



REVIEW REPORT 160-2017

Ministry of Highways and Infrastructure

September 11, 2017

Summary:

The Applicant filed a request for review with this office as the Ministry of Highways and Infrastructure (Highways) has not responded to an access to information request submitted by the Applicant on May 23, 2017. As of the date of this Report, Highways still has not responded to the Applicant's request. The Commissioner found that Highways is not in compliance with FOIP. The Commissioner recommended that within 30 days of receiving this report, Highways responds to the Applicant with the records subject to only mandatory exemptions. The Commissioner also recommended that Highways does not charge fees to the Applicant for this request.

I BACKGROUND

- [1] The Applicant submitted this and 40 additional access to information requests pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) to the Ministry of Highways and Infrastructure (Highways) on May 23, 2017, requesting access to:

Please provide all documents mentioning or related to freedom-of-information request HI338/G16 [sic] (submitted Nov 19, 2016), the [Organization] and/or [Name], including but not limited to: emails, memos, correspondence, Q&As, media lines, briefing notes, etc. Please exclude media clippings.

- [2] Highways did not respond, and the Applicant requested a review on August 8, 2017.

- [3] My office attempted early resolution between August 8th and 17th, 2017 in order to have Highways respond. However, it did not respond to the Applicant.
- [4] On August 17, 2017, my office notified Highways and the Applicant of its intention to undertake a review.
- [5] The notification to Highways outlined that we expected Highways to provide a response to the Applicant by August 24, 2017, with a copy of the covering letter to my office. Alternatively, Highways was invited to make a submission to this office by August 24, 2017 explaining why it did not respond to the request. As of the date of this report, Highways has done neither.
- [6] The notification to the Applicant invited to him make a submission to this office on his views on the Ministry not responding to this request. This office received a submission from the Applicant on August 23, 2017.
- [7] As of the date of this report, 111 days have elapsed since the Applicant filed this request.

II RECORDS AT ISSUE

- [8] As this is a review of the Applicant not receiving a response within the legislative timelines, there are no records at issue.

III DISCUSSION OF THE ISSUES

- [9] Highways is a “government institution” as defined by subsection 2(1)(d)(i) of FOIP.

1. Has Highways complied with the provisions of FOIP?

- [10] Highways has not responded to a request it received 111 days ago.

[11] I considered this issue, in part, in Highways Review Report 231-2016 to 233-2016 issued November 10, 2016. Paragraph [19] in Review Report 231- 2016 to 233-2016 states:

Based on my calculations, Highways is late by three months beyond the legislated timeframes. Regardless of what is driving the delays, Highways must take their obligations under FOIP more seriously. The Legislative Assembly has passed FOIP and I expect that ministries will comply with the laws passed by it. Highways has failed to do so. [emphasis added]

[12] Further, the Applicant has made this office aware that the only reason he filed this and the other 40 access to information requests was because of the way in which Highways handled request HI338/16G. That request is currently under review by my office, but the issues are that Highways did not respond for over 170 days and once it did respond it denied access to the record in full.

[13] In his submission, the Applicant advised this office he recognizes that, although there are legislative requirements surrounding timelines, some requests are complex and it is appropriate for each party to accommodate the complexities. My office has received copies of emails related to this and other requests that demonstrate the Applicant was extremely accommodating to Highways.

[14] In fact, the Applicant agreed to halt the 30 day statutory timelines from June 6th to 20th, 2017. However, this show of good faith on the part of the Applicant resulted in no progress. Therefore, he requested the review by this office.

[15] Subsection 7(2) of FOIP requires that a government institution respond in writing to an access to information request within 30 days of it being received. Section 12 of FOIP allows for an extension of time up to an additional 30 days when a limited circumstance exists. Even if Highways provided an extension of time to the Applicant, the response would have been due on July 22, 2017. There is no evidence that an extension of time letter was sent.

[16] Through conversations with Highways, this office has been told that the work on this and a portion of the other delayed files is complete. Therefore, I suspect that a reason for the

delays is because of Highways routing and/or approval processes. If that is what is causing the delays, Highways must immediately change the process. Responses cannot be late because they are held up in routing and/or approval. If there are bottlenecks in the system, those must be addressed.

[17] Highways has expressed to this office that it takes its obligations under FOIP seriously. It is time for Highways to demonstrate that it takes FOIP seriously through its actions. The action required is for Highways to immediately respond to this and the other delayed requests.

[18] Because of the delays, I find that Highways is not in compliance with FOIP.

2. Can Highways charge fees to process this request?

[19] This has not been raised by the Applicant, however it is important I comment on this issue.

[20] In Highways Review Report 026-2017 this office, in part, considered an estimate of costs issued by Highways after 68 days had elapsed from the date of receipt of the request. At paragraph [24], that report found:

...Highways inappropriately provided an estimate of costs to the Applicant after the legislated response time had passed.

[21] As 111 days have elapsed, I would like Highways to be made aware that the legislation does not allow it to charge fees.

[22] My office provided Highways with a draft report on August 30, 2017. The draft report recommended that it respond to the Applicant with the records within seven days and not charge fees to the Applicant for this request.

[23] In its September 7, 2017 response to the draft report, Highways advised my office it would not charge the Applicant fees for this request. However, it also advised my office that it had not responded to this request but planned to do so, "...in the very near future."

[24] I am extremely frustrated that Highways did not respond within the seven days of the draft report. I simply cannot understand why Highways is ignoring its legal obligations under FOIP. I thought the draft report by my office would have prompted Highways to immediately respond to the Applicant. However, this was not the case.

[25] Pursuant to section 56 of FOIP, Highways will have 30 days from the issuance of this Report for its Head to provide written notice to the Applicant and my office regarding his decision. Section 56 of FOIP provides:

56 Within 30 days after receiving a report of the commissioner pursuant to subsection 55(1), a head shall:

(a) make a decision to follow the recommendations of the commissioner or any other decision that the head considers appropriate; and

(b) give written notice of the decision to the commissioner and the persons mentioned in clause 55(1)(b).

[26] At the end of the 30 days, my office may issue a release that outlines how Highways responds under section 56 of FOIP.

IV FINDING

[27] I find that Highways is not in compliance with FOIP.

V RECOMMENDATIONS

[28] I recommend that within 30 days of receiving this report, Highways responds to the Applicant with the records subject to only mandatory exemptions.

[29] I recommend that Highways does not charge fees to the Applicant for this request.

Dated at Regina, in the Province of Saskatchewan, this 11th day of September, 2017.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner