



Order F24-25

INTERIOR HEALTH AUTHORITY

Alexander Corley
Adjudicator

April 4, 2024

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Summary: An applicant made a request to the Interior Health Authority (Authority) for access to a variety of records. The applicant claimed the Authority did not respond to the access request 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 Authority's alleged failure to respond to their access request in accordance with the legislated response times. The adjudicator found that the Authority did not perform its duties under ss. 6(1) and 7 to respond without delay, in accordance with the required statutory deadlines. The adjudicator ordered the Authority to provide a compliant response to the applicant's access request by a set date.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996], c. 165, ss. 6(1), 7, 8(1)(a), 8(1)(b), 8(1)(c), 10(1)(b), 10(2), 53(3), 57(1), and 58(3).

INTRODUCTION

[1] This inquiry concerns whether the Interior Health Authority (Authority) complied with its duty to respond to the applicant's access request in accordance with ss. 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).¹ Those sections require that a public body make every reasonable effort to respond to access requests without delay and in accordance with specific timelines.

[2] On June 29, 2023, the applicant submitted an access request to the Authority. The Authority's deadline for responding to the request was October 5, 2023.² The Authority provided some responsive records to the applicant on

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA, unless otherwise specified.

² This deadline was set after the Authority elected to take a 30-day extension of the original deadline pursuant to s. 10(1)(b).

October 4, 2023, and advised the applicant that it would be providing the remaining records via what the Authority referred to as a “phased approach”. On November 3, 2023, the applicant contacted the Office of the Information and Privacy Commissioner (OIPC) to request a review of what it said was the Authority’s failure to fully respond to the access request by the October 5, 2023, deadline. Efforts by the OIPC to resolve the matter were unsuccessful and it proceeded to inquiry.

[3] The applicant and the Authority each provided submissions in this inquiry.

ISSUES

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

1. Did the Authority make every reasonable effort to respond without delay to the applicant’s access request as required by ss. 6(1) and 7 of FIPPA?
2. If not, what is the appropriate remedy?

[5] 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. Section 57(1) of FIPPA says that at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the records or part. Therefore, I find the Authority bears the burden of proof in this matter.³

DISCUSSION

Background

[6] The Authority is a regional health board designated under the *Health Authorities Act* and is responsible for administering the provision of healthcare services within the region it governs.⁴

³ See Order F21-33, 2021 BCIPC 41 at paras. 7-8 where the Director of Adjudication took the same approach to establishing the burden of proof under ss. 6(1) and 7.

⁴ RSBC 1996, c. 180.

[7] The relevant chronology of events is as follows:⁵

- On June 29, 2023, the applicant requested records falling within several distinct categories from the Authority.⁶
- On July 26, 2023, the Authority sent a “fee estimate” for responding to the access request to the applicant.
- On August 14, 2023, the applicant paid the assessed fee and on August 17, 2023, the Authority advised the applicant that it was taking a 30-day extension of its time for responding to the request under s. 10(1)(b). The parties agreed that due to this extension, the deadline for the Authority to respond to the access request was set as October 5, 2023.
- On September 21 and September 26, 2023, the Authority requested clarifying information from the applicant which the applicant provided on September 26, 2023.
- On October 4, 2023, the Authority provided some responsive records to the applicant and advised the applicant that it would be taking what it referred to as a “phased approach” to releasing the remaining records.
- On November 3, 2023, the applicant contacted the OIPC to request a review of what it said was the Authority’s failure to fully respond to the access request by the October 5, 2023, deadline.
- On January 4, 2024, and January 25, 2024, the Authority released additional records to the applicant.

[8] It is common ground between the parties that notwithstanding the additional records releases in January 2024, the Authority still possesses responsive records which have not been provided to the applicant.

Duty to respond without delay

[9] FIPPA imposes obligations on public bodies regarding the content of responses to access requests and the timelines within which those responses must be provided to applicants. Specifically, s. 8 sets out what information a public body must include in a communication with an applicant for that communication to qualify as a “response” to an access request.

⁵ The Authority sets out the chronology of events leading to this inquiry in its submission. The applicant’s submission corroborates many elements of the chronology offered by the Authority and does not take issue with the remaining elements. Therefore, I find that the chronology offered by the Authority is not in dispute and that it is appropriate to rely on it here.

⁶ Specifically, the applicant requested all versions of a “briefing note” prepared for the Authority, “any documents” including emails, meeting notes, and other communications involving specific persons and dated within a seven-month timespan, and certain “policy or procedure” documents created by or for the Authority.

