

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2019-38

October 21, 2019

MUNICIPAL DISTRICT OF OPPORTUNITY NO. 17

Case File Number 012563

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request dated April 3, 2018 to the Municipal District of Opportunity No. 17 (the Public Body). The Public Body acknowledged receipt of the request and extended the deadline to respond to it. Despite informing the Applicant that the response to the access request was near completion in October 2018, the Public Body never provided the response as required by the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 (the *Act*).

The Applicant requested a review of the Public Body's failure to respond to the request.

The Adjudicator ordered the Public Body to respond to the Applicant's access request as required by the *Act*.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 s. 11, 14, 72

I. BACKGROUND

[para 1] The Applicant, through its legal counsel, made an access request, dated April 3, 2018, to the Municipal District of Opportunity No. 17 (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request was sent to legal counsel who, according to the Applicant's counsel, was legal counsel for the Public Body.

[para 2] The Public Body's Acting Chief Administrative Officer (CAO) acknowledged receipt of the request by letter dated May 3, 2018. The Acting CAO confirmed that the access request was forwarded to, and received by, the Public Body on April 5, 2018. The Public Body identified that the access request involved searching a large number of records, and extended the deadline to complete the request to June 5, 2018. The Public Body stated that it would try to respond sooner, if possible.

[para 3] It is not clear if the legal counsel who initially received the request was ever again involved in it. It appears that the Applicant and the Public Body were engaged in a separate legal matter during the months following the access request, and that the Public Body retained separate, external legal counsel, different from legal counsel that received the initial access request, to handle that matter. I refer to this legal counsel as "external counsel" through the rest of this order.

[para 4] The Applicant's counsel sent inquiries about the access request to external counsel on the following occasions:

[para 5] The first update request was sent by e-mail dated October 11, 2018. External counsel sent no reply.

[para 6] The Applicant's counsel sent further e-mails on October 19 and 29, 2018, asking for a response to the access request. External counsel replied to both e-mails, each time stating that the inquiries had been forwarded to the "MD of Opportunity's Counsel" who was handling the access request. The "MD of Opportunity's Counsel" was not identified in either reply.

[para 7] On October 31, 2018, external counsel wrote to the Applicant's counsel and reported that they had been advised that the Public Body was working to put the records together, and should have a response to the access request the next week. It is not clear why this communication came from external counsel, when, just two days prior, they informed the Applicant that someone else was handling the access request.

[para 8] On November 23, 2018, the Applicant's counsel replied to the October 31, 2018 e-mail, noting that nothing had been received. External counsel sent a reply the same day. External counsel now stated, "Your clients [sic] FOIP request is outside the scope of this action and is a separate matter between your client and the MD of Opportunity." This e-mail identified the counsel for the Public Body that was purportedly handling the access request. It was another legal counsel, different from the one to whom the access request was initially sent.

[para 9] On March 27, 2019, the Applicant's counsel sent a letter to the Public Body's new legal counsel, as identified in the November 23, 2018 e-mail. The letter again inquired about the access request. There was no reply.

[para 10] On April 26, 2019, this office received the Applicant's request for review of the Public Body's failure to respond.

II. ISSUES

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

III. DISCUSSION OF ISSUES

[para 11] 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 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 12] Section 14(1)(b) allows a public body to extend the time limit for responding to an access request if there is a large number of records to be searched and responding to the access request unreasonably interferes with the public body's operations.

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

...

(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,

[para 13] Presumably, s. 14(1)(b) is the section the Public Body was relying on when it extended the deadline for responding to the request as described in its letter dated May 3, 2018.

[para 14] The Public Body did not make any submissions in this inquiry, and has not explained the failure to respond to the access request by the deadline set in s. 11(1). The Applicant's request seems to have been passed from one person to another by the Public

Body without being fulfilled. There is no doubt, though, that the Public Body was aware of the request, as evidenced by the letter of the Acting CAO, dated May 3, 2018.

[para 15] The Public Body has also not offered any evidence that fulfilling the access request within the initial 30 day period would unreasonably interfere with its operations. It has not established that it had authority under s. 14(1)(b) to extend the deadline set by s. 11(1).

[para 16] Given the above, I find that the Public Body failed to make every reasonable effort to respond within the timelines provided in the *Act*. I also find that the Public Body did not have authority under s. 14(1) to extend the initial 30 day deadline.

IV. ORDER

[para 17] I make this Order under section 72 of the *Act*.

[para 18] I find that the Public Body did not properly extend the time limit for responding to the access request under s. 14(1) of the *Act*, and did not respond to the Applicant within the time limit set out in s. 11. While it is now too late for the Public Body to comply with the deadline in s. 11 of the *Act*, I order the Public Body to respond to the Applicant's access request in accordance with the Public Body's duties it continues to have under the *Act*.

[para 19] I order the Public Body to inform me, within 50 days of receiving this order, that it has complied with it.

John Gabriele
Adjudicator