

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-80

December 20, 2018

HEALTH

Case File Number 010268

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) dated October 1, 2018, to Health (the Public Body). The Public Body acknowledged receipt of the request by letter of the same date.

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, 14, 72.

Authorities Cited: AB: Order F2018-41.

I. BACKGROUND

[para 1] An Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) dated October 1, 2018, to Health (the Public Body). The Public Body acknowledged receipt of the request by letter of the same date. In that acknowledgement, the Public Body stated that it would respond on or before October 31, 2018.

[para 2] The Applicant sent a follow-up email to the Public Body on November 2, 2018 to inquire about the progress of her request. There is no indication that she received a response. On November 15, 2018, this Office received a request from the Applicant to review the Public Body's failure to respond to her request.

[para 3] In its submission to the inquiry, the Public Body stated that it responded to the Applicant's request on December 13, 2018.

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 November 20, 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 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 Applicant's access request is dated October 1, 2018 and was received by the Public Body on the same date.

[para 8] In its submission, the Public Body states (at para. 6):

While the Respondent did not provide a response to the Applicant within the timeline required by s. 11(1) of the Act, a response was sent to the Applicant on December 13, 2018.

[para 9] The Public Body provided me with a copy of its response to the Applicant. The Public Body asks (at para. 20):

... that no order be made that it has refused to respond to the Applicant's access request, or failed to comply with s. 11(1), since the Respondent has responded to the Applicant's access request on December 13, 2018, before the OIPC's deadline for filing these submissions.

[para 10] The Public Body made the same request in a similar file, which also addressed the Public Body's failure to respond within the legislated timeline. In that case (Order F2018-41), I said (at para. 10):

It is not clear whether the Public Body is requesting that I not order it *to do something*, or whether I not issue an Order at all. There are several recent Orders that deal with circumstances in which a public body fails to meet its timelines under section 11 but had responded to the applicant before the Order was issued (see Orders F2016-37, F2017-26, and F2018-23). In such cases, the adjudicator makes a finding as to the public body's compliance with section 11 of the Act, but it is no longer necessary to order the Public Body to respond to the Applicant.

[para 11] I make the same finding here as in that case: as the Public Body has responded to the Applicant, it can no longer be said to have refused access to the records under section 11(2). However, section 11(1) requires the Public Body to make every reasonable effort to respond to an access request in 30 days. The Public Body acknowledges that it did not meet this timeline; there is also no indication that it extended its time to respond under section 14. The fact that the Public Body has responded to the Applicant before its submission was due for this inquiry is irrelevant.

[para 12] Given the above, I find that the Public Body failed to make every reasonable effort to respond within the timelines set out in section 11 of the Act.

V. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. As the Public Body has now responded to the Applicant's access request, it is not necessary for me to order the Public Body to respond to the Applicant under the Act.

Amanda Swanek
Adjudicator