



Order F24-90

MINISTRY OF HEALTH

Erika Syrotuck
Adjudicator

October 22, 2024

CanLII Cite: 2024 BCIPC 103
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 103

Summary: The applicant requested records from the Ministry of Health (Ministry) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant complained to the Office of the Information and Privacy Commissioner that the Ministry did not respond to the access request. The adjudicator found that the Ministry did not respond by the timeline set out in s. 7 of FIPPA and ordered it to respond to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 6(1), 7(1), 7(2), 10(1), and 10(2), Schedule 1; *Interpretation Act*, RSBC 1996, c. 238, s. 29.

INTRODUCTION

[1] This inquiry is about whether the Ministry of Health (Ministry) complied with its duty to respond to an applicant's access request for records relating to the Canadian Climate Institute's heatwave analysis (Request) within the time limits set out in the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] More than a year after making the Request, the applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the Ministry's response was overdue.

[3] The OIPC sent out a Notice of Inquiry setting out the issues to be decided and the timelines for the Ministry's and the applicant's submissions. Both parties made submissions in this inquiry.

[4] During the inquiry, the Ministry asked for the applicant's consent not to hold the inquiry, given that it says it will respond soon. The applicant did not consent and asked the inquiry to go ahead.

ISSUE

[5] The Notice of Inquiry lists the following as the issues in this inquiry:

1. Whether the public body made every reasonable effort to respond without delay as required by s. 6(1) of FIPPA, and
2. Whether the public body failed to respond in accordance with the requirements of s. 7 of FIPPA.

[6] Past orders have said that the burden of proof is on the public body to prove that it fulfilled its duties and obligations under FIPPA.¹ The Ministry accepts that it has the burden.

DISCUSSION

Did the Ministry respond in accordance with ss. 6(1) and 7 of FIPPA?

[7] Division 1, Part 2 of FIPPA sets out how and when a public body must respond to an access request. The relevant sections of FIPPA are as follows:

- 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.
- 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, or
 - ...
- 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;

¹ Order F24-28, 2024 BCIPC 35 (CanLII) at para 7.

- (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.

[8] In addition, Schedule 1 of FIPPA says that “day” does not include a holiday or a Saturday. Under the *Interpretation Act*, a “holiday” includes, among other things, a Sunday.²

[9] Past orders have found that, where a public body has failed to meet the timeline set out in s. 7, the public body is also in breach of its duty under s. 6(1) to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.³

[10] The Ministry sets out the following chronology:

- On June 12, 2023, the applicant made the Request.
- On June 15, 2023, the Ministry acknowledged the Request.
- On July 26, 2023, the Ministry took a time extension under s. 10(1)(b), resulting in a new due date for a response of September 15, 2023.
- On September 15, 2023 the OIPC granted the Ministry a time extension under s. 10(1)(d) resulting in a new legislated due date of October 31, 2023.
- On April 3, 2024, the applicant wrote to the Ministry for an update on the Ministry’s response to the Request. The Ministry responded on April 5,

² RSBC 1996, c. 238, s. 29.

³ Order F06-04, 2006 CanLII 13533 (BCIPC) at para 8; Order F24-28, 2024 BCIPC 35 (CanLII) at para 8.

2024, that the response was overdue and that no further extension had been taken.

- On August 20, 2024, the applicant filed the request for review to the OIPC that led to this inquiry.
- The Ministry has not yet responded to the request.

[11] The Ministry concedes that its statutory deadline to respond to the Request was October 31, 2023 and that it did not meet that deadline. It explains that several factors have contributed to a significant delay including heavy workloads and the nature and volume of the requested records. The Ministry says that it is committed to responding as soon as possible. Specifically, it anticipates that it will be able to respond to the Request on or before October 25, 2024.

[12] The applicant says that, in addition to the Ministry's chronology, the applicant followed up about the Request by email on November 2, 2023 and by phone on November 8, 2023.

[13] I accept that the OIPC granted the Ministry a time extension until October 31, 2023. There is no dispute that this date has passed, and that the Ministry has not yet provided a response. I conclude that the Ministry did not do its duty to respond to the Request within the time limits set out in s. 7. Following past orders, this means that the public body has also failed in its s. 6(1) duty to assist the applicant.

What is the appropriate remedy?

[14] In similar circumstances, past orders have ordered the public body to respond to the request by a particular date.⁴

[15] The Ministry requests that the Commissioner order it to respond to the request by October 25, 2024. The applicant says they are in support of the Commissioner ordering a response by October 25, 2024.

[16] Given that the parties agree on the remedy and the timeline is short, I see no reason to do anything other than order the Ministry to provide a response to the applicant under s. 8 of FIPPA, which specifies what a response to an access request must contain, by the agreed-upon date.

CONCLUSION

[17] For the reasons above, under s. 58(3) of FIPPA, I order the Ministry to do its duty to respond to the Request in accordance with s. 8 of FIPPA by 4:00 pm on October 25, 2024.

⁴ Order F24-28, 2024 BCIPC 35 (CanLII), for example.

[18] Under s. 58(4), I also order the Ministry to copy the OIPC's registrar of inquiries on its response to the applicant.

October 22, 2024

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F24-98089