



Order F21-26

## THOMPSON RIVERS UNIVERSITY

Elizabeth Barker  
Director of Adjudication

June 23, 2021

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**Summary:** Thompson Rivers University failed to respond to an applicant's access requests within the timelines required by *Freedom of Information and Protection of Privacy Act*. The adjudicator found that Thompson Rivers University had not fulfilled its duties under ss. 6(1) and 7 of the Act and ordered it to respond to the access requests by a specified deadline.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, 6(1), 7(1), 7(2), 7(3), 8(1) 10(1), 10(2) and 74.

### INTRODUCTION

[1] This inquiry is about whether Thompson Rivers University (TRU) complied with its duty under ss. 6(1) and 7 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to respond to the applicant's access requests without delay and within required timelines.

[2] The applicant made four requests for records about the costs TRU incurred when five staff traveled for work. He also asked for records that showed who authorized spending that money. His requests were dated March 12, 14, 19 and 21, 2021.

[3] TRU's privacy and access officer confirmed receipt of each request and acknowledged that TRU had 30 working days to respond under s. 7(1) of FIPPA, she added that TRU expected to provide their responses to him by April 27, April 28 and May 5, 2021. However, TRU did not provide responses to the applicant's requests.

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review whether TRU had failed to respond to his

requests in accordance with the timelines in FIPPA.<sup>1</sup> Mediation did not resolve the matters and they proceeded to inquiry.

[5] The applicant and TRU both provided inquiry submissions. The applicant's submission also revisits what the parties said in Order F21-24, an inquiry which I recently decided.<sup>2</sup> He even provides his submission from that earlier inquiry. While I have considered everything the applicant submits, I will only refer to what is necessary to decide and provide reasons for this inquiry.

***Preliminary matters – new issues***

[6] The applicant raises three concerns about issues that were not included in the notice of inquiry being added into this inquiry.

[7] First, the applicant submits that TRU is trying to add a new issue when TRU says that s. 58 provides me with the authority to give more time to respond to the requests.<sup>3</sup>

[8] I do not agree with the applicant that s. 58 is a new issue here. Section 58 says that, on completion of the inquiry, I must dispose of the issues by making an order under s. 58. Thus, s. 58 is about the Commissioner's order-making powers and it plays a role in every inquiry.

[9] Second, the applicant submits that TRU is trying to add s. 43 into the inquiry. I do not agree. While TRU says it is contemplating making a s. 43 application, it has not actually done so. Section 43 is clearly not an issue to be decided in this inquiry.

[10] Third, the applicant submits that TRU has contravened s. 74 of FIPPA. Section 74 says:

74(1) A person must not willfully do any of the following:

(a) make a false statement to, or mislead or attempt to mislead, the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;

(b) obstruct the commissioner or another person in the performance of the duties, powers or functions of the

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<sup>1</sup> Section 53 provides that an applicant may request a review of a "decision" of the head of a public body. Section 53(3) of FIPPA says 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.

<sup>2</sup> Order F21-24, 2021 BCIPC 29.

<sup>3</sup> Applicant's submission at p. 3.

commissioner or other person under this Act;

(c) fail to comply with an order made by the commissioner under section 58 or by an adjudicator under section 65 (2).

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of up to \$5,000.

(3) Section 5 of the *Offence Act* does not apply to this Act.

[11] The applicant alleges that TRU has contravened ss. 74(1)(a) and (b) because he disputes what TRU has said in this and the previous inquiry and because TRU has not responded in time to his requests.<sup>4</sup> TRU replies that the applicant's "differing perception of his conduct does not mean that TRU has made a 'false' or 'misleading' statement to the Commissioner or that TRU has attempted to mislead the Commissioner."<sup>5</sup>

[12] Section 74 creates offences that only the appropriate authority - the Attorney General - can prosecute. I have no authority under, or respecting, anything covered by s. 74.<sup>6</sup> Besides, s. 74 is about wilful acts or omissions relating to the Commissioner's duties or actions. It has nothing to do with adjudicating differences in the parties' evidence at inquiry or the timeliness of a public body's response to an access request under FIPPA.

