

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-47

November 30, 2021

HEALTH

Case File Number 020466

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Health (the Public Body) for policies relating to Safe Site Consumption Policies at various points in time.

The Public Body failed to respond to the access request within 30 days of receiving the access request, contrary to section 11 of the FOIP Act.

The Adjudicator directed the Public Body to respond.

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] The Applicant made an access request to Health (the Public Body). He requested Safe Consumption Site policies in place at various points in time. He made the request on April 2, 2020.

[para 2] The Public Body did not respond to the Applicant's access request.

[para 3] The Applicant requested review by the Commissioner of the Public Body's failure to respond to his access request. The Commissioner directed the Applicant's request to inquiry.

[para 4] In its submissions, the Public Body requested that I not make an order prior to November 30, as it anticipated responding to the access request by that time. However, it subsequently informed this office by telephone that it would not be ready to respond by today's date.

II. ISSUE

Did the Public Body meet its duty to the Applicant as provided by section 11(1) of the Act (time limit for responding)?

[para 5] 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 6] A Public Body must make every reasonable effort to respond to an access request within 30 days of receiving it unless the Public Body has extended the time for responding to the access request under section 14, or has transferred the access request under section 15.

[para 7] The Public Body states:

The delay in a response resulted due to the Respondent's FOIP Office staffing challenges (which are already known to the OIPC) and the current volume of access requests being processed by the Respondent's FOIP Office.

The Respondent is the Department tasked with leading Alberta's response to the COVID-19 pandemic. This affects the Respondent's FOIP Office's operations in two ways. First, there has been a notable increase in the number of FOIP access request submitted to the Respondent regarding the Respondent's handling of the pandemic. Second, the program areas holding responsive records in respect of FOIP access requests regarding the Respondent's handling of the pandemic are the same program areas responsible for leading the response to the COVID-19 pandemic.

These factors resulted in this access request not being processed and a response not being provided to the Applicant within the timelines required by the Act.

[para 8] The Applicant states:

The legal obligation created by section 11 of the *FOIP Act* is a legal obligation for the head of the public body to maintain a properly staffed and funded FOIP office. The staffing challenges of the Alberta Health FOIP office are known to the OIPC, (according to paragraph 8 of the Public Body's submission) and have been for years, (see *Order F2019-16* at paras 9 and 21). This understaffing of a FOIP office is the violation by the head of the public body of their legal obligation.

Understaffing a FOIP office should not excuse a failure to comply with section 11 of the *FOIP Act*, as understaffing the FOIP office is itself the violation of section 11. The OIPC has previously recognized this:

The adjudicator in *Order F2018-10* explained why being short staffed or having a high workload does not mitigate a public body's duty under section 11. She noted that the duty to make every reasonable effort to respond in 30 days is a duty of the head of the public body. Clearly, the head cannot respond to each access request, and so must delegate that responsibility. But the head must delegate the responsibility in a manner that would allow the head's duties to be met. Delegating a large workload to a systemically understaffed unit such that the statutory timelines are consistently not met does not satisfy the duty to make every reasonable effort under section 11 (see paras. 17-18). (*Order F2019-16*, at para 12)

I ask the OIPC to find that the Public Body did not comply with section 11 of the *Act*, and to note that is specifically because the head of the Public Body has not provided adequate funding to properly staff their FOIP office.

[para 9] The Public Body has provided two distinct reasons for failing to respond. First, it states that its FOIP office lacks the employees necessary to process the volume of access requests it receives in a timely way. Second, it states that the areas of the Public Body that are handling the pandemic are the areas where responsive records are located. The second factor suggests that the Public Body is unable to respond to access requests when the area that holds responsive records has different priorities. It is unclear from the Public Body's submissions to what extent these factors have contributed to the Public Body's failure to respond to the Applicant. In any event, in this inquiry, I am tasked with determining whether the Public Body has responded to the Applicant and to issue an order requiring it to do so if I find it has not.

[para 10] I find that the Public Body has failed to meet its duty to respond to the Applicant within 30 days of receiving the access request. As a result, I must order the Public Body to respond to the Applicant.

III. ORDER

[para 11] I make this Order under section 72 of the Act.

[para 12] I order the Public Body to respond to the Applicant.

[para 13] I order the Public Body to inform me within 50 days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator
/bah