



Office of the Information and  
Privacy Commissioner of Alberta

# Investigation Report F2017-IR-02

*Investigation into Executive Council and Public Affairs Bureau's  
delays in responding to access requests*

**February 23, 2017**

*Executive Council and Public Affairs Bureau*

*Investigations 003213 and 003216*



## Commissioner's Message

On June 29, 2016, my office received a request from an applicant asking for a review of how Executive Council and Public Affairs Bureau responded to 14 access requests the applicant had made.

The applicant was concerned that responses to 12 of the 14 requests were not within legislated timelines, and believed that the delays may have been due to the applicant's identity. Further, the applicant was concerned that there had not been an adequate search for responsive records for four of the requests.

I chose to open two investigations, one for each Public Body, in order to examine the applicant's concerns from a broader perspective.

The investigation confirmed that the Public Bodies had not met legislated timelines in responding to the applicant, and it became clear that a number of factors contributed to these delays including processing practices that involve unnecessary preliminary reviews and internal consultations, as well as lengthy approval processes.

Most notably, however, the Public Bodies experienced a 216% increase in the number of access requests received since 2012/13, without a commensurate increase in staff. It is difficult to imagine meeting legislated timelines in these severely strained circumstances.

The investigation also found that the applicant's requests were indeed "batched" (handled as a group). While this practice did not appear to be specific to this applicant, or any particular type of applicant (e.g. media, political, academic), I am nonetheless concerned that, between August 2015 and October 2016, the Public Bodies took, on average, 14 days longer to respond to requests made by the applicant than the average general response time. It may be that this is due to the high number of requests made by the applicant during this period; however, it could also suggest that the applicant's requests are treated differently or are even deliberately delayed.

This investigation report and recommendations are intended to assist the Public Bodies to identify opportunities to improve request processing practices, and improve compliance with the FOIP Act. This is also an opportunity for the Public Bodies to consider whether request processing practices unduly impact any particular applicants, or applicant types – whether intentionally or not.

Overall, I am pleased to note that some of the processes described herein were revised during the course of this investigation, and it appears the Public Bodies will also be increasing staffing levels.

Jill Clayton  
Information and Privacy Commissioner

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## Introduction

- [1] On June 29, 2016, the Office of the Information and Privacy Commissioner (OIPC) received 14 requests from an individual (Applicant) asking for a review of how Executive Council and the Public Affairs Bureau (each a Public Body, or collectively, the Public Bodies) responded to access to information requests the Applicant made under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). Nine of the access requests were made to Executive Council and five were made to the Public Affairs Bureau. A single FOIP Office handles access request processing for both Public Bodies.
- [2] The Applicant alleged that 12 of the requests were not dealt with individually as they were received, but were handled as a group or batched. The Applicant believes the batching treatment could be because he is a frequent requester and his requests are made on behalf of elected officials. He believes that, as a result, request responses may have been unnecessarily delayed.
- [3] The Applicant also raised concerns that the Public Bodies did not find any responsive records for four of the 12 access requests. The Applicant believes records should exist.
- [4] Rather than review each of the requests individually, the Commissioner opted to examine the issues raised by the 12 cases as two investigations, one for each Public Body.<sup>1</sup> The Commissioner preferred to view the concerns from a broader perspective, examining the issues underlying the Applicant's concerns.
- [5] The Commissioner initiated the investigations further to the general powers she has in the Act under section 53(1):

### **General powers of Commissioner**

53(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations to ensure compliance with any provision of this Act...

- [6] The purpose of the investigations was to determine whether:
- the timelines prescribed by the Act to respond were met for the 12 cases and, if not, the reasons for the delay;
  - there were irregularities in processing the requests based on applicant type or identity and, if there was "batching", did it contribute to delay; and,
  - an adequate search was conducted for responsive records.

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<sup>1</sup> The Applicant did not receive responses to two of the 14 access requests. These two cases were directed to the OIPC's Adjudication Unit for inquiry, skipping the usual mediation/investigation process. They are not part of my investigation.

## Methodology

- [7] In conducting this investigation I interviewed the following people:
- The Applicant who initially submitted the review requests and an assistant in his office;
  - The FOIP Coordinator and a FOIP Analyst for the Public Bodies;
  - The Deputy Secretary of Cabinet (DSC), who is the Delegated Head of the Public Bodies; and,
  - The Senior Financial Officer (SFO), to whom the FOIP Coordinator reports.
- [8] I also reviewed various reports from FOIPNet, the system used by the Government of Alberta (GoA) to track access to information requests.

