



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F13-26

CITY OF VANCOUVER

Ross Alexander, Adjudicator

December 6, 2013

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Summary: The City of Vancouver failed to respond to requests for records by two applicants within the timelines required by FIPPA. The adjudicator found that the City breached ss. 6(1) and 7 of FIPPA, and ordered the City to respond to the requests for records by a specified deadline.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6 and 7.

Authorities Considered: B.C.: Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F13-11, 2013 BCIPC No. 12.

INTRODUCTION

[1] This inquiry arises from requests for records from two community centre societies, the Kerrisdale Community Centre Society (“Kerrisdale Society”) and the Killarney Community Centre Society (“Killarney Society”).¹ The applicants made these requests after the Vancouver Board of Parks and Recreation decided to take control of community centres that it had previously operated in

¹ The applicants are represented by the same law firm, and provided joint submissions. The same law firm also represents three other community centre societies in Vancouver (“Community Centre Societies”) that have made similar record requests to the City. These three other requests are repeatedly referred to in the materials before me, but are not matters that form part of this inquiry for the purposes of disposition. However, they do provide some context to the issues I must decide.

partnership with various volunteer-run community centre societies. The requests are broad in scope, and require the City of Vancouver (“City”) to review large quantities of documents to respond.

[2] The issue in this inquiry is whether the City has failed in its duties under ss. 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to assist the applicants and respond to their requests for records within the timelines required by the legislation.

ISSUES

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

1. Did the City fail to respond to each of the requests in accordance with s. 7 of FIPPA?
2. Did the City make every reasonable effort to respond to each of the requests within the meaning of s. 6(1) of FIPPA?
3. If the answer is yes to either of the above questions, what are the appropriate remedies for each of the requests given the circumstances?

DISCUSSION

[4] FIPPA establishes the amount of time a public body is given to respond to an applicant’s request for information. Section 7 states that a public body must respond not later than 30 days after receiving the request, unless the time for response is extended.²

[5] The calculation of the 30 day time limit is based on the definition of the word “day” in FIPPA.³ Further, this calculation excludes the time period from when a public body requests a deposit for the fees related to a request until the applicant pays the deposit or payment is excused.⁴

[6] Section 10 of FIPPA sets out circumstances where the time for response may be extended. Section 10(1)(b), for example, allows for a time extension if

² See ss. 7(1) and (2). Public bodies are not required to respond within 30 days if the time limit is extended under s. 10 or transferred to another public body under s. 11.

³ See Schedule 1 of FIPPA. A “day” generally means Monday to Friday, except for statutory holidays. The definition of day under FIPPA “does not include a holiday or a Saturday”. Sunday is not a “day” because it is a “holiday” as defined by s. 29 of the *Interpretation Act*.

⁴ Section 7(4) of FIPPA.

“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”.

[7] In this case, the City did not respond to the requests within the time required by FIPPA. The City requested a time extension after the time for response had expired, but time could not be extended at that point because s. 53(3) of FIPPA states that a public body’s failure to respond in time to a request for records is to be treated as a decision to refuse access to the record.

Background

[8] Based on my review of the evidence and submissions, I find the facts to be as follows:

- In December 2012, the City received the requests.⁵
- In January 2013, the City issued initial fee estimate demands to the applicants. The City estimated a \$930 fee for the Kerrisdale Society request, and an \$810 fee for the Killarney Society request. The City required the applicants to pay a 50% deposit of their estimated fees, which they subsequently did.
- After the Kerrisdale Society paid its deposit, the City notified it that the deadline for response to its request was February 15, 2013. The City similarly notified the Killarney Society, except with a February 19, 2013 deadline for response.
- The City had not responded to the Kerrisdale Society, or extended its deadline for response, by February 15, 2013. The City missed its time limit for responding to the Kerrisdale Society’s request.
- On February 19, 2013, the City wrote to each of the applicants, and told them that it was extending the deadlines for responding to their respective requests by 30 days under s. 10 of FIPPA.⁶
- The Killarney Society complained to the Office of the Information and Privacy Commissioner (“OIPC”) that the City had inappropriately extended the time limit for responding to its request.

⁵ There were also three other requests made by other Community Centre Societies to the City in December 2012 and January 2013. The City has generally handled and processed the requests at issue and the three other requests together as one large request.

⁶ Thirty days is the longest period of time that a public body may extend their time limit response under s. 10 without receiving approval from the OIPC.

