

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-14

March 1, 2022

HEALTH

Case File Number 024483

Office URL: www.oipc.ab.ca

Summary: On July 23, 2020, an individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Health (the Public Body) for certain information.

On January 17, 2022, the Applicant requested a review by this Office of the Public Body's failure to provide a response to his access request.

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 July 23, 2020, an individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to Health (the Public Body) for certain information.

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

[para 3] On January 17, 2022, the Applicant requested a review of the Public Body's failure to respond to his access request.

[para 4] The Commissioner decided to move the matter directly to inquiry and delegated her authority to conduct the inquiry to me.

II. ISSUE

[para 5] The Notice of Inquiry, dated February 2, 2022, states the issue for this inquiry as follows:

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

III. 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] Section 11(1) 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, unless the time for responding to the access request is extended under section 14, or the public body has transferred the access request under section 15.

[para 8] In its submissions, the Public Body acknowledges that it has not responded to the Applicant within the legislated timeline required by section 11(1) of the Act. The Public Body attributes the delay in responding to the Applicant's access request to staffing challenges, its role in providing support due to the current pandemic, and the current volume of access requests.

[para 9] The Public Body advises that although it is currently understaffed for the volume of requests it receives, it has undertaken the necessary steps to gather the responsive records. It states that it is currently processing the records with the intent to respond to the Applicant no later than March 31, 2022. The Public Body asks that no order be made as it is making its best efforts to complete the request and provide responsive records to the Applicant.

[para 10] In this inquiry, I am tasked with determining whether the Public Body has responded to the Applicant as required by the Act and to issue an order requiring it to respond if I find it has not.

[para 11] I acknowledge that the Public Body has faced a number of challenges in meeting the deadline for responding to the access request; however, the Public Body has a mandatory duty to respond to the Applicant within the time limit set out in section 11 of the Act.

[para 12] It has been over one and a half years since the Public Body received the Applicant's access request. The fact that the Public Body intends to respond to the Applicant by a date in the future is not relevant to the question of whether it has complied with the time limits in section 11 of the Act. I find that the Public Body failed to meet its duty to respond to the Applicant not later than 30 days after receiving the access request as required by section 11 of the Act.

[para 13] As the Public Body has not responded to the Applicant as required by the Act, I must make an order under section 72 of the Act directing the Public Body to respond to the Applicant.

IV. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] 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 16] 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
/kh