

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-18

February 8, 2017

ALBERTA ENVIRONMENT AND PARKS

Case File Number 004364

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 Public Body acknowledged it did not respond to the Applicant within the time frame of section 11 of the Act. The Adjudicator ordered the Public Body to comply with the Act.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 14, 72, 93.

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 March 30, 2016. He requested “all records relating/referring to the implementation of the Climate Leadership Plan” for the time period October 1, 2015 to the date the request was received (April 5, 2016). The Applicant states that the Public Body has not responded to the access request. The Applicant has therefore requested review by the Commissioner of the Public Body’s compliance with section 11 of the Act.

II. ISSUE

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

III. DISCUSSION OF ISSUE

[para 2] 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 3] The Applicant's request for access to information was received by the Public Body on April 5, 2016.

[para 4] The Public Body wrote to Applicant on April 6, 2016 and indicated the Public Body would respond to the request by May 5, 2016. On June 29, 2016 (past the statutory date for response to the request) another letter was sent to the Applicant with a fee estimate of \$1670.00 (I am assuming the letter was written on June 29, 2016 rather than the date on the letter which is June 29, 2015). The Applicant was notified, in that letter, the processing of his request had ceased and would recommence when a deposit for fees was received.

[para 5] The Applicant, in his request for review, attached a document dated July 8, 2016. That document is a request for a fee waiver and makes submissions regarding the request.

[para 6] On September 27, 2016, the Public Body wrote to the Applicant indicating no response had been received from the Applicant to the Public Body's letter of June 29, 2016 and the Applicant's request was considered abandoned.

[para 7] Attached to the Applicant's request for review is a copy of an email correspondence from the Public Body on September 29, 2016 indicating the file would be re-opened.

[para 8] The Public Body's submission to this inquiry states:

[The Public Body] acknowledges that our response to the applicant is past the statutory deadline. Delays did occur due partly to the Advisor handling this request. Unfortunately this departure created some knowledge transfer components such as; the Applicant's request for a fee waiver in the matter of public interest for this request, thus the initiation

of an Abandonment Letter to the Applicant on September 27, 2016 for non-payment of fees. Upon receipt of my letter to the applicant to advise the file would be closed, the applicant contacted me to advise of the submission for a fee waiver on August 16, 2016.

A recommendation is currently being prepared for consideration to the head regarding the [applicants] request to waive the fees as a public interest matter.

Currently this access request has approximately 10,000 pages that require a line by line review of the records. [The Public Body] will continue to update the applicant with regard to the status of this request, however [the Public Body] cannot provide a precise date for the completion of this file at this time.

[para 9] Section 93 of the Act reads:

93(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.

(5) If the head of a public body refuses an applicant's request under subsection (3.1), the notice referred to in subsection (4.1) must state that the applicant may ask for a review under Part 5.

(6) The fees referred to in subsection (1) must not exceed the actual costs of the services.

[para 10] This inquiry is not dealing with the issue of fee waivers. However, it is important to note under section 93, the Public Body had 30 days to respond to a request for fee waiver. Here, even if I were to consider the Public Body was notified of the fee waiver request on September 29, 2016, I have evidence in submissions the Public Body has failed in its statutory obligation to respond to the Applicant within 30 days.

[para 11] Section 14 of the Act states:

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 12] The Public Body did not provide me with any evidence that it exercised its options under section 14. I therefore find the Public Body was to respond to the Applicant within 30 days of April 5, 2016. I find it failed to do so.

[para 13] I find the Public Body has failed to meet its obligations under section 11 of the Act.

IV. ORDER

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

[para 15] I find the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act.

[para 16] I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act. The Public Body is to respond to the request for access to information.

[para 17] I 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.

Neena Ahluwalia Q.C.
Adjudicator