

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2019-11

March 28, 2019

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number 010748

Office URL: www.oipc.ab.ca

Summary: On December 21, 2017, the Applicant made an access request Alberta Justice and Solicitor General (the Public Body). The Public Body 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 Public Body's failure to respond to the access request.

The Adjudicator found the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act and ordered the Public Body to respond to the Applicant's access request.

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] The Applicant advised that on December 21, 2017, she submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Alberta Justice and Solicitor General (the Public Body). She stated the Public Body informed her at that time that it would respond in approximately 30 -90 days.

[para 2] The Applicant advised she was informed by the Public Body on January 22, 2018, that it was extending the time for responding to the request until February 20, 2018.

[para 3] The Applicant advised she requested a waiver of fees by the Public Body on January 29, 2018, and that the Public Body granted her a waiver on February 8, 2018.

[para 4] According to the Applicant, on April 4, 2018, she was informed by the Public Body that it had been granted an extension by this Office to respond to her request, until July 3, 2018.

[para 5] Subsequent communications occurred between the Applicant and the Public Body, and she advised that on June 13, 2018, she was informed by the Public Body it was continuing to process her request and it appeared that many of the records would be withheld.

[para 6] The Applicant advised she was informed by the Public Body on July 30, 2018, that no additional extension was granted, but this did not mean she would receive the records right away.

[para 7] The Applicant advised she made further, unsuccessful attempts on August 30, 2018 and September 6, 2018, to contact the Public Body regarding the status of her request.

[para 8] On September 10, 2018, in response to an email from the Applicant, the Public Body advised the Applicant that her request had been re-assigned to a different employee, and if she had concerns with the processing of her request, she could submit a request for review to this Office.

[para 9] On September 17, 2018, this Office received the Applicant's request for review of the Public Body's failure to respond. She also indicated she wished to dispute the Public Body's advice that redactions would be made to the records.

[para 10] On October 10, 2018, in response to a query from the Applicant, the Public Body informed the Applicant her request was currently being processed but it was unable to provide her with a specific date of completion.

[para 11] On October 10, 2018, this Office received the Applicant's second request for review of the Public Body's failure to respond.

[para 12] The Commissioner decided that the question of whether the Public Body had complied with statutory time limits should proceed directly to inquiry.

II. ISSUE

[para 13] The Notice for Inquiry dated February 1, 2019, states the issue for this inquiry as follows:

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

[para 14] The Applicant's request for a review of the Public Body's advice that it would possibly be withholding or redacting records is premature, as the Public Body has not yet provided a response to the Applicant.

III. DISCUSSION OF ISSUE

[para 15] 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 16] In its submission to this inquiry, the Public Body did not dispute the Applicant's submissions regarding the Public Body's actions with respect to the processing of her access request. The Public Body acknowledged that it did not comply with section 11 of the Act.

[para 17] The Public Body advised that it had made this file a priority and was actively processing it. It advised that it expected to be able to respond to the Applicant in the near future. It also advised that all fees related to this file would be waived.

[para 18] The Act requires the Public Body make every reasonable effort to respond to an access request within 30 days. The Applicant submitted her access request on December 21, 2017. The Public Body has not yet responded. Given the date of the Applicant's request, the expiration of the extended deadline, and the Public Body's acknowledgment that it did not comply with section 11 of the Act, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

[para 19] Although the Public Body has advised that it expects to be able to respond to the Applicant in the near future, it has not *yet* responded. Therefore, I will order the Public Body to do so.

IV. ORDER

[para 20] I make this Order under section 72 of the Act.

[para 21] 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 22] 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.

Carmen Mann
Adjudicator