



Order F20-34

DISTRICT OF SUMMERLAND

Lisa Siew
Adjudicator

August 5, 2020

CanLII Cite: 2020 BCIPC 40
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Summary: Three applicants made a total of five requests to the District of Summerland (the District) for access to a variety of records. The applicants claimed the District did not respond to their access requests without delay as required under ss. 6 and 7 of the *Freedom of Information and Protection of Privacy Act*. They asked the Office of the Information and Privacy Commissioner to review the District's alleged failure to respond to their access requests in accordance with the legislated response times. The adjudicator determined the District did not perform its duties under ss. 6(1) and 7 to respond without delay, in accordance with the required statutory deadlines. The District was ordered to provide a response to the applicants' five access requests by certain set dates.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1) and 7(1), 7(2), 7(3), 8(1), 10(1), 10(2)(b), 43, 53(3).

INTRODUCTION

[1] This inquiry is about the District of Summerland's duty to comply with its obligations under ss. 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Those sections require public bodies to make every reasonable effort to respond without delay to an applicant's request for records, in accordance with the required statutory timelines.

[2] Three related applicants made five separate requests to the District of Summerland (the District) for access to a variety of records. The applicants claim the District did not respond to their access requests.¹ A public body's failure to

¹ One of the applicants is authorized to represent all three applicants for this inquiry. I will refer to them collectively as the "applicants" even though each access request was made by only one of the applicants and some of the correspondence with the District involved only one of the applicants.

respond in time to an access request, in accordance with the statutory time limits, is considered a deemed refusal under s. 53(3). The District contends that it has fulfilled its duty to respond without delay.

[3] The applicants asked the Office of the Information and Privacy Commissioner (OIPC) to review the District's alleged failure to respond to their access requests. In reviews where deemed refusal is at issue, those files are generally resolved during the intake or investigation/mediation stage of the review process by requiring the public body to issue a response to an access applicant within a reasonable timeframe. However, in this case, mediation did not resolve the matter and it proceeded to inquiry.

ISSUES

[4] The issues I must decide in this inquiry are as follows:

1. Did the District make every reasonable effort to respond without delay to the applicants' access requests as required by ss. 6(1) and 7 of FIPPA?
2. If the District failed to respond without delay, what is the appropriate remedy?

[5] FIPPA does not identify who has the burden to prove that the public body did not respond to the applicants' access request. Section 57 sets out the statutory burden when a public body has made a decision about an access request, but FIPPA is silent as to which party must prove that a public body failed to respond in time to an access request under s. 53(3).

[6] However, previous OIPC orders place the burden on the public body to prove that it fulfilled its duties and obligations under FIPPA.² I agree and adopt this approach since the public body is in the best position to provide evidence and information as to whether, and when, it issued a response. Therefore, I conclude the burden is on the District to prove that it did respond in time to the applicants' access requests.

[7] I also note that the parties' submissions raise a number of issues that are not set out in the notice of inquiry. For instance, the parties' submissions include assertions and arguments about whether the access requests are frivolous or vexatious under s. 43 of FIPPA.³ The submissions also include facts and arguments about whether the District adequately searched for and provided

² For example, Order 01-47, 2001 CanLII 21601 (BC IPC) at para. 9; Order No. 327-1999, 1999 CanLII 4131 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 14.

³ For example, Summerland's initial submission at paras. 18, 36, 78 and 81-85. The OIPC's registrar of inquiries informed the lawyer representing the District in this inquiry of the proper OIPC process to address these concerns.

responsive records for previous access requests.⁴ I will not discuss those other matters except where necessary or relevant to provide context for this order. The issues that I will decide in this inquiry are limited to those identified above.

DISCUSSION

Background

[8] The parties have been in a lengthy dispute over a particular property and business.⁵ Among other things, the applicants allege their neighbour constructed a number of structures for a farming business without the required building permits and in contravention of zoning bylaws. The District eventually approved and granted the neighbour a development variance permit to address some of the bylaw breaches. In October 2019, the applicants sued the District, and other parties, for alleged offences related to those events.