## Analysis and Findings

### Issue 1: Did the Public Bodies comply with sections 11 and 14 of the Act, and if not, why?

- [9] Further to section 11 of the Act, public bodies have a duty to provide a response to an access request in 30 calendar days. This time may be extended by the public body by an additional 30 calendar days under section 14 of the Act when the request must be clarified, when there are a large number of records, or when a public body *must* consult with a third party or when it *wants* to consult with another public body. Beyond this, more time can be granted by the Information and Privacy Commissioner if she is persuaded by a public body that one or more of the section 14 conditions are met.
- [10] Section 11 reads:
- 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...
- [11] The applicable part of section 14 reads:
- 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 if...
- (c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record...
- [12] The chart below identifies when the Public Bodies received each of the 12 requests, when responses were provided, how long it took to process the requests and how long the approval process took.

Public Affairs Bureau

Request Number (Case Number)	Date Received per FOIPNet (d/m/y)	Response Date (d/m/y)	Processing Time <sup>2</sup>	Approval Time <sup>3</sup>	Time Between Receipt and Response
2015-G-0121 (003004)	11/06/15	03/21/16 <sup>4</sup>	89 days	47 days	136 days
2015-G-0124 (003005)	11/06/15	03/21/16	94 days	42 days	136 days
2016-G-0049 (003010)	02/25/16	04/11/16	23 days	23 days	46 days
2016-G-0059 (003014)	03/07/16	04/11/16	19 days	16 days	35 days

Executive Council

Request Number (Case Number)	Date Received per FOIPNet (d/m/y)	Response Date (d/m/y)	Processing Time	Approval Time	Time Between Receipt and Response
2015-G-0095 (003003)	10/09/15	04/11/16	100 days <sup>5</sup>	85 days	185 days
2015-G-0125 (003006)	11/06/15	03/29/16	101 days <sup>6</sup>	43 days	144 days
2016-G-0033 (003008)	02/09/16	04/11/16	44 days	18 days	62 days
2016-G-0047 (003009)	02/25/16	04/11/16	18 days	28 days	46 days
2016-G-0050 (003011)	02/25/16	04/11/16 <sup>7</sup>	25 days	21 days	46 days
2016-G-0060 (003012)	03/07/16	04/11/16	10 days	25 days	35 days
2016-G-0061 (003015)	03/07/16	04/11/16	17 days	18 days	35 days
2015-G-0147 (003007)	12/17/15	03/14/16	62 days	26 days	88 days

<sup>2</sup> This includes the number of days from the receipt of the request to the date the response is sent/file is closed, minus the number of days the file is with an approver.

<sup>3</sup> Approval is sought from three places: the FOIP Coordinator (FC), Senior Financial Officer (SFO) and head of the Public Body (the DSC). The FC usually dealt with the issue within 1-2 days, as did the SFO. All remaining days were taken by the DSC.

<sup>4</sup> No records.

<sup>5</sup> This included a 30-day third party consultation process.

<sup>6</sup> This included a 30-day third party consultation process.

<sup>7</sup> No records.

- [13] In each of the 12 cases the Public Body exceeded the timelines in the Act. The longest delay was for more than six months beyond the standard 30-day time frame; the shortest was five days over.
- [14] In two of the Executive Council requests (see the first two in the chart above) the Public Body extended the time by 30 days, as allowed under section 14 of the Act; this was done to consult with a third party. Despite this, the Public Body still exceeded the timelines in providing a response to the Applicant.
- [15] A new FOIP Coordinator started with the Public Bodies in November 2015. Based on the FOIPNet data I reviewed, she inherited a large number of requests that were past or well past their due dates. I note, however, that since November 2015, the Public Bodies' average processing time has dropped from 12-15 months at the beginning of the year to 3-6 months.<sup>8</sup> However, the FOIP Office is still having difficulty meeting the 30- and 60-day timelines prescribed in the Act.
- [16] I find that the Public Bodies did not comply with sections 11 and 14 of the Act in responding to the 12 access requests.
- [17] I next considered the reasons for the delays in responding. I found four factors that significantly impacted the response times for the 12 access requests.

