

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-41

September 6, 2018

HEALTH

Case File Number 009143

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request dated June 8, 2017, to Health (the Public Body). The Public Body acknowledged receipt of the request by letter dated June 9, 2017.

The Applicant requested a review of the time taken by the Public Body to respond.

The Adjudicator found that the Public Body failed to make every reasonable effort to respond within the timelines provided in the Act.

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

Cases Cited: AB: Orders F2016-37, F2017-26, F2018-23.

I. BACKGROUND

[para 1] An Applicant made an access request dated June 8, 2017 to Health (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body acknowledged receipt of the request by letter dated June 9, 2017. In that letter, the Public Body informed the Applicant that it would respond on or before July 10, 2017.

[para 2] By letter dated July 13, 2017, the Public Body informed the Applicant that it was “still processing [his] request”. It is not clear how or whether the Public Body properly extended its time to respond under section 14 of the Act at that time.

[para 3] By letter dated August 4, 2017, the Public Body informed the Applicant that its time to respond to his request was being extended to September 3, 2017, under section 14(1)(c) of the Act.

The Applicant provided copies of email correspondence with the Public Body regarding the progress of this access request, amongst others, from February 2018 to June 2018.

[para 4] On July 3, 2018, this office received the Applicant’s request for a review of the Public Body’s failure to respond.

II. RECORDS AT ISSUE

[para 5] As the issue in this inquiry relates to the timeliness of the Public Body’s response, there are no records at issue.

III. ISSUE

[para 6] The Notice of Inquiry, dated July 18, 2018, states the issue for this inquiry as follows:

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

IV. DISCUSSION OF ISSUE

[para 7] Section 11 of the Act requires a public body to make every reasonable effort to respond to an access request no later than 30 days after receiving the request. 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 8] The Public Body’s submission states that it responded to the Applicant on August 1, 2018; the Public Body attached a copy of that response with its submission. The submission further states (at paras. 15-17):

The Respondent undertook the necessary steps to gather responsive records, consult with third parties as required, advise the Applicant, and process the responsive records so as to provide a response to the Applicant.

The Respondent has determined that the access request that is the subject of this Inquiry consists of 1,346 pages of responsive records. Due to the broad nature of the request, the responsive records also required significant consultation with numerous third parties and interactions between the Respondent's FOIP Office and the Respondent's program areas to determine how the responsive records are to be processed.

[para 9] The Public Body argues that as it has provided the responsive records to the Applicant, and because it did so before its submission deadline for this inquiry (which was August 13, 2018), its response "is no longer a deemed refusal in accordance with s. 11(2) of the Act" (at para. 5). On this basis, the Public Body asked (at para. 18)

that no order be made that it has refused to respond to the Applicant's access request or failed to comply with s. 11(1) since the Respondent has submitted all required material to the Applicant before the OIPC's deadline for filing these submissions on August 13, 2018.

[para 10] It is not clear whether the Public Body is requesting that I not order it *to do something*, or whether I not issue an Order at all. There are several recent Orders that deal with circumstances in which a public body fails to meet its timelines under section 11 but had responded to the applicant before the Order was issued (see Orders F2016-37, F2017-26, and F2018-23). In such cases, the adjudicator makes a finding as to the public body's compliance with section 11 of the Act, but it is no longer necessary to order the Public Body to respond to the Applicant.

[para 11] In this case, the Public Body has responded to the Applicant and can no longer be said to have refused access to the records (under section 11(2)).

[para 12] However, section 11(1) of the Act requires a public body to make every reasonable effort to respond to an access request in 30 days. The Applicant's access request is dated June 8, 2017. The Public Body's initial deadline was July 10, 2017; it later informed the Applicant that its deadline was extended to September 3, 2017. The Public Body did not actually respond to the Applicant until August 1, 2018, almost a year since the Public Body's last deadline. The Public Body has not provided any explanation as to why it did not meet that extended deadline of September 3, 2017. The fact that the Public Body responded to the Applicant before its submission was due for this inquiry is irrelevant.

[para 13] Given the above, I find that the Public Body failed to make every reasonable effort to respond within the timelines set out in section 11 of the Act.

V. ORDER

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

[para 15] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. As the Public Body has now responded to the Applicant's access request, it is not necessary for me to order the Public Body to respond to the Applicant under the Act.

Amanda Swanek
Adjudicator