

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-31

August 18, 2021

MUNICIPALITY OF CROWSNEST PASS

Case File Number 022361

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) that was received by the Municipality of Crowsnest Pass (the Public Body) on April 20, 2021.

The Applicant requested a review of the time taken by the Public Body to respond.

The Adjudicator found that the Public Body responded to the Applicant within the timeframe set out in the Act.

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

I. BACKGROUND

[para 1] An Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) that was received by the Municipality of Crowsnest Pass (the Public Body) on April 20, 2021.

[para 2] The Applicant's access request included his email address, which the Public Body used to confirm that his request was received and was being processed. In this email, dated April 20, 2021, the Public Body also clarified that the request appeared to be a request for general

information, in which case the Applicant would be required to pay a \$25 fee. The Applicant and Public Body both provided a copy of a receipt showing the Applicant paid that fee the same day.

[para 3] On July 9, 2021, this Office received a request for review from the Applicant, stating that he had not yet received a response by the Public Body as required by the Act.

II. RECORDS AT ISSUE

[para 4] 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 5] The Notice of Inquiry, dated July 30, 2021, 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 6] 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 7] In its submission, the Public Body states that it processed the Applicant's request, and provided its response and the records via email, on May 4, 2021. The Public Body provided me with a copy of this email, which lists the attachments provided to the Applicant. I did not receive a copy of the attachments; however, the names of the attachments appear to match the types of records sought by the Applicant.

[para 8] I can confirm that the email address used by the Public Body in its May 4 response is the same address used by the Public Body in its April 20, 2021 email confirming and clarifying the Applicant's access request. It also matches the email address written on the Applicant's access request, and on his request for review.

[para 9] It may be the case that the Applicant did not receive the May 4, 2021 email from the Public Body for reasons that are not apparent (for example, the attachments may have been too large for the Applicant's email account). It may also be that the Applicant *did* receive the email but that it was sent to a junk or spam folder and he did not see it. There is no indication that the Applicant attempted to follow up with the Public Body regarding the processing of his request, which would have alerted the Public Body to the problem.

[para 10] The Public Body must make every reasonable effort to respond to an access request in 30 days. The Public Body responded to the Applicant on May 4, 2021, well within the statutory timelines. It was reasonable for the Public Body to respond via the email address the Applicant included in his FOIP request, and that had been used to communicate with the Applicant during the processing of the request. In the circumstances, it was also reasonable for the Public Body to assume its response had been received by the Applicant. Without something to alert it, the Public Body cannot be expected to know or guess that there was an issue with its response and/or the Applicant's receipt of its response.

[para 11] I find that the Public Body met its duties under section 11 of the Act.

V. ORDER

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

[para 13] I find that the Public Body responded to the Applicant within the time limit set out in section 11 of the Act.

Amanda Swanek
Adjudicator