

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2016-23**

June 29, 2016

**ALBERTA HUMAN RIGHTS COMMISSION**

Case File Number 002930

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** An Applicant made an access request dated July 22, 2015, to Alberta Justice and Solicitor General for records relating to his employment. This request was processed by both Alberta Justice and Solicitor General and the Alberta Human Rights Commission (Public Body); this inquiry addresses the latter public body's response. The Public Body corresponded with the Applicant since the request was made; however, the Public Body has not yet provided a response as required by 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, 72.

**I. BACKGROUND**

[para 1] An Applicant made an access request dated July 22, 2015, to Alberta Justice and Solicitor General (Alberta Justice) for records relating to his employment. Alberta Justice informed the Applicant that both it and the Alberta Human Rights Commission (Public Body) would respond to his request separately. This inquiry concerns the response from the Alberta

Human Rights Commission; however, Alberta Justice is processing the request on behalf of the Public Body.

[para 2] The Applicant provided me with copies of email correspondence between the Alberta Justice FOIP Office and the Applicant, clarifying the Applicant's request. The subject lines in most of the emails contain only the file number relating to the request being answered by Alberta Justice on its own behalf; however, a few subject lines include the file number for the request relating to this inquiry. It is therefore not clear whether Alberta Justice was also seeking clarification of the request relating to the Public Body.

[para 3] In the event that the clarification requests from Alberta Justice relate also to the request being answered by the Public Body, I will provide the relevant dates. They do not affect the outcome of this inquiry in any event.

[para 4] The email chain indicates that the Applicant provided additional information to Alberta Justice on July 30, 2015. Alberta Justice presumably asked for more information, as the Applicant acknowledged another request for clarification on August 26, 2015. The Applicant answered those questions on February 1, 2016, and Alberta Justice acknowledged receipt of the answers on February 2, 2016.

[para 5] The Applicant requested an update on the progress of his access request by email dated March 4, 2016. By email dated March 8, 2016, Alberta Justice responded, stating:

The Alberta Justice and Solicitor General (JSG) FOIP Office has received an influx of access to information requests which have, unfortunately, resulted in a number of late files; your two requests #2015-G-0229 and 0230 fall within this category.

We apologize for the delay and thank you for your continued patience regarding this matter. As we are late responding to your requests, any and all fees associated with your requests will be waived.

The file numbers cited above relate to the access request at issue in this inquiry, as well as the related request being answered by Alberta Justice.

[para 6] On April 7, 2016, the Applicant requested a review of the time taken by the Public Body 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 June 2, 2016, 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] In its submission to the inquiry, the Public Body states:

The Public Body acknowledges that it did not comply with section 11 of the *FOIP Act*.

The Public Body has numerous late files and, in order to be fair to all its applicants, it has been processing them in the order in which they were received. The exceptions to this have been files which were required to be prioritized, for example Court dates, etc.

Given the above information, the Public Body made the decision not to request an extension from the Office of the Information and Privacy Commissioner (OIPC) in accordance with section 14 of the Act, as it was expected the OIPC would not approve the length of time the Public Body would require to process the request.

In response to the Notice of Inquiry, the Public Body has made this file a priority and is actively processing this request.

...

The Public Body acknowledges that it did not meet the requirements of section 11 of the *FOIP Act*. As it is late in responding to the Applicant, it has waived all fees related to this file.

The Public Body is actively processing this request and expects to be able to respond to the Applicant in the near future.

[para 11] The Public Body must make every reasonable effort to respond to an access request in 30 days. The Public Body states that it extended the time to respond by 30 days, as permitted by section 14(1)(b) on August 26, 2015; however those 30 days have clearly passed.

[para 12] Alberta Justice sought clarification from the Applicant, most of which appear to relate only to the related request being answered by Alberta Justice. However, it is possible that the requests for clarification relate to both files. Either way, the dates associated with the clarification correspondence show that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act. The Public Body also admits that it failed to fulfill this duty. Therefore, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in 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. 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 15] 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.

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Amanda Swanek  
Adjudicator