

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-17

March 21, 2022

HEALTH

Case File Number 023236

Office URL: www.oipc.ab.ca

Summary: On January 22, 2021, 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 February 8, 2021, the Public Body wrote to the Applicant and acknowledged receiving a revised access request from the Applicant, and indicated it would respond by March 10, 2021, if possible.

On September 30, 2021, the Applicant requested a review of the Public Body's failure to respond to her 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, 14 and 72.

I. BACKGROUND

[para 1] On January 22, 2021, 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] On February 8, 2021, the Public Body wrote to the Applicant and acknowledged receiving a revised access request from the Applicant on February 8, 2021, and indicated it would respond by March 10, 2021, if possible.

[para 3] The Public Body did not provide a response to the Applicant's access request.

[para 4] On September 30, 2021, the Applicant requested a review of the Public Body's failure to respond to her access request.

[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 February 16, 2022, 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 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 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 10] Section 11(2) of the Act deems a failure to respond to an access request within 30 days, or any extended period permitted by the Act, to be a refusal to give access to requested records.

[para 11] Section 14 of the Act, referred to in section 11(1)(a) of the Act, allows for the time for a public body to respond to an access request under section 11 to be extended in certain situations. Section 14 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 of time if

- (a) the applicant does not give enough detail to enable to 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 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 12] 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 13] 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 as

soon as possible. 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 14] 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 15] 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 16] It has been over a year now and the Public Body has not yet responded to the Applicant. There is no evidence before me that the Public Body made a request and received permission from the Commissioner under section 14 of the Act to extend the time to respond to the Applicant's access request.

[para 17] 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.

V. ORDER

[para 18] I make this Order under section 72 of the Act.

[para 19] 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 20] 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