



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner
Catherine Tully

REVIEW REPORT 18-06

September 20, 2018

Municipality of the County of Kings

Summary: In the past 10 months, the Municipality of the County of Kings failed to respond to 12 access to information requests within the 30 day timeline mandated by the law. The Commissioner finds that the Municipality is in violation of the *Municipal Government Act*. Access to information law is the bellwether of our democracy. When access to information laws are strong and effective, citizens benefit and our democracy thrives. But when public bodies, such as the Municipality in this case, completely ignore their obligations to respond in a timely fashion, this should raise red flags for citizens. The Commissioner recommends that the Municipality respond to the applicant within 10 days on all outstanding files and that it train additional staff to improve its ability to respond to access to information requests.

Statutes Considered: *Municipal Government Act*, [SNS 1998, c18](#), ss. 467, 469, 471, 480

INTRODUCTION:

[1] Between November 18, 2017 and July 13, 2018, the applicant made 12 access to information requests to the Municipality of the County of Kings (Municipality). In these 12 cases, the Municipality did not reply within 30 days of receipt of any of the requests. The applicant filed 12 review requests with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) relating to the Municipality's failure to respond to her access to information requests. Such review requests are known as "deemed refusals".

[2] Following discussions with staff from this office, the Municipality responded to 7 of the 12 requests as follows:

OIPC File	Date request received	Date response sent	Total time to issue decision (days)	# of Responsive pages
1. 18-00053	November 18, 2017	July 30, 2018	255	7
2. 18-00118	February 6, 2018	July 30, 2018	175	46
3. 18-00119	February 15, 2018	July 30, 2018	166	0
4. 18-00120	February 6, 2018	July 30, 2018	175	23
5. 18-00121	February 5, 2018	July 30, 2018	176	0
6. 18-00129	February 11, 2018	July 30, 2018	170	0
7. 18-00141	November 21, 2017	July 30, 2018	252	0
Average			196 days	11 pages

[3] Despite repeated assurances of its intention to respond, the Municipality has not responded to 5 remaining access to information requests:

OIPC File	Date request received	Total time elapsed (days) (as of September 20, 2018) ¹
1. 18-00067	November 20, 2017	305
2. 18-00123	October 20, 2017 ²	336
3. 18-00265	March 28, 2018	177
4. 18-00266	March 28, 2018	177
5. 18-00267	March 28, 2018	177
Average		234 days

ISSUE:

[4] Did the Municipality meet its duty to assist the applicant by responding in writing to the applicant within 30 days after each application was received as required by s. 467(2)(a) of the *Municipal Government Act*?

DISCUSSION:

Background

[5] Following receipt of the first 8 requests for review, staff from this office met with officials with the Municipality and with the applicant on April 12, 2018. During that meeting, municipal officials agreed to respond to the requests on a series of staggered dates. The Municipality failed to meet any of the agreed upon due dates. However, as noted above, eventually the Municipality responded to 7 of the 12 outstanding requests on July 30, 2018. Its average response time for those 7 requests was 196 days or 6.5 months. This, despite the fact that 4 of the requests actually had no responsive records and the remaining 3 had a maximum of 46 responsive pages.

¹ September 20, 2018 is the release date of this report.

² The original request was filed on October 20, 2017 but the Municipality sought clarification November 24, 2017. The time for responding to the request had expired by that time. The applicant responded on December 12, 2017.

[6] The remaining access to information requests were received by the Municipality between October 20, 2017 and March 28, 2018 and have been awaiting a response an average of 234 days or 8 months as of the date of this report.

Relevant Statutory Provisions

[7] The *Municipal Government Act (MGA)* is straightforward. Section 467(2) requires municipalities to respond to access to information requests within 30 days or longer if an authorized time extension has been taken. In these cases, there were no time extensions authorized and so the original due dates apply.

Did the Municipality meet its duty to assist the applicant by responding in writing to the applicant within 30 days after each application was received as required by s. 467(2)(a) of the *Municipal Government Act*?

[8] The applicant's submissions express frustration with the process and concern about the lack of openness and accountability of the Municipality. The Municipality gave no submissions in response to the Notice of Formal Review sent out on the 5 outstanding files. The Municipality has hired a contractor, a law firm, to process its responses to these access to information requests. Based on our conversations with that contractor, it is clear that he does not have the resources to respond to the requests within the statutory timeline. A municipality can certainly contract out the processing of access to information requests so long as the ultimate decision regarding disclosure is made by an authorized individual. However, by doing so, the Municipality does not abdicate its obligations under the *MGA*. It remains responsible for meeting the mandatory statutory timelines.

[9] One of the issues here appears to be that this applicant has made what, for the Municipality, is a large number of access to information requests. The 12 at issue here are not the only requests this applicant has made. What does this mean for the Municipality? First, it means that in order to meet its statutory obligations under the *MGA*, the Municipality must ensure that its access to information program is properly resourced. If in the short term a municipality is unable to meet its statutory timeline it must retain additional resources to ensure that it stays in compliance with the law.

