



## **REVIEW REPORT 231-2016 to 233-2016**

### **Ministry of Highways and Infrastructure**

**November 10, 2016**

#### **Summary:**

The Applicant paid a deposit to the Ministry of Highways and Infrastructure (Highways) on July 20, 2016, to proceed with six access to information requests. Highways responded to three of the six requests on August 31, 2016, but had not responded to the remaining three as of October 27, 2016. The Commissioner found the Applicant met his obligations under *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner also found Highways is not in compliance with FOIP as they did not meet the legislated timelines. Prior to this Review Report being issued, Highways responded to the Applicant. The Commissioner recommended Highways consider refunding the Applicant his deposit due to the excessive delays. The Commissioner also recommended that Highways within 90 days review their processes under FOIP to ensure they are meeting the legislated timelines and complying with the law and report back to my office.

#### **I BACKGROUND**

- [1] On July 20, 2016, Highways received a fee deposit from the Applicant in the amount of \$560.00 to proceed with six access to information requests.
- [2] By letter dated August 31, 2016, Highways responded to three of the six requests, advising the Applicant they were responding to the requests that they considered were a representative sample of the records. They suggested the Applicant review the records and advise Highways if he wished to proceed with the remaining three requests.

[3] By email dated September 8, 2016, the Applicant advised Highways that he, “...*would like the requests that I made to be fulfilled and provided....*”

[4] On September 23, 2016, my office received three requests for review from the Applicant regarding the delayed response. My office engaged our early resolution process to attempt to see if Highways would provide responses to the Applicants’ requests.

[5] As no responses were provided by Highways, on October 7, 2016, my office sent Highways and the Applicant three notification emails of our intention to undertake a review. Each of the notifications provided to Highways stated, in part:

Please have your response to this request ready and make arrangements with the Applicant to pay the balance and receive delivery no later than **October 21, 2016** and provide a copy of the covering letter to the analyst.

...

Alternatively, if Highways does not intend to respond to this request, please provide the Analyst with a submission by **October 21, 2016** explaining why the Ministry [of Highways and Infrastructure] has not responded to this access request within the legislated timeline.

## **II RECORDS AT ISSUE**

[6] This report focuses on Highways’ delays in responding to three access to information requests, so there are no records at issue at this time.

## **III DISCUSSION OF THE ISSUES**

[7] Highways qualifies as a government institution pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP).

### **1. Has Highways complied with the provisions of FOIP?**

[8] The three access to information requests at issue in this review are part of 13 access to information requests the Applicant submitted to Highways on March 8, 2016. On April 4, 2016, the Ministry of Highways provided the Applicant with a combined estimate of

costs in the amount of \$69,645.00 for Highways to respond to the 13 requests. I would like to note that the Applicant has requested a review of the \$69,645.00 estimate of costs, and this issue is being addressed under a separate report.

[9] When the Applicant filed reviews with my office based upon the \$69,645.00 estimate of costs, it was mutually agreed between the Applicant and Highways that IPC staff would attempt to work with both parties to narrow the scope of the requests to reduce costs. By letter dated July 15, 2016, Highways provided the Applicant with an itemized estimate of costs to process the 13 separate access to information requests.

[10] On July 20, 2016, the Applicant provided Highways with a deposit in the amount of \$560.00 and a copy of the July 15, 2016 letter highlighting which six of the 13 requests that he wished to proceed with. The estimated total to process the six requests was \$1023.75. The Applicant's \$560.00 deposit represented over 50% of the estimated costs.

[11] Subsection 9(4) of FOIP provides:

9(4) Where an estimate is provided pursuant to subsection (2), the head may require the applicant to pay a deposit of an amount that does not exceed one-half of the estimated amount before a search is commenced and for the records for which access is sought.

[12] As the deposit provided by the Applicant represented more than 50% of the estimated costs, I find that the Applicant met his obligations under subsection 9(4) of FOIP. Based on what Highways received from the Applicant on July 20, 2016, it is clear that the Applicant wished to proceed with the six requests.

[13] It is important to note that once an Applicant is provided an estimate of costs, subsection 9(4) of FOIP provides that the 30 day response time is suspended until the Applicant pays the deposit. Therefore, the response time would again begin on July 20, 2016. The Applicant filed his access to information requests on March 8, 2016 and the date he received the initial estimate of costs from Highways was on April 4, 2016. Based on my calculations, Highways provided the Applicant with the estimate of costs on day 27.

Therefore, Highways only had three days left to respond once the Applicant paid the deposit. At this point Highways should have pushed to comply with the access requests.

[14] Section 12 of FOIP provides for a 30 day extension of time when certain circumstances exist. However, I have not been provided with documentation that demonstrates that Highways extended the response time pursuant to section 12 of FOIP. Therefore, lacking the notification of an extension of time, once the deposit was received, Highways was in non-compliance with the Act beginning July 24, 2016 and should have proceeded as quickly as possible.

[15] When Highways responded to the first three outstanding access to information requests by letter date August 31, 2016, it was already beyond the response time provided for in FOIP.

[16] Further, it appears from the initial response letter that Highways made the arbitrary decision, without consulting the Applicant that they would respond to only three of the six requests. Had Highways discussed this with the Applicant, and he agreed to this approach, it would have been acceptable. It is my understanding that he was not consulted and on September 8, 2016, the Applicant asked for the records from the three outstanding requests.

[17] If this is a case where Highways has determined they are refusing access to these requests, Highways must provide notification to the Applicant citing the specific exemptions that support the refusal. Further, subsection 8(2) of the FOIP Regulations requires in that case that the deposit be returned to the Applicant. Subsection 8(2) of the FOIP Regulations provides:

8(2) Where a deposit has been paid pursuant to subsection 9(4) of the Act and access to the record requested is refused, the deposit is to be refunded to the applicant.

[18] My understanding is that this did not happen.

[19] 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.

[20] On October 27, 2016, my office shared its analysis with Highways. Highways advised my office by letter dated November 3, 2016 of its decisions surrounding the following recommendations:

1. I recommend Highways respond to these three requests no later than November 3, 2016.
2. I recommend that Highways consider responding to these requests at no cost to the Applicant given the excessive delays and refund his money.
3. I recommend that Highways review their processes under FOIP to ensure they are meeting the legislated timelines and complying with the law.

[21] Highways complied with the first recommendation and mailed the three responses to the Applicant on November 1, 2016. IPC staffed confirmed with the Applicant that he received the responses by mail on November 4, 2016.

[22] Highways did not comply with the second recommendation. However, they did reduce the outstanding fee of \$433.75 to \$240.00 based upon the repetitive nature of the records.

[23] Highways advised my office that it accepts the third recommendation.

[24] Upon receipt of the responsive records, the Applicant contacted my office with concerns regarding the response he received from Highways. I would like to note that this Report addressed the preliminary issue of Highways' delayed response to the Applicant's three outstanding access to information requests. Now that the Applicant has received the responses, he has the right to request further reviews pursuant to Part VII of FOIP.

#### **IV FINDINGS**

- [25] I find that the Applicant met his obligations under FOIP by paying a deposit that equalled more than 50% of the total fee to process the six requests.
- [26] I find that Highways is not in compliance with FOIP as they did not respond within the legislated timelines.

#### **V RECOMMENDATIONS**

- [27] I recommend that Highways consider responding to these requests at no cost to the Applicant given the excessive delays and refund the fees.
- [28] I recommend that Highways within 90 days review their processes under FOIP to ensure they are meeting the legislated timelines and complying with the law and report back to my office.

Dated at Regina, in the Province of Saskatchewan, this 10th day of November, 2016.

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