



**F07-14-MS City Responds in Time, but Reasoning for Refusing
Access Shaky**

A man who emailed an access to information request to a city for internal correspondence complained that the city had not responded to his request in time, had not provided a reason for withholding one record and had not advised him of his right to ask our office to review the city's response.

Section 7 of the *Freedom of Information and Protection of Privacy Act* requires a public body to respond to an access request within 30 business days. The complainant had not understood that "day" meant business day—the city had responded in time.

Section 8(1)(c)(i) requires a public body that refuses disclosure to give reasons for the refusal and the provision of FIPPA on which the refusal is based. In this case, the city had told the requester that it was withholding the record under section 12(1). When we pointed out that section 12(1) applies to Cabinet confidences at the provincial level, not local governments, the city realized its mistake and explained that it had intended to cite section 13(1), which applies to advice to a public body. As access to the record remained the complainant's ultimate objective, we opened a separate request-for-review file to address that matter and consider the city's section 13(1) argument.

The third part of the complaint related to the obligation of the city, under section 8(1)(c)(iii), to advise the requester of his right to request a review by our office of the city's decision to withhold information. The fact that his access request to the city had been by email and perceived to be of an informal nature made no difference to its validity, as the *Electronic Transactions Act* provides that a requirement for a document to be "in writing" includes electronic means; in addition, he had emphasized that "you can consider this a written request via Freedom of Information and Privacy Act". He was thus correct that the city had had an obligation to advise him of his FIPPA right to ask us to review the city's decision, and we therefore found this part of his complaint to be substantiated. Fortunately, the complainant was fully aware of the role of our office; as many people are not, it is most important that public bodies ensure that their section 8(1)(c)(iii) obligation is met when they respond to a request.