

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2025-06

February 20, 2025

CALGARY POLICE SERVICE

Case File Number 036509

Office URL: www.oipc.ab.ca

Summary: On May 1, 2024, an applicant (the Applicant) made an access request to the Calgary Police Service (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

On November 13, 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.

The Public Body advised that it had provided some responsive records to the Applicant on January 31, 2025, and provided the Applicant with a fee estimate for other records it had located which were responsive to the Applicant's access request. The Public Body advised it had not heard back from the Applicant regarding the fee estimate.

The Adjudicator found that the Public Body failed to make every reasonable effort to respond within the timelines provided in the FOIP Act with respect to the records that were not subject to the fee estimate; however, as the Public Body had now responded with respect to those records, no further order was necessary.

Statutes and Regulations Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 8, 11, 12, 14, 72 and 93; *Freedom of Information and Protection of Privacy Regulation*, Alberta Regulation 186/2008, s. 14.

I. BACKGROUND

[para 1] On May 1, 2024, an applicant (the Applicant) made an access request to the Calgary 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) for the following information:

All information kept or produced by the Calgary Police Service Professional Standards Section regarding file [number], which was a complaint made by me [Name], on or about [date].

[para 2] The time frame specified by the Applicant was 2023-11-01 to 2023-11-15.

[para 3] On May 14, 2024, the Public Body acknowledged receipt of the access request. It stated, in part:

Most files take 30 days to process, however we have a large backlog at the moment due to a number of staff on extended leave. We will respond to your access request as soon as we can.

[para 4] On November 13, 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 5] 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 6] 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 7] The Notice of Inquiry, dated January 22, 2025, 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 8] 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 9] 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 10] 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 11] In its submission dated February 10, 2025, the Public Body stated:

The Calgary Police Service provided the records to [Name] on January 31, 2025. At the same time, we provided her with a fee estimate for the available recordings we had and we have not heard back from her as the date of this letter.

If we do not hear back from [Name] by March 3, 2025, we will abandon that portion of the request.

[para 12] As the Public Body has advised that it has now provided some responsive records to the Applicant, and issued a fee estimate for other responsive records, I will address these responses separately.

Public Body's Response Dated January 31, 2025, Providing Certain Responsive Records to Applicant

[para 13] Although it acknowledged receiving the Applicant's access request on May 14, 2024, the Public Body did not provide a response and did not disclose certain responsive records to the Applicant, until January 31, 2025. This is well outside the time limit set out in section 11 of the FOIP Act. There is no evidence before me that the Public Body sought or received permission from the Commissioner pursuant to section 14 of the FOIP Act to take a longer period to respond to the Applicant.

[para 14] Accordingly, I find that the Public Body failed to make every reasonable effort to respond to the Applicant within the time limits set out in the FOIP Act. However, as the Public Body has now responded to the Applicant and provided certain responsive records, an order requiring the Public Body to provide a response with respect to these records to the Applicant is unnecessary.

[para 15] If the Public Body withheld any responsive information in the records it provided to the Applicant and the Applicant wishes to have the Public Body's decision to withhold

responsive information reviewed by this Office, the Applicant may submit a Request for Review to this Office and the Commissioner will decide whether or not to authorize a review.

Public Body's Issuance of a Fee Estimate on January 31, 2025, to the Applicant for Certain Records

[para 16] As I will explain below, with respect to the responsive records for which the Public Body has issued a fee estimate, the Applicant's assertion that the Public Body's time limit for responding to her request has expired and she has received no reply, is premature based on the information before me.

[para 17] Upon receipt of an access request under the FOIP Act, the 30-day time limit set out in section 11 for a public body to provide a response to the applicant which contains the information required in section 12 of the FOIP Act, starts to run. Absent the application of another provision in the FOIP Act to extend the public body's time to respond or suspend the public body's obligation to process the access request and respond to an applicant within the 30 days, the FOIP Act requires the public body to provide a response to the applicant not later than 30 days after receiving the request.

[para 18] Pursuant to section 14 of *Alberta Regulation 186/2008*, (the FOIP Regulation), the issuance of a fee estimate under section 93 of the FOIP Act suspends a public body's obligation to process an access request.

[para 19] Section 93 of the FOIP Act states:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fees before providing the services.

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the

head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 20] Section 14 of the FOIP Regulation states:

14(1) Processing of a request ceases once a notice of estimate has been forwarded to an applicant and recommences immediately on the receipt

(a) of at least 50% of any estimated fee that exceeds \$150, and

(b) in the case of a continuing request if the estimated fee for the entire request exceeds \$150, of at least 50% of the portion of the estimate applicable to the delivery of the first instalment of the request.

(2) Processing of any subsequent instalment of a continuing request commences only on the receipt of at least 50% of the portion of the estimate applicable to the delivery of that instalment.

(3) The balance of any fee owing is payable at the time the information is delivered to the applicant.

(4) Fees, other than an initial fee, or any part of those fees will be refunded if the amount paid is higher than the actual fees required to be paid.

[para 21] Section 8 of the FOIP Act states:

8(1) Where the head of a public body contacts an applicant in writing respecting the applicant's request, including

(a) seeking information from the applicant that is necessary to process the request, or

(b) requesting the applicant to pay a fee or to agree to pay a fee,

and the applicant fails to respond to the head of the public body, as requested by the head, within 30 days after being contacted, the head of the public body may, by notice in writing to the applicant, declare the request abandoned.

(3) A notice under subsection (1) must state that the applicant may ask for a review under Part 5.

[para 22] In other words, once a public body issues a fee estimate, the processing of an applicant's access request and the obligation to provide a response under section 11 of the FOIP Act ceases until the conditions set out in section 14 of the FOIP Regulation are met. If the

applicant fails to respond to the public body's fee estimate within 30 days after receiving the fee estimate, the public body may notify the applicant in writing that it is declaring the request to have been abandoned, and that the applicant may ask this Office for a review of its decision under Part 5 of the FOIP Act. If the applicant met the conditions set out in section 14, then the public body would be required to recommence processing the access request and provide a response to the applicant within the remaining time under the FOIP Act.

[para 23] In this case, depending on whether the Applicant responds to the fee estimate or not within the time limits set out in the FOIP Act, the Public Body may or may not have to recommence processing the Applicant's access request and provide the Applicant with a response with respect to the responsive records to which the fee estimate applies. These factors would need to be known before a determination could be made as to whether the Public Body had provided a response that complies with the timelines under the FOIP Act.

[para 24] Accordingly, it is premature for me to make any finding on whether the Public Body complied with the timelines in the FOIP Act with respect to providing a response to the Applicant regarding the responsive records that are the subject of the fee estimate.

V. ORDER

[para 25] I make this Order under section 72 of the Act.

[para 26] With respect to the response and the records the Public Body provided to the Applicant on January 31, 2025, I find that the Public Body failed to make every reasonable effort to meet the time limit to provide its response set out in section 11 of the FOIP Act. As the Public Body has now responded to the Applicant's access request, it is not necessary for me to order the Public Body to respond to the Applicant under the FOIP Act with respect to these records.

[para 27] I make no finding on the Public Body's fee estimate or whether the Public Body has complied with the time limit to provide a response set out in the FOIP Act with respect to the responsive records that are the subject of the fee estimate.

Carmen Mann
Adjudicator
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