



**Office of the Information and Privacy Commissioner for Nova Scotia  
Report of the Acting Commissioner (Review Officer)  
Carmen Stuart**

**REVIEW REPORT 25-03**

**March 25, 2025**

**Department of Opportunities and Social Development**

**Summary:** The Department of Opportunities and Social Development<sup>1</sup> (public body) did not issue a decision to the applicant in response to an access to information request within the legislated time period required by the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. The applicant appealed to the Office of the Information and Privacy Commissioner. The Commissioner finds that the public body is in contravention of s. 7 of *FOIPOP* and recommends that a decision be issued to the applicant within 14 days of the date of this review report.

This is the sixth report that the Commissioner has made since August 2023 because this public body has failed to respond to the applicant within the statutory deadline. For this reason, the Commissioner is repeating the recommendation in *NS Review Report 24-16*, which was previously rejected, that senior leadership at the public body address this problem by ensuring it has sufficient resources to fulfill its legal obligations under *FOIPOP*.

**INTRODUCTION:**

[1] On October 3, 2024, the applicant made a request for records (access request) held by the Department of Opportunities and Social Development (public body) under the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Section 7(2) of *FOIPOP* required the public body to issue a decision in response to the access request within 30 days, which in this case was by November 3, 2024, unless an authorized time extension was taken.

[2] A public body may, on its own accord, extend the time to respond to an access request for up to 30 days if it meets one or more of the circumstances set out in s. 9(1) of *FOIPOP*. On November 4, 2024, the public body advised the applicant that it was taking a time extension under s. 9(1)(b) of *FOIPOP*. This section allows the public body to take a time extension if a large number of records is requested or must be searched, and meeting the time limit would unreasonably interfere with the operations of the public body. This extended the public body's time to respond to December 4, 2024.

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<sup>1</sup> At the time the request was made, the Department was known as Community Services.

[3] On November 29, 2024, the public body sought the permission of the Office of the Information and Privacy Commissioner (OIPC) for an extension of 182 days. The OIPC denied permission. The December 4, 2024 due date was still in effect.

[4] The public body did not issue a decision in response to the access request by that time. On February 21, 2025, the applicant filed a review request with the OIPC about the public body's failure to respond to their access request.

[5] The OIPC's efforts to informally resolve this matter and facilitate a decision being issued were not successful. As such, this matter proceeded to this public review report.

## **ISSUE:**

[6] Did the public body meet its duty to assist the applicant by responding without delay as required by s. 7 of the *Freedom of Information and Protection of Privacy Act*?

## **DISCUSSION:**

### **Burden of proof**

[7] With respect to the duty to assist set out in s. 7, *FOIPOP* is silent as to who bears the burden of proof. Therefore, the parties must each submit arguments and evidence in support of their positions. However, it is the public body who failed to make a decision in this case and who is in the best position to discharge the burden of proof.

### **Did the public body meet its duty to assist the applicant by responding without delay as required by s. 7 of the *Freedom of Information and Protection of Privacy Act*?**

[8] For the reasons provided below, I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant's access request within the required legislated time period.

[9] Section 7(1) requires public bodies to respond to access requests openly, accurately, completely and without delay. Section 7(2) requires public bodies to respond to access requests within 30 days unless an authorized time extension has been taken by the public body or granted by the OIPC under s. 9 of *FOIPOP*. Section 7(3) states that when a public body fails to respond to an applicant within the statutory time period, it is deemed to have refused access to the requested records. This circumstance is referred to as a "deemed refusal."

[10] The public body provided a file background, which was a chronology of the file. The public body provided a reason for the delay – the unusual size of the record. The public body anticipates it will take until February 12, 2026 (11 more months) to process the 4228 pages of records.

[11] The public body was already denied an extension to June 4, 2025. A review for a deemed refusal is not an opportunity to have the OIPC reconsider a time extension.

[12] In reviews where deemed refusal is at issue, the only remedy is for the public body to issue a decision to the applicant. I have made that recommendation below. Given that the OIPC is issuing the sixth review report to address the same problem in such a short period of time and that the resourcing issue is still present, in the recommendations below I am repeating Recommendation #2 from *NS Review Report 24-16*, which was previously rejected by this public body.

#### **FINDING & RECOMMENDATIONS:**

[13] I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant's access request within the legislated time period.

[14] I recommend that:

1. Within 14 days of the date of this review report, the public body issue a decision in response to the applicant's access request, along with a copy of the records.<sup>2</sup>
2. Within one month of the date of this review report, senior leadership at the public body address this problem by ensuring it has sufficient resources to fulfill its legal obligations under *FOIPOP*. This includes hiring additional staff and exploring any other avenues that could be capitalized on to complete this work.

March 25, 2025

Carmen Stuart  
Acting Information and Privacy Commissioner for Nova Scotia

OIPC File: 25-00136

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<sup>2</sup> Per s. 8(1)(a)(i) of *FOIPOP*.