

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-64

July 28, 2017

ALBERTA ENVIRONMENT AND PARKS

Case File Number 005800

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 received the request, and extended the timeline limit for responding to the request past the 30 days allowed by the Act. The Adjudicator found the Public Body failed to meet the requirements 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, 30, 72.

I. BACKGROUND

[para 1] This inquiry arises from a request for records made by the Applicant to Alberta Environment and Parks (the Public Body). The Public Body received the request on October 12, 2016. The Applicant requested records related to an inspection that took place in September 2015, a specific letter issued on February 2, 2016 and an ongoing investigation regarding a specified property and himself. He also requested records regarding agreements between a specific Municipal District, a specific Irrigation District and the Province of Alberta between the time periods of 1960-1980. He further requested records relating to the specified property. The Applicant states, in his request for review 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 Public Body submitted the following summary regarding this matter:

- October 12, 2016 - access request received.
- October 19, 2016 - AEP sent acknowledgement letter to the applicant and advised the applicant their due date would be November 14, 2016.
- October 21, 2016 -AEP sent out a search for response records to four program areas asking them to provide response records to Foip office by October 26, 2016.
- November 1, 2016 - Advisor realized one program area got missed on the search for records request and immediately sent them a search for records form.
- December 10, 2016 - Administrative staff completed page count of records received. Approximately 2, 157 pages of mainly emails and attachments received into the Foip office for this access request.
- December 16, 2016 -Advisor issued a fee estimate on 2,157 pages of records costing \$388.57 asking for a due date to respond by January 5, 2017.
- January 3, 2017 - the Applicant provided AEP with a deposit of \$194.00. AEP acknowledged deposit to applicant and extended the time for responding to the request under section 14(b) of the FOIP Act, due to a large volume of records. New due date Dec. 12, 2016.

[para 4] Upon a request for clarification of the due date being in the past (i.e. Dec.12, 2016), the Public Body submitted the following:

Unfortunately the Dec 12, 2016 due date was an oversight on our end.

1. When a request is overdue and we receive additional fees for the request the System automatically calculates the due date. The Advisor then needs to override this date due manually which in this particular case was not done due to an administrative oversight, the Dec 12, 2016 due date was in turn incorrect.

2. When the applicant paid the deposit (on Jan. 3/17) AEP applied for an extension under section 14(1)(b) which states, we have extended the time limit for responding by 30 days to provide additional time for the processing of the records. The actual due date should have been 30 days from when the money was received which would have been Feb. 2/17.

I apologize these oversights were not corrected prior to responding to the applicant.

[para 5] 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.

(my emphasis)

[para 6] In a letter to the Applicant on January 3, 2017, the Public Body indicates it was extending the time limit to respond for 30 days. It also advised the Applicant, that a further extension might be necessary if the need arose to consult with third parties under the Act (section 30). The Public Body did not send any further letters to the Applicant.

[para 7] The Applicant having received no response, contacted the Public Body on March 27, 2017. The Public Body, through email correspondence, indicated it would try to complete the processing of the request by the end of May.

[para 8] There has been no response to the request for access to records to date.

[para 9] The Public Body, in submissions, outlines an Action Plan to address the next steps to complete the request. I note the Action Plan indicates a records release to the Applicant on November 1, 2017. This is over a year from the receipt of the request for access to information. I also note the Action Plan does not consider obligations of the Public Body to comply with requirements under the Act.

[para 10] I find the Public Body has failed to meet its obligations under section 11 and section 14 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. I also find the Public Body failed to comply with the requirements of section 14 when it extended the time limit beyond 30 days without the consent of the Commissioner.

[para 13] I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act.

[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