## ISSUES

[13] The issues to be decided in this inquiry are as follows:

1. Did TRU make every reasonable effort to respond without delay to the requests as required by s. 6(1) of FIPPA?
2. Did TRU fail to respond to the requests 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?

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<sup>4</sup> Applicant's submission at pp. 3-4.

<sup>5</sup> TRU's reply submission at para. 2.

<sup>6</sup> Order 00-51, 2000 CanLII 14416 (BC IPC) at p. 6 and Order F21-04, 2021 BCIPC 04. See also *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 1204 (CanLII) at para. 58. This point was not overturned on appeal, see: *British Columbia (Ministry of Children and Family Development) v. Harrison*, 2012 BCCA 277 (CanLII) at para. 42.

## DISCUSSION

### ***Duty to Respond Without Delay***

[14] FIPPA imposes obligations on public bodies to provide a response to access requests within certain timelines. The sections of FIPPA that are relevant in this inquiry 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, ...

(3) If the head of a public body asks the commissioner under section 43 for authorization to disregard a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the application is made under section 43 to the end of the day a decision is made by the commissioner with respect to that application.

...

#### **Contents of response**

8 (1) In a response under section 7, the head of the public body must tell the applicant

(a) whether or not the applicant is entitled to access to the record or to part of the record,

(b) if the applicant is entitled to access, where, when and how access will be given, and

(c) if access to the record or to part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public

body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 53 or 63.

...

### **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:

(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.

...

[15] Schedule 1 of FIPPA says that "day" does not include a holiday or a Saturday.

### *TRU's submission*

[16] TRU does not dispute that it has not yet provided responses to the access requests. TRU also does not say that it took or received a time extension under s. 10.

In its initial submission, TRU provides the following explanation for why it has not responded to the requests:

TRU has not been able to respond to these access requests within the time originally indicated for several reasons. First, [the applicant] has made approximately 31 FIPPA access requests to TRU since January 1, 2021, and TRU has had to manage these numerous requests of [the applicant], along with the other more normal volume of FIPPA access requests received from other individuals by TRU. Further, TRU required legal advice with respect to this (and other) access requests of [the applicant].

The above-mentioned access requests of [the applicant], along with other requests which are not the subject of this Inquiry, have been focused on travel records of female faculty members. A complaint of harassment has been made to TRU based on these access requests. TRU is in the process of considering whether [the applicant's] access requests relating to the travel records of female faculty members will be the subject of a Section 43 *FOIPPA* Application. TRU continues to require legal advice in relation to that determination. Accordingly, TRU requests additional time to make the determination relating to a Section 43 Application.

Given all of the above circumstances, TRU submits that it would be fair and reasonable for an Adjudicator to allow further time for TRU to determine whether it will bring a section 43 application with respect to the access requests described above on the basis that the targeted nature of these access requests constitutes harassment and is frivolous or vexatious within the meaning of section 43 of *FOIPPA*. TRU must grapple with the complaint of harassment which has been made in relation to these *FOIPPA* requests and whether a section 43 application is thus warranted. TRU respectfully submits that it would not be appropriate for TRU to simply provide responses to *FOIPPA* access requests which have been alleged to constitute harassment.

TRU expects to be in a position to either bring a section 43 application or respond substantively to the above-mentioned access requests by June 30, 2021.<sup>7</sup>

[17] TRU also submits that I am authorized by ss. 58(3)(b) and 58(4) to extend the time deadline by which TRU must provide a response to the requests.<sup>8</sup>

[18] In its reply submission, TRU says that it has determined that it will not bring a s. 43 application in connection with these access requests.<sup>9</sup>

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<sup>7</sup> TRU's initial submission at paras. 7-10.

<sup>8</sup> TRU's initial submission at para. 9.

<sup>9</sup> TRU's reply submission at para. 1.

*Applicant's submission*

[19] The applicant does not dispute TRU's allegation that he has made 31 access requests. He explains his motive for making FIPPA access requests and what he believes is motivating TRU to respond (or not).<sup>10</sup> He also denies TRU's claim that his requests are harassment of female faculty and says that he has made access requests for the travel costs associated with male staff as well.<sup>11</sup> He provides a copy of the May 3, 2021 harassment complaint against him, which he observes was made by TRU's human resources director, who is male.

