

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2021-40**

October 27, 2021

**HEALTH**

Case File Number 021955

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Health (the Public Body) for data and studies that informed the Government of Alberta's recommendation to Albertans to wear face coverings to prevent the spread of COVID-19.

The Public Body did not respond to the access request.

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

Once the inquiry was under way, the Public Body responded to the access request.

The Adjudicator did not order the Public Body to respond to the Applicant as it had already done so, but asked it to review its policies to ensure that it responded to requesters in compliance with the FOIP Act in the future.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000. c. F-25, ss. 11, 14, 15, 72

## 1. BACKGROUND

[para 1] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Health (the Public Body) on October 23, 2020. The Applicant requested:

All documents referencing the specific data and studies that informed Dr. Deena Hinshaw and the Government of Alberta's recommendation for Albertans to wear facial coverings to prevent the spread of COVID-19. This should include but not be limited to all studies and data referenced that prove the mode of person-to-person transmission of COVID-19, occupational health and safety standards, as well as the studies and data that informed the government's statement on its external COVID-19 webpage that states, "it hasn't been proven that masks protect the person wearing it, but it can help protect people from being exposed to germs."

[para 2] The Public Body did not respond to the Applicant's access request.

[para 3] On July 6, 2021 Applicant requested review by the Commissioner of the Public Body's failure to respond to his access request as required by section 11 of the FOIP Act.

[para 4] The Commissioner referred the matter directly to inquiry.

[para 5] On August 10, 2021 the Public Body informed the Applicant and the Commissioner that it was seeking an extension of the time to make submissions as it intended to respond to the Applicant by September 18, 2021.

[para 6] I agreed to extend the time for the Public Body to make submissions to enable it to respond to the access request.

[para 7] After the Public Body responded to the access request, the Applicant requested that the inquiry continue.

## II. ISSUE

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

[para 8] 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 9] A Public Body must make every reasonable effort to respond to an access request within 30 days of receiving it unless the Public Body has extended the time for responding to the access request under section 14, or has transferred the access request under section 15.

[para 10] The Public Body states:

This Inquiry was ordered as result of Alberta Health's delay in providing a response to the applicant's access request received on October 29, 2020. Subsequent to that date, Alberta Health provided the records to the applicant as identified in the access request on September 16, 2021. As the records have now been provided to the applicant, Alberta Health has no further information to provide in relation to the Inquiry.

Alberta Health's delay in responding was not a deliberate refusal to respond to the access request. The records being sought were in relation to Alberta Health's response to the COVID-19 pandemic. Since March of 2020, Alberta Health has led the Government of Alberta's COVID-19 pandemic response and is dealing with unprecedented demands in this regard. The fact that this urgent work caused Alberta Health's delay in responding to the access request was an unfortunate occurrence arising from this unique situation.

[para 11] The Public Body attributes its delay in responding to the Applicant's access request to the role of Health in responding to the COVID-19 epidemic. It is not clear in its submissions why the Public Body's FOIP Office was unable to respond to the access request. Perhaps the Public Body received many requests for similar information or perhaps the program areas that held the responsive records did not respond in a timely manner due to their duties regarding pandemic response. I accept that the Public Body considers the situation to be unique. I recommend that the Public Body consider how the delay occurred and take any measures available to it to avoid similar delays.

[para 12] The Public Body confirms that it did not meet its duty under section 11 of the FOIP Act. However, the Public Body has now responded to the Applicant.

[para 13] As the Public Body has now responded to the Applicant, there is no benefit to be gained from ordering the Public Body to respond to the Applicant and I will not make an order directing it to respond in this case.

### **III. ORDER**

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

[para 15] I confirm that the Public Body did not meet its duty to take all reasonable steps to respond to the Applicant within the terms of section 11 of the Act.

[para 16] As the Public Body has now responded to the Applicant's access request, I will not make an order requiring it to perform its duty to respond to the Applicant.

However, I ask that it review its processes regarding responding to applicants so that it may align them with the requirements of section 11 of the Act in the future.

---

Teresa Cunningham  
Adjudicator  
/bah