- The OIPC confirmed that the City had missed its time deadline for responding to the Killarney Society because the correct deadline was February 15, not February 19 as the City had told the Killarney Society. The City missed its time limit for responding to both of the requests.
- On March 8, 2013, the City seconded one extra full time employee and one extra quarter time employee to its access to information office to work on the requests. The City also purchased software to help process the requests.⁷
- On March 26, 2013, the City submitted time extension applications to the OIPC for the requests. The City requested a 300 day extension for the Kerrisdale Society request, and a 200 day extension for the Killarney Society.⁸
- The OIPC did not accept the City's time extension applications because the City had missed its time limits for response.⁹ This is consistent with s. 53(3) of FIPPA, and the OIPC's Policy and Procedures Guidelines stating that time extension requests will not be considered after the time for response has expired.¹⁰
- In April 2013, the applicants made the complaints to the OIPC that are the subject of this inquiry.
- In May 2013, the City revised its fee estimates for the applicants, increasing them to \$11,895 for the Kerrisdale Society request and \$10,275 for the Killarney Society request. It asked for 50% deposits of these revised estimates. The applicants have not paid the revised fee deposits to the City, and the parties dispute whether the applicants are required to pay the revised fee estimates.¹¹
- The City estimates that it will take 415 hours of work to respond to the Kerrisdale Society request, and 359 hours of work to respond to the Killarney Society request.¹² The City states that it has completed the records searches, but it still needs to organize, compile and review the responsive records.

⁷ The staff was seconded, and new software was purchased, to process both the applicants' requests and the other three Community Centre Societies access requests.

⁸ The City also requested lengthy time extensions for the three requests from the other Community Centre Societies.

⁹ The City was granted 120, 250 and 300 day time extensions for the other three Community Centre Societies requests.

¹⁰ OIPC policies and procedures (FIPPA), May 2009: <http://www.oipc.bc.ca/tools-guidance/guidance-documents.aspx>.

¹¹ The fee dispute is not within the scope of this inquiry.

¹² City's initial submission at p. 2 and fee estimate table dated April 29, 2013.

Position of the Parties

[9] The City acknowledges and apologizes for failing to respond to the requests within the timelines required by FIPPA. It states that it missed the deadlines by making an honest error of not counting the days between Christmas and New Years because the City's office was closed during that time.

[10] The City submits that it only missed the deadline by a few days, and that it would have been entitled to a time extension because of the size of the requests if it had not missed the deadline. The City states that the requests require the City to search many of its files to respond, including:

- 77 bankers' boxes of financial records, containing approximately 231,000 pages;
- approximately 58,000 emails for the Kerrisdale request and over 10,000 emails for the Killarney request;
- hard copies of the City's maintenance yards work orders for 4½ years; and
- other files the City refers to as "Vancouver Service Review" files.

[11] The City states that it has gone above and beyond its normal business operations to process the requests. The City seconded extra staff to work on the request responses, and it purchased computer software to enable the City to process the requests faster. The City also says that it communicated with the applicants to attempt to narrow the requests to enable the City to assist the applicants and process the requests faster, but the applicants did not agree to narrow their requests. The City submits that it has met its duty to assist the applicants under s. 6 of FIPPA.

[12] The applicants submit that the City has failed to abide by FIPPA, and that it now seeks excessive and extraordinary time extensions without providing evidence that justifies the requested extensions. The applicants state that they have followed the legislation, paid the initial fee, and attempted to work with the City in good faith to receive the records in a timely way. They say that the City has breached both ss. 6 and 7 of FIPPA.

Analysis

Time for Response – s. 7

[13] Section 7 of FIPPA imposes a mandatory timeline for public bodies to respond to information requests. In this case, the City missed its deadline due to mistakenly believing that it did not need to count December 27, 28 and 31, 2012

as “days” because its office was closed. However, the fact that an inadvertent error may have caused the City to miscalculate the date for response does not excuse it from its obligations under s. 7.

[14] I therefore find that the City breached s. 7 of FIPPA with respect to the requests.

Duty to Assist Applicants – s. 6

[15] FIPPA imposes obligations on public bodies to assist applicants with their information requests. Section 6(1) states:

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.

[16] If a public body does not respond to an applicant within the prescribed time limits, it fails to meet its obligations under s. 6 of FIPPA even if it is processing the request in good faith. As former Commissioner Loukidelis stated in Order 02-38:

[22] Both public bodies breached the Act’s requirement to respond to the applicant’s request in the time required under s. 7(1) (subject to either s. 10(1) or ss. 23 and 24). It is simply not tenable to say that a public body that is in breach of the Act by having responded late can still be found to have fulfilled its statutory duty to respond to an applicant “without delay”. As I indicated in Order 01-47, [2001] B.C.I.P.C.D. No. 49, at para. 28, the s. 6(1) duty to respond without delay requires a public body to make every reasonable effort to respond before the time required under s. 7(1). A public body in breach of the latter duty cannot be found to have fulfilled the former.

