

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-61

October 9, 2018

ALBERTA ENERGY

Case File Number 009157

Office URL: www.oipc.ab.ca

Summary: On August 17, 2016, the Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Energy (the Public Body). It requested:

[...] all records relating / referring to the Climate Leadership Plan, Bill 20 (implementation of the Climate Leadership Plan), and / or the carbon levy (carbon tax, carbon pricing).

The Public Body did not respond to the Applicant. The Applicant requested review of the Public Body's failure to respond. The Adjudicator directed the Public Body to respond.

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

I. BACKGROUND

[para 1] On August 17, 2016, the Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Alberta Energy (the Public Body). It requested:

[...] all records relating / referring to the Climate Leadership Plan, Bill 20 (implementation of the Climate Leadership Plan), and / or the carbon levy (carbon tax, carbon pricing).

October 1, 2015 – Date Request Received

Please include but do not limit records to: any briefing notes, memorandum, presentation slides, “advice to minister” and “advice to deputy minister” notes, timelines or summaries of the process (Process for Minister’s office or Deputy Minister’s Office), business cases for the project, description of steps in the process, and meeting agendas.

[para 2] On September 14, 2016, the Public Body wrote the Applicant to inform it that it would be extending the time for responding until October 17, 2016.

[para 3] On October 7, 2016, the Public Body wrote the Applicant confirming the scope of the access request.

[para 4] On October 11, 2016, the Public Body wrote the Applicant to inform it that it had requested, and obtained a 60 day extension of the time for responding. The new date for responding was set as November 15, 2016.

[para 5] On February 3, 2017, the Public Body wrote the Applicant to confirm that it would process its access request.

[para 6] On July 10, 2018, the Applicant emailed the Public Body to inquire whether it had responded to the access request. The Public Body replied that it had not responded but that responding was “a top priority”. Following this response, the Applicant requested review by the Commissioner of the Public Body’s failure to respond to the access request.

[para 7] The Commissioner decided to move the matter directly to inquiry.

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

[para 8] 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 9] In its submissions for the inquiry, the Public Body acknowledged that it had not complied with section 11 of the FOIP Act:

In recognition of section 11(2) and ensuring the Applicant receives a timely response as of the date of the Notice, the Public Body proposes the following (the Proposal”):

- 1) Fees will not be charged for the processing of the estimated 9000 pages of located records.
- 2) The Public Body is actively processing the records.
- 3) The remaining requested records shall be released in approximately five batches from an appraised time frame from August 13, 2018 to September 28, 2018.

[...]

Notwithstanding the Proposal, the Public Body shall accept the decision of the adjudicator and comply with the Order issued.

[para 10] It is unclear on the evidence before me whether the Public Body provided the records to the Applicant as it proposed doing. If it provided the releases it proposed providing, it has not contacted this office to confirm that it did so.

[para 11] As it is possible that the Public Body overestimated its capacity to respond to the access request, I must make an order directing the Public Body to respond to the Applicant. The Public Body will have fifty days from the receipt of the order to respond to the Applicant. If the Public Body has already responded to the Applicant, it may write this office to confirm that it has responded.

III. ORDER

[para 12] I make this Order under section 72 of the Act.

[para 13] 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 14] 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 it.

Teresa Cunningham
Adjudicator