

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-29

July 18, 2016

OFFICE OF THE PREMIER / EXECUTIVE COUNCIL

Case File Number 003002

Office URL: www.oipc.ab.ca

Summary: On August 8, 2015, the Applicant made an access request to the Office of the Premier / Executive Council (the Public Body) for all records relating to the contract extension of Kan-Alta's lease of the Kananaskis Golf Course, including the contract itself.

The Public Body wrote the Applicant on September 8, 2015 to acknowledge receipt of his access request. It stated that it would extend the time for responding by 30 days in order to consult with two public bodies: Alberta Environment and Parks (Alberta Environment) and Alberta Treasury Board and Finance.

The Public Body did not respond to the Applicant. On April 19, 2016, the Applicant requested that the Commissioner review the Public Body's failure to respond to his access request.

At the inquiry, the Public Body acknowledged that it had not complied with its duty under section 11 (time limit for responding). It indicated that it would comply with its duty once it had consulted with Alberta Environment on or before July 29, 2016.

The Adjudicator reminded the Public Body that the FOIP Act makes it mandatory for a public body to make reasonable efforts to respond to an applicant within 30 days. Consultation with public bodies is discretionary and to be completed within the timelines

set out in section 14 of the FOIP Act. The Adjudicator ordered the Public Body to respond to the Applicant in accordance with its remaining duties under the FOIP Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 14, 72, 74

I. BACKGROUND

[para 1] On August 8, 2015, the Applicant made an access request to the Office of the Premier / Executive Council (the Public Body) for all records relating to the contract extension of Kan-Alta's lease of the Kananaskis Golf Course, including the contract itself.

[para 2] On September 8, 2015, the Public Body wrote the Applicant to acknowledge receipt of his access request. It stated that it would extend the time for responding by 30 days, for the following reason:

A preliminary review of the records you have requested indicates that extensive consultations with other parties including Alberta Treasury Board and Finance and Alberta Environment and Parks may be required before we can fully process your request. This consultation is necessary for us to deal completely with the records that are the subject of your request.

The request detail report submitted by the Public Body for the inquiry indicates that the Public Body sent a letter to Alberta Treasury Board and Finance on January 22, 2016. However, no further action was taken.

[para 3] The Applicant did not receive a response to his access request. On April 19, 2016, he requested review by the Commissioner of the Public Body's failure to respond to his access request. The Commissioner decided that the matter would proceed directly to inquiry. The issue in the inquiry, as set out in the Notice of Inquiry dated June 22, 2016 is: Did the Public Body comply with section 11 of the Act (time limit for responding)?

II. DISCUSSION OF ISSUE

[para 4] 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 5] Section 14 of the FOIP Act authorizes a public body to extend the time for responding to an access request in limited circumstances. It states, in part:

14(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

(a) the applicant does not give enough detail to enable the public body to identify a requested record,

(b) a large number of records are requested or must be searched and responding within the period set out in section 11 would unreasonably interfere with the operations of the public body,

(c) more time is needed to consult with a third party or another public body before deciding whether to grant access to a record, or

(d) a third party asks for a review under section 65(2) or 77(3).

[...]

[para 6] In its submission to the inquiry, the Public Body states:

As required under section 69(1)(Inquiry by the Commissioner), Executive Council's FOIP Office has enclosed the FOIPNet report and the chronology of FOIP file 2015-G-0074 ("Kananaskis") for your files. In reviewing the order of events, we have determined that we did not meet our duty to respond as required under section 11 of the FOIP Act.

Our records indicate that we did not contact or communicate with the Applicant on or before the original due date which progressed this file into non-compliance early into the FOIP process. A time extension letter was sent to the Applicant on September 8, 2015 but was not on or before the due date of September 7, 2015. For that reason, the FOIP file became non-compliant and was automatically a deemed refusal to the Applicant as of September 7, 2015.

Initially, the FOIP Office received and reviewed approximately 2800 potentially responsive records. Unfortunately, with the staff shortage and the transition of new FOIP staff, the file reassignment did not occur until June 6, 2016. However, with the Applicant's assistance, the Advisor was able to narrow the scope of the request and reduce the volume of the records to 151 responsive records. As agreed by the Applicant, the FOIP Office is continuing to process the access request and will be entering into the consultation process with Alberta Environment on or before July 29, 2016. Final review and approval will commence shortly after the consultation process is complete.

As we [are] continuing to move towards total FOIP compliance in our Ministry, we are making every effort to ensure we have constant communication with the FOIP Applicants for both old and new FOIP files.

[para 7] The Public Body acknowledges that it has not met its duty to the Applicant under section 11 of the FOIP Act, as it has not yet responded to the Applicant's access request. The Public Body states that it has located responsive records, but intends to respond to the Applicant only once it has consulted with Alberta Environment. It anticipates that consultation with Alberta Environment will take place no later than July 29, 2016.

[para 8] Section 14(1) of the FOIP Act authorizes a public body to extend the time for responding to an applicant by 30 days when the public body decides that it needs more time to consult with another public body before deciding to grant access to the records it has located. In this case, the Public Body extended the time for responding by 30 days for the purpose of consulting with Alberta Treasury Board and Finance and Alberta Environment. In its September 8, 2015 letter to the Applicant, the Public Body acknowledged that it had already located and reviewed responsive records, but felt it necessary to consult with two ministries prior to releasing them.

[para 9] Section 14(1) recognizes that there are circumstances in which a public body may consider it desirable or even necessary to obtain input from another public body regarding severing decisions prior to releasing records and it allows 30 days in which the responding public body may do so. However, section 14(1) does not contain a mandatory duty to consult. A public body may consult with other public bodies regarding releasing records, but it need not do so. In contrast, section 11 is mandatory. It requires a public body to make all reasonable efforts to respond to an applicant within 30 days of receiving an access request. If a public body decides to consult with another public body, the Act requires it do so within the time frame authorized by sections 11 and 14.

[para 10] Although eight months have passed since the head of the Public Body was required by the statute to have made all reasonable efforts to respond to the Applicant, and despite the fact that it states that it has located responsive records, the Public Body proposes taking further time to consult with Alberta Environment regarding the release of responsive records.

[para 11] No reasons have been given for the inquiry for not consulting with Alberta Environment at the time the Public Body informed the Applicant that it had decided it should do so, or at the time it wrote to Alberta Treasury Board and Finance in January of this year. Moreover, no convincing reasons have been provided for the inquiry for consulting with Alberta Environment now, when the Applicant has already been required to wait eight months beyond the time in which the FOIP Act requires the Public Body to respond.

[para 12] If it is the case that the Public Body anticipates that consultation with Alberta Environment will provide it with background information necessary to make better decisions regarding access, then that is a satisfactory reason for consulting with Alberta Environment, although not for waiting until July 29, 2016 to complete this process. However, the Public Body has not provided reasons for consulting with Alberta

Environment for the inquiry, and so I am not able to find that obtaining background information is its purpose in increasing the delay in responding.

[para 13] As section 74(2) of the FOIP Act requires the head of a public body not to take steps to comply with an order until the judicial review period in section 74(3) has ended, I cannot order the Public Body to respond to the Applicant immediately without waiting to conduct a consultation with Alberta Environment in circumstances where the FOIP Act does not authorize or require it. However, I remind the Public Body that the duty to make all reasonable efforts to respond to an applicant within 30 days is mandatory, while consultation with public bodies and third parties under section 14(1)(c) is not.

III. ORDER

[para 14] I make this Order under section 72 of the Act.

[para 15] 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 16] 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.

Teresa Cunningham
Adjudicator