### Receiving Access Requests

- [18] The processing practices employed by a public body impact the time it takes to respond to an applicant. Based on information provided by public bodies, the general process for responding to an access request is as follows:
- The time a public body has to respond to a request is 30 calendar days. There are typically 21 to 22 working days in a month.<sup>9</sup>
  - Retrieving records should take between 3-5 days.
  - Responses must be approved by the Delegated Head, which should take 3-5 days depending on the volume of records in the response.
  - Given the above, the best case allows a FOIP Analyst 16 working days to:
    - read all the records to confirm they were retrieved (which, if not, starts the 3-5 day retrieval process over again) and to review for mandatory exceptions;
    - consult with subject matter experts when necessary;
    - consult with other public bodies when desired;
    - consult with legal counsel on matters where legal advice is advisable;

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<sup>8</sup> FOIPNet FOIP Request Detail Report, October 2016.

<sup>9</sup> For instance, December 2016 had only 17 working days.



- redact the information from the records;
- fulfill the administrative duties (letter writing, entering processing information into FOIPNet, photocopying, etc.);
- manage all the other requests the Analyst has on her/his case load; and,
- manage access request reviews and inquiries that are with the OIPC.

[19] In examining the 12 cases at issue in this matter, I noted that the number of days taken by the Public Bodies to process a request ranged between 10 and 101 days, with an average time of 50 days. These processing times are well over the statutory 30-day response timeline established by the Act (unless an extension has been taken or granted, which was only done for two of the 12 files).

[20] I was told that the Public Bodies had established a practice whereby, upon receipt, access requests were entered into FOIPNet and sent to the SFO, rather than to a FOIP Analyst to begin processing. The SFO in turn sent the request to the Delegated Head. Following reviews by the SFO and Delegated Head, the requests were returned to the FOIP Office to start the process of retrieving records and reviewing them for disclosure.

[21] I asked the SFO and Delegated Head why requests were given to them before they were sent to the FOIP Office. I was told the Delegated Head reviews the request with a “different lens” than a FOIP office would to achieve the following goals:

- Allow for reasonable searches.
- To determine whether there can be a reduction in the burden for the Public Body to conduct searches for broadly worded requests.
- To reduce the stress employees in the program areas may be under because of the time it takes to retrieve the records.
- The Delegated Head and SFO may have business knowledge that the FOIP Office may not be as familiar with and, as a consequence, may be able to provide some insight into how the search for records can be conducted without unduly burdening the individuals tasked with retrieving records.
- The Delegated Head wants things to be “as clear and accurate as possible” and have records released in a “crisper fashion”.

[22] Despite these goals, I noted that the process described can, and does, impact timelines. Further, this process could be perceived as a form of interference by individuals who need not be involved until the records are retrieved and at least an initial review has been completed.

[23] Following my interviews with the Delegated Head and SFO, the SFO called to advise me the described process had changed. Requests are no longer reviewed by the Delegated Head prior to being seen by the processing staff. Although the Delegated Head continues to

receive a copy of the request, the request is provided to the FOIP Analyst at the same time so as to not delay processing.

- [24] The Delegated Head is authorized under the Act to know the content of an access request and must know it to properly execute his disclosure decision. If early notification of the request's content to the Delegated Head does not cause delays, the practice is not contrary to the Act.

### Recommendation

- Access requests should be provided to a FOIP Analyst as soon as they are received. I understand the Public Bodies have already modified their internal process to ensure this occurs.

### Review by SFO

- [25] Another practice established by the Public Bodies is to send responses to the FOIP Coordinator once they have been processed by the FOIP Analyst. The FOIP Coordinator reviews the response and approves the disclosure recommendation. Following this step, and before the request goes to the Delegated Head for approval, the disclosure recommendation is provided to the SFO for review.
- [26] As described to me, the SFO's role is fairly minor, takes only 1-2 days, and seemed to be related to a desire to become familiar with the records and to understand the types of requests received by the Public Bodies, rather than to provide comment on, or make decisions about, disclosure.
- [27] Further, it appears that this process has come about as a result of the reporting relationship within the Public Bodies where FOIP Analysts who process access requests report to the FOIP Coordinator and the FOIP Coordinator reports to the SFO.
- [28] Nonetheless, I have concerns with this process. The SFO has not been delegated any duty, power or function under section 85 of the Act, and does not have the authority to review or approve decisions about access, nor to be involved in the access response process. Unless records responsive to an access request relate to the finance role (the SFO's area of expertise), and the FOIP Analyst requires such expertise to process the request, the SFO should not be involved in reviewing information.

