



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F13-11

## MINISTRY OF FINANCE

Elizabeth Barker  
Adjudicator

May 22, 2013

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**Summary:** The applicant requested records related to a pulp mill. Approximately eight months later, the Ministry still had not provided the applicant with a response. The Ministry was found not to have fulfilled its duties under ss. 6(1) and 7 of FIPPA and was ordered to provide the response by June 24, 2013.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 7, 10, 53(3), 58.

**Authorities Considered:** **B.C.:** Order F06-04, [2006] B.C.I.P.C.D. No. 9; Order 04-30, [2004] B.C.I.P.C.D. No. 31; Order F11-18, [2011] B.C.I.P.C.D. No. 24.

## INTRODUCTION

[1] This case is about the failure of the Ministry of Finance (“Ministry”) to comply with its duties under sections 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to respond without delay to an information request. The applicant is a law firm that represents Sun Wave Forest Products Ltd., and the request relates to information about the Watson Island pulp mill.

## ISSUES

[2] The issues in this inquiry are as follows:

1. Did the Ministry make every reasonable effort to respond without delay to the applicant's request as required by s. 6(1) of FIPPA?
2. Did the Ministry fail to respond to the applicant's request in accordance with the requirements of s. 7 of FIPPA?

## DISCUSSION

[3] **Background Facts**—The material before me consists of the applicant's Request for Review form notifying the OIPC of the Ministry's failure to respond, the Notice of Written Inquiry and the parties' written submissions. Neither party provided affidavit evidence. I have reviewed these materials and find the facts to be as follows:

- On September 10, 2012, the Ministry received an access to information request regarding records related to the Watson Island pulp mill.
- On October 2, 2012, the Ministry assessed a fee to process the applicant's request, and on October 12, 2012, the applicant paid the Ministry a deposit towards that fee.
- On October 23, 2012, the Ministry took a time extension to respond to the request as permitted under s. 10 of FIPPA, making the new release date January 4, 2013.
- On December 18, 2012, the Ministry requested a further extension. The Office of the Information and Privacy Commissioner ("OIPC") granted the extension, under ss. 10(1)(b) and (c) of FIPPA, and extended the deadline to March 18, 2013.
- On March 15, 2013, the Ministry requested a further extension which was refused.
- On March 27, 2013, the applicant filed a complaint with the OIPC that the Ministry had failed to comply with the March 18, 2013 deadline.
- By March 28, 2013, the Ministry had sent to the Information Access Office ("IAO") analyst who was processing the request over 3500 pages of records. By April 23, 2013, a further 230 records had been sent to the analyst.
- On April 30, 2013, the OIPC issued a Notice of Written Inquiry. The final submissions in the inquiry were received on May 13, 2013.

[4] **Duty to Respond Without Delay**—FIPPA imposes obligations on a public body to respond to information requests within certain timelines. The relevant sections of FIPPA are as follows:

**Duty to assist applicants**

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

**Time limit for responding**

- 7(1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).
- (2) The head of the public body is not required to comply with subsection (1) if
- (a) the time limit is extended under section 10, ...

**Extending the time limit for responding**

- 10(1) The head of a public body may extend the time for responding to a request for up to 30 days if one or more of the following apply:
- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record;
- (d) the applicant has consented, in the prescribed manner, to the extension.
- (2) In addition to the authority under subsection (1), with the permission of the commissioner, the head of a public body may extend the time for responding to a request as follows:
- (a) if one or more of the circumstances described in subsection (1) (a) to (d) apply, for a period of longer than the 30 days permitted under that subsection;
- (b) if the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate.

...

[5] The Ministry concedes that it failed to respond to the applicant's request within the time required by s. 7 of FIPPA and that it breached s. 6(1) by failing to

make every reasonable effort to respond without delay. Given these concessions, and my understanding of the facts, I find that the Ministry breached ss. 6(1) and 7 of FIPPA.

[6] Section 53(3) of FIPPA states that the failure of the head of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record. Therefore, I will treat the Ministry's failure to comply with s. 7 as a refusal to provide access to the record as required by s. 53(3).

[7] **What is the Appropriate Remedy?**—The usual remedy in such cases is to order the public body, under s. 58, to respond to the request by a particular date.<sup>1</sup> I believe that this is the appropriate remedy in these circumstances.

[8] I have reviewed what the Ministry submits were the reasons for the delay in processing the request. I will not repeat those factors here. Suffice it to say that the Ministry provided detail about the complexity, sensitivity and volume of the requested records along with other work and staffing pressures that have caused the delayed response.

[9] I have also considered information about the current status of the Ministry's processing of the request. The Ministry explains that as of April 23, 2013, all of the responsive records—approximately 3700 pages—have been in the hands of the analyst responsible for reviewing the records. The analyst has been authorized to work exclusively on this file and overtime has been approved. The Ministry also explains that duplicate records, and the fact that the records touch on sensitive matters, necessitates a high level of care and time. The Ministry estimates that consultations with other public bodies, which are needed to determine the proper application of FIPPA, will be concluded by May 24, 2013. It believes that the line by line review of the records will be done by July 5, 2013.

[10] In conclusion, the Ministry explains that there is still a considerable amount of work to be done, and it is not possible for it to fully respond to the request before July 22, 2013. In reply to the applicant's allegation that it has thus far refused to provide the records in stages, the Ministry replies that it is now willing to do so. It outlines a timeline for four phased responses, with the final stage being completed by July 22, 2013.

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<sup>1</sup> For example, see Order F06-04, [2006] B.C.I.P.C.D. No. 9; Order 04-30, [2004] B.C.I.P.C.D. No. 31; Order F11-18, [2011] B.C.I.P.C.D. No. 24.

[11] The applicant submits that the Ministry has not shown the tangible steps it has taken over the preceding months to respond to the request. It adds that some of the reasons the Ministry provides for the delay could reasonably have been anticipated (e.g., preparing for the return of the PST, preparing the 2013 budget and fiscal plan, processing other FOI requests). It also submits that the Ministry was aware shortly after receiving the request that it would need to consult with other ministries, yet the consultations are still not underway. The applicant explains that the requested records relate to three law suits which are scheduled to be heard July 24-26, 2013, and that it will be prejudiced if it does not receive them with adequate time to prepare for examinations for discovery and trial. The applicant requests that the new deadline for the response to its request be May 24, 2013.

[12] I acknowledge the Ministry's argument that it has been a challenge dealing with the volume of records and the need to engage in consultations. However, the Ministry has already had two time extensions and approximately eight months to process this request. It is evident that the Ministry has been aware of the large volume of records and the need to consult since at least March 28, 2013 when 3500 of the 3700 pages were given to the analyst (and arguably even earlier given that the December 18, 2012 extension was granted for those very reasons).

[13] I think that the Ministry has had more than sufficient time to respond, and I do not believe extending the timeline to July 22, 2013 is reasonable. According to the Ministry all of the responsive records were gathered by April 23, 2013, and consultations will conclude on May 24, 2013. I find that another 30 calendar days from that latter date is a reasonable amount of time to respond to the applicant's request. Given the amount of time that it has taken to respond, it would be a gesture of good faith for the Ministry to respond to the request in stages.

## **CONCLUSION**

[14] I have found that the Ministry failed to meet its duties to respond to the request without delay under ss. 6(1) and 7 of FIPPA. Therefore, pursuant to s. 58 of FIPPA, I order the Ministry to respond completely to the applicant on or before June 24, 2013. I also require the Ministry to copy me on its cover letter to the applicant.

May 22, 2013

## **ORIGINAL SIGNED BY**

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Elizabeth Barker, Adjudicator

OIPC File No.: F13-52584