[9] Throughout 2019, the applicants made a number of requests to the District for access to a variety of records. The District responded to some of those requests.⁶ On January 30, 2020, the District applied to the OIPC for authority under s. 43 to disregard some of those access requests because they would unreasonably interfere with the District's operations or because the requests are frivolous or vexatious.⁷ On February 3 and 6, 2020, the OIPC informed the applicants of the District's s. 43 application.⁸

[10] The applicants made two access requests, dated February 6, 2020, to the District for certain records.⁹ The applicants also made three more access requests, dated February 18, 2020, to the District for records.¹⁰ The applicants allege the District did not respond to these five requests for access, which are now the focus of this inquiry.

[11] On March 18, 2020, the provincial government declared a state of emergency due to the COVID-19 pandemic. On the same day, the Commissioner issued a decision under s. 10(2)(b) of FIPPA to allow public bodies to extend their time for response under s. 7(1) or s. 10(1) by an additional 30 days.¹¹

⁴ For example, applicants' submission at pp. 2-4.

⁵ The background facts are compiled from the parties' submissions and evidence.

⁶ The District's Book of Evidence includes copies of its responses.

⁷ OIPC file numbers: F20-81807, F20-81808, F20-81809.

⁸ Two letters dated February 3, 2020 and one letter dated February 6, 2020.

⁹ OIPC file numbers: F20-82837 and F20-82844.

¹⁰ OIPC file numbers: F20-82839, F20-82842 and F20-82845.

¹¹ The Commissioner's decision is found on the OIPC website at <<https://www.oipc.bc.ca/news-releases/2399>>.

[12] On April 30, 2020, the District withdrew their s. 43 application. Thereafter, the applicants contacted the District for an update about their outstanding requests. The applicants also made further complaints and demands.

[13] On May 20, 2020, the District's chief administrative officer sent the applicants the following email:

As you are aware, the District is represented by [name of lawyer] of [name of law firm] in your civil suit against the District. I have been advised that this correspondence and previous ones you have sent to me, will need to be dealt with by [the lawyer's] office. [The lawyer] will respond in due course.¹²

[14] There was further correspondence between the parties, but the matter was not resolved. On May 21, 2020, the applicants complained to the OIPC that the District was refusing to provide the records in response to their February access requests.

Duty to respond without delay

[15] FIPPA requires a public body to respond to access requests within certain timelines. Section 7(1) states that a public body must respond no later than 30 days after receiving a written request for access to records. In complying with s. 7(1), a public body is required under s. 8(1) to tell an access applicant whether or not the applicant is entitled to access the requested record or only parts of the record.

[16] If the applicant is entitled to access, the public body must tell the applicant where, when and how access will be given. If access is refused to all or part of a record, then the public body must provide the applicant with the reasons for the refusal and the provision of FIPPA on which the refusal is based.

[17] In its response, the public body must also provide the name, title, business address and telephone number of an officer or employee who can answer the applicant's questions about the refusal. It must also inform the applicant of their right, under s. 53, to ask the OIPC to review the public body's decision to refuse access.

[18] A public body that fails to respond, within the time required under s. 7(1) and in the manner prescribed by s. 8, will be in breach of its s. 6(1) duty to respond without delay.¹³ Section 53(3) says that a public body's failure to respond in time is to be treated as a decision to refuse access.¹⁴

¹² Copy of email included with the applicants' inquiry submission and also located in the applicants' May 21, 2020 complaint to the OIPC.

¹³ Order F06-04, 2006 CanLII 13533 (BC IPC) at para. 8.

¹⁴ Order F11-18, 2011 BCIPC 24 at para. 13.

[19] The time required for a response, however, is subject to certain allowances. Subsections 7(2) to 7(7) and s. 10 set out circumstances where the statutory 30-day deadline for response may be extended or suspended.¹⁵ The sections that are relevant for this inquiry are ss. 7(3) and 10(2)(b).

[20] Section 7(3) provides that the 30-day response time does not include the period from the start of a s. 43 application to the end of the day a decision is made on that application. Under s. 43, a public body may apply to the Commissioner for authority to disregard access requests that would unreasonably interfere with a public body's operations or because the requests are frivolous or vexatious.

