

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-48

December 1, 2021

JUSTICE AND SOLICITOR GENERAL

Case File Number 020675

Office URL: www.oipc.ab.ca

Summary: On April 6, 2020, Justice and Solicitor General (the Public Body) received an access request from an applicant (the Applicant) under the *Freedom of Information and Protection of Privacy Act* (the Act).

On April 8, 2021, the Applicant requested a review by this Office, indicating that the time limit for responding to the request under the Act had expired and the Public Body had not provided a response.

The Adjudicator found that the Public Body did not comply with section 11 of the Act. The Adjudicator ordered the Public Body to respond to the Applicant.

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

I. BACKGROUND

[para 1] On April 6, 2020, Justice and Solicitor General (the Public Body) received an access request from an applicant (the Applicant) under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) for certain information.¹

¹ Public Body's submission dated November 26, 2021 (the Public Body's submission) at page 1.

[para 2] On April 8, 2021, the Applicant requested a review by this Office, indicating that the time limit for responding to the request under the Act had expired and the Public Body had not provided a response.²

[para 3] 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 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 November 2, 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 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 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 in this inquiry, the Public Body advised that it received the Applicant's access request dated April 1, 2020, on April 6, 2020.³

[para 8] The Public Body further stated in its submission (references to Tabs omitted):⁴

2. On April 17, 2020 the Public Body sent a letter to the Applicant acknowledging that this request has been received. The Applicant was advised that under a *Public Health Act order*, the *FOIP Act* was modified to allow the Public Body to extend timelines temporarily on responding to a FOIP access request during the State of Public Health

² Applicant's Request for Review/Complaint dated April 7, 2021 and received by this Office on April 8, 2021.

³ Public Body's submission at page 1.

⁴ *Ibid.*, at pages 2 – 3.

Emergency. The limit for responding to an access request is modified from 30 days to not later than 90 days.

3. On June 12, 2020, the Public Body provided a fee estimate to the Applicant and the file was placed on hold.
4. On June 24, 2020 the Applicant accepted the fees and the file was taken off hold.
5. On July 3, 2020 the Public Body extended the time limit for responding under section 14(1)(b) [for volume] of the *FOIP Act* and a letter was sent to the Applicant. The new due date was adjusted to August 3, 2020.
6. On July 24, 2020 an email was sent to the Applicant advising that there was a miscalculation on the time line and the provided due date of August 3, 2020 should have been quoted as August 18, 2020.
7. On August 12, 2020 a further extension was requested for 30 days under section 14(1.1) [COVID-19]. The due date was adjusted to October 19, 2020.
8. On October 19, 2020, the Public Body requested a time extension for 60 days from the Office of the Information and Privacy Commissioner (OIPC) under section 14(1)(b) [volume] and section 14(2) [multiple concurrent requests] and a decision was provided on November 23, 2020 granting the extension. On December 9, 2020 the Applicant was advised that a further extension of 60 days was granted by the OIPC. The due date was adjusted to December 14, 2020.
9. On December 11, 2020, the Public Body requested a further extension of 60 days from the OIPC which was denied on December 16, 2020.

II. ISSUE AND PUBLIC BODY RESPONSE TO ISSUE

In section I of the Notice of Inquiry, the Adjudicator identified one issue in this inquiry. The Public Body's response is outlined below.

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

10. In response to the above issue, the Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*.

[para 9] The Public Body concluded its submission as follows:⁵

The Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*. The Public Body is actively processing this request.

[para 10] It has been more than one year and seven months since the Applicant submitted his access request to the Public Body, and almost a year since the extension granted by this Office to the Public Body expired.

⁵ *Ibid.*, at page 3.

[para 11] The Public Body has acknowledged that it did not comply with section 11 of the Act. I find that the Public Body did not comply with section 11 of the Act.

[para 12] As the Public Body has not responded to the access request, I must make an order directing the Public Body to respond to the Applicant.

V. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. While it is too late for the Public Body to now comply with that section of the Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act.

[para 15] 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.

Carmen Mann
Adjudicator