

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-44

September 20, 2018

HEALTH

Case File Number 009141

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the FOIP Act dated June 26, 2017, to Health (the Public Body). The Public Body acknowledged receipt of the request by letter dated June 30, 2017.

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

The Adjudicator found that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

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

Cases Cited: **AB:** Order F2018-10

I. BACKGROUND

[para 1] An Applicant made an access request dated June 26, 2017 to Health (the 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 June 30, 2017. In that letter, the Public Body informed the Applicant that it would respond on or before July 26, 2017 or advise the Applicant of any time extension.

[para 2] By letter dated July 5, 2017, the Public Body provided the Applicant with a fee estimate. A letter dated July 11, 2017 from the Public Body to the Applicant acknowledges the Applicant's payment of the deposit. As the processing time stops once a fee estimate is issued, the Public Body's new response date was July 31, 2017 (as stated in the letter).

By letter dated July 21, 2017, the Public Body informed the Applicant that it "requested and obtained" an extension to August 30, 2017. On August 30, 2017, the Public Body sent a letter to the Applicant stating that it needed to consult with other parties and extended its response date to September 29, 2017.

The Applicant provided copies of email correspondence with the Public Body regarding the progress of this (and other) access request, from February 2018 to June 2018.

[para 3] On July 3, 2018, this office received the Applicant's request for a review of the Public Body's failure to respond.

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 July 18, 2018, 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 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 7] The Public Body states in its submission that it has not provided a response to the Applicant as required by section 11(1) of the Act. Given this acknowledgement, as

well as the date of the Applicant's access request and other relevant correspondence, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

[para 8] Despite the Public Body's admission, it has asked that no order be made in this case because it "has been making best efforts to provide a response within legislative [timelines] and a response to the Applicant is anticipated by October 31, 2018" (at para. 26).

[para 9] The Public Body provided an affidavit from its FOIP coordinator with its initial submission. The affiant explained the Public Body's process for responding to access requests. The affiant also states that the Public Body's FOIP office has significant file loads and that the advisor working on the file will be out of the office for most of September, and that transferring this file to another advisor would result in further delays.

[para 10] The affiant concludes by stating (affidavit, at para. 41):

The onboarding of FOIP Office staff and the volume and complexity of access requests received by Alberta Health since June 2017 has made it challenging to adhere to the timelines established per s. 11 of the FOIPPA and this has resulted in an unintended delay in responding to this Applicant's access request. Re-prioritizing this access request has caused Alberta Health to delay processing of other access requests and has created further non-compliance with the timelines for responses set out in the legislation.

[para 11] A similar argument was made by this Public Body to the adjudicator in Order F2018-10, which also addressed the Public Body's failure to respond to an access request within the timeframe in the Act. The adjudicator commented on the duty of the head of the Public Body (i.e. the Minister) to ensure all reasonable efforts are taken to meet the legislated timelines for responding to access requests; I have nothing further to add to those comments.

[para 12] Regarding the Public Body's request that an order not be made in this case, the Commissioner's letter to the parties in this inquiry (sent with the Notice of Inquiry) states that she decided that this matter will proceed directly to inquiry to ensure a timely response to the Applicant's access request. The Commissioner then delegated this inquiry to me. Section 72(1) of the Act states:

72(1) On completing an inquiry under section 69, the Commissioner must dispose of the issues by making an order under this section.

[para 13] Therefore, I must make an order to resolve the sole issue in this inquiry – whether the Public Body met the timelines set out in section 11 of the Act. As stated above, the Public Body acknowledges that it did not meet those timelines and the evidence supports that finding.

[para 14] Having made that finding, it is incumbent on me to apply the appropriate remedy. Section 72(3) sets out the orders I can make in these circumstances; it lists six

things I may do, including requiring that a duty imposed by the Act be performed (section 72(3)(a)). The duty that has not been met in this case is the Public Body's duty to respond to the Applicant's request within the timeframe of the Act. The Public Body's deadlines have been well passed but it still has the duty to respond. Therefore, that is the appropriate order to make in this case.

[para 15] Regarding the Public Body's argument that it needs until October 2018 to respond to the Applicant, the timeframe for complying with an Order is 50 days, set out in section 74(1). Even where a public body has valid reasons for requesting further time to comply, this timeframe cannot be altered by the Commissioner.

[para 16] I do not discount the Public Body's arguments regarding its high workload and the corresponding difficulty in meeting the legislated timelines. However, it is the head of the Public Body that has a duty to respond as required by the Act, as discussed in Order F2018-10. If the Public Body is experiencing systemic issues in meeting its obligations under the Act, it is up to the Public Body to address those issues.

V. ORDER

[para 17] I make this Order under section 72 of the Act.

[para 18] 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 19] 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