[21] Section 10(2) allows a public body to seek the Commissioner's permission to extend the time for responding to an access request. Section 10(2)(b) gives the Commissioner the discretion to extend the time for responding to an access request "if the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate." If the time for responding to an access request is extended under s. 10, then s. 10(3) requires the public body to tell the applicant the reason for the extension and when a response can be expected.¹⁶

The District's submission

[22] The District admits that it did not provide a response to the applicants' five access requests that are at issue in this inquiry. It says it believed all statutory time periods for responding to the applicant's access requests were suspended while the s. 43 application was being considered by the OIPC. Therefore, it "did not respond to the five FOI requests from the Applicants dated February 7, 2020 and February 18, 2020."¹⁷

[23] Nonetheless, the District submits that it has fully responded to the applicants' access requests. The District argues that it has fulfilled its duty to respond to these requests based on records that it provided to the applicants in other access requests and during litigation. The District's submissions discuss each outstanding access request and identify when it previously produced, what it says were "any and all records that would be responsive to the outstanding FOI requests."¹⁸

¹⁵ The time periods under s. 7(1) are also subject to ss. 23 and 24(1) which suspends the response time where notice is given to third parties.

¹⁶ In the case of an extension under ss. 10(1)(a) to (c), the public body must also tell the applicant that they have a right to complain about the extension under ss. 42(2)(b) or 60(1)(a).

¹⁷ The District's initial submission at para. 11.

¹⁸ The District's initial submission at paras. 36-74.

[24] The District submits that it has made every reasonable effort to respond to the applicants' access requests in accordance with its obligations under FIPPA. It says that it has exceeded its obligations to search for, compile and disclose all records requested by the applicants. Alternatively, the District says if it is required to search for and produce further records, "it requests specific direction from the OIPC as to the scope of its obligations under FIPPA in the circumstances."¹⁹

Applicants' submission

[25] The applicants say the District did not respond or provide acknowledgement letters for their February access requests.²⁰ The applicants allege the District has repeatedly missed deadlines and failed to provide "the mandatory extension request notifications."²¹ They say the District is refusing to provide records in contravention of its obligations under FIPPA and that it is continuing to withhold relevant and requested documents. The applicants claim the District has done everything possible to obstruct the release of documents and "has shown a complete disregard for the FOI process."²² In support of its position, the applicants detail and discuss the District's handling of their past and current access requests.²³

[26] Among other things, the applicants accuse the District of making a s. 43 application as another delay tactic to prevent the release of the requested records.²⁴ They say the District's s. 43 application was made in January, but claim it was withdrawn three months later when the OIPC required written submissions from the District. The applicants say the District is now refusing to even acknowledge their FOI requests, which they claim is another attempt by the District to avoid accountability.

[27] In response to the District's position that the applicants already have all the responsive records, the applicants claim the five access requests at issue here are different from any previous requests and will reveal new information. The applicants discuss how the records provided by the District for the applicants' past access requests do not fully respond or satisfy the five access requests at issue in this inquiry.²⁵

¹⁹ The District's initial submission at para. 86.

²⁰ Applicants' submission at pp. 9 and 11.

²¹ Applicants' submission at p. 1.

²² Applicants' submission at p. 2.

²³ For example, applicants' submission at pp. 2-4.

²⁴ Applicants' submission at pp. 9, 28 and 29.

²⁵ Pages 15-40 of the applicants' submission. The applicants' submissions also include allegations that the District did not respond accurately and completely to their past access requests (e.g. pages 12-13). As previously stated, these allegations and arguments are not a part of the issues for this inquiry.

[28] As well, the applicants dispute the District’s need for “specific direction from the OIPC as to the scope of its obligations under FIPPA in the circumstances.”²⁶ The applicants say their access requests are clearly stated and the District has previously completed many FOI response packages. They allege that this is just another attempt by the District to delay the process.