[23] I do not question the diligence or good faith of those who processed the applicant’s request, but their inability to respond as required by law cannot – whether or not it was due to an excess of demand over the resources available to respond – wipe away the fact that the responses were late. I therefore find that both public bodies have failed to discharge their duty under s. 6(1) to respond to the applicant without delay.¹³

[17] Given that the City breached s. 7(1) of FIPPA by not responding in the required time, I find that the City has failed to discharge its duty to respond to the applicant without delay under s. 6(1).

¹³ Order 02-38, [2002] B.C.I.P.C.D. No. 38.

[18] **What is the appropriate remedy?**—Having decided that the City breached ss. 6 and 7 of FIPPA, I must now decide on the appropriate remedy given the circumstances. The typical remedy is to order the public body to respond to the requests by a certain date.¹⁴

[19] The City states that the time extension requests it proposed to the OIPC in March 2013 remain the appropriate amount of time to complete the work and respond to the applicants. These requests were for a 300 day extension for the Kerrisdale Society request and a 200 day extension for the Killarney Society request.¹⁵

[20] The City estimates that the total amount of work to respond to the requests is 415 hours for the Kerrisdale Society request and 359 hours for the Killarney Society request.¹⁶ It calculates these estimates in conjunction with three other similar requests by other Community Centre Societies, estimating that it will take 1,461 hours to respond to all five requests.¹⁷ The City submits that the 200 day and 300 day extensions it seeks are reasonable, given the magnitude of work required to respond to the requests at issue and the three other similar requests.

[21] The applicants submit that the City's evidence does not justify the amount of time it seeks to have to respond to the requests. They state that the deadlines requested by the City are extraordinary and excessive.

[22] The City states that it is continuing to work on the requests, and that it has completed the records searches. However, the City still needed to organize, compile and review the responsive records as of when this inquiry closed, and the City explains that this is a slow and arduous process.

[23] The City points to the 120, 250 and 300-day time extensions it received from the OIPC for the three requests from the other Community Centre Societies as evidence of the amount of time it needs to respond to the requests in this inquiry.¹⁸ However, the duration of these time extensions that were granted months ago for different requests do not persuade me that the remedy sought by the City in this inquiry is appropriate.

¹⁴ Order F13-11, 2013 BCIPC No. 12.

¹⁵ These proposed due dates, according to the City's time extension requests, are June 26, 2014 for the Kerrisdale Society request and January 30, 2014 for the Killarney Society.

¹⁶ These time estimates are in a table dated April 29, 2013.

¹⁷ The City estimated the total amount of time to complete the work, and then ascribed percentages of time to each of the requests. It did this because it needed to search most of the same files for all five the requests.

¹⁸ The deadlines for response to those three requests are September 9, 2013, February 20, 2014, and April 4, 2014, according to the City.

[24] The City's submissions are not especially helpful for establishing when the City should be ordered to respond to these requests. Its submissions state it has been working to respond to the requests since its time extension application and fee estimate calculation.¹⁹ However, the City does not provide specific evidence about how much work has been done to date to respond to the requests, or how much remains to be done. Assuming the City's own time estimates about the amount of work that is required to respond are correct, and given the time that has already passed, the City should be in a position to respond to the applicants shortly.²⁰

[25] While I do not doubt that responding to the requests is a "massive volume of work" for the City, approximately a year has elapsed since the requests for records were made. In my view, these circumstances do not warrant a significant amount of additional time to respond to the requests.

[26] Based on the materials before me, I find that a reasonable amount of time for the City to respond to each of the requests is 30 days from the date of this order.

CONCLUSION

[27] For the reasons given above, I have found that the City failed to meet its duty to respond to the requests without delay under ss. 6(1) and 7 of FIPPA. Therefore, pursuant to s. 58 of FIPPA, I order the City to respond to each of the requests by **January 22, 2014**. I require the City to copy me on its cover letters to the respective applicants.

December 6, 2013

ORIGINAL SIGNED BY

Ross Alexander
Adjudicator

OIPC File No.: F13-52867 & F13-52780

¹⁹ The time extension application is dated March 2013 and the fee estimate is dated April 2013.

²⁰ In March 2013, the City added one full time and one quarter time person to work to respond to the five requests, in addition to any time expended by the City's three regular access to information staff.