[29] The FOIP Analyst and FOIP Coordinator, along with the Delegated Head, are in the best position to determine whether the tests for exceptions to access are met and should be the only staff members involved in processing and approving a disclosure. To do otherwise raises at least three troubling possibilities:

1. Individuals who have no authority to do so have access to the personal information of third parties. An applicant may be identifiable or the personal information of others may form an integral part of the records. Part Two of the Act sets out precise duties and rules regarding the sharing and use of information within a public body. There are no provisions in the Act that authorize the SFO's role in reviewing responses as described above.
2. Some exceptions to access are discretionary (i.e., the Public Bodies may decide whether or not they wish to refuse access to records to which discretionary exceptions apply). Allowing multiple people to have input regarding disclosure of a record can be contrary to the Act if doing so interferes, or appears to interfere, in the exercise of discretion.
3. The process is delayed every time a new person is introduced to the process to review a record or make a decision on disclosure. The Public Bodies are already experiencing difficulties meeting statutory timelines; the lengthy processing and approval process is a significant contributor to these delays.

#### Recommendations

- The SFO should not be involved in reviewing access request responses. The role of Head of the Public Bodies has been delegated to the Deputy Secretary of Cabinet. To help ensure the fair and timely processing of an access request response, the file, including the response package with records, should only be handled by the FOIP Analyst assigned to the file as the processor, the FOIP Coordinator for quality control where needed, and the Delegated Head to make decisions about disclosure. All others are superfluous and may even be contrary to the privacy provisions in the Act if an applicant can be identified, or if the records themselves contain the personal information of a third party.
- The FOIP Coordinator should report directly to the Delegated Head to obtain disclosure decisions. The FOIP Coordinator is the best placed and most knowledgeable and experienced person in a public body to deal with access and privacy matters and decisions. Having an intermediary between the FOIP Coordinator and the Delegated Head not only delays the process but can hinder the exchange of important information.

#### Approving Disclosure Responses

- [30] As already noted, a public body typically has between 30 and 60 calendar days to provide a response to a request for access.
- [31] In examining the 12 cases at issue in this matter, I noted that the number of days taken by the Public Bodies to approve a request for disclosure ranged between 16 and 85 days, with an average time of 33 days.

- [32] Neither the longest period of time (85 days), nor the average period of 33 days is reasonable. Even the *shortest* number of days taken to approve a request for disclosure was 16 days – meaning this one step in the process took over half the allotted time for a standard access request.
- [33] I did note that as time taken to process requests decreased for the 12 files reviewed, the approval times also decreased. However, approvals were still not done quickly enough to meet the timelines required by the Act.
- [34] Overall, processing an access request within the standard time frame can be difficult even when a request is relatively simple. The difficulty only increases when the approval process takes more than half of the standard 30-day period. Following this practice, a public body will not be able to regularly respond on time.

### Recommendation

- The Delegated Head should reduce the time taken to review and approve disclosures. The FOIPNet data indicated the approval time is decreasing; however, this must be done consistently in order to achieve consistent compliance.

### Staffing and Volume of Requests

- [35] In addition to looking at the processing practices that contributed to delayed responses to the 12 access requests, I also looked at whether the Public Bodies’ current complement of staff was sufficient to handle the volume of access requests received.
- [36] The table below identifies the number of access requests received by the Public Bodies over a span of six years.

Year	Executive Council	PAB	Total
2011/2012	3	2	5
2012/2013	54	10	64
2013/2014	112	15	127
2014/2015	173	26	199
2015/2016	219	21	240
2016/2017 <sup>10</sup>	178	24	202

- [37] Until quite recently, the number of staff has remained the same over this time period – the FOIP Coordinator, an analyst and an administrative employee.
- [38] It is clear from the table that there has been a substantial increase in the number of access requests for both Public Bodies. Even disregarding the very low numbers in 2011/2012, there has still been a 216% increase in the volume of requests received since 2012/2013.

