

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2018-29

July 13, 2018

ALBERTA HEALTH SERVICES

Case File Number 008442

Office URL: www.oipc.ab.ca

Summary: On February 1, 2018, the Applicant made a request for access to Alberta Health Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). She requested:

Personal info: Aug. 2005 – Current date request processed 2018. Any information with my name, employee id [...], SIN [...], e-mail [...], supervisors [...] + [an operations manager's] informal files. All HR Files since 2005 - Internal Investigations, Disciplinary Proceedings, Grievances, Complaint letters of 2017, Employment Compensation history since 2005. *All records since 2005* to present

The Public Body extended the time for responding to the access request until April 6, 2018, but was unable to respond to the Applicant by that date.

The Adjudicator found that the Public Body had not met its duty to respond to the Applicant within statutory time limits. She also noted that the Public Body did not appear to have taken steps to clarify the Applicant's access request, which may have resulted in its conducting an overly broad search for responsive records. She recommended to the Public Body that it take steps to clarify ambiguous access requests in order to respond more efficiently, in the future.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 8, 11, 14, 72

I. BACKGROUND

[para 1] On February 1, 2018, the Applicant made a request for access to Alberta Health Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). She requested:

Personal info: Aug. 2005 – Current date request processed 2018. Any information with my name, employee id [...], SIN [...], e-mail [...], supervisors [...] + [an operations manager's] informal files. All HR Files since 2005 - Internal Investigations, Disciplinary Proceedings, Grievances, Complaint letters of 2017, Employment Compensation history since 2005. *All records since 2005* to present

[para 2] On February 5, 2018, the Public Body wrote the Applicant to acknowledge receipt of the request. The Public Body stated:

I note that in your email of February 1, 2018 you ask for clarification as to whether your request is considered a personal information request or a general request. In which case we advised you that we deemed it to be a personal information request and fees are not required at this time. That said the scope of your request does appear to be far broader than solely seeking your own personal information. For example: "Any information with your name to [the Applicant's email address as an employee of the Public Body] may not be related to you personally, but rather related to the programs and services or business matters of Alberta Health Services (AHS) that you have been involved with or carbon copied on in the line of your duties with AHS. In this case the information would be that of a general nature and fees would apply.

[...]

At this time we will provide you [with] any and all information that is deemed personal in nature to you. Any information in email communications etc. that have been sent or received by you that pertain to business related information will **not be** included in our response to your personal information request. If you so choose to have such general information, then you must submit a separate request and include the \$25.00 initial fee made payable to Alberta Health Services [emphasis in original].

As for your personal information request, we will provide you with our response to your request as quickly as possible. The FOIP Act allows us 30 days to respond, so we will reply no later than March 6, 2018 or advise you if a time extension is required.

[para 3] On March 5, 2018, the Public Body wrote the Applicant to inform her that it was extending the time for responding to her access request for a period of thirty days. The Public Body explained that it was doing so under section 14(1)(b) of the FOIP Act as it had to search for a large number of records in order to respond to the access request. It indicated that it would respond by April 6, 2018.

[para 4] On March 20, 2018, the Public Body applied to the Commissioner under section 14(1) of the FOIP Act for permission to extend the time for responding to 60 days. It explained that it had begun searching for the requested records but was finding that there were more records than it had anticipated and that searching -- which involved converting files into different formats -- was more time consuming than it had initially

realized. It also indicated that it intended to consult with third parties. The Commissioner denied the extension request.

[para 5] The Public Body did not respond to the Applicant on April 6, 2018. On April 10, 2018, the Applicant requested that the Commissioner review the Public Body's failure to respond to her access request.

III. ISSUE

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

[para 6] 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 7] The Public Body acknowledged in its initial submissions that it has not met its duty under section 11 of the FOIP Act. It states that it is actively processing the request. I agree that it has taken more than 30 days to respond to the access request and that it is unclear whether it made every reasonable effort to do so.

[para 8] I accept that the Public Body is actively processing the request and is attempting to respond to the Applicant as soon as possible. However, I must order it to meet its duty to the Applicant and to provide her with a response to her access request.

[para 9] From my review of the Public Body's correspondence to the Applicant, I note that it identified an ambiguity in the Applicant's access request. In its letter of February 5, 2018, the Public Body indicated that some of the records the Applicant had requested might not contain her personal information, but might only contain her name because she received an email as part of her employment duties. However, it also noted that the Applicant had confined her access request to personal information. The Public Body noted that the Applicant's access request could be interpreted very broadly, or more narrowly; however, the Public Body does not indicate whether it asked the Applicant to clarify the scope of her access request, even though section 8(1)(a) of the FOIP Act provides authority to do so.

[para 10] The Public Body informed the Applicant that it would exclude records she had received or sent in the course of her duties in its response. The difficulty with this approach is that without clarification from the Applicant, the Public Body would either

exclude responsive records, if the Applicant was, in fact, requesting all emails containing her name over a 13 year period, or would spend an inordinate amount of time sorting through 13 years' worth of records to determine responsiveness, if she was not. In other words, if the Applicant did intend her access request to be interpreted more narrowly, the Public Body would have to sift through information it located as a result of a broad interpretation of the request, to determine whether the information was responsive to a narrow interpretation. Had the Public Body contacted the Applicant to determine the specific kinds of records she was seeking when she made the access request, it might have been able to conduct a more efficient, targeted search.

[para 11] On the records before me, it is difficult to say whether the Public Body took steps to clarify with the Applicant the records that she was trying to obtain in making the access request. I accept that it is possible that it did, and that records documenting those steps were not provided for the inquiry. However, in the event that it did not contact the Applicant to clarify the request, I recommend that the Public Body consider taking steps in future to clarify with an applicant the scope of an ambiguous access request. By doing so, it may more quickly identify responsive records and determine the probable locations of such records, thereby avoiding searching for and sifting through non-responsive records. On the evidence before me, it appears that the length of time the Public Body has taken to process the access request may be attributable, in part, to not taking steps to clarify an ambiguous and extremely broad access request.

[para 12] If the Public Body considers there would be any benefit to clarifying the scope of the access request at this point, the order I make will not preclude it from doing so.

III. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] 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 15] 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