

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2024-23

July 17, 2024

CITY OF EDMONTON

Case File Number 033935

Office URL: www.oipc.ab.ca

Summary: On August 16, 2023, the City of Edmonton received an access request made by the Applicant under the *Freedom of Information and Protection of Privacy Act*.

On February 15, 2024, the Applicant requested a review of the Public Body's failure to respond to the request.

The Adjudicator ordered the Public Body to respond to the 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, 14, 72.

Authorities Cited: AB: Orders F2018-10, F2018-44, F2018-57, F2021-46, F2021-51, F2022-10, F2022-11, F2023-12, F2024-10.

I. BACKGROUND

[para 1] On August 16, 2023, the City of Edmonton (the Public Body) received an access request made by the Applicant under the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

[para 2] The request was for:

“All documentation related to the Edmonton Public Safety and Community Response Task force including but not limited to any and all records - google chats, phone call logs, text messages notes (written and digitized), emails, meeting requests, invites, and direct messages on social media, including communications with City Council and the Provincial representatives”;

from the “Office of the Mayor” and the “Office of the City Manager” of the Public Body and for the time period of November 1, 2022 to August 16, 2023

[para 3] The initial records located by the Public Body for review totaled 1,221 pages.

[para 4] The timeline of communication between the parties is as follows:

August 29, 2023	The Public Body acknowledged the request for records and advised the Applicant of the September 15, 2023 due date for the request.
September 13, 2023	The Public Body advised the Applicant that because of the large number of records, the due date would be extended to October 16, 2023 under section 14(1)(b) of the FOIP Act.
September 29, 2023	The Public Body advised the Applicant of a \$217.35 fee estimate and put the request on hold.
September 29, 2023	The Applicant paid the \$108.68 fee deposit
October 13, 2023	The Public Body acknowledged the deposit payment and relayed that the due date remained October 16, 2023.
October 16, 2023	The Public Body requested a 90 day time extension from the Office of the Information and Privacy Commissioner (OIPC), pursuant to sections 14(1)(b), 14(1)(c) and 14(2). The Applicant was advised of the request.
October 19, 2023	OIPC granted a 60 day extension under section 14(1)(b) of the FOIP Act.
October 20, 2023	The Public Body informed the Applicant of the extension and the new due date of December 14, 2023.
February 13, 2024	The Public Body provided an update to the Applicant on the request for records. The next steps included a review, internal and external consultations. While a response date could not be provided, the Public Body set March 28, 2024 as the next date for an update.
April 26, 2024	The Public Body informed the Applicant that the request was reassigned and a follow up update would be provided in a couple of weeks.

May 23, 2024	The Public Body advised the Applicant that the request had been reassigned, records were being reviewed, which would be followed up with internal and external consultations. The Applicant was advised that the fee deposit would be refunded.
June 2024	The Applicant was refunded the fee deposit.

[para 5] On February 15, 2024 this Office received a request from the Applicant to review the Public Body’s failure to respond to the request. The Commissioner issued a Notice of Inquiry on June 7, 2024.

II. RECORDS AT ISSUE

[para 6] There are no records at issue as the issue in this Inquiry relates to the timeliness of the Public Body’s response.

III. ISSUE

[para 7] The June 7, 2024 Notice of Inquiry states the issue as:

Did the Public Body comply with section 11 of the FOIP Act (time limit for responding)?

IV. DISCUSSION OF ISSUE

[para 8] Section 11 of the FOIP Act addresses the time limit for responding to a request:

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 9] Section 14 (in part) of the FOIP Act addresses time extensions:

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

[...]

- (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*

[...]

(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.

[para 10] The Public Body acknowledges that the section 11 timelines have been exceeded. It further submits that the high volume of requests being processed at its office and the processing of the Applicant's numerous requests in a short time span, should be a consideration in the time needed to respond to the request.

[para 11] In its submissions, the Public Body states at paragraph 27:

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 access 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.

[para 12] The Public Body further submits that earlier this year, it had to prepare and respond to Order F2024-10 of this Office, which also pertained to a request by the Applicant.

[para 13] The Public Body submits that, "in respect of the offices from which records are sought, the City Manager's Office, City Council, and the Mayor's Office, each have their own priorities and responsibilities that affect their respective response times. Furthermore, the office of each City Councillor is individually consulted on their respective records."

[para 14] Several Orders (F2018-44, F2018-57, F2021-46, F2021-51, F2022-10, F2022-11, F2023-12) of this Office have applied the analysis found in Order F2018-10. In Order F2018-10, at paragraphs 18-22, the Adjudicator discussed the Public Body's obligations under section 11 of the FOIP Act, with respect to a Public Body's workload and staffing issues:

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 it 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 15] As noted in Order F2024-10 at 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 16] I note that 317 days have passed since the original request was received by the Public Body (August 16, 2023) and the submissions (June 28, 2024) made by the Public Body to the OIPC. The last update given to the Applicant was May 23, 2024, without any indication of when the Public Body would be able to respond to the request. To date, the Public Body has not responded to the request.

[para 17] Based on the submissions before me, I find that the Public Body has not made a reasonable effort to comply with section 11 of the FOIP Act.

V. ORDER

[para 18] I make this Order under section 72 of the FOIP Act.

[para 19] I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining obligations under the FOIP Act.

[para 20] 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.

Pam Gill
Adjudicator