

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-22

February 8, 2017

ALBERTA ENVIRONMENT AND PARKS

Case File Number 004369

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 May 6, 2016. He requested “all records relating/referring to McLean Creek dam” for the time period June 1, 2013 to the date the request was received [May 9, 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 May 10, 2016.

[para 4] The Public Body's made the following submissions to this inquiry:

The following is a summary regarding the steps taken to address the processing of this request.

- May 10/16 - access request received.
- June 4/16 - former Advisor left department and new Advisor took over processing.
- June 6/16 - Section 14(1)(b) letter sent to applicant advising of a 30 day extension which will allow AEP to search for all records.
- June 23/16 - Applicant contacted Advisor and was informed still awaiting records.
- July 5/16 - all records provided to Advisor.
- July 5/16 - Advisor issued a fee estimate on 25,000 pages of records with a due date to respond by July 25/16.
- July 18/16 - the Applicant requested a fee waiver identifying this matter of public interest.

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

Currently this access request has approximately 25,000 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 5] 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 6] 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. In this case, the Public Body was notified of the fee waiver request on July 18, 2016. I have evidence, in submissions, the Public Body has failed in its statutory obligation to respond to the Applicant within 30 days.

[para 7] 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 8] The Public Body, pursuant to section 14(1)(b), did extend the deadline to respond to the Applicant's request by letter dated June 6, 2016. On July 5, 2016, the Public Body provided a fee estimate to the Applicant. After the Applicant's request for a fee waiver, I have no evidence before me indicating there was any further correspondence to the Applicant from the Public Body. I therefore find the Public body had an obligation to address the request for access and the request for a fee waiver within 30 days of July 18, 2016. I find it failed in its obligations to the Applicant.

[para 9] I am mindful the response to the request has a significantly large number of pages. I am also mindful the Public Body has many requests for access to information to be processed. There are a number of steps the Public Body could have taken under the Act to deal with this and other requests of this Applicant. It failed to exercise any of those options.

[para 10] I find the Public Body has failed to meet its obligations under section 11 of the Act.

IV. ORDER

[para 11] I make this Order under section 72 of the Act.

[para 12] I find the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act.

[para 13] 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 14] 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