



## Information Commissioner's final report

**Institution:** Department of Justice Canada

**Date:** 2024-08-06

**OIC file number:** 5822-03179

**Access request number:** A-2021-00580

### Complaint

The complainant alleged that the Department of Justice Canada (Justice) did not respond to an access request within the 30-day period set out in section 7 of the *Access to Information Act*. The request was for records between December 1, 2020 and October 6, 2021, associated with the legality or legal path of Prime Minister Justin Trudeau's announcements on August 13, 2021, and the subsequent implementation of mandates regarding COVID-19 vaccinations for federal employees and for travel.

This allegation falls under paragraph 30(1)(a) of the Act.

The complainant also alleged the following:

- Justice took an invalid extension of time and eventually withdrew it. This allegation falls under paragraph 30(1)(a).
- Justice improperly placed the access request on hold. This allegation falls under paragraph 30(1)(f).
- Justice communicated by phone, despite requesting communication in writing. This allegation falls under paragraph 30(1)(f).
- Justice did not meet its responsibilities under subsection 4(2.1) to make every reasonable effort to assist the requester with the above-noted access request(s). This allegation falls under paragraph 30(1)(f).

## **Investigation**

### **Extension of time**

Justice received the access request on September 23, 2021. On December 1, 2021, Justice took a time extension of 1,825 days pursuant to paragraphs 9(1)(a) and 9(1)(b). On December 15, 2021, Justice emailed the complainant to confirm that they were officially retracting the extension and placing the file on hold as of December 1, 2021. Also on December 15, 2021, Justice informed the Office of the Information Commissioner (OIC) that the extension would be retracted and that Justice would continue to work with the complainant to clarify the request and provide a response to the access request in a timely manner. On December 20, 2021, Justice sent the complainant a letter that formally confirmed the retraction of the extension letter issued on December 1, 2021.

As Justice withdrew the time extension, I conclude that the issue is moot, and that no further investigation into its validity is required.

### **Suspension of the time limit to respond**

Justice stated that the file was placed on hold indefinitely as of December 1, 2021, to allow for additional clarification of scope.

Section 6 requires requesters to provide enough detail in their request that experienced institutional employees could identify relevant records with a reasonable effort. Justice did not claim that the access request did not meet the requirements of section 6. Rather, Justice's attempts at clarifying were meant to reduce the scope of the subject matter of the request in order to assist in managing the anticipated volume of responsive records.

There is no provision in the Act for putting an access request on hold for any reason, except when suspending the time limit pending the Commissioner's decision on an application under subsection 6.1(1), even with the consent of the complainant.

As such, I conclude that Justice improperly placed the access request on hold.

### **Communication by phone**

On December 1, 2021, Justice acknowledged the complainant's preference to communicate in writing, and noted this preference in the file. Later in the day, the complainant indicated that they would take a call, that they wanted a call from a supervisor, and included a phone number. On December 2, 2021, the complainant

arranged with Justice for a phone call on December 3, 2021. This phone call occurred as agreed upon.

While the complainant submitted that this phone call was the result of undue pressure, I received no evidence illustrating this pressure. Further, no evidence was received that indicated that Justice communicated by phone on other occasions, or that Justice communicated by phone without the complainant's express consent. I therefore conclude that this allegation is not founded.

### **Subsection 4(2.1): Responsibility of government institutions**

Subsection 4(2.1) requires that the head of a government institution, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.

#### **Did the institution meet its obligations under the Act?**

Justice stated that every reasonable effort was made to assist the complainant by providing multiple options, clarifying the request, and guiding the complainant through the process of the access request. In particular, multiple efforts were made to assist the complainant in clarifying the scope of the request through September and October 2021.

However, communication decreased or ceased to a level where the complainant submitted that the access request appeared to have been abandoned by Justice or purposely not handed over to a new point of contact. The complainant stated that there was no contact or updates on the file since January 2023. Justice informed the OIC that the complainant emailed twice on August 31, 2023, but that the emails were sent to the attention of individuals no longer working at the department. While Justice stated on March 19, 2024, that they would reach out to the complainant to provide an update, the complainant has stated that no such communication occurred.

It is clear that updates regarding the point of contact and regarding the processing of the request were not made, and as such I conclude that Justice failed to meet its obligations set out in subsection 4(2.1) to assist the complainant. I find this to be particularly egregious given that Justice stated the file was put on hold in December 2021, to allow for additional communication with the complainant to clarify the scope of the request.

## **Time limits for responding to access requests**

Section 7 requires institutions to respond to access requests within 30 days unless they have transferred a request to another institution or validly extended the 30-day period for responding by meeting the requirements of section 9. When an institution does not respond to a request within the 30-day or extended period, it is deemed to have refused access to the requested records under subsection 10(3).

Nevertheless, the institution is still required to provide a response to the access request.

### **What is a response?**

The response must be in writing and indicate whether the institution is giving access to any or part of the requested records.

- When the response indicates that the institution has **given access** to the records or part of them, the institution must provide access to those records.
- When the response indicates that the institution has **denied access** to the records or part of them, the institution must explain that the records do not exist or that the institution has exempted them, or part of them, under a specific provision, which the institution must name.