The District’s response submission

[29] The District asserts that it is not withholding or refusing to provide responsive records to the applicants. The District explains that “since June 6, 2019, it has provided more than 1000 pages of records to the Applicants in response to overlapping and duplicative FOI requests such that the FOI Requests at issue will result in a response package that only contains duplicates of what has already been provided.”²⁷ It says that it is not aware of any further records that are responsive to the five access requests at issue and seeks an order affirming that it has fulfilled its s. 6(1) duty to respond to the applicants.

[30] In terms of the s. 43 application, the District denies the application was submitted as a delay tactic. It says that it made the application in a good faith effort to ascertain the scope of its disclosure obligations under FIPPA in the circumstances. It explains that it withdrew the s. 43 application because of unforeseen constraints on its financial and operational resources particularly during the time of the pandemic.

[31] The District also notes that the five access requests at issue were made after it submitted the s. 43 application to the OIPC. It reiterates that it misunderstood the effect of the s. 43 application on “the statutory limitation periods.”²⁸ It explains that even after submitting the application, it continued to respond to the applicants’ further access requests as evidenced by its responses dated January 30 and February 3, 4, 11, 12 and 18, 2020.²⁹

Analysis and findings on duty to respond

What was the District’s statutory deadline to respond?

[32] Public bodies are required to respond to an access request in the time required under s. 7(1), unless the time for response is extended or suspended. Therefore, the first step is to determine the District’s response deadline for each access request.

²⁶ Applicants’ submission at p. 31.

²⁷ The District’s response submission at para. 6.

²⁸ The District’s response submission at para. 14.

²⁹ The District’s response submission at para. 15.

[33] Two of the access requests are signed and dated February 6, 2020, but there is nothing in the parties' submissions that establishes when the District received these two requests from the applicants.³⁰ The parties do not identify or discuss when these access requests were received by the District. However, the two requests are attached to an email dated Thursday, February 6, 2020 at 5:32 pm that was sent by one of the applicants to the District's chief administrative officer (CAO).³¹ The District's current website identifies the hours of operation for its administration services as Monday to Friday 8:30 am – 4:00 pm.³² Therefore, the question I must determine is whether the District received these two access requests on the date the email was sent or the next business day.

[34] There is nothing in FIPPA or in any OIPC guidance documents that addresses this scenario and designates a deemed date of receipt. Even though there is no formal policy, the OIPC generally takes the position that access requests that are emailed to a public body during normal business hours are considered to be received that day and access requests emailed anytime after business hours are considered to be received the next day.³³

[35] Some administrative tribunals, though, do have legislation or rules that specify when a document or communication is considered received or delivered. For example, the BC Human Rights Tribunal's *Rules of Practice and Procedure* states that "a communication received after a business day is deemed to be filed or delivered on the next business day."³⁴ A "business day" is defined as "between 8:30 and 4:30 from Monday to Friday, excluding holidays."³⁵ BC's *Interpretation Act* also takes into account business hours in the calculation of certain time periods.³⁶

[36] The Supreme Court Civil Rules also specify when a document served by fax or email is deemed to be completed. Rule 4-2(6) states the following:

(6) A document transmitted for service by fax or e-mail under this rule is deemed to be served as follows:

(a) if the document is transmitted before 4 p.m. on a day that is not a Saturday or holiday, the document is deemed to be served on the day of transmission;

³⁰ OIPC file numbers: F20-82837 and F20-82844 (public body file numbers: FOI 2020-010 and FOI 2020-011). The public body refers to the date of these requests as February 7, 2020, but does not identify when it received the access requests.

³¹ Email found in the applicants' May 21, 2020 request for review to the OIPC.

³² <www.summerland.ca/your-city-hall/contact>.

³³ This policy is consistently applied by the OIPC's case review officers. Most public bodies, including the OIPC, are open from 8:30am-4:30pm.

³⁴ BC Human Rights Tribunal *Rules of Practice and Procedure*, June 22, 2020 at Rule 9(3).

³⁵ *Ibid* at Rule 9(2).

³⁶ For example, *Interpretation Act*, RSBC 1996, c 238 at s. 25(4).

