



Order F25-09

MINISTRY OF FINANCE

Elizabeth Barker
Director of Adjudication

January 27, 2025

CanLII Cite: 2025 BCIPC 9
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 9

Summary: An applicant requested records from the Ministry of Finance (Ministry) 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 Finance (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. He did not receive a response to his request, so he 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 inquiry. As of the date of the inquiry, the Ministry acknowledges it still has not responded to the access request.

ISSUES

[3] 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?

[4] The notice of inquiry the OIPC issued to the parties said that 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."

[5] 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.

[6] 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.

[7] 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

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.

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.

[8] 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

[9] 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

[10] 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 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 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

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

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.

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

...

(4) If the head of a public body determines that an applicant is to pay fees under section 75 (1) (a) or (b), the 30 days referred to in subsection (1) of this section do not include the period of time from that determination until one of the following occurs:

- (a) the head of the public body excuses the applicant from paying all of the fees for services;
- (b) the head of the public body excuses the applicant from paying some of the fees for services and the applicant agrees to pay the remainder and, if required by the head of the public body, pays the deposit required;
- (c) the applicant agrees to pay the fees for services set out in the written estimate and, if required by the head of the public body, pays the deposit required;
- (d) the applicant pays the application fee.

...

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

[13] There is no dispute between the parties about the following dates:

- The date of the applicant's access request was July 24, 2023.
- On November 2, 2023, the Ministry issued a fee assessment.
- On November 9, 2023, the applicant paid the fee.
- The Ministry still has not responded to the access request.

[14] I find that the Ministry received the access request on July 24, 2023. Given what s. 7 says and the meaning of "day" in FIPPA, the Ministry's original was due by September 6, 2023.

[15] The Ministry does not argue 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

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

was transferred under s. 11 of FIPPA.⁸ Rather, the Ministry concedes it failed to respond to the applicant's request in accordance with s. 7(1) of FIPPA and acknowledges it still has not responded to the request.

[16] In light 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 the Ministry still has not provided a response that complies with s. 8. In conclusion, I 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 the request.

What is the appropriate remedy?

[17] 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.⁹

[18] In its initial submission, the Ministry requests that the commissioner order it to respond to the request on or before January 28, 2025. It provides affidavit evidence from an analyst at the Ministry of Citizen Services' Information Access Operations who says there are over 2900 pages of records responsive to the applicant's request. She explains that the Ministry has had to consult with the Ministry of Public Safety and Solicitor General about 600 pages and that she also will need to ensure consistent severing with other access requests to the Ministry. She adds that the records contain sensitive information and must be carefully reviewed to ensure they are severed in accordance with FIPPA. She anticipates the Ministry will be able to respond to the request on or before January 28, 2025.

[19] In its reply submission, however, the Ministry revises the date by which it anticipates it can respond. It says that in December 2024, it discovered it had to conduct an additional consultation on approximately 400 pages. Given the increased work, it believes it can respond by "approximately February 11, 2025."¹⁰

[20] The applicant asks for the immediate release of the records. He also says:

Given the government's resources, it can easily hire personnel (especially contract staff) to manage backlogs in FIPPA processing, particularly where it would prevent violating regulatory requirements. The government has a

⁸ It did not say it had taken a further 30 days as permitted by s. 10(1). If it had, the response date would have been October 19, 2023 and still well before the fee estimate was issued.

⁹ 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.

¹⁰ Ministry's reply submission at para 6.

clear advantage because it can easily allocate funds from its billion-dollar budget to address backlogs, while our company has finite resources. The government cannot be seen to be making a reasonable effort to respond where its explanation for delay is essentially “we are too busy to get to it”.¹¹

[21] Having considered what the parties have said, 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 acknowledge that the applicant objects to the Ministry having any more time and the Ministry’s response to the request has been due for well over a year. However, I am satisfied that the appropriate date for the Ministry to respond to the request is February 7, 2025, a date roughly midway between what the parties are asking.

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 **February 7, 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.: F24-98758

¹¹ Applicant’s submission at p. 3.