[10] Further, s. 6(1) requires a public body to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely. Section 7 requires a public body to respond no later than 30 days after it receives an access request.⁷ A public body that fails to respond, within the time required under s. 7 and in the manner prescribed by s. 8, will be in breach of its s. 6(1) duty to respond without delay.⁸

[11] However, under s. 10(1), a public body may be entitled to an extension of the response deadline for up to an additional 30 days, at its own election, in certain circumstances. For any further extensions a public body must obtain the Commissioner's permission under s. 10(2).

Parties' positions

[12] The Authority submits that it has made every reasonable effort to respond without delay to the applicant's access request. It acknowledges that it did not release all the responsive records to the applicant within the time limit set out in s. 7.⁹ However, it says that this was unavoidable given the "scope of the request" and the volume of responsive records. Further, the Authority says that its ongoing delay in providing records to the applicant is partially due to it only discovering the existence of some responsive records on January 31, 2024.

[13] The Authority also says that it has dedicated one full-time employee to process the applicant's request and intends to provide the applicant with the remaining records "as soon as possible". Further, that it continues to search for responsive records and hopes that a full and final release of responsive records to the applicant can be completed by "the end of March/early April, 2024".

[14] The Authority does not dispute its failure to request the Commissioner's permission to extend the deadline for responding to the access request beyond October 5, 2023. The Authority says its failure was due to an internal oversight and that it "instead advised the [a]pplicant" of its decision to take a "phased approach" to releasing the remaining records.

[15] The applicant submits that the Authority has not complied with FIPPA's legislated timelines. The applicant does not dispute the Authority's initial decision to extend the response deadline to October 5, 2023. The applicant says though that extensions beyond that date required permission from the Commissioner under s. 10(2). The applicant further submits that the Authority has kept them in the dark regarding "every relevant aspect of its response" to the access request.

⁷ Pursuant to FIPPA, Schedule "1", a "day" for purposes of FIPPA does not include a "holiday" or Saturday and, per s. 29 of the *Interpretation Act*, RSBC 1996, c. 238, "holiday" includes Sundays.

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

⁹ As that time limit was amended by the Authority's election to take an extension under s. 10(1)(b).

For instance, the applicant says, the first time they learned about any disclosure planned for the spring of 2024 was upon reviewing the Authority's submission in this inquiry.

What was the Authority's deadline to respond and did it meet it?

[16] The parties agree that the Authority's deadline for responding to the access request was October 5, 2023. It is also common ground that the Authority never sought the Commissioner's permission to extend this deadline. The parties disagree regarding whether the Authority met this deadline.

[17] I understand the Authority's argument on this point to be that it "responded" to the applicant's request on October 4, 2023, by providing an initial batch of records and advising the applicant that the remaining records would be provided to them in what the Authority called a "phased approach". I am not able to accept this argument.

[18] Section 8 sets out what information a public body must include in a response to an access request. Section 8(1)(a) specifies that to be compliant with FIPPA, a response must advise an applicant whether or not they are entitled to access the requested records.

[19] I accept that the Authority communicated with the applicant on October 4, 2023, provided them with some responsive records, and advised them of the "approach" the Authority intended to take regarding the remaining records. However, I find that an explanation of the Authority's proposed "approach" to releasing records is not an explanation of whether the applicant is entitled to access those records as required by s. 8(1)(a).¹⁰ Therefore, I find the Authority's communication with the applicant on October 4, 2023, was not compliant with s. 8 and did not qualify as a "response" to the applicant's access request for purposes of s. 7.¹¹

[20] Given this, I find that the Authority did not satisfy its clear statutory obligation under ss. 7 and 10 to respond to the access request in the form required by s. 8 before or on October 5, 2023.

¹⁰ Explanations regarding the approach to releasing records or the schedule for releasing records may satisfy the requirements in s. 8(1)(b), but a response to an access request must satisfy all of ss. 8(1)(a), (b), and (c) to be compliant with FIPPA.

¹¹ I have a copy of the Authority's October 4, 2023, letter to the applicant before me.

Did the Authority make every reasonable effort to respond without delay?

[21] Prior orders are clear that where a public body does not respond to an access request within the timelines set out in ss. 7 and 10, it has failed to make “every reasonable effort” to respond without delay openly, accurately, and completely to the access request as required by s. 6(1).¹² I found above that the Authority’s deadline for responding to the access request was October 5, 2023, and that the Authority failed to respond to the applicant, in the manner required by s. 8, by that date. Therefore, based on the reasoning in those orders, which I adopt, the Authority has clearly breached s. 6(1) and the applicant is entitled to a remedy for that breach under s. 58(3)(a).