(b) if the document is transmitted on a Saturday or holiday or after 4 p.m. on any other day, the document is deemed to be served on the next day that is not a Saturday or holiday.³⁷

[37] Taking all of this into account, unless there is evidence to indicate otherwise, I conclude that an access request sent by email after a public body's business hours is deemed to be received the next business day. Therefore, I find the District received the two access requests on February 7, 2020.

[38] As for the other requests, I am satisfied that the District received these three access requests on February 18, 2020.³⁸ There was an email discussion between one of the applicants and the District's CAO during which that applicant discusses attending city hall in person to drop off the three access requests to have them date-stamped and photocopied.³⁹ A copy of each access request was provided by the applicants to the OIPC which shows a District date-stamp of February 18, 2020. I, therefore, find the District received the three access requests on that date.

[39] Section 7(1) states that a public body must respond no later than 30 days after receiving a written request for access to records. The determination of the number of days does not include weekends and certain statutory holidays.⁴⁰ Therefore, the District was required to respond on or before March 23, 2020 for the two access requests received on February 7, 2020.⁴¹ For the three access requests received on February 18, 2020, the District was required to respond on or before March 31, 2020.

[40] The next question is whether there were any applicable extensions or suspensions of time that apply in these circumstances. The District believed that s. 7(3) applied to suspend its 30-day response deadline while its s. 43 application was being considered by the OIPC.⁴² Section 7(3) provides that the 30-day statutory deadline does not include the period from the start of a s. 43 application to the end of the day a decision is made on that application. Therefore, if a public body brings a s. 43 application, it suspends the public body's duty to process

³⁷ *Supreme Court Civil Rules*, BC Reg 168/2009 at Rule 4-2(6).

³⁸ OIPC file numbers: F20-82842, F20-82839, F20-82845. Public body file numbers: FOI 2020-012, FOI-2020-013, FOI-2020-014.

³⁹ Email chain and copies of the FOI requests found in the applicants' May 21, 2020 request for review to the OIPC.

⁴⁰ Definition of "day" under Schedule 1 of FIPPA excludes a "holiday or a Saturday." Under s. 29 of BC's *Interpretation Act*, RSBC 1996, c 238, a "holiday" does not include Sunday or Family Day. See also OIPC guidance document: *Guide to the Freedom of Information and Protection of Privacy Act (FIPPA) for individuals*, March 9, 2015 at p. 8.

⁴¹ This calculation of time excludes Saturdays and Sundays and Family Day on Monday, February 17, 2020.

⁴² The District's initial submission at para. 15 and Affidavit of the District's Director of Corporate Services at para. 32.

access requests that are the subject of a s. 43 application. However, a public body must specify what access requests it is seeking authority under s. 43 to disregard.

[41] I have reviewed the District's s. 43 application and find that the five access requests in dispute here were not a part of that application. The District's s. 43 application was submitted to the OIPC on January 30, 2020, before it received the access requests at issue in this inquiry. There were subsequent communications between District staff and the OIPC investigator. The OIPC investigator informed the District that it could request the addition of the five requests that are now the subject of this inquiry to its s. 43 application.

[42] On March 9, 2020, the District was asked to provide an updated list of the access requests that were subject to its s. 43 application.⁴³ However, the District did not provide the OIPC with an updated list. Instead, on April 30, 2020, the District informed the OIPC that it was withdrawing its s. 43 application. I, therefore, conclude that the five access requests in dispute here were not included in the District's s. 43 application. As a result, I am satisfied that s. 7(3) did not apply to suspend the District's response deadlines for the five access requests at issue in this inquiry.

[43] The District does not address s. 10(2)(b) in their inquiry submissions; however, its correspondence with the OIPC indicates that the District also believed that its response timeline under s. 7(1) was extended an additional 30 days based on the Commissioner's March 18, 2020 decision.⁴⁴ I conclude that the Commissioner's s. 10(2)(b) decision announced on March 18, 2020, did not apply to the five access requests at issue in this inquiry. The Commissioner's decision clearly specifies that this special extension only applied to access requests received by a public body between March 1, 2020 and April 30, 2020. The five access requests at issue in this inquiry were received by the District in February 2020 and, therefore, do not fall within this timeframe.

