

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2024-19**

July 2, 2024

**CITY OF EDMONTON**

Case File Number 033901

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** On July 27, 2023, the City of Edmonton (the Public Body) received an access request from an individual (the Applicant) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), for certain information.

On February 9, 2024, Applicant requested a review by this Office, indicating that the time limit for responding to the access request under the FOIP Act had expired and the Public Body had not provided a response.

The Adjudicator found that the Public Body did not respond to the Applicant within the time limit set out in the FOIP Act and ordered the Public Body to respond to the Applicant's access request as required by the FOIP 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.

**Orders Cited: AB:** Orders F2018-10, F2018-65, and F2024-10.

**Cases Cited: AB:** *Alberta Energy v. Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198.

## I. BACKGROUND

[para 1] The following factual background is based on the information the Applicant provided with his request for review, and the submission provided by the Public Body.

[para 2] On July 27, 2023, the City of Edmonton (the Public Body) received an access request (the Request) from an individual (the Applicant) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act), for certain information. The Public Body informed the Applicant that the due date for it to respond to his request was August 28, 2023.

[para 3] In a letter dated July 27, 2023 to the Applicant, which was sent by e-mail on August 1, 2023, the Public Body acknowledged the Applicant's access request and advised of a due date of August 28, 2023 for the Request.

[para 4] On August 16, 2023, the Public Body provided the Applicant with a fee estimate of \$601.50 and placed processing of the Request on hold until it received a deposit of 50% of the fee estimate.

[para 5] On September 5, 2023, the Public Body received the 50% deposit from the Applicant and recommenced processing of the Request.

[para 6] On September 7, 2023, the Public Body informed the Applicant that due to the large number of records and the volume of information involved, his Request could not be processed within the 30 day time limit and it was extending the due date of his Request by 30 days under section 14(1)(b) of the FOIP Act. The Public Body advised the Applicant that the new due date for its response to the Applicant was October 16, 2023.

[para 7] On October 16, 2023, the Public Body submitted a request to the Commissioner for a time extension of 90 days to respond to the Request (the Extension Request), based on sections 14(1)(b) (large number of records) and 14(2) (multiple concurrent requests made by the same applicant) of the FOIP Act.

[para 8] On the same day by way of e-mail, the Public Body advised the Applicant that it had made the Extension Request to the Commissioner.

[para 9] On October 25, 2023, the Public Body received notification from this Office that an extension of 90 days (92 days to the next business day) to respond to the Request (the Extension) had been granted pursuant to section 14(1)(b) of the FOIP Act.

[para 10] On October 26, 2024, the Public Body informed the Applicant that it had received permission from the Commissioner to extend the time to respond to the Applicant's access request under section 14(1)(b) of the FOIP Act by 90 days, due to the large number of records involved (section 14(1)(b)). The Public Body advised the Applicant that the new due date for its response to the Applicant was January 15, 2024.

[para 11] On January 16, 2024 by way of e-mail, the Public Body advised the Applicant of an internal reassignment of the processing of the Request and that the Public Body was unable to respond to the Request by the new due date. In respect of the Request, the Public Body advised that upon review of the records to ensure all attachments were included and initial severing, internal consultations would occur with subject matter experts.

[para 12] On January 19, 2024 by way of e-mail, in response to an e-mail of January 17, 2024 from the Applicant, the Public Body advised the Applicant that it could not provide an estimated response date, but would provide a further update by February 9, 2024.

[para 13] On February 9, 2024, the Public Body informed the Applicant that it would be refunding the deposit paid for this request. It informed him that it anticipated responding to him by March 29, 2024, and that if additional delays occurred, it would let him know.

[para 14] On February 9, 2024, the Applicant requested a review by this Office, indicating that the time limit for responding to the access request under the FOIP Act had expired and the Public Body had not provided a response.

[para 15] In or about March 2024 the Public Body refunded the deposit to the Applicant.

[para 16] On April 26, 2024 by way of email, the Public Body provided the Applicant with an update on five (5) access requests submitted by the Applicant to the Public Body, including the Request. The Public Body advised that it was continuing to review the records in respect of the Request and that a further update would be provided on May 31, 2024.

[para 17] On May 31, 2024 by way of e-mail, the Public Body provided the Applicant with an update that the Request required consultations under sections 30 and 31 of the FOIP Act, and that if it was unable to initiate same by July 19, 2024 then a further update would be provided at such time.

