



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
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Order F16-29

## MINISTRY OF FINANCE

Elizabeth Barker  
Senior Adjudicator

June 13, 2016

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**Summary:** The applicant made a request for records to the Ministry. Approximately seven months later, the Ministry still had not provided the applicant with a response. The Ministry was found not to have fulfilled its duties under ss. 6(1) and 7 of FIPPA and was ordered to provide the response by June 24, 2016.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 6(1) and 7.

**Authorities Considered: B.C.:** Order 04-30, 2004 CanLII 43762 (BC IPC); Order F06-04, 2006 CanLII 13533 (BC IPC); Order F11-18, 2011 BCIPC 24 (CanLII).

## INTRODUCTION

[1] This case is about the failure of the Ministry of Finance (“Ministry”) to comply with its duty under sections 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to make every reasonable effort to assist the applicant and respond without delay to its request for records. The request is for records that relate to Life Licence Qualification Program course providers.

[2] The Ministry concedes that it failed to respond to the applicant's request for records in accordance with the timelines set out in s. 7 of FIPPA and that it is, therefore, in breach of s. 6 of FIPPA.<sup>1</sup>

## ISSUES

[3] The issues in this inquiry are as follows:

1. Did the Ministry make every reasonable effort to respond without delay to the applicant's request as required by s. 6(1) of FIPPA?
2. Did the Ministry fail to respond to the applicant's request in accordance with the requirements of s. 7 of FIPPA?
3. If the answer is "yes" to either of the above questions, what is the appropriate remedy?

## DISCUSSION

[4] **Background Facts** - There is no dispute between the parties as to the chronology of events, which is as follows:

- On November 13, 2015, the Ministry received the applicant's request for records.
- On December 3, 2015 the Ministry assessed a fee to process the applicant's request, and on December 10, 2015, the applicant paid the fee.
- On December 23, 2015, the Ministry resumed processing the access request.
- On February 5, 2016 the Ministry took a time extension to respond to the request as permitted under s. 10(1)(b) of FIPPA, and extended the release date to March 21, 2016. This deadline was not met.
- On May 15, 2016, the applicant filed a complaint with the OIPC that the Ministry had failed to comply with the March 21, 2016 deadline. Investigation and mediation did not resolve the matter and the applicant requested it proceed to inquiry.

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<sup>1</sup> Ministry's submissions, para. 1.

- On May 26, 2016, the OIPC issued a Notice of Written Inquiry regarding the deemed refusal.
- The Ministry's submissions are dated June 3, 2016. The applicant chose not to provide a response submission.<sup>2</sup>

[5] **Duty to Respond Without Delay** - FIPPA imposes obligations on a public body to respond to information requests within certain timelines. The relevant sections of FIPPA are as follows:

*Duty to assist applicants*

- 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.

*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, ...

*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:
- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (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:

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<sup>2</sup> The applicant informed the OIPC's registrar by telephone that it would not provide a response.

- (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.

...

[6] The Ministry concedes that it failed to respond to the applicant's request within the time required by s. 7 of FIPPA and that it breached s. 6(1) by failing to make every reasonable effort to respond without delay. Given these concessions, and my understanding of the facts, I find that the Ministry breached ss. 6(1) and 7 of FIPPA.

[7] Section 53(3) of FIPPA states that the failure of the head of a public body 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. Therefore, I will treat the Ministry's failure to comply with s. 7 as a refusal to provide access to the record as required by s. 53(3).

[8] **What is the Appropriate Remedy?** - The usual remedy in such cases is to order the public body, under s. 58, to respond to the request by a particular date.<sup>3</sup> I believe that this is the appropriate remedy in these circumstances.

[9] The Ministry says that the applicant's request involved searching a relatively large volume of records exceeding 2000 pages. The search was put on hold in December 2015 pending payment of the fee assessed. Once the fee was paid, the Ministry resumed processing the request on December 23, 2015. The Ministry says that there are approximately 280 pages of records. It submits:

While the number of records involved is not extraordinarily high, the disclosure issues on this access request are particularly complex and challenging due to a large number of individuals and organizations involved. The records contain communications and other information relating to numerous individuals which requires attention and research by the IAO to ensure that disclosure of many of the records is authorized under the Act. This review includes researching what information is public and making sure that any severing that has been applied is being applied consistently throughout the package. The process will also require consultation by the IAO with the subject matter experts to ensure that the information contained in the records may be released.

Once the IAO prepares the redlined package of records, which sets out the IAO's proposed severing of information that is protected under the Act, the

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<sup>3</sup> For example, see Order F06-04, 2006 CanLII 13533 (BC IPC); Order 04-30, [2004 CanLII 43762 (BC IPC); Order F11-18, 2011 BCIPC 24 (CanLII).

redlined package goes back to the Ministry for a line-by-line review of the information to ensure that the proposed severing is accurate. The head of the public body must then sign off on the package before it is released to the Applicant. The records will then be returned to the IAO for a final line-by-line examination of each record.

This access request is currently being given priority by the IAO above other access requests. Approximate time required to release the records is estimated to be three weeks.

In conclusion, it is our submission that an order for the Ministry to respond to the Applicant's request by June 24, 2016 is feasible under the circumstances.<sup>4</sup>

[10] The applicant does not dispute that the Ministry should be required to respond by June 24, 2016.

[11] Given that there is no dispute between the parties, I find that June 24, 2016 is the appropriate date by which the Ministry should provide the applicant with the requested records.

## **CONCLUSION**

[12] Having found that the Ministry failed to meet its duties to respond to the request without delay under ss. 6(1) and 7, pursuant to s. 58 of FIPPA, I order it to provide its response to the applicant on or before June 24, 2016.

June 13, 2016

## **ORIGINAL SIGNED BY**

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Elizabeth Barker, Senior Adjudicator

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<sup>4</sup> Ministry's submissions, paras. 7-10.