

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2017-69

September 1, 2017

TREASURY BOARD AND FINANCE

Case File Number 005999

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request dated August 17, 2016 to Treasury Board and Finance (Public Body). The Public Body acknowledged receipt of the request but has not yet provided a response as required by the *Freedom of Information and Protection of Privacy Act* (the Act).

The Applicant requested a review of the time taken by the Public Body to respond.

The Adjudicator ordered the Public Body to respond to the Applicant's access request as required by the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 14, 72, 74.

I. BACKGROUND

[para 1] An Applicant made an access request dated August 17, 2016 to Treasury Board and Finance (Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body acknowledged receipt of the request by letter dated September 2, 2016. In that letter, the Public Body extended its time to respond to the Applicant's request under section 14(1)(b) of the FOIP Act, to October 17, 2016.

[para 2] The Public Body sent a letter to the Applicant, dated October 4, 2016, confirming a recent phone call in which the Applicant clarified his request. The Public Body also confirmed that it would endeavor to respond to the Applicant by October 17, 2016.

[para 3] By letter dated October 17, 2016, the Public Body provided the Applicant with a fee estimate of \$708.75. That letter informed the Applicant that the processing of the request would cease until the Public Body received the Applicant's deposit (\$354.00). The letter also stated that if the Applicant did not respond to the Public Body by November 16, 2016, the request would be considered abandoned.

[para 4] The Applicant requested a fee waiver, by letter dated November 3, 2016. By letter dated January 10, 2017, the Public Body informed the Applicant that it was waiving 100% of the fees, and that the processing of his request would recommence.

[para 5] In its letter, the Public Body provided the following circumstances that supported its decision to waive the fees (emphasis added):

- Despite the Applicant's willingness to modify the request, it is still broad with a focus on "all records" on a general topic. However, it is possible that a subset of the requested records are in the public interest and not already available to the public.
- The Applicant worked with TBF FOIP Office to narrow the request by focusing on the records at ADM and DM level and by eliminating emails and records related to the administration/collection of taxes. This clarification is likely to have significantly reduced the volume of responsive records.
- TBF is late in responding to the fee waiver request, which was due December 5, 2016. Due to this lapse, TBF will not be able to extend the time limit for responding to the request even though one would likely have been permitted by section 14 of the FOIP Act. Given the very large volume of records involved, we anticipate that the response to the request will be late due to our inability to extend the response due date further.

[para 6] On June 15, 2017, this Office received the Applicant's request for a review of the Public Body's failure to respond.

II. RECORDS AT ISSUE

[para 7] 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 8] The Notice of Inquiry, dated August 2, 2017, 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 9] Section 11 of the Act requires a public body to make every reasonable effort to respond to an access request no 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 10] The Public Body admits that it failed to meet the requirements of section 11. It states that because it failed to meet the timeline for responding to the Applicant's fee waiver, it did not seek permission from this Office for a time extension for responding to the Applicant's request.

[para 11] The Public Body also states that it requires approximately six months to finish processing the Applicant's request. It states:

On March 6, 2017, in a telephone conversation, the Public Body's FOIP staff asked the Applicant if the records could be disclosed in batches, due to the large volume involved. The Applicant confirmed that the records could be disclosed in this manner.

The Public Body is actively working on this request, however, significant work remains to be done. The Public Body had estimated locating approximately 3,500 pages of potentially responsive records. However, the search has recently been completed and resulted in approximately 6,190 pages of potentially responsive records.

The Public Body's FOIP Office is now processing those records which includes removing drafts and duplicates and converting them into a PDF format. The majority of the records did not originate with the Public Body and will require input of other public bodies to determine whether to grant access. The records are complex and contain sensitive information. There is likely a significant volume that are subject to section 22(1) of the FOIP Act [Cabinet and Treasury Board confidences], which is a mandatory exception to disclosure.

The Public Body's FOIP Office estimates needing another six months to fully respond to the request. However, to manage this large volume of complex records the Public Body will be releasing the records in batches, with the first batch being disclosed by September 29, 2017.

The Public Body's FOIP office currently has several access requests involving several thousand pages of sensitive records. These requests combined with FOIP request 2016-G-0126, has resulted in an increased demand on FOIP staff, whose expertise is needed. There is no readily available pool of FOIP experts or resources available to step-in and meet this demand at this time. Focusing our FOIP resources onto this one request would result in an inability to respond on time to other access requests and additional delays to other late requests.

Demands on the Public Body's FOIP staff are not limited to access requests. We also have the added pressures of other FOIP-related tasks. These other tasks are delayed as a result of the volumes of access requests. In addition, the Public Body provides FOIP services to the Public Service Commission (formerly Corporate Human Resources) and assists Alberta Gaming and Liquor Commission, which also have significant FOIP cases.

Due to the large volume of records involved it would also take significant time and effort for senior management (who have competing priorities). However, their input is needed so that FOIP staff can understand the records to determine which sections of the FOIP Act might apply.

This Applicant made several access requests to the Public Body. In 2016, the Applicant submitted 25 access requests to the Public Body. From Jan 1/17 to Aug 25/17, the Applicant made nine access requests. (Enclosure - Request Detail Report, pages 17-29).

[para 12] The Public Body must make every reasonable effort to respond to an access request within 30 days. It admits that it did not meet this timeline; nor did it extend its timeline under section 14, or seek permission for an extension from this Office (also under section 14).

[para 13] Given the date of the Applicant's access request and other relevant correspondence, and the Public Body's acknowledgement that it did not comply with section 11 of the FOIP Act, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

[para 14] The Public Body has given extensive reasons for requiring approximately six months to finish processing the Applicant's request. In this case, the relevant order-making authority is section 72(3)(a), which authorizes me to require that a duty imposed by the FOIP Act or the regulation be performed by a public body. Under this authority I will order the Public Body to respond to the Applicant as required by the Act, which is the usual order made when a public body fails to meet the requirements of section 11 and has not yet responded to the applicant. The time for complying with an Order is set out in the Act as 50 days (section 74(1)); I cannot alter that time limit set out in the Act.

V. ORDER

[para 15] I make this Order under section 72 of the Act.

[para 16] 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 17] 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.

Amanda Swanek
Adjudicator