



Order F21-24

## THOMPSON RIVERS UNIVERSITY

Elizabeth Barker  
Director of Adjudication

June 14, 2021

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**Summary:** Thompson Rivers University failed to respond to an applicant's access request within the timelines required by *Freedom of Information and Protection of Privacy Act*. The adjudicator found that Thompson Rivers University had not fulfilled its duties under ss. 6(1) and 7 of the Act and ordered it to respond to the access request by a specified deadline.

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

### INTRODUCTION

[1] The applicant requested records from Thompson Rivers University (TRU) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). This inquiry is about whether TRU complied with its duties under ss. 6(1) and 7 of FIPPA to respond to the request without delay and within the required timelines.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review whether TRU had failed to respond to his request in accordance with the timelines in FIPPA.<sup>1</sup> Mediation did not resolve the matter and it proceeded to inquiry.

### ***Preliminary Matter***

[3] The applicant's inquiry submission raises issues that are not in the notice of inquiry. He alleges that TRU is trying to intimidate him into withdrawing his

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<sup>1</sup> Section 53 provides that an applicant may request a review of a "decision" of the head of a public body. Section 53(3) of FIPPA says 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.

current FIPPA requests and to not file future ones.<sup>2</sup> In support, he provides a copy of a May 3, 2021 complaint made about him under TRUs collective agreement and Respectful Workplace Policy. It alleges the applicant is harassing female faculty and staff by making FIPPA requests for their travel expenses.

[4] The Notice of Inquiry for the present inquiry did not include the issues the applicant raises in his letter.<sup>3</sup> Past orders and decisions have consistently said that parties may only raise new issues in an inquiry with the OIPC's prior consent.<sup>4</sup> The applicant does not say why he did not request prior approval to add new issues or why he should be permitted to do so, without notice and at such a late stage in the inquiry, specifically after TRU has already made its initial submission.

[5] I decline to add the issues that the applicant raises into this inquiry.

## **ISSUES**

[6] The issues to be decided in this inquiry are as follows:

1. Did TRU make every reasonable effort to respond without delay to the request as required by s. 6(1) of FIPPA?
2. Did TRU fail to respond to the request in accordance with the requirements of s. 7 of FIPPA?
3. If the answer is "yes" to either of the above questions, what is the appropriate remedy?

## **DISCUSSION**

### **Background**

[7] There was no dispute about the chronology of events in this case, which I find to be as follows:

- On February 25, 2021, the applicant emailed TRU and asked for access to:

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<sup>2</sup> The applicant's allegation is set out in a May 24, 2021 letter addressed to the OIPC. He does not say if he has already formally brought that complaint to the OIPC. That option is still available to him.

<sup>3</sup> The notice of inquiry was dated May 17, 2021, TRU's initial submission is dated May 25, 2021, the applicant's response submission is dated June 1, 2021 and TRU's final reply is dated June 4, 2021.

<sup>4</sup> For example: Order F20-38, 2020 BCIPC 44 at paras 4-7 and Order F11-28, 2011 BCIPC 34 at para. 11.

Any records relating to expenses or costs to TRU for [faculty member's name] attending the "Advanced Nursing Research 2018 Conference" (Omics International Conference) in Dublin Ireland from June 14-15, 2018. Examples include conference fees, travel (airfare, taxis, etc.), hotel, meals, incidentals, etc., any record that shows who authorized the above expenses, and any records that shows who authorized the international travel".<sup>5</sup>

- On February 26, 2021, TRU's privacy and access office responded to clarify the details of the request and said that TRU would provide a response by April 12, 2021, in accordance with s. 7(1) of FIPPA.
- On April 12, 2021, the applicant emailed TRU to say that the University's response was due.
- On April 14, 2021, TRU's legal counsel replied, "I do not anticipate being in a position to respond this week as you have requested."<sup>6</sup>
- On April 14, 2021, the applicant requested the OIPC review whether TRU had failed to respond to his request in accordance with FIPPA.<sup>7</sup>
- TRU had not provided a response to the access request as of the date of its final submission in this inquiry.

### ***Duty to Respond Without Delay***

[8] FIPPA imposes obligations on public bodies to provide a response to access requests within certain timelines. The sections of FIPPA that are relevant in this inquiry 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.

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<sup>5</sup> Applicant's April 14, 2021 request for review at Exhibit B. The University's file number for this request is FOI A21-25.

<sup>6</sup> Applicant's April 14, 2021 request for review, appendix C.

<sup>7</sup> The applicant also alleged that TRU failed to meet timelines regarding three other access requests. On June 7, 2021, the applicant withdrew his request for an inquiry of those three matters because TRU provided its response to them on June 4, 2021.

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### **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, ...

(3) If the head of a public body asks the commissioner under section 43 for authorization to disregard a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the application is made under section 43 to the end of the day a decision is made by the commissioner with respect to that application.

...

### **Contents of response**

8 (1) In a response under section 7, the head of the public body must tell the applicant

(a) whether or not the applicant is entitled to access to the record or to part of the record,

(b) if the applicant is entitled to access, where, when and how access will be given, and

(c) if access to the record or to part of the record 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 under section 53 or 63.

...

### **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.

...

[9] Schedule 1 of FIPPA says that "day" does not include a holiday or a Saturday.

*TRU's submission*

[10] TRU does not dispute that it has not yet provided a response to the February 25, 2021 access request. TRU also does not say that it took or received a time extension under s. 10.

