



## **REVIEW REPORT 053-2023, 054-2023, 055-2023, 056-2023**

### **Ministry of Environment**

**May 12, 2023**

**Summary:** The Applicant submitted four access to information requests to the Ministry of Environment (Environment). Environment extended the original time period of 30 days to respond by an additional 30 days pursuant to subsection 12(1)(a)(ii) of FOIP to each of the four access requests. The Applicant asked the Commissioner to review Environment's extension. The Commissioner made a number of findings, including that Environment demonstrated that it properly extended the 30-day response period set out in section 7 of FOIP pursuant to subsection 12(1)(a)(ii) of FOIP.

### **I BACKGROUND**

[1] On January 27, 2023, the Applicant submitted four access to information requests to the Ministry of Environment (Environment). Each access to information request was as follows:

Copy of enforcement, correspondence and occurrence files in respect of fines and/or other penalties for violations of the Discharge and Discovery Reporting Standard by the City of Regina for their Wastewater (Discharge Water) Treatment Facility which discharges effluent into Wascana Creek.

[2] The first access request was for records from 2019 (Access Request #1). The second access request was for records from 2020 (Access Request #2). The third access request was for records from 2021 (Access Request #3). The fourth access request was for records from 2022 (Access Request #4).

- [3] Based on how the Applicant worded their access requests, Environment conducted a search and determined there were no responsive records.
- [4] On February 23, 2023, Environment contacted the Applicant by telephone regarding what records they were seeking. Based on the telephone call, Environment revised the Applicant's four access requests to:
- Copy of all records pertaining to the Discharge and Discovery Reporting Standard by the City of Regina for their Wastewater (Discharge Water) Treatment Facility which discharges effluent into Wascana Creek.
- [5] The revision broadened the scope of the access requests.
- [6] On February 27, 2023, Environment provided four notices to the Applicant, one for each access request. In each of the notices, Environment indicated it was extending the 30-day response period by an additional 30 days. It cited subsection 12(1)(a)(ii) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [7] Also on February 27, 2023, the Applicant requested reviews by my office.
- [8] On March 1, 2023, my office notified both Environment and the Applicant that it would undertake reviews of Environment's decisions to extend the time period to respond to each of the access requests pursuant to subsection 12(1)(a)(ii) of FOIP. My office also indicated that it would review whether Environment gave notice of its extension of the time period within the time period set out in subsection 12(2) of FOIP. Finally, my office said it would review if Environment issued its written notice pursuant to section 7 of FOIP within the time period set out in subsection 12(3) of FOIP.
- [9] On March 22, 2023, Environment provided its responses pursuant to section 7 of FOIP to each of the access requests to the Applicant.
- [10] On April 28, 2023, Environment provided its submissions to my office. On May 1, 2023, the Applicant provided their submission to my office.

## **II RECORDS AT ISSUE**

[11] At issue is Environment's decision to extend the time period to respond to the Applicant. Therefore, there are no records at issue.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction to conduct this review?**

[12] Environment is a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Therefore, I find that I have jurisdiction to conduct this review.

### **2. Did Environment comply with section 12 of FOIP?**

[13] Subsection 7(2) of FOIP provides that government institutions must respond to an access to information request within 30 days of receiving it unless the deadline for the response was extended pursuant to section 12 of FOIP. Subsection 7(2) of FOIP provides:

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

[14] Section 12 of FOIP sets out the circumstances where a government institution can extend the initial 30-day time period for a maximum of 30 days. If the time period is extended for the maximum amount, the government institution has 60 days total to respond.

[15] First, I must consider if Environment issued the notice within 30 days after the access requests were made pursuant to subsection 12(2) of FOIP. If so, then I will consider if Environment responded to the four access requests within the period of extension pursuant to subsection 12(3) of FOIP. If so, then I will consider if Environment properly extended the time period to respond to the access request, pursuant to subsection 12(1) of FOIP.