<sup>10</sup> 2016/2017 activity is from April 1<sup>st</sup>, 2016 to September 13<sup>th</sup>, 2016.

This is a huge jump on its own but is staggering when measured against the fact that there has not been a commensurate increase in the number of staff processing the requests.

[39] It also appears that the number of access requests are continuing to increase and has not yet plateaued. The increases began in 2012, the year Alberta began to have substantial numbers of members in opposition in the Legislative Assembly. The use of access to information legislation by elected members of the Assembly, journalists, researchers and special interest groups continues to increase. I note that the numbers reported in the table above for 2016/2017 do not even represent a full year of statistics.

[40] I understand the Public Bodies made some staffing changes during the course of my investigation and two additional staff were hired; however, long-term planning is still needed as one analyst recently left.

#### Recommendations

- The Public Bodies should ensure an appropriate level of staffing so that access requests are responded to in a timely fashion. The appropriate staffing level should be determined by the Public Bodies in consultation with the FOIP Coordinator who will be able to provide the best information on the needs of the FOIP Office. My discussions with the FOIP Coordinator suggest that at least one other FOIP Analyst is necessary for proper functioning, although this would only assist the FOIP Office to keep up and would not address the current backlog.
- The Public Bodies should add staff to address the current backlog.

### **Issue 2: Did the Public Bodies meet their duty to assist the Applicant by responding openly as provided by section 10 of the FOIP Act?**

[41] Public bodies have a duty to assist applicants to ensure their requests are dealt with openly, accurately and completely. Section 10 of the Act reads:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[42] I reviewed the 12 access requests that are at issue in this investigation. I noted that the 12 requests were received on six different dates (i.e., some of the requests were submitted on the same day). Normally, this would mean there should be six different response dates. However, I found there were only four response dates. This suggests the requests were batched rather than handled individually.

[43] As previously described, the Applicant in these cases believes the batching treatment could be because he is a frequent requester and his requests are made on behalf of elected officials. He believes that, as a result, responses to his requests may be unnecessarily delayed.

- [44] I reviewed all access requests responded to by the Public Bodies during the same period as the Applicant's 12 requests. I found that three of the Applicant's four response dates matched the response dates of other access responses. The applicants in those other cases included members of the general public. This indicated to me that batching was used for convenience and efficiency for the approver, and not to deliberately target the Applicant or any particular type of applicant.
- [45] I also looked at the average length of time the Public Bodies took to respond to the Applicant, versus the general average.
- [46] For the period of August 2015 to October 2016:
- There were a total of 257 requests.
  - Of the 257 requests, 105 (41%) were made by the Applicant.
  - A response was provided to the Applicant for 82 of his 105 requests. The average length of time to respond was 78 days.
  - The average length of time to respond to all the other applicants was 64 days.
- [47] The response time for the Applicant's requests was 14 days longer than the average general response time. This is a concern and could suggest that the Applicant's requests are treated differently, or are even deliberately or intentionally delayed. Given the lengthy delays generally, it is also possible that the delay is due to the volume of requests made by the Applicant in a relatively short period of time.
- [48] Whatever time is used, the average processing time for the Applicant's requests should not exceed the average processing time for all other types of applicants unless, and only unless, the Applicant's requests require lengthier periods *due to one of the authorized reasons* in section 14 of the Act.

### Recommendations

- I recommend that the Public Bodies ensure that responses are not batched if doing so will delay a response and put the Public Body in breach of the statutory timelines set out in the Act.
- If the Public Bodies require additional time to respond to requests because more than one request was submitted by an applicant within a very short period of time, the Public Bodies should consider asking the Commissioner to extend the time for responding, further to section 14(2) of the Act.
- I strongly recommend that the Public Body must respond to all applicants within the 30-day timeline, or a longer period when an extension is authorized. All access requests should be dealt with in the same fashion.

### Issue 3: Did the Public Bodies meet their duty to conduct an adequate search for responsive records further to section 10 of the Act?

[49] In four of the 12 responses provided by the Public Bodies, the Applicant was told there were no responsive records –two requests were made to each Public Body. The Applicant questioned the responses, as he believed the requested records should be in the custody of the Public Bodies.

