



Office of the Information and
Privacy Commissioner of Alberta

Sent by email
July 25, 2022

Mr. Mike De Souza



Central Intake - Access Service/General and
Privacy Requests
Energy
402, 10405 Jasper Avenue Building
10405 Jasper AVE
Edmonton, AB T5J 4R7

Dear Mr. De Souza and Central Intake:

RE: Request for Review File #: 019874
Energy File #: EN000-2020-G-33 (formerly 2020-G-0048)

I am writing in response to Mr. Mike De Souza (the Applicant) asking this Office to review a decision made by Energy (the Public Body) regarding an access request he made under the *Freedom of Information and Protection of Privacy Act* (FOIP or the Act). The Commissioner accepted the review request under section 65 of the Act and assigned me to investigate and try to settle this matter. My findings follow.

Background

The Applicant submitted an access request on July 13, 2020 to the Public Body requesting the following information:

“Copies of all agendas of meetings of the CAPP-Government of Alberta joint working group between Feb 1, 2020 and July 13, 2020. Please also include attachments and any supporting documents shared as part of the agenda. Please also provide copies of minutes produced for meetings of the CAPP Government of Alberta Joint Working Group, between Feb. 1, 2020 and July 13, 2020.”

Time period: February 1, 2020 to July 13, 2020

Excluding: duplicate records and email records which are duplicated in the final/longest string.

The Public Body responded to the Applicant on the following dates:

- July 16, 2020, acknowledging the \$25 fee payment and providing a due date of October 13, 2020. The Public Body noted the authority under *Ministerial Order No. SA:009/2020* (MO) to extend the deadline of a FOIP access request to 90 days;
- August 12, 2020, extending the due date for a response under 14(1.1) (as per the MO) to December 10, 2020;

- October 16, 2020, granting the Applicant’s request for a fee waiver and confirming the deadline for a response to December 11, 2020;
- December 4, 2020, indicating the request involves a large number of records and as such it was taking a further 30 day extension to the deadline to provide a response (to January 11, 2021) under 14(1)(b); and
- January 15, 2021 indicating it had been granted an extension of 200 days for the response due date by our Office under section 14(1)(b) of FOIP (large volume of records) and the deadline for response was now August 26, 2021.

Request for Review

The Applicant submitted a Request for Review form on January 20, 2021 indicating the time limit for responding had expired, that he had not received a reply, and he disputed the need for the time extension.

Response to Request for Review

On February 11, 2022, the Public Body provided a response to the RFR indicating responses to the following questions:

- When was the Applicant’s access request received:
“This access request was received on July 13, 2020 (copy attached; see Acknowledgment Letter).”
- What time extension(s) were taken and under what sections of the Act:
“Two time extensions were taken (copies attached) under:
 - a) section 14(1.1) on August 12, 2020, in accordance with the Public Health Order regarding the pandemic impact (see 0048 Covid-19 Extension); and*
 - b) section 14(1)(b) on December 4, 2020, for the large number of records requested, and that needed to be searched through for responsive records (see 2020-G-0048 – Extension s.14(1)).”*

Responding within the period set out in section 11 would have unreasonably interfered with the operations of the public body (Energy) at that time (addressing a high caseload and large volume of access request files, in addition to their operational requirements).”

- When was the Applicant informed of the time extension(s) (include copies of any correspondence sent to the Applicant)
“The Applicant was informed of the above-noted extensions on August 12, 2020, and December 4, 2020, respectively (copies attached, as described above).”
- Why does the Public Body believe it complied with the Act in taking the time extension(s)
“The above-noted extensions were applied in accordance with the FOIP Act, and the Public Health Order which allowed an extension of timelines due to complications during an unprecedented pandemic (State of Public Health Emergency) affecting workplaces. “
- If the Public Body also applied to our office for permission to extend the time limit please provide a copy of the Commissioner’s decision.

“A request for time extension was submitted to the Office of the Information and Privacy Commissioner (OIPC) on January 7, 2021.

The OIPC Decision was provided on January 12, 2021, providing an additional 200 days under section 14(1)(b) for the volume of records (see attached OIPC Decision).

The OIPC extension was communicated to the Applicant on January 15, 2021 (attached letter, OIPC Time Extension – Letter to Applicant).”

- Please confirm whether or not a response to the access request has been provided to the Applicant and if so when this was sent? If it has not been sent, does the Public Body have an estimate as to when the response will be sent?

“A response has not yet been provided the Applicant. We continue to work on the request among other competing demands for the FOIP Unit and Department of Energy, as well as responsibilities serving other public bodies (Alberta Petroleum Marketing Commission, and Indigenous Relations). We are working on this file as a priority file among other files in the queue. We endeavour to have the response to the Applicant by April 2022, or sooner if at all possible.