In specific circumstances, the institution may refuse to confirm or deny in its response whether records exist under subsection 10(2).

### **Did the institution respond within the time limits?**

Justice received the access request on September 23, 2021. On December 1, 2021, Justice took a time extension of 1,825 days pursuant to paragraphs 9(1)(a) and 9(1)(b). However, Justice notified the complainant by formal letter on December 20, 2021, that this time extension was being withdrawn. As such, the deadline to respond to the request remains October 29, 2021. Justice did not respond by this date. Justice is deemed to have refused access to the requested records under subsection 10(3).

Justice advised that there are 168,537 pages of records responsive to the request. Justice's access to information and privacy unit confirmed that all records were gathered by May 10, 2022. However, two years later, review of the records has not yet begun. Justice indicated that once the review begins, the analyst will be required to index each document, as well as identify the duplicates and not relevant/out of scope records. Justice noted that internal and external consultations may be required, which may cause significant delays.

Justice estimated that it would take 14 years to process the request. This is based on a preliminary volume of 168,537 pages, with a calculation of 1,000 pages processed per month by a single analyst.

I do not consider Justice's estimate of 14 years to be reasonable. Given that the records were retrieved from eight different offices of primary interest (OPI) across Justice, there is a high likelihood of duplicates, which will lower the total volume of responsive records. In addition, five of the eight OPIs are legal services units, and it is therefore likely that many of the records from these OPIs will be exempted under solicitor-client privilege, which would not require line-by-line review.

Finally, an institution the size of Justice should be able to put more than one resource on this request. While I understand that Justice seeks to strike a balance between processing one large request and serving other requesters, the fact remains that Justice has committed no resources to the processing of this request since the records were retrieved.

The complainant has now been waiting for over two and a half years for a response to the request. This delay is unacceptable and is in clear contravention Justice's obligations under the Act, which provide for the provision of timely responses.

Considering all of the above, I conclude that Justice must respond to the request within five (5) years, taking into consideration that:

- The Justice Access to Information and Privacy team has several analysts who will be able to share the task while working on other files - it is possible to carry out several tasks at the same time;
- The final page count will most likely be lower than the current estimate; and,
- Consultations should be limited to necessary circumstances and specific information, in order to limit delays.

I also find that Justice must report to the complainant on the progress it has made and must consider releasing the documents as they are processed, if possible.

In the event that the complainant decides to modify the scope of the request in order to reduce the response time, I invite the complainant to discuss this aspect directly with Justice.

## **Intent to Deny Access**

During the course of the investigation, the complainant alleged that there was document manipulation and false information being used to subvert the Act.

Section 67.1 makes it an offence to destroy, mutilate or alter a record, or direct, propose, counsel or cause any person in any manner to do such things with the intent to deny a right of access under this Act.

My mandate is to conduct administrative investigations into federal institutions' compliance with the Act and to draw conclusions based on facts. I am not mandated to conduct criminal investigations or assign civil or criminal liability. Although I can draw conclusions based on facts, I do not have the authority to investigate whether actions were taken with the intent to deny a right of access under the Act.

During an investigation, I may disclose to the Attorney General of Canada information relating to the commission of an offence against a law of Canada or a province by a director, an officer or an employee of a government institution if, in my opinion, there is evidence of such an offence, as stipulated in subsection 63(2).

While Justice could certainly have handled the processing of this request better, I did not find evidence related to the commission of an offence under the Act in the context of this investigation.

## **Outcome**

The complaint is well founded, because:

- Justice improperly placed the access request on hold.
- Justice failed to meet its obligations to assist the complainant pursuant to subsection 4(2.1).
- Justice is deemed to have refused access to the requested records under subsection 10(3).

## **Orders**

I order the Minister of Justice to do the following:

1. Remove any hold placed on the processing of the request;
2. Provide a complete response to the access request by May 17, 2029;
3. Provide updates to the complainant every six months on the progress of processing the access request; and
4. Provide interim releases to the complainant at regular intervals, if possible.

## **Initial report and notice from institution**

On June 13, 2024, I issued my initial report to the Minister of Justice setting out my orders.

On August 2, 2024, Justice's Acting Director of Access to Information and Privacy gave me notice that Justice would be implementing the orders. Justice indicated that in an effort to comply with the orders, they have assigned five members to index the records, and the file will be transferred to a paralegal for review of exclusions and a senior analyst will take over review of the documents due to its volume and complexities.

## **Review by Federal Court**

When an allegation in a complaint falls under paragraph 30(1)(a), (b), (c), (d), (d.1) or (e) of the Act, the complainant has the right to apply to the Federal Court for a review. When the Information Commissioner makes an order(s), the institution also has the right to apply for a review. Whoever applies for a review must do so within 35 business days after the date of this report and serve a copy of the application for review to the relevant parties, as per section 43. If no one applies for a review by this deadline, the order(s) takes effect on the 36th business day after the date of this report.



Caroline Maynard

Information Commissioner of Canada