

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2022-55**

November 7, 2022

**PUBLIC SAFETY AND EMERGENCY SERVICES**

Case File Number 025515

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

**Summary:** An individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to Public Safety and Emergency Services (then Justice and Solicitor General) (the Public Body). The Public Body extended its time to respond to the access request under section 14(1)(b) and granted the Applicant a partial fee waiver under section 93(4) of the Act, but did not provide the Applicant any responsive records or an explanation of why any responsive records may be withheld. The Applicant alleged that the Public Body failed to respond to her access request in time, as required under section 11 of the Act.

The Adjudicator found that the Public Body failed to respond within the timelines provided for under the Act, even taking into account an extension to respond and time to process the Applicant's request for a fee waiver. The Adjudicator ordered the Public Body to respond to the access request as required by the Act.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 11, 12, 14(1)(b), 93(3.1), 93(4), 93(4.1), 72.

**I. BACKGROUND**

[para 1] On June 23, 2021, an individual (the Applicant) made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act)

to Public Safety and Emergency Services (then Justice and Solicitor General) (the Public Body) for certain information.

[para 2] On June 24, 2021, the Public Body sent an e-mail to the Applicant acknowledging the access request and requesting information to better establish search parameters to be used to locate responsive records. On June 25, the Public Body sent a letter to the Applicant describing newly established search parameters for the access request and informed the Applicant that it would respond to the access request by July 26, 2021.

[para 3] On July 20, 2021, the Public Body informed the Applicant that it was extending its time to respond to the access request, pursuant to section 14(1)(b) of the Act.

[para 4] On August 6, 2021, the Public Body provided the Applicant an estimate of the fees for processing the access request, and put the matter on hold pending the Applicant's response to the fee estimate. Subsequently, the Applicant sought a fee waiver. On October 7, 2021, the Public Body informed the Applicant that it would waive 50% of the estimated fees. The Public Body received the Applicant's fee deposit on October 18, 2021.

[para 5] On December 2, 2021, the Applicant requested a review of the Public Body's handling of her access request.

[para 6] To date, the Applicant has not received from the Public Body any responsive records or an explanation of why responsive records, if any, are withheld.

[para 7] The Commissioner decided to move the matter directly to inquiry and delegated her authority to conduct the inquiry to me.

## II. ISSUES

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

**B. If the Public Body did respond within time, did the Public Body comply with section 12 of the Act (contents of response)?**

## III. DISCUSSION OF ISSUES

*Preliminary Matter – Issue not added*

[para 8] In her submission, the Applicant requested that the fees she has paid be refunded. As this issue was not raised in her request for review, I do not address it here.

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

**B. If the Public Body did respond within time, did the Public Body comply with section 12 of the Act (contents of response)?**

[para 9] 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 10] Section 14(1)(b) of the Act, under which the Public Body extended time to respond to the access request, states,

*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 11] Sections 93(3.1), (4), and (4.1) of the Act describe the process by which an applicant can request a waiver of fees, and a public body's time to respond to a waiver request:

*(3.1) An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).*

*(4) The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,*

*(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or*

*(b) the record relates to a matter of public interest, including the environment or public health or safety.*

*(4.1) If an applicant has, under subsection (3.1), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of*

*the head's decision to grant or refuse the request to the applicant within 30 days after receiving the request.*

[para 12] The Public Body admits that it failed to comply with section 11; I agree. Even taking into account a 30 day extension under section 14(1)(b), and time to process the Applicant's request for a fee waiver under section 93(3.1), the permitted time to respond to the access request expired many months ago. The Applicant made the access request on June 23, 2021; it is now November, 2022.

[para 13] In concluding that the Public Body failed to comply with section 11, I have considered that it did not fail to respond to the access request in the sense that it completely ignored the request. The Public Body acknowledged the request and engaged in the time extension and fee waiver processes contemplated in the Act, and provided the Applicant notice of the same. However, the essence of complying with section 11 is to inform the Applicant, in a timely manner, of whether access is granted, and if so how, and on what basis access is refused to any records. These requirements are set out in section 12 of the Act:

*12(1) In a response under section 11, the applicant must be told*

- (a) whether access to the record or part of it is granted or refused,*
- (b) if access to the record or part of it is granted, where, when and how access will be given, and*
- (c) if access to the record or to part of it is refused,*
  - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,*
  - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and*
  - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.*

*(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of*

- (a) a record containing information described in section 18 or 20, or*
- (b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.*

[para 14] Accordingly, though the Public Body did not completely ignore the access request, I find that it failed to comply with sections 11 and 12 of the Act.

#### **IV. ORDER**

[para 15] I make this Order under section 72 of the Act.

[para 16] I find that the Public Body did not respond to the Applicant within the time limit set out in section 11 of the Act. While it is too late for the Public Body to now comply with that section of the Act, I order the Public Body to respond to the Applicant in accordance with the Public Body's remaining duties under the Act, including those under section 12.

[para 17] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

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John Gabriele  
Adjudicator  
/ah