[50] The requests were as follows:

- From Executive Council, the Applicant requested “communication records to the Standing Committee on Legislative Offices” and “communication records relating to PressProgress”.
- From the Public Affairs Bureau, the Applicant requested “briefing notes, memos, ministerial orders, ‘advice from officials’ notes related to key oil and gas issues” and “communication records relating to PressProgress.”

[51] I asked the Public Bodies about the responses provided to the Applicant. I was told:

- “The legislative offices do not report into [sic] Executive Council and is identified as a separate public body under the FOIP Act. Given that, it is unlikely the Ministry would have any records.”
- “PressProgress is an online news and analysis website which serves as an online political news source. It operates under the Broadbent Institutes [sic] mandate and focuses on issues that fall broadly within the following categories: social and economic equality; green economy; and democratic renewal.

A ‘no records’ [response] was not an unexpected result: as the one record type requested by the applicant (communication records) makes the scope of the request quite narrow and the Government of Alberta has no formal affiliation with PressProgress. In addition, PressProgress social media posts may occasionally have shown up in social media monitoring, but that monitoring is of public posts and passive – based on keywords or hashtags rather than specifically identifying them as a target for monitoring. There is no active monitoring of PressProgress posts, any such mention of them would be in the context of dozens of other social media posts on any given day, and no records on Press Progress [sic] exist. PressProgress infrequently publishes on Government of Alberta progress, and it is not unreasonable that the employees of the PAB would not keep or maintain PressProgress articles or records, as they do not have operational value to the government.”

- “PAB provides communication services to EC (including the Premier’s Office) as well as news services to the public to support the government policies and initiatives. PAB would not generate or create ‘advice from officials’ on any policy development, given that, a ‘no records’ response was reasonable and conceivable.”
- The same response was given as above for records relating to PressProgress.

- [52] In my view, these explanations are reasonable relative to what was requested. With respect to the requests made to Executive Council, the Public Body correctly pointed out that the Legislative Offices do not report to Executive Council, and they are distinct from it, so it is reasonable that no communication records would be in the custody or control of Executive Council. Since the government has no affiliation with PressProgress, it is similarly reasonable that no communication documents would be found related to that entity.
- [53] With respect to the requests made to Public Affairs Bureau, given this Public Body is not a policy maker for the government of Alberta with respect to oil and gas, it is reasonable to assume it would not have any briefing notes, memos, ministerial orders or other advice documents with respect to that topic.
- [54] And, as above, the government has no affiliation with PressProgress so it is unlikely that communication documents would be found related to that entity.
- [55] I should note that the Public Bodies also attempted to locate records again after the Applicant had submitted his review but the same answer resulted. In addition, I was told that:
- both Public Bodies “have established ministry standards and requirements for [its] FOIP Network contacts in each division as it relates to their search and retrieval obligations under the FOIP Act”;
  - “the FOIP Office has a consultation with the program areas when a ‘no records’ response is provided”;
  - “the search and retrieval process is examined and verified by the FOIP Office”; and,
  - “approval is required by the FOIP Coordinator and the Deputy Secretary to Cabinet (delegated authority under the FOIP Act)”.
- [56] Given all of the above, in my opinion, the Public Bodies conducted an adequate search for responsive records and it is reasonable that no records were found.
- [57] I find the Public Bodies met their duty to conduct an adequate search for responsive records further to section 10 of the Act. I accept the Public Bodies’ explanation of why there were no records responsive to these requests and I have no further recommendation to make.

## Summary of Findings and Recommendations

- [58] I find that the Public Bodies did not comply with sections 11 and 14 of the Act in responding to the Applicant’s 12 access requests.
- [59] It is clear that the Applicant’s requests were handled as a group, and therefore “batching” did occur. However, I did not find any evidence that this process was specific to the Applicant or any particular type of applicant.



[60] I find the Public Bodies met their duty to conduct an adequate search for responsive records further to section 10 of the Act. I accept the Public Bodies' explanation of why there were no records responsive to these requests and I have no further recommendation to make.

