Time Extension Request Guidelines for Municipalities

Office of the Information and Privacy Commissioner for Nova Scotia

INTRODUCTION

Under s. 469 of the *Municipal Government Act Part XX* (*MGA*), municipalities may take a 30-day time extension in prescribed circumstances. A further time extension may be granted with the permission of the Information and Privacy Commissioner.[1] These guidelines[2] are intended to assist municipalities with establishing whether the conditions apply for either taking time extensions or requesting permission from the Commissioner for time extensions under s. 469(1). By submitting the requested information to the Office of the Information and Privacy Commissioner (OIPC) when permission for a further time extension is sought, the OIPC will have the information required to determine whether a further time extension is authorized. Where possible, municipalities should make every effort to request only one time extension from the OIPC under s. 469(1) for any given access request.

Municipalities may request permission for a time extension by completing the Time Extension Request Form and submitting it to the OIPC via email to oipcns@novascotia.ca a minimum of 5 business days prior to the statutory deadline to respond to the access request. Time extension requests received less than 5 business days prior to the statutory deadline to respond are not guaranteed to be processed within the statutory timelines. **The OIPC will not approve a time extension request after the statutory deadline for responding to the access request has passed.**

Definitions

"Municipality" means a municipality or municipal body subject to the *MGA* as defined at s. 461(d) and (e).

"The" or "this municipality" means the municipality or municipal body that the applicant requested information from.

"Third party" in relation to an access or correction request, means any person, group of persons or organization as defined in s. 461(k) of the *MGA*. A third party may be an individual, an organization, a business or another level of government, but it does not include the person who made the access request, or municipal body as defined in s. 461(d).

"Other municipality" means a municipality or municipal body that meets the definition under s.461(d) and (e) of the *MGA* but does not include the municipality requesting the time extension.

"Responsible officer" means the person designated to respond to an access request as set out in s. 461(i) of the *MGA*.

[1] The Information and Privacy Commissioner for Nova Scotia is also known as the Review Officer and is appointed as the independent oversight authority under the *Freedom of Information and Protection of Privacy Act*, the *Municipal Government Act*, the *Personal Health Information Act*, and the *Privacy Review Officer Act*.
[2] These guidelines were adapted from similar guidelines prepared by the Offices of the Information and Privacy Commissioners in Alberta, Ontario, Newfoundland and British Columbia.

LEGISLATION

Extension of time for response
469(1) The responsible officer may extend the time provided for responding to a request for up to thirty days or, with the review officer's[3] permission, for a longer period if

(a) the applicant does not give enough detail to enable the municipality to identify a requested record;
(b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the municipality; or
(c) more time is needed to consult with a third party or other municipality before the responsible officer can decide whether or not to give the applicant access to a requested record.

(2) Where the time is extended pursuant to subsection (1), the responsible officer shall tell the applicant

(a) the reason;
(b) when a response can be expected; and
(c) that the applicant may complain about the extension to the Information and Privacy Commissioner.

STATUTORY TIMELINES

Sections 466, 467, 469 and 482(3A) of the *MGA* are crucial to understanding and applying the statutory timelines for responding to access requests. A municipality may only suspend a statutory timeline if it is authorized under s. 467(2). If an application has been received and an applicant has met the requirements of s. 466(1)(b) and (c), the municipality has 30 days to respond to the access request. A municipality's decision to put a request "on hold" (i.e. stop the clock) does not suspend the statutory timeline if there is no authority to do so under s. 467(2).

If the statutory deadline for responding has passed, a municipality is not authorized by s. 469(1) to extend the time for responding. Similarly, if the deadline for responding has passed the OIPC cannot grant a time extension under s. 469(1).

For the OIPC to properly consider a time extension request, a municipality must submit their request to the OIPC **a minimum of 5 business days prior to the statutory deadline** to respond to the access request. Time extension requests received less than 5 business days prior to the statutory deadline to respond are not guaranteed to be processed within the statutory timelines. The OIPC will not approve a time extension request after the statutory deadline for responding has passed.

[3] Nova Scotia's Information and Privacy Commissioner is the "Review Officer" stated in the legislation.

Clarify or Narrow?

It is important to understand the difference between a clarified request and a narrowed request. To "clarify" is to make clear what the requester is seeking – so that the municipality is able to identify the record sought. To "narrow" is to reduce the scope of the request, i.e. decrease the number of records requested. Time extensions for clarification are contemplated under s. 469(1)(a) and are discussed below. Time extensions are not permitted for narrowing a request.

