



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

November 26, 2015

Jordan Bateman
BC Director
Canadian Taxpayers Federation
6951 - 208A Street
LANGLEY BC V2Y 0G1

Dear Jordan Bateman:

**Re: Complaint - Disclosure;
TransLink (South Coast British Columbia Transportation Authority) File 2014/414;
OIPC File F15-62051**

I am writing in response to your June 30, 2015 email in which you questioned the adequacy of TransLink's response to your access request. As the Investigator assigned to this complaint, it is my role to investigate and make findings, conclusions and recommendations as appropriate.

Chronology

On November 21, 2014 you made a request to TransLink for severance package information and vendor contracts that had been terminated since January 1, 2011. TransLink took an initial time extension for consultation, resulting in a due date of February 20, 2015 for your request.

On February 17, 2015 TransLink requested an additional 70 days to respond to this access request. By letter dated February 18, 2015 Intake Officer LeBlanc denied TransLink's request. Ms. LeBlanc found that it was not fair and reasonable to grant a time extension for the reasons submitted by TransLink.

On March 4, 2015 TransLink asked for a reconsideration of our February 18, 2015 decision, however this reconsideration was denied on May 15, 2015 by the Office of the Information and Privacy Commissioner ("OIPC").

On June 29, 2015 at 2:09pm TransLink released a summary of the material gathered for your access request to a member of the media.

On June 29, 2015 at 4:21pm, TransLink finally responded to your November 21, 2014 request.

Subsequently, you complained to our office about the TransLink's response to your request. Specifically you complained that TransLink did not respond to your request as required by sections 6 and 7 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and provided a copy of records responsive to your request to a member of the media before providing it to you.

Issue

The issue in this investigation is whether TransLink fulfilled its obligation under sections 6 and 7 of FIPPA to respond to your access request.

Section 6 of FIPPA sets out the duty of a public body 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.

Section 7 of FIPPA sets out the timeline for a public body to respond to applicants:

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...

Section 6 Findings

For this investigation, I spoke to Sabina Kunkel (Manager of Information Access for TransLink) and discussed your concerns. In regards to their February 17, 2015 time extension request, TransLink advised that their Interim CEO (Doug Allen) had just come on-board and required time to review and analyze the responsive information. They advised the OIPC reconsideration process took three months, with the final denial letter coming from OIPC on May 15th. TransLink advised while the OIPC did ultimately deny the extension, Mr. Allen still required additional time to review the material, as outlined in his submission(s), before the response could be finalized.

TransLink also acknowledged that they disclosed your information to their Media Relations Department, as they do for other special interest group and media applicants. They advised they do this for the convenience of their staff that may be approached directly by the applicants, since they want to avoid duplicating efforts and also ensure their approach and messaging are consistent. This seems reasonable and there is nothing in FIPPA which prohibits this.

However TransLink also acknowledged that they disclosed records related to your request to a member of the media just prior to responding to your request. Although the records provided to the member of the media were not the same records that you requested, they can be accurately categorized as a summary of records responsive to your request. TransLink explained this disclosure as follows:

[The reporter] did an article on June 24th, 2015 focused on the high turnover rate of TransLink corporate staff. In the course of his discussions with our media relations department, [the reporter] asked questions about those staff who did not leave voluntarily and were paid our severance packages. He was specifically asking for stats.

We started looking into it and found that info was already being gathered through the FOI process. We took the information and gave the high level details of severances paid out from 2011 to 2014.

TransLink has since advised their communications department that FOI applicants should, as a courtesy, receive the information 24 hours in advance of any further disclosure unless they are dealing with information that was due to be published within 60 days of a request's receipt. They recognize that while the information provided did not exactly match the formal response, they do appreciate your concern. Their promise to delay the release of information to other applicants for 24 hours is in line with Investigative Report F11-02.

Based on the above, I conclude that TransLink did not respond to you "without delay" and provided a summary of the information you requested to a member of the media before responding to your request. Therefore I find that TransLink did not comply with section 6 of FIPPA when responding to your request.

Section 7 Findings

You have also alleged that the public body did not respond to you within the timelines outlined in section 7 of FIPPA. Without repeating the above, it is clear that it took TransLink over seven months to provide you with 5 pages of responsive records. Although I appreciate it did take some time to compile these records, TransLink did not provide a reasonable explanation as to why they were ultimately over four months late in responding to your request. Therefore I find that TransLink did not comply with section 7 of FIPPA.

Conclusion

I find TransLink did not respond to your request for records as required by sections 6 and 7 of FIPPA, based on the information above.

Under my delegated authority to investigate and resolve complaints, I consider this matter resolved and I will now close this file. Please feel free to call me at 250-387-0289 if you have any questions regarding this matter. By copy of this letter I am advising TransLink of my findings and conclusions in this matter.

Sincerely,



Trevor Presley
Investigator

Cc: TransLink