***a. Did Environment comply with subsection 12(2) of FOIP?***

[16] Subsection 12(2) of FOIP requires a head to give notice of the extension within 30 days after the access to information request is made. Subsection 12(2) of FOIP provides:

**12(2)** A head who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the application is made.

[17] Environment received the access requests on January 27, 2023. Subsection 12(2) of FOIP provides that the notice of the extension must be provided within 30 days after the application is made. To calculate whether Environment issued the notice of extension within the time period set out in subsection 12(2) of FOIP, I need to consider subsection 2-28(3) of *The Legislation Act*. It says:

**2-28(3)** A period described by reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens.

[18] Therefore, based on the above, the first day the access request is received (January 27, 2023) is excluded from the calculation of time (*Guide to FOIP*, Chapter 3 “Access to Records”, Updated June 29, 2021 [*Guide to FOIP*, Ch. 3] p. 28). Based on this, the date by which Environment was required to provide its notice of extension to the Applicant was February 26, 2023.

[19] I note that February 26, 2023 was a Sunday. Subsection 2-28(6) of *The Legislation Act* provides as follows:

**2-28(6)** A time limit for registering or filing documents or for doing anything else that falls or expires on a day on which the place for doing so is not open during its regular hours of business is extended to include the next day the place is open during its regular hours of business.

[20] Since the 30<sup>th</sup> day fell on a Sunday, then Environment was required to send its notice of extension by Monday, February 27, 2023 during its regular hours of business (*Guide to FOIP*, Ch. 3, p. 28). As Environment provided its written notice of extension on this date, I find Environment complied with subsection 12(2) of FOIP.

***b. Did Environment comply with subsection 12(3) of FOIP?***

[21] Subsection 12(3) of FOIP provides:

**12(3)** Within the period of extension, the head shall give written notice to the applicant in accordance with section 7.

[22] Subsection 12(3) of FOIP provides that following the extension, the government institution must provide its response pursuant to section 7 of FOIP to the applicant within the extended 30-day deadline. In other words, the government institution has a maximum of 60 days to provide a section 7 decision (*Guide to FOIP*, Ch. 3, p. 8).

[23] In order to have complied with subsection 12(3) of FOIP in this case, Environment would have needed to provide a decision by March 28, 2023. Environment responded to each of the Applicant's access requests by March 22, 2023. Therefore, I find that Environment complied with subsection 12(3) of FOIP.

***c. Did Environment demonstrate it properly extended the 30-day response period set out in section 7 of FOIP pursuant to subsection 12(1)(a)(ii) of FOIP?***

[24] As noted in the background of this Report, Environment had cited subsection 12(1)(a)(ii) of FOIP as its reason for extending the 30-day response period set out in section 7 of FOIP. Subsection 12(1)(a)(ii) of FOIP provides:

**12(1)** The head of a government institution may extend the period set out in section 7 or 11 for a reasonable period not exceeding 30 days:

(a) where:

...

(ii) there is a large number of requests;

and completing the work within the original period would unreasonably interfere with the operations of the government institution;

[25] My office uses the following two-part test to determine whether the government institution properly extended the period of time pursuant to subsection 12(1)(a)(ii) of FOIP. Both parts of the test must be met:

1. Were there a large number of requests at the time?
2. Will meeting the original time limit unreasonably interfere with the operations of the government institution?

*(Guide to FOIP, Ch. 3, p. 76)*

[26] The following is an analysis to determine if both parts of the two-part test is met.

***1. Were there a large number of requests at the time?***

[27] FOIP does not define what a “large number” of access requests is. However, my office considers how many requests are involved and that number compares to the average number the government usually has (*Guide to FOIP, Ch. 3, p. 76*).

[28] In its submissions to my office, Environment noted that it had 119 access requests in the queue that required processing ahead of access request #1, 120 access requests ahead of access request #2, 121 access requests ahead of access request #3, and 122 access requests ahead of access request #4.

[29] To determine if having 119 to 122 access requests at one time was a large number of access requests for Environment to have, my office reviewed the Ministry of Justice and Attorney General’s (Justice) Annual Reports on FOIP for the fiscal years [2021-22](#), [2020-21](#), [2019-20](#), [2018-19](#), and [2017-18](#) to understand the average of number of access requests Environment has. Below is a table that depicts the number of access requests Environment received in the past five fiscal years:

<b>Fiscal Year</b>	<b>Total number of Access Requests processed</b>	<b>Monthly average number of access requests per year (total number of access requests processed/12 months)</b>
2021-22	1087	91
2020-21	686	57
2019-20	760	63
2018-19	984	82
2017-18	727	61