APPLICATION

Under s. 469(1) of *MGA* there are three circumstances in which the OIPC may give a municipality permission to extend the time for responding to an access request. Permission may be granted if one or more of s. 469(1)(a), (b) or (c) apply.

In taking or requesting a time extension under s. 469(1)(a), (b) or (c), only factors for the municipality requesting the time extension are considered.

(1) SECTION 469(1)(a) – FAILURE TO PROVIDE SUFFICIENT DETAIL

This provision applies when an applicant does not give enough detail to enable the municipality to identify a requested record. If the municipality can identify the requested record but is seeking to narrow the scope of the request, s. 469(1)(a) does not apply.

Test:
When requesting permission from the OIPC to take a time extension, the municipality must explain why more detail is required to identify a record.

Other relevant information:

- Dates of access request and follow up with applicant, including efforts made by the municipality to contact the applicant and clarify the request.
- If the municipality has already requested further details from the applicant, what is the expected response date?
- Subsection 3(2) of the Regulations require that if an individual familiar with the subject matter is unable to identify a record for which an application is made, the head of the public body (municipality) shall so advise the applicant and permit the applicant to amend the application to provide additional particulars.

(2) SECTION 469(1)(b) – VOLUME & UNREASONABLE INTERFERENCE

This provision applies when a large number of records have been requested or must be searched ***and*** meeting the time limit would unreasonably interfere with the operations of the municipality. If the OIPC approves a time extension for 60 days or more under s. 469(1)(b), it is expected that any consultations related to those records will be completed within that time.

Test:
The municipality must demonstrate that:

1) a large number of records have been requested or must be searched, **and**
2) meeting the time limit would unreasonably interfere with the operations of the municipality.

Both a large volume of records and unreasonable interference with operations must be present to meet the test for s. 469(1)(b). Municipalities should consider the factors provided below in evaluating whether s. 469(1)(b) applies:

Volume:

- How many pages?
- Does the type of record require different methods of searching or handling?
- How does the volume of this request for information compare with the average request volume for the past year?
- How does the size or scope of the searching for this request compare with the typical searches done within the past year?
- Are there previous requests for the same or similar records?

Circumstances that contribute to unreasonable interference:

- Significant increase in access requests (e.g., sharp rise over the past 1-4 months in the number of access requests and/or volume of those requests). Generally, the threshold for a significant increase is a 100% increase (i.e., double) within the previous 1-4 month period. The municipality must provide the number and volume of access requests showing a significant increase in the past 1-4 months.
- Computer systems or technical problems. The time allotted is equal to the down time experienced.
- Unexpected leave. The time allotted is equal to the time out of the office and does not apply to extended or planned leaves.
- Unusual number (high percentage) of new administrators-in-training assigned to the municipality and this file.
- Program area discovers a significant amount of additional responsive records
- Type of records are more difficult to process (e.g. maps, photographs, hand written records, poor quality records, etc.)
- A larger number of program areas must be searched.
- Degree to which the subject matter expertise of the municipality holding the records will be diverted to the municipality's detriment. This does not include normal business processes such as fiscal year end, or elections.

Circumstances that <u>do not</u> contribute to unreasonable interference:

- The municipality's access to information program has not been allocated sufficient resources.
- Long term or systemic problems.
- Vacations.
- Office processes (e.g., approval/sign-off).
- Personal commitments.

- Pre-planned events (e.g., retirements).
- Previous s. 469(1) extension taken and little or no progress made on the file.
- Type of applicant (e.g., media, political, etc.).
- Privacy-related duties.
- Request for review obligations.
- Other duties including duties performed for other municipalities, i.e. access requests processed for other municipalities.
- Poor records management.

Other Relevant Information:

- The municipality made attempts to correct a mistake in processing the request.
- The municipality communicated with the applicant.
- The municipality waived fees.

(3) SECTION 469(1)(c) – CONSULTATION REQUIRED

Section 469(1)(c) applies when more time is needed to consult with a third party or other municipality before the responsible officer can decide whether or not to give the applicant access to a requested record. Note that "third party" and "other municipality" do not include programs or branches within the same municipality.

Consultation is done by the municipality for the purpose of assisting with deciding whether to give access to the applicant. Because of s. 482(3A), the time limit set out in s. 467(2) applies even when the municipality is required to issue a third party notice pursuant to s. 482 or if it chooses to consult with a third party or other municipality. However, that time may be extended pursuant to s. 469(1).

