

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-42

September 6, 2018

SERVICE ALBERTA

Case File Number 009069

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Service Alberta (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) on October 4, 2017. On May 3, 2018, the Applicant requested that the Commissioner review the Public Body's failure to respond to his access request.

The Adjudicator ordered the Public Body to comply with its duty under section 11 of the FOIP Act. In doing so, she noted that Public Body appeared to have ceased communications with the Applicant and to have ceased providing releases of records once he made the request for review to the Commissioner. The Adjudicator confirmed that there is no provision of the FOIP Act that authorizes a public body to stop making reasonable efforts to respond to an applicant under section 11 when the applicant requests review of the public body's compliance with section 11.

The Adjudicator ordered the Public Body to meet its duty under section 11.

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

I. BACKGROUND

[para 1] On October 4, 2017, the Applicant made an access request under the FOIP Act to Service Alberta for:

[...] all records as defined by Section 1(q) of the Act related to audits of Alberta Registry Agent compliance with Service Alberta legislation, regulations, and policies. This request includes, but is not limited to, any reports or investigations related to breaches or potential breaches of personal information privacy and/or security [...]

[para 2] On October 16, 2017, the Applicant clarified that he was seeking the following kinds of records:

Alberta Registry Agent Compliance Audits – Year-end summary reports.
Timeframe: January 1, 2012 to October 3, 2017.

Performance Monitoring of Clerk Activity – All disciplinary letters (warnings, notices of suspensions, etc.) that were sent out. Also any briefing notes, memos, reports, etc. that speak to the issue generally (i.e. not just in relation to an individual file).
Timeframe: January 1, 2015 to October 4, 2017 (date received)

Registry Agent Investigations – Any briefing notes and final reports that may have been produced for each of the 37 investigative files.
Timeframe: January 1, 2012 to October 4, 2017 (date received)

[para 3] On November 3, 2017, the Public Body wrote the Applicant to inform him that it anticipated that it would be in a position to respond to his access request by December 4, 2017. It explained that it had extended the date for responding by 30 days pursuant to section 14(1)(b) of the FOIP Act.

[para 4] On December 21, 2017, the Public Body informed the Applicant that it had received an extension from the Commissioner under section 14(1)(b) of the FOIP Act to respond later than it had originally anticipated. The new date for responding was January 17, 2018.

[para 5] On February 1, 2018 the Public Body informed the Applicant that it had determined that over 900 records were responsive to the access request. The Public Body stated that it would be unable to respond to his access request by February 2, 2018.

[para 6] On March 1, 2018, the Public Body provided the Applicant with a “first release” of documents, records 1 – 147. It informed him that due to the volume of records, it would continue to release records to him in batches.

[para 7] On March 29, 2018, the Public Body informed the Applicant that it had “reached a decision regarding a portion of the records related to part 2” of his access request. It provided records 148 – 426 to the Applicant. The Public Body also stated:

Service Alberta continues to process your request. Due to the volume of records, SA will continue to release information to you in batches as the information is processed in order to provide you with access to the records as soon as possible.

[para 8] On May 3, 2018, the Applicant requested that the Commissioner review the Public Body’s failure to respond to his access request within the time limits imposed by section 11 of the FOIP Act.

[para 9] The Commissioner directed that the matter proceed directly to inquiry.

[para 10] The Public Body ceased communications with the Applicant and did not provide any further records.

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

[para 11] Section 11 of the Act imposes a duty on a public body to take steps to respond to an applicant within 30 days of receiving an access request. It 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 12] In its submissions of August 13, 2018, the Public Body stated:

On October 4, 2017, the Public Body received the Applicant's access to information request [...]

The Public Body communicated with the Applicant regarding the request scope between October 4 and 16, 2017. On October 16, 2017, the request was clarified [...]

Additional fees were not assessed for this request.

A time extension under section 14(1)(b) for search and volume was taken under the FOIP Act.

The Public Body requested and received additional time from the Office of the Information and Privacy Commissioner (OIPC) for processing the request under section 14(1)(b) of the FOIP Act. The Applicant was notified of the extension and the new response date of January 17, 2018.

Status updates were provided to the Applicant during the processing of the request. Given the complexity of the records and the amount of personal information within the records, records were processed and released in batches.

On March 1, 2018, a first release was provided to the Applicant.

On March 29, 2018, a second release was provided to the Applicant.

[para 13] The Public Body acknowledged that it has failed to meet the requirements of section 11, stating:

The Public Body acknowledges that it has missed the deadline imposed by section 11 of the FOIP Act. The Public Body further apologizes to the Applicant for the delay in completely responding to the Applicant's access to information request.

[para 14] While the Public Body acknowledges that it failed to comply with the timeline imposed by section 11, I note that it has provided no explanation of its lack of communication with the Applicant following the second release of records on March 29, 2018 or its failure to provide additional releases of records, despite expressing the intent to do so. As it stands, according to its correspondence with the Applicant, there are at least 474 records responsive to the access request that the Public Body has located and withheld from the Applicant, despite not applying an exception to disclosure that would provide authority to do so.

[para 15] It may be the case that the Public Body misunderstood the effect of the Applicant's making a request for review to the Commissioner and decided that it was no longer under a duty to take reasonable steps to respond to the Applicant once he made the request. If so, I confirm that there is no provision in the FOIP Act that authorizes a public body to disregard an access request once a request for review has been made. Even though an applicant has made a request for review of the Public Body's compliance with timelines, a public body should continue to process the access request in order for the applicant to receive the records in as short a time as possible. Doing so may negate the need for an inquiry when the public body is in a position to respond fully to an access request prior to the scheduled date of the inquiry.

[para 16] Alternatively, it may be the case that the Public Body continues to process the Applicant's access request, but inadvertently omitted mention of doing so in its submissions. If so, then I recommend that information about the steps it is taking to bring itself into compliance be included in the Public Body's submissions in the future, as such evidence is relevant to the question of whether it has made reasonable efforts to respond to the Applicant as required by section 11.

[para 17] In any event, the Public Body's evidence does not establish that it has made reasonable efforts to respond to the Applicant's access request and I find, as a result, that it has not complied with its duty under section 11. I must therefore order it to meet its duty to the Applicant.

III. ORDER

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

[para 19] I order the head of the Public Body to respond to the Applicant in accordance with his duty under section 11 of the Act.

[para 20] I order the head of the Public Body to inform this office within 50 days of receiving this order, that he has complied with it.

Teresa Cunningham
Adjudicator