- [30] The number of access requests that Environment receives and processes fluctuates from year to year. However, from 2020-21 to 2021-22, Environment experienced a 58% increase of access requests.
- [31] Currently, Environment has three positions dedicated to responding to “Environmental Protection Branch requests” and it has four positions in total dedicated to responding to freedom of information requests. One of the four positions was created and filled in June 2022. Another position, which is a permanent position, was vacant from November 2022 to February 2023 but was filled in February 2023. Therefore, I note that Environment was short one employee at the time it received the Applicant’s access requests on January 27, 2023.
- [32] In past reports, I have found that an increase in the number of access requests of 50% or more qualifies as a large number of access requests from one year to the next (see [Review Report 177-2021](#), [Review Report 158-2017](#), and [Review Report 125-2015](#)). In contrast, I have found that a decrease in the number of access requests received by a public body from one year to the next to not qualify as a large number of access requests (see [Review Report 054-2022](#), [072-2022](#)).
- [33] In this case, if I were to compare the 91 monthly average number of access requests in 2021-22 with the 119 access requests Environment had at the time it received the

Applicant's Access Request #1, there was a 31% increase in access requests. While this increase isn't over 50% as I have found in previous cases, it is still a significant increase especially when Environment was short one employee at the time. In the fiscal year 2021-22, each employee would have managed 22.75 access requests as a monthly average (91 monthly access requests/4 employees). At the time of the access request, the caseload per employee would have been 39.67 access requests (119 access requests/3 employees). This means the 3 Environment employees dedicated to responding to access requests was experiencing approximately a 74% increase in their workload. I find, therefore, that Environment had a large number of access request at the time of receiving the Applicant's four access requests, which meets the first part of the test.

***2. Will meeting the original time limit unreasonably interfere with the operations of the government institution?***

[34] "Unreasonably interfere" means going beyond the limits of what is reasonable or equitable in time and resources and the impact, which this use of resources would have on the government institutions day-to-day activities. Examples of circumstances that may contribute to unreasonable inference include:

- significant increase in FOIP requests
- significant increase in FOIP caseloads
- computer systems or technical problems
- unexpected employee leaves from the FOIP branch
- unusual number (high percentage ) of new FOIP employees in training
- program area discovers a significant amount of additional records
- type of records (maps, etc.)
- number of program areas searched
- location of records

*(Guide to FOIP, Ch. 3, p. 76)*



- [35] Based on the fact that Environment was short one employee when it received the Applicant's access request, and that it had experienced a significant increase in the number of access requests received and processed, I find that meeting the original 30-day timeline would have interfered with the operations of the government institution.
- [36] I find that Environment demonstrated that it properly extended the 30-day response period set out in section 7 of FOIP pursuant to subsection 12(1)(a)(ii) of FOIP.
- [37] Given the trend that Environment is receiving an increased number of access requests, I recommend that Environment consider increasing the number of positions dedicated to responding to access requests.
- [38] I further recommend that Environment consider section 65.1 of FOIP, which provides as follows:

**65.1(1)** Subject to subsection (2), the head may establish categories of records that are in the possession or under the control of the government institution and that are available to the public within a reasonable time without an application for access pursuant to this Act.

...

- [39] I note that Alberta Environment and Parks provides "instant access" to scientific/technical information from its Environmental Site Assessment Repository here: <https://foip.aep.alberta.ca/>. By doing so, Environment can reduce the number of access requests under FOIP that it receives while citizens are being provided access to information in a timely manner without applying for them.

#### **IV FINDINGS**

- [40] I find that I have jurisdiction to conduct this review.
- [41] I find that Environment complied with subsections 12(2) and (3) of FOIP.

[42] I find that Environment demonstrated that it properly extended the 30-day response period set out in section 7 of FOIP pursuant to subsection 12(1)(a)(ii) of FOIP.

## **V RECOMMENDATIONS**

[43] I recommend that Environment consider increasing the number of positions dedicated to responding to access requests.

[44] I recommend that Environment consider section 65.1 of FOIP and establish categories of records to be available within a reasonable time without an application for access under FOIP.

Dated at Regina, in the Province of Saskatchewan, this 12th day of May, 2023.

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