[44] Further, the Commissioner's March 18, 2020 decision required public bodies to contact the OIPC and provide a document listing every request for access where the time for responding was extended under this special permission. There is no evidence that the District contacted the OIPC to provide the necessary documentation. Ultimately, I find there were no applicable extensions of time for the District's s. 7(1) response deadlines.⁴⁵ Therefore, the

⁴³ Email from OIPC investigator dated March 9, 2020 to District staff.

⁴⁴ The District provided the OIPC investigator with a table that shows the public body believed its response deadlines were July 27, 2020 and August 7, 2020 and that it relied on the Commissioner's s. 10(2)(b) extension decision (noted in the table as "COVID-19 increased required response to 60 days").

⁴⁵ The timelines under Section 7(1) are also subject to ss. 23 and 24 (third party notices); however, those sections do not apply in these circumstances.

District was required to respond to two of the access requests by March 23, 2020 and to the other three requests by March 31, 2020.

Did the District respond in time to the access requests?

[45] The second step in the analysis is to determine whether the District responded to the applicants' access requests in accordance with ss. 7 and 8. I have reviewed the parties' submissions and evidence, which totalled over 1,400 pages; however, I was not able to find correspondence from the District to the applicants that qualifies as a s. 8 response.

[46] The District, in fact, admits that it did not respond to the applicants' five February access requests at issue in this inquiry.⁴⁶ However, the District takes the position that it fully responded to the access requests because it provided the requested records in previous access requests or as part of litigation disclosure. I infer the District to be arguing that it has responded in substance to the five access requests even though a s. 8(1) response was not provided within the timelines set out in s. 7.

[47] I have carefully considered the District's position on this matter; however, 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).⁴⁷ The District was required to provide the applicants with a response by March 23 and March 31, 2020, which it failed to do in this case. Section 8(1) sets out the contents of a public body's response to an access request and it is a mandatory obligation. The District did not provide this type of response to any of the five access requests at issue in this inquiry. Therefore, I conclude the District did not meet its obligations under FIPPA to respond to the access requests at issue by the required statutory deadlines.

[48] Based on my review of the District's response to the applicants' past access requests, it is clear to me that the District understands what is needed for an appropriate s. 8(1) response.⁴⁸ Nevertheless, the District asks for guidance on how to meet its obligations under FIPPA in these circumstances. Therefore, I understand the District is asking for guidance on how to properly respond to an access request when it believes the responsive records were already provided to the access applicants.

[49] Section 8 does not identify how a public body should respond to an access request when the public body believes it has already provided an access applicant with the requested records. However, previous OIPC decisions have

⁴⁶ The District's initial submission at para. 11.

⁴⁷ Order 01-47, 2001 CanLII 21601 (BC IPC) at para. 28.

⁴⁸ For example, the District's response to previous access requests is located at Tab 17 and 18 of its Book of Evidence.

explained that “FIPPA does not normally require public bodies to disclose copies of records that they have already provided to the same applicant, either through a previous request or another avenue of access.”⁴⁹ A public body need only identify when those records were previously provided to the access applicant.

[50] To be clear, a public body is required to respond to an access request in accordance with ss. 7 and 8. However, if the public body believes that the responsive records were previously provided to the applicant, then it should identify and provide details, in its response, of when those records were previously given to the access applicant.⁵⁰

What is the appropriate remedy?

[51] The usual remedy in such cases is to order the public body, under s. 58, to respond to the access requests by a particular date.⁵¹ I believe that a response deadline is an appropriate remedy in these circumstances. None of the parties suggested an appropriate timeline for a response, but I have determined what would be reasonable deadlines based on a number of factors.

[52] First, in its submission, the District discussed each outstanding access request and identified when it previously produced “any and all records that would be responsive to the outstanding FOI requests.”⁵² The District should, therefore, be able to easily incorporate this information into its response where appropriate.

[53] I note, however, the applicants claim the five access requests in dispute are different from their prior access requests. The applicants provide detailed submissions that address how their current access requests are different.⁵³ As part of its response, the District must take into account the applicants’ submissions on this issue.

