



Order F25-11

PUBLIC SERVICE AGENCY

Allison J. Shamas
Adjudicator

February 6, 2025

CanLII Cite: 2025 BCIPC 12
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 12

Summary: An applicant requested records from the Public Service Agency (PSA) pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The PSA acknowledged it did not respond to the applicant's access request within the time limit required by s. 7 of FIPPA. The adjudicator found the PSA had not fulfilled its duty under s. 7 of the FIPPA 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), 7(2), 10(2).

INTRODUCTION

[1] This inquiry concerns whether the Public Service Agency (PSA) complied with its duty to respond to two access requests made by the applicant within the time limits required by s. 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] Section 7 establishes the statutory time limits within which a public body is required to respond to an access request. While s. 7(1) requires a public body to respond to an access request within 30 days of receiving the request, s. 7(2)(a) allows a public body to extend the time for responding for more than 30 days with the permission of the Information and Privacy Commissioner (Commissioner) in certain circumstances.

[3] The relevant background facts are not in dispute. The applicant made two access requests to the PSA, the first on December 4, 2022, the second on February 14, 2023.¹ In accordance with s. 7(2)(a), the head of the PSA extended

¹ PSA's initial submission at para 3.

the deadlines to respond to the requests until August 25, 2024 and August 30, 2024.² The PSA did not respond to the access requests by the extended dates.³ On December 14, 2024 the applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the PSA's response to both access requests was late.⁴ As of the date of the inquiry the PSA had still not responded to the access requests.⁵ The PSA acknowledges that it failed to respond to the applicant's access requests in accordance with the statutory time limits imposed by s. 7.⁶

ISSUES

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

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

[5] In addition to the above s. 7 issues, the notice of inquiry the OIPC issued to the parties lists as an issue to be determined whether the PSA "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."

[6] In two recent orders, the OIPC's Director of Adjudication explained why it is neither necessary nor appropriate to consider s. 6(1) where the issue between the parties is whether or not the public body's response to the applicant's access request was late. The Director explained:

[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).⁷ 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.⁸ 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

² See letters dated March 1, 2024 and May 10, 2024 from PSA's FOI specialist to the applicant.

³ PSA's initial submission at para 3.

⁴ Applicant's complaint form dated November 7, 2024 and sent to the OIPC on December 14, 2024. See also Notice of Inquiry.

⁵ PSA's initial submission at para 3.

⁶ PSA's initial submission at para 9.

⁷ For example, Order F06-04, 2006 CanLII 13533 (BCIPC) at paras 8-9.

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

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 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.⁹ 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."¹⁰

[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. 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).¹¹

[7] I agree with the Director's reasoning and approach and adopt them here. Although the orders discussed above concern the 30 day time limit in s. 7(1), rather than an extended time limit under s. 7(2), I find that the reasoning is directly applicable to the s. 7(2) issue before me. Therefore, for the reasons set out above I will not consider the s. 6(1) issue in this inquiry, and while I have read the PSA's explanation about the reasons for its delay in responding, I find that explanation is not relevant to the issue of whether the PSA complied with its duty under s. 7.

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

¹⁰ 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.

¹¹ Order F25-09, 2025 BCIPC 9 at paras 5 – 9 (*citations specific to the facts of the inquiry removed*). See also Order F25-08, 2025 BCIPC 8 at paras 7 - 11.

BURDEN OF PROOF

[8] The PSA acknowledges it did not respond to the applicant's requests within the time requirements of FIPPA. Section 53(3) provides 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) provides 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 PSA 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.¹²

DISCUSSION

Relevant Legislation

[9] Together, ss. 7(2)(a) and 10(2)(a) of FIPPA empower the Commissioner to grant permission to the head of a public body to extend the time limit for a public body to respond to an access request for a period longer than 30 days in certain circumstances. The relevant parts of ss. 7 and 10 are as follows:

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 ...

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: ...

(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;

¹² This determination is consistent with past orders. See for example Order F25-08, 2025 BCIPC 8 and Order F25-09, 2025 BCIPC 9.

Did the PSA comply with its duty to respond to the access requests within the timelines in s. 7?

[10] In this case, there is no dispute between the parties that:

- The applicant made two access requests to the PSA, the first on December 4, 2022, the second on February 14, 2023.¹³
- With the permission of the Commissioner, the head of the PSA extended the deadlines to respond to the requests until August 30, 2024 and August 25, 2024, respectively.¹⁴
- The PSA did not respond to the access requests by the extended time limits.¹⁵

[11] As noted above, 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”. In this case, it did not. Therefore, I find that the PSA has not complied with the statutory time limits in s. 7(2) of FIPPA.

What is the appropriate remedy?

[12] Section 58 of FIPPA states the Commissioner must dispose of the issues in an inquiry by making an order under s. 58. In this case, the PSA acknowledges that it has still not responded to the access requests,¹⁶ and that it failed to respond to the applicant’s access requests in accordance with the statutory time limits imposed by s. 7.¹⁷ 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.¹⁸

[13] The PSA attributes its delay in responding to resource and staffing issues, as well as the complexity and volume of responsive captured by the applicant’s access requests. As a remedy it requests an order that the PSA respond to both access requests by February 21, 2025.¹⁹

[14] The applicant submits that the PSA’s explanation for such a lengthy delay is not credible. As a remedy, the applicant requests an order requiring the PSA to respond fully to both requests on or before February 21, 2025, and any other orders as may be deemed appropriate given the ongoing delay in providing a response.

¹³ PSA’s initial submission at para 3.

¹⁴ See letters dated March 1, 2024 and May 10, 2024 from PSA’s FOI specialist to the applicant.

¹⁵ PSA’s initial submission at para 3.

¹⁶ PSA’s initial submission at para 3.

¹⁷ PSA’s initial submission at para 9.

¹⁸ See for example Order F25-08, 2025 BCIPC 8; Order F25-09, 2025 BCIPC 9; Order F16-29, 2016 BCIPC 31; Order F24-90, 2024 BCIPC 103; and Order F23-59, 2023 BCIPC 69 at para 31.

¹⁹ See PSA’s initial submission at para. 6 and applicant’s response submission at para 5.

[15] The parties agree on the date by which I should order the PSA to respond to the access requests, and the timeline they have agreed to is short. In the circumstances, I find that it is appropriate to order the PSA to respond to the applicant's access requests as required under Part 2 of FIPPA by the agreed upon date. I note that Part 2 of FIPPA describes, among other things, how a public body must respond to an access request and what a public body must tell an applicant in its response.

[16] I do not deem it appropriate to issue any other orders. The Commissioner's order making power is clearly defined in s. 58 of FIPPA. I do not see any other orders that would be appropriate or relevant in these circumstances, and the applicant has not identified any. While I acknowledge that the applicant has waited a long time for a response to their access requests, in my view the appropriate recourse is an order requiring the PSA to respond to the access requests, as required by Part 2 of FIPPA, with a short timeline. The parties have already agreed to this remedy.

CONCLUSION

[17] For the reasons above, I make the following orders under ss. 58(3)(a) and 58(4) of FIPPA:

1. I order the PSA 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 21, 2025**.
2. I order the PSA to copy the OIPC's registrar of inquiries on the response the PSA sends to the applicant in compliance with item 2, above.

February 6, 2025

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: F24-98882 and F24-98883