

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2024-38

November 13, 2024

MEDICINE HAT POLICE SERVICE

Case File Number 035185

Office URL: www.oipc.ab.ca

Summary: Under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), the Applicant made an access request to the Medicine Hat Police Service (the Public Body). The Applicant sought a review of whether the Public Body complied with the timelines set under section 11 of FOIP Act. The Public Body admitted that it failed to meet the timelines, and the Adjudicator concluded the same.

When explaining why it missed the deadlines, the Public Body expressed the view that section 3(a) of the FOIP Act excused it from providing records in response to an access request where those records were available through another process. The Adjudicator clarified that section 3(a) does not excuse a public body from providing records in response to an access request simply because they are available through another process. Section 3(a) states that the process in the FOIP Act is in addition to other processes, and does not extinguish other processes.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 3(a), 10(1), 11, 72.

Orders Cited: AB: Order F2015-22

I. BACKGROUND

[para 1] On January 4, 2024, the Applicant made an access to information request to the Medicine Hat Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the FOIP Act). The Applicant is an employee of the Public Body. In the access request, the Applicant sought e-mails containing his name, his personnel file, and notes taken by several employees of the Public Body.

[para 2] On May 9, 2024, the Applicant filed a request for review of the Public Body’s handling of his access request in light of the fact that he had not received any records by that date.

[para 3] The matter was sent to inquiry.

II. ISSUE

[para 4] The Notice for Inquiry states the issue for this inquiry as follows:

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

III. DISCUSSION OF ISSUE

[para 5] 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 6] The Public Body admits that it failed to comply with the timelines in section 11. For the benefit of the Applicant, it also provided an explanation for its delay in processing. Much of the delay was caused by the fact that fulfilling the access request was more complex than the Public Body first anticipated.

[para 7] In the words of the Public Body, the access request “sparked further consideration regarding record access for our employees.” Included in those concerns was the fact that the Applicant, as an employee, enjoyed access to his personnel file apart from the access request. In view of this, the Public Body understood that it would not be required to provide those records as part of the access request because of section 3(a) of the FOIP Act. Section 3(a) states,

3 This Act

(a) is in addition to and does not replace existing procedures for access to information or records,

...

[para 8] As a practical matter, providing access to information or records through other processes may relieve the need for an individual to make a formal access request under

the FOIP Act. This point is referenced on page 35 of the FOIP Guidelines and Practices (2009) manual, as noted by the Public Body. That point however does not address or inform the effect of section 3(a).

[para 9] In the event that an applicant makes a request for information already available to them, clarifying that with the applicant may inspire the applicant to narrow the scope of the access request to exclude such records. Such clarifications may occur as part of a public body's duty under section 10(1) of the FOIP, to respond openly, accurately, and completely. (Order F2015-22 at paras. 21 – 26). Where an applicant excludes such records from an access request those records need not be provided in response to it.

[para 10] The availability of records through another process does not, however, mean that a public body does not have to provide those records in response to an access request.¹ The process under the FOIP Act involves a right of access for applicants, procedural requirements for public bodies, and rights of review for applicants that other processes may not. Public bodies are not excused from the processes under the FOIP Act simply because records may be available from another source, and section 3(a) does not state that they are. Section 3(a) preserves other means of access along side of the process created under FOIP, and clarifies that FOIP does not extinguish those other processes.

[para 11] Fortunately, despite its views on section 3(a), and out of consideration for the Applicant's personal circumstances, the Public Body provided him with the records from his personnel file when it finished responding to his access request on October 17, 2024.

IV. ORDER

[para 12] I make this Order under section 72 of the Act.

[para 13] I find that the Public Body failed to comply with section 11(1). In view of the fact that the Public Body has since responded to the access request, no further action need be ordered.

John Gabriele
Adjudicator
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¹ Here I do not consider whether access via employment is a "process" contemplated under section 3(a).