[para 18] On June 7, 2024, 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 19] 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 20] The Notice of Inquiry, dated June 7, 2024, 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 21] Section 11 of the FOIP 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 FOIP 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 22] Section 12(1) of the FOIP 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 23] Section 14 of the FOIP 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 24] Section 11 of the FOIP 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 25] In this case, the Public Body extended its time to respond on its own, and obtained permission from the Commissioner for an additional extension. The Public Body's final extension was to January 15, 2024.

[para 26] In its submission dated June 28, 2024, the Public Body stated:

21. The Public Body admits that it has exceeded the timelines prescribed by the Act.
22. The Public Body could not reasonably fulfill the Request within the additional 90 days allowed by the OIPC. The Public Body applied the 30-day extension set out in section 14(1) of the Act. However, as the OIPC advised in the decision in respect of the Extension that the "90 days requested by the Public Body [was] reasonable to complete the processing of this request", the Public Body did not seek a further extension from the OIPC.
23. The Public Body advises that the initial records located that were potentially responsive were substantial and totalled approximately 8,600 pages, all of which were

required to be reviewed to determine the responsiveness of the records, to eliminate any duplicates, and to ensure all attachments were provided.

24. Due to the nature and scope of the Request, the Public Body notes that there is:
  - (a) a large volume of records to be reviewed and processed; and
  - (b) the need to conduct a number of complex consultations;both of which impact the overall time for the Public Body to review and process the relevant records.
25. In respect of the Request, the Public Body has invested considerable efforts to manage and review the records provided by individual City Councillors. The abundance of records necessitated extensive review to distinguish responsive and non-responsive documents. Significant time was spent in ensuring that all records had been provided, including any missing attachments or embedded links. In addition, given the nature of the responsive records, greater time is necessary to locate duplicate records, adding to the complexity of the review process.
26. The Public Body also notes that in respect of the departments from which records are sought, the Office of the City Councillors and the Office of the Mayor, as well as the individual business areas within the Public Body to be consulted, each have their respective priorities and responsibilities that affect their individual response times.
27. While it recognizes previous decisions of the OIPC commenting that it is up to public bodies to provide resources to ensure that a public body meets its statutory obligations, the Public Body believes it is important to note that its Corporate Access and Privacy Office receives a significant number of requests under the FOIP Act, which includes formal access requests, consultations, and disclosure requests, each year. In 2023 such requests totalled approximately 946. In addition, the office is involved in privacy breach investigations, as well as providing internal advice to business areas of the Public Body in respect of programs, initiatives, proposals, documents, and activities, which range in complexity and duration.
28. In respect of the Request, the Public Body has completed the following work:
  - (a) Acknowledged the Request;
  - (b) Distributed search of records to internal business areas of the Public Body, and based on communications with business areas, conducted preliminary assessment of potential responsive records;
  - (c) Issued fee estimate;
  - (d) Began reviewing approximately 8,600 pages of records to remove duplicates and non-responsive items and to ensure an adequate search has been conducted;
  - (e) Returned to multiple offices to request additional records (attachments and embedded links);

- (f) Processed the deposit, and provided refund of same to the Applicant; and
  - (g) Communicated with the Applicant in respect of the Extension Request and status of the matter.
29. The Public Body advises that between June 21, 2023 and October 27, 2023, the Public Body received sixteen (16) access requests from the Applicant. Four (4) other requests were made within 30 days prior to the Request, and three (3) other requests were made within 30 days after the Request, to the Public Body by the Applicant.
30. The Public Body also spent time earlier this year to prepare for and respond to a recent OIPC decision, Order F2024-10, in respect of a review request by the Applicant.
31. The Public Body notes that the time needed to respond to the Applicant's numerous requests in a short time span ought to be considered, in view of the significant amount of work in which the Public Body is engaged in discharging all of its duties and obligations under the FOIP Act.
32. In respect of the Request, the Public Body intends to take the following steps:
- (a) Finish re-organizing the remaining 3,686 pages of records and ensure that all duplicates and non-responsive items are removed;
  - (b) Complete line-by-line review of current copy of responsive records and apply mandatory exemptions;
  - (c) Internal consultation with the Office of the Mayor;
  - (d) Internal consultation with the offices of twelve (12) City Councillors;
  - (e) Consult with additional internal business areas of the Public Body and incorporate feedback; and
  - (f) Send external consultation notices to at least eight (8) third parties.
33. The Public Body advises that the internal consultations are expected to take a significant amount of time due to the sheer number of different business areas within the Public Body providing records for the Request, as well as the interconnected nature of records, with individual records requiring consultation with multiple business areas of the Public Body. Moreover, due to the complexity of the records, considerable efforts are required in order to prepare consultation packages for third parties.
34. The Public Body has made every reasonable effort to keep the Applicant informed in respect of the FOIP request to date and will continue to keep the Applicant updated in respect of the processing of the Request.