[54] To assist the parties, I have reviewed the five access requests and the parties’ submissions on this issue. Based on my review of this information, the applicants’ current access requests are broader than their previous access requests in order to capture records that the applicants believe the District may be withholding.

[55] For example, the applicants requested access to “All records of communications between District staff and RCMP in May – June 2019 and

⁴⁹ Decision F11-04, 2011 BCIPC 40 at para. 15; Decision F10-09, 2010 BCIPC 47 at para. 26.

⁵⁰ Order 01-47, 2001 CanLII 21601 (BC IPC) at para. 63; Order F13-16, 2013 BCIPC 20 (CanLII) at para. 33; Order F18-34, 2018 BCIPC 37 (CanLII) at para. 35.

⁵¹ Order F16-29, 2016 BCIPC 31 at paras. 8-11.

⁵² District’s initial submission at para. 36. The District’s detailed discussion is located at paras. 37-74 of its initial submission.

⁵³ For example, the applicants’ submissions at pp. 15-40.

January 2020.”⁵⁴ The applicants argue that this request is different from previous requests because it is seeking records created in January 2020 and its prior request was limited to records related to the development variance permit granted to their neighbour.⁵⁵ I agree that the wording of this current request is different from previous requests. The current request is for *all* communications District staff had with the RCMP in May and June 2019 and January 2020.

[56] I have also considered the number of requests at issue. The District is required to respond to five access requests instead of a single request. For each request, it will be required to search for any other responsive records given the expanded scope of the requests. I am also aware the District has received other access requests from the applicants since this matter was brought to the OIPC and those requests are also outstanding.⁵⁶ Therefore, in addition to their regular work duties, District staff will need to devote the necessary time and effort in order to respond without delay to all of these outstanding requests.

[57] I am mindful that public bodies are required to ensure that adequate resources are available so that their access to information staff can process requests in compliance with FIPPA.⁵⁷ However, without absolving the District of its failure to respond without delay to the applicants’ access requests, I believe some accommodation is appropriate in these circumstances considering the effect of the COVID-19 pandemic on those resources.

[58] Lastly, I have considered the length of the delay experienced by the applicants. The District was required to provide the applicants with a response to the five access requests at issue in March 2020. It has now been over four months and the applicants are still awaiting a response.

[59] Taking all of this into account, I require the District to provide the applicants with a response to their five access requests based on the following schedule:

- F20-82837 (Public body file FOI 2020-010): **August 19, 2020**
- F20-82844 (Public body file FOI 2020-011): **August 19, 2020**
- F20-82842 (Public body file FOI 2020-012): **August 26, 2020**
- F20-82839 (Public body file FOI 2020-013): **August 26, 2020**
- F20-82845 (Public body file FOI 2020-014): **August 26, 2020**

[60] The District must determine whether there are any responsive records and provide the applicants with a response on or before the above-noted dates in accordance with s. 8 of FIPPA. Where the records have previously been

⁵⁴ This request is part of OIPC File number F20-82837 and public file number FOI 2020-010.

⁵⁵ Applicants’ submission at pp. 15 and 16.

⁵⁶ The District’s initial submission at para. 75.

⁵⁷ Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 23.

provided to the applicants, the District only needs to identify when and how that access was previously given. If there are no responsive records, the District need only inform the applicants of that fact.

[61] If the applicants are not happy with the responses they receive from the District, then the applicants may seek a resolution through the OIPC's complaint process or its review process.⁵⁸

CONCLUSION

[62] For the reasons given above, under s. 58(3)(a), I require the District to perform its duty under s. 6(1) to respond to the applicants' access requests without delay as set out in this order.

August 5, 2020

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File Numbers: F20-82837, F20-82839,
F20-82842, F20-82844, F20-82845

⁵⁸ Once the OIPC has accepted a complaint, however, they are usually investigated and resolved by a case review officer or investigator and not at a formal inquiry: Order F18-11, 2018 BCIPC 14 at para. 6 and Decision F08-02, 2008 CanLII 1647 (BC IPC) at para. 38.