There are two types of consultations that may occur: mandatory consultations that require notice under s. 482 of *MGA* and discretionary consultations that do not require notice under s. 482.

When to Initiate Consultations

Municipalities should initiate consultations with third parties or other municipalities as soon as possible within the first 30 days of receiving an access request and provide them with a copy of the relevant records to obtain their comment.

Mandatory consultations:

Section 482(1) of *MGA* provides that notice to third parties is required "when a responsible officer receives a request for access to a record that contains or may contain information of or about a third party that cannot be disclosed…"

If the municipality decides that a third party exemption might apply, then third party notice is required. In total, the process of disclosing records to an applicant where third party notice is required can take up to 51 days to complete. The 51 days is broken down as follows:

- 30-day statutory timeline is provided in s. 467(2). This time is to complete any consultations, complete the decision and notify applicants and third parties of the decision in writing as provided in s. 482(4).
    - Within the 30-day statutory timeline, the municipality must give a third party being consulted 14 days to respond to the notice given under s. 482(1)(c).

- After the 30-day statutory timeline, the municipality must wait 20 days for a third party to request a review to the OIPC following the municipality's decision as provided in s. 482(5).

- One additional day because the 20-day period for the third party to request a review ends at midnight on the 20th day. The municipality will need at least one additional day to get the disclosure package out to the applicant in cases where ethe third party does not request a review.

For more information on s. 482 notices, see our Third Party Notice Guidelines for Public Bodies and Municipalities. A time extension granted by the OIPC involving a third party entitled to s. 482 notice will include the third party's 20-day period to request a review with the expectation that the deadline date provided is the date on which the municipality will deliver the disclosure package to the applicant (barring a request for review initiated by the third party). This does not relieve the municipality of the obligation to make its decision 20 days prior to the extended deadline date and to communicate that decision to both the third party and the applicant.

It is important to note that third party consent is not required for a municipality to disclose records for which a third party mandatory notice is given. The municipality must consider the third party's representations, but consent is not required for disclosure if it is otherwise authorized under the *MGA*.

Discretionary consultations

Consultations that do not require s. 482 notice are not mandatory under *MGA*; however, a municipality may choose to consult with a third party or other municipality in order to make a decision about the applicant's right of access.

MGA is silent on the timelines for discretionary consultations that do not require s. 482 notice; however, the OIPC considers it generally reasonable to follow the same timelines provided for mandatory consultations, excluding the 20-day period for the third party to request a review. The municipality has up to 30 days to complete the notice to the third party, which includes the 14-day period for the third party to respond to the notice, and time to issue a decision to the applicant. Additional amounts of time for discretionary consultations may be approved in exceptional circumstances.

It is important to note that when a municipality gives notice for a discretionary consultation, the municipality may consider the third party's or other municipality's views, but consent is not required for disclosure.

Test: The municipality needs to explain why it is necessary to consult with a third party or other municipality in order to make a decision about access, including how the third party or other municipality is expected to assist. Also, the municipality needs to explain why it needs more time to do this.

Some reasons for consulting for which the OIPC will consider granting extended time:

- Third party or other municipality has an interest in the records.
- Records created or controlled jointly.
- The municipality must give third party notice pursuant to s. 482.

Circumstances for which the OIPC will not consider granting extended time:

- Consultations with staff in same municipality (e.g., legal counsel or program area).
- Consultations for a purpose other than deciding whether to give access.
- Courtesy notices.
- Time required/requested for consultation is unreasonable.
- Previous s. 469(1) extension taken and little or no progress made on the file.

Other Relevant Information:

- When did the municipality initiate the consultation?
- Did the municipality provide a copy of the proposed disclosure to the third party/other municipality?
- Explanation for any delay in initiating consultations.
- Number of consultations required.
- Number of pages sent for consultation.
- Did the municipality set deadline expectations for third party or other municipality to respond?
- Has the municipality followed up on consultation request?

Notice: These guidelines are for information only and do not constitute a decision or finding by the Information and Privacy Commissioner for Nova Scotia with respect to any matter within her jurisdiction. These guidelines do not affect the powers, duties or functions of the Information and Privacy Commissioner regarding any complaint, investigation or other matter under or connected with the Information and Privacy Commissioner's jurisdiction, respecting which the Information and Privacy Commissioner

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