[61] I made the following recommendations:

1. Access requests should be provided to a FOIP Analyst as soon as they are received. I understand the Public Bodies have already modified their internal process to ensure this occurs.
2. The SFO should not be involved in reviewing access request responses. The role of Head of the Public Bodies has been delegated to the Deputy Secretary of Cabinet. To help ensure the fair and timely processing of an access request response, the file, including the response package with records, should only be handled by the FOIP Analyst assigned to the file as the processor, the FOIP Coordinator for quality control where needed, and the Delegated Head to make decisions about disclosure. All others are superfluous and may even be contrary to the privacy provisions in the Act if an applicant can be identified, or if the records themselves contain the personal information of a third party.
3. The FOIP Coordinator should report directly to the Delegated Head to obtain disclosure decisions. The FOIP Coordinator is the best placed and most knowledgeable and experienced person in a public body to deal with access and privacy matters and decisions. Having an intermediary between the FOIP Coordinator and the Delegated Head not only delays the process but can hinder the exchange of important information.
4. The Delegated Head should reduce the time taken to review and approve disclosures. The FOIPNet data indicated the approval time is decreasing; however, this must be done consistently in order to achieve consistent compliance.
5. The Public Bodies should ensure an appropriate level of staffing so that access requests are responded to in a timely fashion. The appropriate staffing level should be determined by the Public Bodies in consultation with the FOIP Coordinator who will be able to provide the best information on the needs of the FOIP Office. My discussions with the FOIP Coordinator suggest that at least one other FOIP Analyst is necessary for proper functioning, although this would only assist the FOIP Office to keep up and would not address the current backlog.
6. The Public Bodies should add staff to address the current backlog.
7. The Public Bodies should ensure that responses are not batched if doing so will delay a response and put the Public Body in breach of the statutory timelines set out in the Act.
8. If the Public Bodies require additional time to respond to requests because more than one request was submitted by an applicant within a very short period of time, the Public Bodies should consider asking the Commissioner to extend the time for responding, further to section 14(2) of the Act.

9. I strongly recommend that the Public Body must respond to all applicants within the 30-day timeline, or a longer period when an extension is authorized. All access requests should be dealt with in the same fashion.

## Other Considerations – Best Practices

[62] While reviewing the cases in this file, some practices were noted that were not directly related to the crux of the investigation but are matters that relate to processing in general. I make the following suggestions for the Public Bodies to consider:

- Since the FOIP Office in this investigation acts for more than one public body, I recommend using the letterhead of the responsive Public Body when responding to a request for access. If it is the Public Affairs Bureau that received the access request then the response should be on letterhead from that office, not from Executive Council (this practice is throughout the Government of Alberta in ministries that handle more than the “home” ministry’s access requests. It can create confusion for applicants and for the OIPC). Alternatively, the letter could state that the writer is “responding to the request made to “Public Body Name”.
- Reiterate the access request or a summary of it in the response letter. When there are multiple requests from a single applicant this approach can help avoid confusion. For instance, when file numbers are assigned but mistakenly applied to correspondence, the access request summary in the response letter helps clear up the error.
- In the letter acknowledging receipt of an access request, list the date the access request was received. This allows an applicant to know whether the receipt date should be questioned.
- Consider whether consultations between public bodies are necessary in every circumstance or if disclosure decisions can be made without a consult. The records are in the custody or under the control of the public bodies and the disclosure decision is for the head to make.<sup>11</sup>
- When refusing to disclose records, cite the full provision used to deny access wherever applicable. For example, use “section 25(1)(c)(i) and (ii)” not simply “section 25” or “section 17(1) supported by section 17(4)(d)” not just “section 17”.

This is a requirement under section 12(1)(c) of the Act. It is so applicants are given information as to why she/he has been denied access. A refusal under “section 20” is not as informative as providing the more detailed information found within the subsections.

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<sup>11</sup> The consultation process was recently addressed in Order F2017-12 issued by the OIPC to the Public Body. That Order states that an internal consultation process is not a requirement in the Act and a public body “cannot permit [those] processes to interfere with its duty to make all reasonable efforts to respond [on time].” The Order was retrieved from <https://www.oipc.ab.ca/media/785663/F2017-12Order.pdf>.

## Acknowledgement and Appreciation

[63] Investigations are not possible without the cooperation of the Public Bodies and the people it employs.

[64] I want to thank the Public Bodies for their cooperation and assistance during this investigation. In particular, I would like to thank the FOIP Coordinator and the FOIP Analyst for their time and insightful comments. I also want to thank the Delegated Head of the Public Body and the Senior Financial Officer for their time and for their stated eagerness to make positive changes, as well as for the quick changes they have already made to existing processes.

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