[10] As a practical matter, there are a number of strategies municipalities can use to manage an unusually high request caseload in the short term. These strategies include:

- Upon receipt of a request, immediately assess whether there is any responsive information that is publicly available. If so, advise the applicant. The publicly available information may satisfy the applicant.

- Upon receipt of the request, immediately assess whether a similar request has already been processed and so records are available that have been approved for release in a previous request. If so, advise the applicant and provide him or her with a copy of the previously released information.³
- Contact the applicant to discuss the request to ensure that the municipality has a clear understanding of the information sought. It is often possible to narrow the scope of the request.
- Where the applicant has made multiple requests related to a single topic it can often be significantly more efficient to combine the requests into one request for all related information. Ensure that the applicant agrees that such an approach will satisfy his or her requests. Taking this approach means the municipality conducts one broad comprehensive search and processes the responsive records only once. It also means that the applicant receives a complete response to all aspects of the requests made.
- Once the municipality has conducted its search for records, but before it begins processing them for the response, contact the applicant to discuss the nature of the records found. It is possible that, once the applicant knows the exact nature of the records, he or she will be able to significantly reduce the scope of the request or will focus in on a few specific record types.
- Under the *MGA*, municipalities are entitled to take time extensions in limited circumstances. Municipalities need to make an assessment of the need for time extensions as soon as possible but no later than 30 days after receipt of the request.⁴
- Under the *MGA*, municipalities are also entitled to request fees for locating, retrieving and producing the responsive records.⁵ Where fees are authorized, the municipality can use this mechanism to recover some of the costs associated with processing the request.

[11] I encourage the municipalities across Nova Scotia to employ these types of strategies in all cases, but particularly when they receive an unexpectedly large number of access to information requests. Simply failing to process access to information requests for months at a time is a clear and unequivocal failure to meet an important statutory obligation.

[12] As there is no evidence contradicting the summary of dates of non-compliance above, I find that the Municipality of the County of Kings is in violation of s. 467(2) in that it has failed to respond to the 5 access to information requests noted above within the required 30 days.

³ Of course, if the previously released information contains the personal information of a third party, the Municipality will have to conduct a new review of the information to ensure that information that must be withheld under s. 480 is identified and removed.

⁴ Section 469 of the *MGA* sets out the three circumstances in which a time extension may be taken or may be granted by the Information and Privacy Commissioner.

⁵ Section 471 of the *MGA* sets out in detail the circumstances in which a fee may be charged. No fee may be charged for a request for personal information and no fee may be charged for the first two hours spent locating and retrieving a record.

[13] There is no question that this is a troubling case for two reasons. First, the Municipality failed to respond to the applicant and continues to be in violation of the law 11 months after the original request was made. Second, the Municipality agreed to resolution times on a number of files with this office but failed to honour that agreement. The actions of the Municipality in this case suggest that officials there fail to appreciate the importance of the access rights granted under the *Municipal Government Act*. This case also highlights the significant shortcomings of our outdated access to information laws.

[14] Access to information laws are fundamental to the health of our democracy. As citizens, we have not abdicated our right to make decisions for ourselves. We have granted politicians the power to do so, temporarily if we don't like what they do. Access to information law is the bellwether of our democracy. When access to information laws are strong and effective, citizens benefit and our democracy thrives. But when public bodies, such as the Municipality in this case, completely ignore their obligations to respond in a timely fashion, this should raise red flags for citizens.

[15] In order to meet the statutory obligations set out under the *MGA*, the Municipality must devote sufficient resources to respond to access to information requests without delay, openly, accurately and completely. It clearly has not done so in these cases.

[16] The second lesson to be learned from these appeals is that the *MGA* is inadequate as a tool for ensuring a meaningful right to access information. As Information and Privacy Commissioner, I only have the authority to recommend that the Municipality respond to each outstanding request. But these recommendations are not orders. The burden rests on the applicant to take the Municipality to court should it fail to accept and implement my recommendations. By way of contrast, modern access to information laws place the burden on public bodies and municipalities to either comply with the order or recommendation of the Information and Privacy Commissioner or seek a court's permission to refuse to comply. It is time to modernize Nova Scotia's access to information laws to ensure that applicants do not have to wait 11 months to receive access to information to which they are entitled under the law.

FINDINGS & RECOMMENDATIONS:

[17] I find that the Municipality of the County of Kings is in violation of s. 467(2) in that it has failed to respond to the 5 access to information requests noted above within the required 30 days.

[18] I recommend that the Municipality:

1. Respond to all 5 outstanding requests within 10 days of receipt of this report and provide my office with a copy of the response letters.
2. Assign and train additional staff to assist with the processing of access to information requests.

[19] My office provides free training on how to process access to information requests, which the Municipality has attended. If the Municipality requires further assistance in training its staff, I encourage the Municipality to contact my office to arrange appropriate training. Further, my office provides a consultation service in which we provide information and resources to public

bodies and municipalities to aid them in making decisions under Nova Scotia's access and privacy laws. I encourage the Municipality to avail itself of this service which is also free of charge.

September 20, 2018

Catherine Tully
Information and Privacy Commissioner for Nova Scotia

OIPC Files 18-00067, 18-00123, 18-00265, 18-00266 and 18-00267