#### IV. Conclusion

35. The Public Body acknowledges that it has exceeded the timeline in section 11 of the Act to respond to the Request. It has and will continue to exercise all reasonable efforts to process the request.

[para 27] In Order F2024-10 issued March 14, 2024, the adjudicator considered similar arguments made by the Public Body and concluded the Public Body failed to comply with the timelines set out in the FOIP Act. At paragraphs 8 – 16, the adjudicator stated:

[para 8] 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 dated August 11, 2023. The Public Body extended its time to respond on its own, and obtained permission from the Commissioner for an additional extension. The Public Body's final extension was to December 11, 2023.

[para 9] In its submission, the Public Body acknowledges that it exceeded the timelines in section 11 of the Act to respond to the Applicant.

[para 10] In its submission, the Public Body argues that it is in the best position to determine how much time it needs to complete its response to the Applicant. It notes that it extended its time to respond by 30 days, under section 14(1), and requested a further 90 day extension from the Commissioner under sections 14(1) and (2). However, the Commissioner granted only 60 days. The Public Body states that it did not seek an additional extension from the Commissioner because its initial extension request was not granted in full.

[para 11] I note that had the Public Body received the full 90-day extension from the Commissioner, that deadline would have been January 10, 2024, a date which has also come and gone.

[para 12] The Public Body provides an explanation for the time taken to respond to the Applicant:

15. The Public Body advises that the initial amount of records located that were potentially responsive were approximately 1,321 pages. The Public Body had to review all of these records before it was able to determine what records were responsive to the Applicant's request. The extensive number of these records require a significant amount of time and resources to review the same in order to ensure that the Public Body meets its obligations under the Act. However, the Public Body including the City Operations, the Office of the Mayor, and the Office of the Councillors have limited resources. And each of these parts of City Government have their own competing responsibilities and priorities.

[para 13] In Order F2018-10, the adjudicator considered the impact of a public body's high workload and staffing issues on its obligations under section 11 of the Act. She said (at paras. 18-22):

I am unable to accept the Public Body's arguments regarding the delay in responding to the access request or to accept its suggestion that it respond by August 2018 to ensure that it responds to prior access requests in a timely manner. Section 11 imposes a duty on the head of a public body to make



reasonable efforts to respond to an access request. As the head is the Minister of Health, it would be impractical for her to process access requests personally. For this reason, section 85 of the FOIP Act permits the head to delegate her duties, powers or functions under the FOIP Act to any person. However, if the head does not delegate her duty, the duty remains with her. Moreover, if the duty is not met by the delegate, the Minister will not have complied with the duty imposed by the FOIP Act.

The Public Body's arguments and proposed response time appear to rely on the notion that it is the FOIP branch of the Public Body that has the duty to respond to the Applicant, rather than the head. If that were the case, then the arguments regarding staffing levels and the complexity of records [very complex] that requires the FOIP Advisor to "work with the appropriate program areas" in making access decisions would be more persuasive. However, as noted above, it is the *head* of the Public Body who has the duty to make reasonable efforts to respond to the Applicant. She may meet this duty by delegating her duties to "any person" and is not limited to delegating the duty to an employee of a FOIP office. If the FOIP office is unable to meet the head's duties under section 11, then the head will fail in her duty under section 11 if she delegates the duty to an employee of the FOIP Office without ensuring the duty can be met. In contrast, if the FOIP office is sufficiently staffed with persons having adequate authority and knowledge to make timely access decisions, then the head will be more likely to meet her duty under section 11 by delegating the duty to an employee of the office.

The foregoing analysis holds true for the other access requests, for which the Public Body indicates the head may not meet, or has not met, her duty under section 11 to respond to applicants if she were to "reprioritize" the access request before me.