Please note as well that the FOIP Advisor originally assigned to this file is no longer with our office and other staff are completing the review. A thorough processing of this file requires consideration of consultations with multiple other public bodies and impacted third parties.

In addition, we also note that this file required consideration of the Applicant’s request for a fee waiver in the public interest, and preparation of an analysis for a decision by the Department of Energy. A notification of the waiver of additional processing fees, for other reasons of fairness, was provided the Applicant on October 16, 2020 (copy attached).”

Issues

Did the Public Body comply with section 11(1) of the Act and properly apply section 14(1) of the Act when responding to the Applicant’s access request?

Findings

For the reasons which follow, I find the Public Body has not complied with section 11(1) of the section as a response has yet to be provided to the Applicant. As such, I find the lack of a response a decision by the Public Body to refuse access to the Applicant.

Analysis

Section 11¹ of the Act requires a public body to respond to an access request no later than 30 days after receiving it, unless that time limit is extended under section 14. Failure to respond within the 30 day period or any extended period is treated as a decision to refuse access to the record.

On April 9, 2020, the Government of Alberta issued *Ministerial Order No. SA:009/2020* (MO). Section 1(1) of the MO modified section 11 of FOIP to extend the legislative timeline for responding to an access

¹ The FOIP Act may be accessed online at: <https://www.gp.alberta.ca/documents/Acts/F25.pdf>

request from 30 days to 90 days. Section 1(2) modified section 14 of FOIP to extend the time for responding to an access request for up to 60 days if the COVID-19 pandemic unreasonably interferes with the operations of the public body.

Section 14 recognizes it may take longer than 30 days to respond to an applicant due to the nature and quantity of records requested when that would unreasonably interfere with the operations of the public body (subsection 14(1)(b)). Under this section, a public body may extend the time limit by another 30 days for a total of 60 days. Anything longer than this timeframe requires the Commissioner's permission.

The Public Body took several extensions under the MO and under 14(1)(b) before it was granted a final extension by our Office. As our Office did grant the 200 day extension I have decided not to make a finding whether or not the Public Body properly applied FOIP it taking the extensions under the MO and under section 14(1).

However, I note that on January 12, 2021, the Assistant Commissioner, Compliance and Government Relations provided a 200 day extension and set the final response due date as **August 26, 2021**. The Public Body has failed to provide a response by this date and by the April 2022 date noted in its February 11, 2022 response to me.²

Conclusion & Recommendations

It is almost a year since the August 26, 2021 date set by the Assistant Commissioner and the Public Body has failed to provide a response to the Applicant's access request. As such, I find the Public Body has failed to comply with section 11(1) and in doing so has refused access to the records. Given the amount of time that has past, there should be no further delay. I recommend the Public Body respond to the Applicant's access request within 30 days of receiving this finding.

I ask the Public Body to inform the Applicant in writing, with a copy to me, by August 9, 2022, as to whether it has accepted my recommendation in this matter and provide the Applicant with a date that he will receive the response to the access request, taking into consideration my recommendation of 30 days. If after this time the Applicant is not satisfied or the Public body fails to respond in the timeline provided, the Applicant may request an inquiry

Next Steps

If the Applicant believes this investigation did not resolve all of the issues, the Applicant may request that the Commissioner hold an inquiry into the matter under section 69 of the FOIP Act.

- The Commissioner's decision to hold an inquiry is **discretionary**, meaning the Commissioner may or may not decide to hold an inquiry.
- My analysis and conclusions are not used in the inquiry process. The inquiry process is a new evaluation of the issues.
- The background information provided by the Applicant and the Public Body during this investigation will be used in the inquiry process.
- If the inquiry request is accepted by the Commissioner, you will be required to provide a separate submission for the inquiry process to our Adjudication Unit.

² I reached out to the Public Body on July 19, 2022 by email and asked when a response can be expected. I have not received a response as of the date of this letter. In light of the considerable delay in this file I have decided to issue my letter of findings recommending a response without further delay.

- The Commissioner or a delegate will consider submissions of both parties and then decide questions of fact and law independent of the mediation and investigation process.

The mediation/investigation phase of this file will conclude on August 24, 2022. If you wish to request an inquiry, I must receive a completed "Request for Inquiry" form, by **August 24, 2022.** **Failure to submit a Request for Inquiry form by this date may require you to provide an explanation to the Commissioner. It will be at the Commissioner's discretion to accept the request for inquiry.**

Further information about the inquiry process and form can be found at:

<https://www.oipc.ab.ca/action-items/request-a-review-file-a-complaint/inquiries.aspx>

Sincerely,



Senior Information and Privacy Manager