Calgary Police Service had roughly 430 active requests in the timeframe with 7 Active Analysts with each analyst averaging 60 requests. As this request had a larger volume of records to review, with the additional search time required, the additional time was warranted. The Analyst was able to complete the request and search within the additional time frame, providing 154 pages of responsive records. To focus the Analyst on this request alone would have impacted the over 50 other requests assigned to them. To draw assistance from other analysts would have taken them away from their volume of assignments and potentially made other requests late.

[para 23] The Public Body further advised that it provided its response to the Applicant on May 20, 2021, which was before the 30 day extension it took under section 14(1)(b) expired.

[para 24] Section 14 exists, in part, to assist public bodies in managing deadlines to respond to access requests for large numbers of records, or where a large number of records must be searched in order to respond to an access request.

[para 25] I find the Public Body properly notified the Applicant it was extending the deadline to respond to his access request under section 14(1)(b) before the expiry of the initial 30 day deadline under section 11.

[para 26] I find that section 14(1)(b) permitted the Public Body to extend the deadline to respond to the Applicant on the basis that a large number of records had to be searched, and that its decision to extend the deadline by 30 days was appropriate.

[para 27] One of the operations of the Public Body is to respond to access requests. I accept the Public Body's explanation as to how the actions it would have had to take in order to give the Applicant's access request priority, and respond to the Applicant within the original 30 days, would have unreasonably interfered with the Public Body's ability and duty to process and respond to all of the access requests it currently had received, in accordance with the Act.

[para 28] I find the Public Body did everything correctly to take a time extension to respond to the Applicant under section 14(1)(b).

[para 29] The Public Body responded to the Applicant one day prior to the expiry of the extended deadline under section 14(1)(b).

[para 30] With respect to the submissions made by the Applicant, I make the following comments below.

[para 31] As noted above, in his Request for Inquiry, the Applicant alleged that "the public body is known to have a penchant for requesting strategic adjournments while blaming such alleged resource issues on other factors". The Applicant did not provide any evidence to substantiate his allegation.

[para 32] The Act permits public bodies to take extensions to respond to access requests in certain circumstances, and that is exactly what the Public Body did in this case. There is no basis for me to conclude that there is any merit to the Applicant's allegation.

[para 33] The Applicant further stated in his Request for Inquiry "In addition, the public body admitted that there existed a large number of records, but the records applicable, if any, were not large as within the meaning of that definition" as support for his assertion that the Public Body did not need to take an extension to respond to his access request.

[para 34] The Applicant has not accurately stated the Public Body's position. The Public Body's position is that there existed a large number of records *that had to be searched in order to locate records responsive to the Applicant's access request*. The Public Body did not know *at the time it began the search* how many pages of records it would ultimately find that were responsive to the Applicant's access request. The number of pages the Public Body ultimately determined were *actually* responsive *after* searching and processing all of the *potentially* responsive records it located, is not relevant to a determination as to whether the Public Body met the requirements of section 14(1)(b) in order to extend the deadline to respond to the Applicant.

[para 35] In his submission, the Applicant stated:

I politely emphasize that I should not have been and continue to be prejudiced because an Officer was on 'leave' and the documents sought in this matter needed to be obtained through 'human resources'. The public body's response is also contradictory. They should have drawn assistance from other analysts, rather than cause my records to be late, which occurred in any event.

[para 36] The Applicant provided no evidence to support his assertion that he was, and continues to be prejudiced because he received the Public Body's response within 60 days of his access request instead of 30 days.

[para 37] The Public Body has explained its available resources to process access requests, and how it manages its analysts' workloads. The Applicant's suggestion that the Public Body reallocate analysts working on other individuals' access requests to work on his request, so he could have received his records quicker and in priority to other access requests the Public Body was processing, is not reasonable. His opinion expressed in his Request for Review that the Public Body could have responded to him in "a couple of days", is likewise unreasonable.

[para 38] The Applicant did not receive his records "late". The Public Body properly extended the original 30 day deadline under section 11, by an additional 30 days pursuant to section 14(1)(b). It then delivered its response to the Applicant one day prior to the extended deadline.

[para 39] Finally, as the Public Body has already responded to the Applicant, even if I had determined the Public Body did not properly take its own extension under section 14, there would be nothing further for me to order the Public Body to do.

V. ORDER

[para 40] I make this Order under section 72 of the Act.

[para 41] I find that the Public Body properly extended its deadline to respond to the Applicant's access request under section 14(1)(b) of the Act.

Carmen Mann
Adjudicator