[22] However, I acknowledge that the circumstances between the Authority and the applicant are somewhat different than the facts which are generally before an adjudicator who is considering a public body’s failure to respond to an access request. Specifically, I accept that the Authority provided the applicant with some responsive records prior to the statutory deadline and has continued to provide the applicant with additional responsive records on an ongoing basis since that time, as opposed to failing to provide the applicant with any records whatever.

[23] Therefore, I will briefly address the Authority’s arguments that its ongoing efforts to respond in full to the access request demonstrate that it has complied with s. 6(1) notwithstanding its clear breach of s. 7. Ultimately, for the following reasons, I find that the Authority has not demonstrated that the steps it has taken since October 5, 2023, amount to it making “every reasonable effort” to respond to the access request without delay.

[24] In the first place, I find the Authority has not demonstrated that it has adequately communicated with the applicant about the reasons for its ongoing delay in responding to the access request. I further find the Authority did not seek agreement from the applicant regarding a “phased approach” to disclosing records but instead imposed such an approach on the applicant. In my view, ongoing communications with an applicant to discuss issues with responding and proposed solutions to those issues are required as part of a public body’s reasonable efforts to respond openly, accurately, and completely to an access request.¹³

¹² See, for example, Order F06-04, *supra* note 8 at para. 8.

¹³ There is some evidence before me that the Authority communicated with the applicant regarding related matters in September 2023. However, I find that the existence of two communications with the applicant prior to the Authority’s deadline for responding to the access request is, at most, minimal evidence of the Authority’s overall efforts to adequately advise the applicant of the reasons for its continued delay and seek collaborative solutions to resolving the matter.

[25] The Authority also submits that its inability to, as of yet, fully respond to the access request is due to the volume of records and the operational resources required to collect, review, and organize those records and that it has dedicated additional operational resources to responding to the access request.

[26] Reasonable delays in responding to access requests due to resource constraints are understandable. It is, however, incumbent on public bodies to ensure that they have adequate resources in place to fulfill their obligations under FIPPA. Fulfilling those obligations includes meeting statutory timelines for providing compliant responses to access requests, which the Authority has failed to do.¹⁴ Where a public body has good reason why it may not be able to comply with those timelines, it can request an extension from the Commissioner under s. 10(2), which the Authority also failed to do.

[27] Moreover, while the Authority submits that it has allocated additional resources to the applicant's file, it provides no explanation of whether those resources were allocated before or after its deadline for responding to the access request had passed, what the effect of those additional resources has been, or why, in the face of a delay which is quickly approaching six months, it has failed to allocate further resources still to resolving this matter. Therefore, even taking the Authority's alleged resource constraints into account, I find the Authority has not demonstrated that the delay in this case is reasonable.

[28] Finally, the Authority raises the fact that it only discovered the existence of some responsive records in January 2024 as a partial justification for its ongoing delay. However, the Authority has not adequately explained why these additional records were not identified earlier or why it has taken more than two months since these records were identified for the Authority to provide them to the applicant. Therefore, I do not find that the Authority's late discovery of responsive records is any evidence that the Authority has made every reasonable effort to respond to the access request without delay.

[29] Based on all of the above, I find that the Authority stands in breach of s. 6(1) and that I must craft an appropriate remedy for this breach pursuant to s. 58(3)(a).

What is the appropriate remedy?

[30] The usual remedy where a public body is found to be in breach of ss. 6(1) and 7 is for an adjudicator to make an order directing the public body to respond to the applicant by a particular date.¹⁵ I find that it is appropriate to do so here.

¹⁴ See, for example, Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 23 and Order F21-33, *supra* note 3 at para. 32.

¹⁵ See Order F20-34, 2020 BCIPC 40 at para. 51 and Order F21-24, 2021 BCIPC 29 at para. 24.

[31] The Authority submits that it has been working diligently to fully respond to the applicant’s access request and that it “may” be able to issue a final response by “early April, 2024”. The applicant does not clearly address the appropriate remedy here.

[32] Given the Authority’s evidence that responding to the applicant’s access request has been difficult due to the volume and character of the records involved, I find that it is appropriate to order that the Authority comply with its own anticipated timeline of fully responding to the access request by “early April, 2024”. I further find April 12, 2024, to be the latest date which is reasonably captured by the phrase “early April, 2024” and meets FIPPA’s definition of a “day”.

CONCLUSION

[33] For the reasons given above, under s. 58(3)(a) of FIPPA, I require the Authority to respond to the applicant’s access request, in a manner that is fully compliant with s. 8 of FIPPA, by no later than **April 12, 2024**, and to concurrently copy the OIPC Registrar of Inquiries on its response to the applicant.

April 4, 2024

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

OIPC File No.: F23-95400