[11] TRU provides the following explanation for why it has not provided a response:

TRU has not been able to respond to this access request within the time originally indicated for several reasons. First, [the applicant] has made approximately 31 FIPPA access requests to TRU since January 1, 2021, and TRU has had to manage these numerous requests of [the applicant], along with the other more normal volume of FIPPA access requests received from other individuals by TRU. Further, TRU required legal advice with respect to this (and other) access requests of [applicant].<sup>8</sup>

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<sup>8</sup> TRU's initial submission at para. 2.

[12] TRU says that it is still considering whether to make a s. 43 application regarding this access request and it needs more time to figure out how to respond in light of the complaint against the applicant. TRU says:

TRU must grapple with the complaint of harassment which has been made in relation to these *FOIPPA* requests and whether a section 43 application is thus warranted. TRU respectfully submits that it would not be appropriate for TRU to simply provide responses to *FOIPPA* access requests which have been alleged to constitute harassment.<sup>9</sup>

[13] TRU says it “expects to be in a position to either respond substantively to this access request or to bring a section 43 application with respect to this access request by June 25, 2021. If necessary, TRU respectfully requests a time extension to June 25, 2021, under section 10(2)(b) of *FIPPA*.”<sup>10</sup>

[14] TRU submits that I am authorized by ss. 58(3) and 58(4) to extend the time deadline by which TRU must provide a response to the request.<sup>11</sup>

*Applicant’s submission*

[15] The applicant does not dispute that he has made 31 access requests, and he explains why he did so. He also says that he does not think that it would “involve a major undertaking” to respond to the request at issue here.<sup>12</sup> He provides his opinion on why he thinks TRU does not want to respond to his access request. He also says, “...I cannot imagine why TRU claims to need legal advice as far as their requirements under *FIPA* [*sic*] are concerned. Seeking legal advice for this FOI request sounds like a legal Hail Mary to try to get out of supplying the information.”<sup>13</sup>

[16] The applicant says that granting TRU an extension would be neither fair and reasonable or appropriate, as it has had plenty of time to consider whether to make a s. 43 application or provide a response.<sup>14</sup> He adds that s. 10(2)(b) “only concerns the possibility of the commissioner authorising extra time ‘for responding to a request’. It does not mention authorising extra time to make other applications.”<sup>15</sup>

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<sup>9</sup> TRU’s reply at para. 7.

<sup>10</sup> TRU’s initial submission at para. 3.

<sup>11</sup> TRU’s reply at paras. 5-6

<sup>12</sup> Applicant’s submission at p. 2.

<sup>13</sup> Applicant’s submission at p. 2.

<sup>14</sup> Applicant’s submission at p. 3.

<sup>15</sup> Applicant’s submission at p. 3.

[17] The applicant submits that by the time a decision is reached in this inquiry, TRU will have had additional time, so it “would be fair, reasonable and appropriate for TRU to be required to respond shortly after the ruling.”<sup>16</sup>

### *Findings*

[18] The applicant’s access request was made on February 25, 2021. TRU’s obligation under s. 7(1) was to provide a response by no later than 30 days after receiving the request.

[19] TRU could have had more than the 30 days stipulated under s. 7(1) if it had taken a self-initiated time extension under s. 10(1) or requested an extension from the commissioner under s. 10(2)(b). TRU did not initiate either method to extend the time, so its response to the request was due by no later than April 12, 2021.

[20] The time requirements in s. 7 might also have been met, if TRU had made an application under s. 43 for authorization to disregard the request. If that had been done, s. 7(3) would have been called into play and stopped the clock until the s. 43 application had been decided by the Commissioner.

[21] As of the date of TRU’s final submission in this inquiry it has still not provided a response to the request. TRU has also not made a s. 43 application.

[22] Therefore, I find that TRU failed to respond to the applicant’s February 25, 2021 request within the timelines set out in s. 7.

[23] I also find that TRU has failed to comply with its duty under s. 6(1) to make every reasonable effort to respond without delay to the request. I am not persuaded by what TRU says that it could not decide how to respond to the access request within the timelines set out in FIPPA. It is apparent that TRU had legal counsel working on the access request and responding to the applicant by April 14, 2021. Further, the complaint about the applicant that TRU says caused it to need more time to decide was not received until well after the response to the access request was due. Importantly, TRU does not explain why it did not make use of s. 10 which provides the mechanism for properly taking more time to respond to a request.

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<sup>16</sup> Applicant’s submission at p. 5.

***What is the appropriate remedy?***

[24] 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>17</sup> I find that this is the appropriate remedy in this case as well.

[25] TRU says that it “expects to be in a position to either respond substantively to this access request or to bring a section 43 application with respect to this access request by June 25, 2021.”

[26] Given the date of this order, I find that June 25, 2021 is appropriate.

**CONCLUSION**

[27] For the reasons given above, I make the following order under s. 58 of FIPPA:

- 1) I find that TRU has failed to meet its duties to respond to the request without delay under s. 6(1) and within the required timelines in s. 7 of FIPPA.
- 2) I require TRU to respond to the applicant’s request by no later than June 25, 2021.

June 14, 2021

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Director of Adjudication

OIPC File No.: F21-85784

<sup>17</sup> For example, see: Order F16-29, 2016 BCIPC 31 (CanLII); Order F06-04, 2006 CanLII 13533 (BC IPC); Order 04-30, [2004 CanLII 43762 (BC IPC); Order F11-18, 2011 BCIPC 24 (CanLII).