

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2018-17

April 30, 2018

ALBERTA CULTURE AND TOURISM

Case File Number 007965

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Culture and Tourism (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) for the following:

All correspondence records between the Minister of Culture and Tourism and the Jubilee Auditoria of Alberta, Jubilee Society, Jubilee Auditoria Society Board, Occupational Health and Safety and/or [named individual] relating to the Falun Dafa Association, Shen Yun, and/or safety nets located on top of orchestra pit between September 2016 - end of July 2017

The Public Body extended the time for responding twice. It first extended the time to enable it to search for records. It then extended the time for responding to make decisions under section 31 (time limit and notice of decision). However, despite extending the time for responding, the Public Body did not respond to the Applicant's access request.

At the inquiry, the Public Body indicated that it had made a decision to grant partial access under section 31 of the FOIP Act and communicated this decision to the Applicant on April 6, 2018.

The Adjudicator noted that the Public Body's correspondence of April 6, 2018 did not explain why only partial access was being granted, what the Public Body meant by "partial access", or indicate the section numbers of the exceptions being applied. As a result she could not construe the April 6, 2018 as a response.

The Public Body stated in its submissions that it intended to respond to the Applicant on April 27, 2018. However, the Public Body did not notify the Adjudicator whether it had complied with its duties on that date. The Adjudicator directed the Public Body to meet its duties to the Applicant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 11, 12, 14, 31, 72

I. BACKGROUND

[para 1] On August 23, 2017, the Applicant made an access request to Alberta Culture and Tourism. She requested:

All correspondence records between the Minister of Culture and Tourism and the Jubilee Auditoria of Alberta, Jubilee Society, Jubilee Auditoria Society Board, Occupational Health and Safety and/or [named individual] relating to the Falun Dafa Association, Shen Yun, and/or safety nets located on top of orchestra pits between September 2016 - end of July 2017.

[para 2] On August 25, 2017, the Public Body wrote the Applicant and confirmed that it had received her access request and acknowledged that she had paid the initial processing fee.

[para 3] On September 25, 2017, the Public Body informed the Applicant that it was extending the time for responding to the access request until October 23, 2017. It explained that it would be necessary to search through a large volume of records in order to process the access request.

[para 4] On October 23, 2017, the Public Body informed the Applicant that it was consulting with “some third parties” and would provide her with an update on November 14, 2017.

[para 5] On November 28, 2017, the Public Body wrote the Applicant and stated:

A review of the requested records indicates that consultation with third parties is required in order to determine whether access can be granted. Section 14 of the FOIP Act provides that a public body may extend this time limit under certain circumstances. For this reason, a time extension in accordance with section 14(3) of the FOIP Act is required to process your request. The new date for your request is January 23, 2017.

[para 6] On January 24, 2018 the Public Body wrote the Applicant and stated:

We wanted to provide you an update to your FOIP request. Unfortunately we are unable to meet the response date of January 23, 2018. Please note that we continue to process your request and are in the final stages of processing and the final review/severing is underway by FOIP Services. Once the final review / severing is completed by our office, we will circulate the request for approval.

We anticipate responding by February 9, 2018 or sooner if possible. If FOIP Services cannot meet this date, we will provide you an update.

[para 7] On January 30, 2018, the Applicant requested review by the Commissioner of the Public Body's failure to respond to her access request.

[para 8] The Commissioner decided that the matter would proceed directly to inquiry and delegated her authority to conduct an inquiry to me.

[para 9] On April 6, 2018, the Public Body wrote the Applicant and stated:

Culture and Tourism (CT) has reached a decision about your request for information under the FOIP Act for access [...]

CT notified the affected parties and gave them an opportunity to make a written representation under section 30 of the FOIP Act. As a result of this process, CT has decided to give you partial access to the records you requested, subject to some limited and specific exemptions allowed under the FOIP Act.

The third parties now have 20 days to request a review of CT's decision by the Office of the Information and Privacy Commissioner (OIPC). If no third party requests a review by the OIPC, the records will be released to you on April 27, 2018.

II. ISSUE:

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

[para 10] Section 11 of the FOIP 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 11] Section 12 of the FOIP Act establishes the requirements of a response under the FOIP act. It states, in part:

12(1) In a response under section 11, the applicant must be told

(a) whether access to the record or part of it is granted or refused,

(b) if access to the record or part of it is granted, where, when and how access will be given, and

(c) if access to the record or to part of it is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based, [my emphasis]

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be [...]

[para 12] Section 14 of the FOIP Act, referred to in section 11(1)(a), authorizes the Public Body to extend the time for responding to an access request. 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).

[...]

(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 [...]

[para 13] Section 31, to which section 14(3) refers, states:

31(1) Within 30 days after notice is given pursuant to section 30(1) or (2), the head of the public body must decide whether to give access to the record or to part of the record [my emphasis], but no decision may be made before the earlier of

(a) 21 days after the day notice is given, and

(b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision, including reasons for the decision, to the applicant and the third party.[my emphasis]

(3) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (2) must state that the applicant will be given access unless the third party asks for a review under Part 5 within 20 days after that notice is given.

(4) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (2) must state that the applicant may ask for a review under Part 5.

[para 14] The Public Body states in its submissions for the inquiry:

A time extension under section 14(1)(b) for search and volume and an extension for third party consultations were taken under the FOIP Act.

Status updates were provided to the Applicant during the processing of the request. The most recent update was provided on March 22, 2018 advising the Applicant that the request is circulating for approval. The Applicant was further advised that once sign-off is complete, FOIP Services will be notifying the affected third parties of the decision for disclosure per section 31 of the FOIP Act.

Approval for this request was completed on April 6, 2018 and the affected third parties and Applicant were notified of the Public Body's decision for disclosure on April 6, 2018.

[para 15] The Public Body's letter of April 6 explained to the Applicant that it had made a decision to give her "partial access" to the records she had requested. However, the Public Body's letter did not inform her of the provisions the Public Body had applied to withhold information from her, with the result that she would receive only "partial access". The letter also did not explain what constituted "partial access".

[para 16] Section 31(2), cited above, requires the head of a public body to provide reasons for a decision to an applicant. The provision of the Act the head considers to authorize or require severing information would be an essential part of the head's reasons. However, the April 6, 2018 letter does not cite the relevant provisions of the FOIP Act or provide reasons for the decision.

[para 17] It is unclear why the Public Body did not provide a response to the Applicant complying with the terms of section 12 of the FOIP Act on April 6, 2018, given that it indicates it had made access decisions and was prepared to release the records in the event third parties did not request review. Regardless, I cannot construe the April 6, 2018 letter as a response within the terms of section 11, given that the Public Body's access decisions and its reasons for them are not expressed in the letter. Further, as the Public Body has explained that it intended to provide the records to the Applicant on April 27, 2018, but has not reported to me whether it did release the records to the

Applicant on that date, or whether it provided a response within the terms of the FOIP Act, I do not know whether it has met its duties to the Applicant. As I do not know whether the Public Body has responded, or whether its response was in compliance with its duties under the FOIP Act if it did, I must order the Public Body to respond to the Applicant, or confirm that it has done so.

III. ORDER

[para 18] I make this order under section 72 of the FOIP Act.

[para 19] I require the Public Body to comply with the duty to make all reasonable efforts to respond to the Applicant's access request. If it has already complied with its duty, I ask the Public Body to inform me that it has done so.

[para 20] I further order the Public Body to notify me within 50 days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator