



Order F25-08

MINISTRY OF AGRICULTURE AND FOOD

Elizabeth Barker
Director of Adjudication

January 27, 2025

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Summary: An applicant requested records from the Ministry of Agriculture and Food pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry acknowledged it did not respond to the applicant's access request within the timeline required by s. 7 of FIPPA. The adjudicator found the Ministry had not fulfilled its duty under s. 7 of the Act and ordered it to respond to the access request by a specified date.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 6(1), 7(1), 8 and Schedule 1 (definition of "day"); *Interpretation Act*, RSBC 1996 c 238 (definition of "holiday").

INTRODUCTION

[1] This inquiry is about whether the Ministry of Agriculture and Food (Ministry) complied with its duty to respond to the applicant's access request within the required time limit in s. 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] On July 24, 2023, the applicant made a request to the Ministry for access to specific records. The Ministry did not provide a response to his request. The applicant complained to the Office of the Information and Privacy Commissioner (OIPC), alleging the Ministry had failed to respond to his request within the timelines set out in FIPPA. Mediation did not resolve the matter, and it proceeded to this inquiry. As of the date of the inquiry, the Ministry acknowledges it still has not responded to the access request.

PRELIMINARY MATTER

[3] In his reply to the Ministry's initial submission, the applicant asserts that this inquiry should also decide if the Ministry committed an offence under s. 65.2 of FIPPA. Section 65.2 says that it is an offence to wilfully mislead, obstruct or fail to comply with commissioner. This issue was not included in the notice of inquiry.

[4] The notice of inquiry advised the parties to review the OIPC's Instructions for Written Inquiries, which say that parties may not add new issues without the OIPC's prior permission, and any request for permission must be made before the date for initial submissions. I can see nothing in the materials before me that indicates the applicant requested the OIPC's prior approval to add a new issue or that it would be fair to add s. 65.2 at such a late date in the inquiry. Therefore, I decline to add s. 65.2 as an issue in this inquiry.

ISSUES

[5] As I will explain below, I find the issues to be decided in this inquiry are as follows:

1. Did the Ministry comply with its duty to respond to the applicant's access request within the timelines in s. 7 of FIPPA?
2. If the Ministry did not comply with its duty under s. 7, what is the appropriate remedy?

[6] I note the notice of inquiry the OIPC issued to the parties states the issues to be decided in this inquiry include whether the Ministry "made every reasonable effort to respond without delay to the request as required by s. 6(1) of FIPPA." Section 6(1) states, "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] Past OIPC inquiries and orders have included s. 6(1) as an issue to be decided when an applicant alleges a public body has failed to respond within the time required under s. 7(1) and in the manner prescribed by s. 8.¹ Those orders have concluded a public body that has failed to respond within the time required under s. 7 has not fulfilled its s. 6(1) duty to make every reasonable effort to respond without delay.² However, I do not think it is necessary to add or decide s. 6(1) when s. 7 compliance is at issue: a public body will necessarily have failed to discharge its duty under s. 6(1) if it does not respond to an applicant's request within the timelines specified in s. 7.

¹ For example, Order F06-04, 2006 CanLII 13533 (BCIPC) at paras 8-9.

² Order F06-04, 2006 CanLII 13533 (BCIPC) at paras 8.

[8] Whether a public body has met its duty to respond to an access request within the timelines specified in s. 7 can be answered in only two ways: either “it did” or “it did not”. Adding s. 6(1) to the inquiry incorrectly suggests that a public body can defend its failure to comply with s. 7 by arguing that it made every reasonable effort to respond without delay. No such reasonable efforts language exists in s. 7.

[9] Section 6(1) creates a public body’s overarching duty to assist applicants, but it does not say precisely what procedural steps are required of a public body. Sections 7 and 8 are the provisions to do that. Section 8 specifies what exactly a public body must tell an applicant in its response under s. 7, and s. 7 says when the response must be provided. The reasonable effort language in s. 6(1) is not a shield or defence to a contravention of the requirements imposed by s. 7. The duties established at s. 6(1) are general, but do not operate to override other mandatory obligations in other sections of the Act.

[10] As former Commissioner Loukidelis explained, a public body that fails to respond when required under s. 7 cannot be found to have fulfilled its s. 6(1) obligation to make every reasonable effort to respond without delay.³ Simply put, the “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.”⁴

[11] Therefore, I will not make any finding about whether the Ministry complied with its duty under s. 6(1) to make every reasonable effort to respond without delay.⁵ In addition, while I have read the Ministry’s explanation about why it did not respond to the request within the time limits required by s. 7(1), that explanation is not relevant to deciding if the Ministry complied with its duty under s. 7(1).⁶

BURDEN OF PROOF

[12] The Ministry acknowledges it did not respond to the applicant’s request within the time requirements of FIPPA. Section 53(3) says that a public body’s failure to respond in time to a request for access to a record is to be treated as a

³ Order F06-04, *Ministry of Water, Land and Air Protection*, 2006 CanLII 13533 (BC IPC) at paras 7-9.

⁴ Order 02-38, *Office of the Premier and Executive Council Operations and Ministry of Skills Development and Labour*, Re, 2002 CanLII 42472 (BC IPC) at para 23.

⁵ The Ministry concedes that because it failed to comply with the time requirements of s. 7(1), it breached its s. 6(1) duty to make every reasonable effort to respond to the applicant without delay.

⁶ The Ministry says it provides the explanation as context for the delay, which the Ministry fully acknowledges.

decision to refuse access to the record. Further, s. 57(1) 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 that the Ministry has the burden to prove that it met its duty to respond to the applicant's access request as required by s. 7 of FIPPA.

DISCUSSION

Time limit for responding under s. 7 of FIPPA

[13] The parts of s. 7 that are relevant in this case state as follows:

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

(b) the request has been transferred under section 11 to another public body.

...

[14] Schedule 1 of FIPPA says that "day" does not include a holiday or a Saturday.⁷

[15] Section 7(1) states that a public body must respond no later than 30 days after receiving a written request for access to records. There is no dispute between the parties that the date the Ministry received the applicant's access request was July 24, 2023.

[16] The Ministry does not submit that the 30-day deadline in s. 7(1) was extended or suspended under the provisions of ss. 7 or 10, or that the request was transferred under s. 11 of FIPPA. In fact, the Ministry concedes that it failed to respond to the applicant's request in accordance with s. 7(1) of FIPPA and acknowledges that it still has not responded to the request.

[17] Given all of the above, I find that the date by which the Ministry was required to respond to the applicant's request under s. 7(1) was September 6, 2023 and it still has not provided a response that complies with s. 8. Therefore, I also find that the Ministry failed to comply with its duty under s. 7(1) to respond to the applicant's access request by no later than 30 days after receiving it.

⁷ The *Interpretation Act*, RSBC 1996, c 238 s. 29 defines "holiday".

What is the appropriate remedy?

[18] Section 58 of FIPPA states the commissioner must dispose of the issues in an inquiry by making an order under s. 58. 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.⁸

[19] The Ministry requests that the commissioner order it to respond to the request on or before January 28, 2025. It provides affidavit evidence from a manager at the Ministry of Citizen Services' Information Access Operations who says there are over 1600 pages of records responsive to the applicant's request. She adds that the Ministry has had to consult with different groups within government relating to the records. In addition, she explains the records contain sensitive information and must be carefully reviewed to ensure they are severed in accordance with FIPPA. She estimates the Ministry will be able to respond to the request on or before January 28, 2025.

[20] The applicant requests the commissioner deny the Ministry any more time. He also asks for an order requiring the Ministry to immediately release the records to the applicant and meet with him to discuss the details of the information in dispute in this file and others. In addition, the applicant requests the commissioner take enforcement action against the Ministry. Other than his request that the Ministry be given no more time, the applicant's requested remedies are not available under this inquiry process. Section 58 does not authorize the commissioner to order a public body to disclose records before the public body has even issued its decision about them under Part 2 of FIPPA. Further, s. 58 does not authorize the commissioner to force the Ministry to meet with the applicant or take enforcement action.

[21] I find that the appropriate remedy in this case is to order the Ministry to respond to the applicant's request as required under Part 2 of FIPPA and to do so by a specific date. I recognize that the Ministry says it *estimates* or *anticipates* being able to respond by tomorrow, and the applicant does not want the Ministry to have any more time. Given the date of this order and the tight turn around it requires, I have decided January 31, 2025 is the appropriate date by which the Ministry must provide the applicant with a response that complies with Part 2 of FIPPA.

⁸ For examples: Order F16-29, 2016 BCIPC 31, at paras 8-11; Order F24-90, 2024 BCIPC 103 at paras 14-16; Order F23-59, 2023 BCIPC 69 at para 31.

CONCLUSION

[22] For the reasons given above, under s. 58(3)(a), I order the Ministry to perform its duty under s. 7 by responding to the applicant's access request in accordance with Part 2 of FIPPA on or before **January 31, 2025**.

[23] Under s. 58(4), I order the Ministry to copy the OIPC's registrar of inquiries on the response the Ministry sends to the applicant in compliance with paragraph 22 above.

January 27, 2025

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F24-98666