The Public Body indicates that its FOIP Coordinator and three recently hired FOIP advisors must review 130,000 records in order to process the access requests currently before them. I agree with the Public Body that it would not be reasonable to expect the Public Body's FOIP office, with its current staffing and experience levels, to process that number of records within the timeframe imposed by sections 11 or 74(1) of the FOIP Act. However, that would be unreasonable to expect the FOIP office to be able to respond to the Applicant's access request means only that it may be unreasonable for the head of the Public Body to delegate the duties imposed by section 11 and 74(1) to the FOIP office. If delegating the duty to the FOIP office is not likely to bring about compliance with section 11 of the FOIP Act, then it would be unreasonable for the head of the Public Body to delegate this duty to the FOIP office.

The FOIP Act, which is a paramount statute, does not create exceptions to the duty under section 11 to accommodate low staff levels or insufficient experience. Instead, section 85 of the FOIP Act enables the head of the Public Body to achieve compliance through delegation of the head's duties, powers, and functions. However, if the head delegates her duty and authority to employees who lack sufficient authority, time, and experience to fulfil those duties, the result may be a failure to comply with mandatory duties under the FOIP Act.

[para 14] This point has been made and the analysis applied in several subsequent Orders (see Orders F2018-44, F2018-57, F2019-15, F2021-46, F2021-51, F2022-10, F2022-11, F2023-12).

[para 15] Nothing before me indicates that the same analysis and finding ought not to apply here.

[para 16] I acknowledge the Public Body's arguments regarding its high workload and the corresponding difficulty in meeting the legislated timelines. However, it is the head of the Public Body that has a duty to respond as required by the Act, as discussed in Order F2018-10. If the Public Body is experiencing systemic issues in meeting its obligations under the Act, it is up to the Public Body to address those issues.

[para 28] There is nothing before me in this case that indicates the same analysis and findings made by the adjudicators in Orders F2018-10 and F2024-10 ought not to apply here.

[para 29] In the case before me, it appears that the Public Body is making arguments as to why it believes the Commissioner's (or her delegate's) decision to only permit the Public Body an additional 90 days to respond to the Request was wrong, or unfair. I have no authority to review the Commissioner's decision, or to grant the Public Body a further time extension to respond to the Request under section 14.

[para 30] I note that there is no provision in the FOIP Act which permits a public body to delay responding to an applicant, or to extend the time to respond to an access request because it needs more time for *internal* consultations with various business areas or offices *within* the public body.

[para 31] I further note that the Public Body has not provided any information about whether any of the approximately 8,600 records it has already processed contain information that is responsive to the Applicant's access request, and if so, why it has not yet provided a response about whether it is granting access to any of that information to the Applicant.

[para 32] It has now been almost a year since the Public Body received the Applicant's access request. The deadline for responding, as per the extension granted by the Commissioner, was January 15, 2024. That deadline has come and gone without a response to the Applicant.

[para 33] I note the following comments of the Court of King's Bench in *Alberta Energy v. Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198 at paragraph 76:

[76] The FOIPPA regime in Alberta is premised on relatively tight deadlines and an obligation for the public body to respond quickly. That speaks to the fact that for the right of access to information to be meaningful, it must be timely. Receiving records years after a request may often be a pyrrhic victory and one that does little to contribute to the need for public accountability for government actions.

[para 34] 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 FOIP Act. Accordingly, I will order it to respond to the Applicant.

[para 35] Section 74(1) requires the Public Body to comply with the order not later than 50 days after being given a copy of the order.

[para 36] If the Public Body is suggesting that I can and should set the date for it to comply with the order, I cannot.

[para 37] I have no authority under the FOIP Act to set a different deadline for the Public Body to comply with the order. This has been confirmed in previous Orders of this Office such as Order F2018-65 at paragraph 13, where the adjudicator stated:

[para 13] Regarding the Public Body's request for a date of compliance with this Order, I have addressed similar requests in Orders F2017-68, F2017-69, F2018-28 and F2018-44. The time for complying with an Order is set out in the Act as 50 days (section 74(1)). Even where a public body has valid reasons for requesting further time to comply, I cannot alter that time limit set out in the Act.

[para 38] If the Applicant is not satisfied with the response he receives from the Public Body, such as the application of any exceptions under the FOIP 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 39] I make this Order under section 72 of the FOIP Act.

[para 40] I find that the Public Body failed to respond to the Applicant within the time limit set out in section 11 of the FOIP Act. While it is too late for the Public Body to now comply with that section of the FOIP Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining obligations under the FOIP Act.

[para 41] 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.

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Carmen Mann  
Adjudicator  
/kh