[20] The applicant submits TRU has had plenty of time to decide what to do, and it does not need more time or legal advice. He says:

For the FOI requests this enquiry is considering, no major undertaking is necessary to respond. The individuals involved would have submitted travel claims that would contain all the information requested. I will also note that as FIPPA, and case law, is clear on the obligation of public bodies to provide such information, I cannot imagine why TRU claims to need legal advice as far as their requirements under FIPA are concerned. Seeking legal advice for these FOI requests sounds like a legal Hail Mary to try to get out of supplying the information. Either that, or it is a simple delaying tactic.<sup>12</sup>

He adds:

Definitely within the scope of this inquiry is the fact that TRU has had more time than necessary (or legally allowed under s. 7) to respond to these FOI requests. ... I think it would be fair, reasonable and appropriate for TRU to be required to respond shortly after the ruling. TRU should not be rewarded for their repeated delaying tactics.<sup>13</sup>

*Findings*

[21] The applicant's access requests were dated March 12, 14, 19 and 21, 2021. TRU's obligation under s. 7(1) was to provide a response by no later than 30 days after receiving the request.

[22] TRU could have had more than the 30 days stipulated under s. 7(1) if it had taken a self-initiated time extension under s. 10(1) or requested an extension from the Commissioner under s. 10(2)(b). TRU did not initiate either method to

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<sup>10</sup> The applicant's submission contains a US Federal Trade Commission order and news articles about fraudulent scientific academic journals and academic conferences.

<sup>11</sup> Applicant's submission at p. 8. He points out that he has made access requests involving male faculty as well.

<sup>12</sup> Applicant's submission at p. 11.

<sup>13</sup> Applicant's submission at p. 12.

extend the timelines, so its responses were due by no later than April 27, April 28 and May 5, 2021.

[23] The time requirements in s. 7 might also have been met, if TRU had made an application under s. 43 for authorization to disregard the requests. If that had been done, s. 7(3) would have been called into play and stopped the clock until the s. 43 application had been decided by the Commissioner.

[24] As of the date of this order, TRU has not yet provided responses to the requests.

[25] Therefore, I find that TRU failed to respond to the applicant's four access requests within the time lines set out in s. 7.

[26] TRU has been aware of its obligation to respond to these four access requests since mid March. In the Order F21-24 inquiry I learned that TRU has had legal counsel assisting it with the applicant's access requests since mid April 2021. The May 3 harassment complaint that TRU says complicates its decision-making was initiated by its own human resources director, so it is reasonable to conclude that TRU knew about it before May 3. Despite that timeline and access to legal counsel, TRU asserts that it still needs more time to decide what to do. I am not persuaded that the amount of time TRU has taken to decide how to respond is warranted in this case. Therefore, I find that TRU has failed to comply with its duty under s. 6(1) to make every reasonable effort to respond without delay to the requests.

### ***What is the appropriate remedy?***

[27] The usual remedy in such cases is to make an order pursuant to s. 58 requiring the public body to respond to the requests by a particular date.<sup>14</sup>

[28] TRU says that it expects to be in a position to respond substantively to the above-mentioned access requests by June 30, 2021.

[29] I find that requiring TRU to respond to the four access requests by June 30, 2021 is the appropriate remedy in this case.

## **CONCLUSION**

[30] For the reasons given above, I make the following order under s. 58 of FIPPA:

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<sup>14</sup> For example, see: Order F16-29, 2016 BCIPC 31 (CanLII); Order F06-04, 2006 CanLII 13533 (BC IPC); Order 04-30, [2004 CanLII 43762 (BC IPC); Order F11-18, 2011 BCIPC 24 (CanLII).

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- 1) I find that TRU has failed to meet its duties to respond to the requests without delay under s. 6(1) and within the required timelines in s. 7 of FIPPA.
  - 2) I require TRU to respond to the applicant's requests by no later than June 30, 2021.

June 23, 2021

**ORIGINAL SIGNED BY**

Elizabeth Barker, Director of Adjudication

OIPC Files: F21-85938, F21-85982, F21-86067 and F21-86071