

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2016-38

September 14, 2016

ALBERTA ENVIRONMENT AND PARKS

Case File Number 002896

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Environment and Parks (the Public Body) pursuant to the *Freedom of Information and Protection of Privacy Act* (the Act). The Applicant requested “all briefing notes and memos in regard to phasing out coal power”. The Public Body acknowledged it did not respond to the Applicant within the time frame of section 11 of the Act.

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

I. BACKGROUND

[para 1] This inquiry arises from a request for records made by the Applicant to Alberta Environment and Parks (the Public Body) on September 11, 2015. The Applicant, in his request for review dated April 27, 2016 to this Office stated the Public Body had not responded to the access request. In order to ensure a timely response to the access request, the Applicant’s request for review proceeded directly to inquiry.

[para 2] The Public Body responded to the Applicant’s request for records on June 24, 2016.

II. ISSUE

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

III. DISCUSSION OF ISSUE

[para 3] 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 4] The Public Body acknowledged receipt of the Applicant's request by letter dated September 17, 2015.

[para 5] By letter dated October 19, 2015 the Public Body, pursuant to section 14 of the Act, extended the deadline for response to November 20, 2015.

[para 6] The Public Body acknowledges that it did not comply with section 11 of the Act.

[para 7] In submissions to this Inquiry, the Public Body states:

The Public Body notes that during the processing of this file, the Public Body received over 1500 separate access requests. The FOIP Advisor assigned this file was also responsible for the processing of an additional 150 separate access requests. In 2015 AEP's FOIP Office had 6 fulltime FOIP Advisors processing FOIP requests, currently the AEP FOIP Office is down 3 fulltime FOIP Advisors. Since 2011 the AEP's FOIP Office has had approximate increase of 400 and 500 FOIP requests received per year. The AEP FOIP office is currently completing the recruiting process to hire 3 new FOIP Advisors. It is expected once the AEP FOIP office has a full complement of staff, the backlog of FOIP requests will be addressed and FOIP request will be processed with the legislated timeframe. While a combination of staffing shortages and a higher than usual volume of requests has had an impact on the processing of all FOIP requests, the Public Body acknowledges that a response to this FOIP request is significantly past due and that it is an anomaly in that regard.

[para 8] It further states "there were no intentional delays imposed by the Public Body; however delays did occur due to the complex nature of the request and ongoing and extensive program area consultation."

[para 9] I note the following from the Public Body's submissions:

1. The Public Body's FOIP office on October 16, 2015 received 13 pages of electronic records and on October 22, 2015 received approximately 500 pages of records as a result of searches conducted.
2. The FOIP Advisor completed their review of the records on January 15, 2016 and sent consults to program areas. Results from the consults were received on May 12, 2016.
3. On May 27, 2016, the FOIP Advisor began preparation of the signoff which was then not completed until June 23, 2016.

[para 10] I draw the Public Body's attention to section 14 of the Act:

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).*

(2) The head of a public body may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other.

(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 30 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 31.

(4) If the time for responding to a request is extended under subsection (1), (2) or (3), the head of the public body must tell the applicant

- (a) the reason for the extension,*
- (b) when a response can be expected, and*
- (c) that the applicant may make a complaint to the Commissioner or to an adjudicator, as the case may be, about the extension.*

[para 11] The Public Body made no request to the Commissioner for an extension of the time to respond to the request, despite its submissions regarding "the complex nature of the request and ongoing and extensive program area consultation".

[para 12] I find the Public Body has failed to meet its obligations under section 11 of the Act.

IV. ORDER

[para 13] I find the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act.

[para 14] As the Public Body has now responded to the Applicant, I do not find it necessary to order the Public Body to do anything further under the Act.

Neena Ahluwalia Q.C.
Adjudicator