



Office of the Information and Privacy Commissioner for Nova Scotia  
Report of the Commissioner  
Carmen Stuart

**REVIEW REPORT 20-01**

**January 30, 2020**

**Department of Fisheries and Aquaculture**

**Summary:** The Department of Fisheries and Aquaculture failed to issue a decision in response to an access to information request to the applicant within the 30 days required by the *Freedom of Information and Protection of Privacy Act*. The applicant appealed to the Office of the Information and Privacy Commissioner for Nova Scotia. The reason for the delay is that the Deputy Minister has not signed off on the access to information decision. The Commissioner has found that the Department is in violation of s. 7(2) of the *Freedom of Information and Protection of Privacy Act* and recommends a decision be issued immediately.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [SNS 1993, c 5](#), ss. 7(2), 7(3).

**Authorities Considered:** Nova Scotia: Review Report 18-06, [2018 NSOIPC 6 \(CanLII\)](#).

**Other Sources Considered:** [Time Extension Guidelines](#).

**INTRODUCTION:**

[1] On October 31, 2019, the Department of Fisheries and Aquaculture (Department) acknowledged receipt of an access to information request under the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for three types of records: lease inspection reports and accompanying documents for three identified sites; correspondence between the Department and two named businesses related to potential or actual lease violations; and correspondence between the same three parties relating to compliance with the conditions outlined in an attached letter.

[2] The Department did not issue a decision within 30 days of receipt in response to the access to information request. The applicant filed a review request with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) relating to the Department's failure to respond to his access to information request.

[3] A failure by a public body to give an applicant a written decision within the time limit is, under s. 7(3) of *FOIPOP*, deemed to be a refusal to give access to the record. This circumstance is regularly referred to as “deemed refusal”.

[4] In reviews where deemed refusal is at issue, the only remedy is for the public body to issue a decision to the applicant within a reasonable timeframe approved by the OIPC. Once a decision is issued to the applicant, the file is closed. These files are addressed by the OIPC at the intake stage of the review process and are generally resolved in a timely and efficient manner by facilitating a decision to the applicant, usually with one telephone call to the public body, and in almost all instances within 15 days or less. This method has proven highly successful in resolving deemed refusal reviews. This approach was not successful in this case – no decision has been issued.

**ISSUE:**

[5] Did the Department meet its duty to assist the applicant by responding in writing to the applicant within 30 days after the application was received as required by s. 7(2) of the *Freedom of Information and Protection of Privacy Act*?

**DISCUSSION:**

**Relevant statutory provisions**

[6] Section 7(2) of *FOIPOP* is straightforward. It requires public bodies to respond to access to information 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*. In this case, there was no time extension taken, so the original due date applies.

**Did the Department comply with s. 7(2) of *FOIPOP*?**

[7] The applicant did not provide a submission in response to the notice of formal review and the one received from the Department confirmed the deemed refusal status and provided very little additional information. As such, the only information to rely on is the chronology that is gleaned from the standard documents that must be provided to the OIPC, pursuant to s. 38(1)(a) of *FOIPOP*.

Date	Day #	Actions
10/31/19	0	IAP Services <sup>1</sup> received the access to information request and sent acknowledgement to the applicant.
11/01/19	1	Thirty-day clock started. Notification sent by IAP Services to the Department that the access to information request was received. Record request memo sent to the Department by IAP Services confirming records due to IAP Services by 11/12/19.

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<sup>1</sup> The Information Access and Privacy (IAP) Services group was formed April 1, 2015 by centralizing information access and privacy staff from across several government departments into one centralized service at the Department of Internal Services. The mandate for this group is to provide information access and privacy policies, practices, services and resources for government. This information was obtained from an Information Access and Privacy Services pamphlet prepared for the 2018 Reverse Trade Show.

11/08/19	8	Responsive records provided by the Department to IAP Services.
11/12/19	12	Proposed redactions sent by IAP Services to three Department staff, one communications staff and one IAP Services' staff for comment or feedback by 11/19/19.
11/20/19	20	Proposed redactions sent by IAP Services to the Department's Deputy Minister (86 pages with personal information severed) for sign off of the disclosure decision. Notice provided that the decision is due to the applicant on 12/02/19.
11/27/19	27	Feedback on redactions sent by Department staff to IAP Services. Additional redactions made by IAP Services and resubmitted to the Deputy Minister for signature with the due date to the applicant noted.
11/28/19	28	IAP Services ready to issue decision.
12/18/19	48	IAP Services notified the Department's acting Deputy Minister that the applicant followed up looking for a status update, the decision was overdue and that the applicant was in a position to file a review request with the OIPC.
12/27/19	57	Request for Review (Form 7) received by the OIPC from the applicant. OIPC provided notice to IAP Services.
12/30/19	60	IAP Services notified the Department that the applicant filed a review request with the OIPC because of the deemed refusal status. A copy of the OIPC letter sent to IAP Services was included, which provided a deadline of 01/11/20 to issue a decision or the file would be escalated at the OIPC which could mean a public review report being issued.
12/30/19	60	Response to IAP Services from the Department: "We hope to have these records ready for release when everyone is back next week."
01/09/20	70	IAP Services followed up with the Department noting the deadline provided by the OIPC would be elapsing in two days.
01/13/20	74	File correspondence provided by IAP Services to OIPC. A status update was requested from IAP Services by the OIPC. No new information provided.
01/14/20	75	Review escalated within the OIPC. The Department declined to commit to a date to have the decision to the applicant and was informed that the file would move to formal review the following day.
01/15/20	76	Notice provided to the parties that the file had moved to formal review, with submissions due by 01/29/20.
01/29/20	90	No decision was issued.

[8] Over the last few years, delays due to sign off procedures by public bodies serviced by IAP Services have been the subject of a growing number of review requests. As a result, the OIPC has been using a number of strategies to address this trend. Those include:

- The OIPC's Time Extension Guidelines<sup>2</sup> clarify that sign off is not an authorized reason for a time extension under s. 9 of *FOIPOP*.

<sup>2</sup> Found on the OIPC website: <https://oipc.novascotia.ca>.

- In July 2019, the former Commissioner wrote to all of the Deputy Ministers with her concerns that Deputy Minister sign off was often the reason given for failure to respond to access to information requests within the legislated timelines. She recommended three solutions to this problem. In response, the former Commissioner was assured that all Deputy Ministers take their *FOIPOP* responsibilities seriously and that they would continue efforts to improve practices for maximum legislative compliance.
- In 2018, the OIPC changed its internal process to escalate deemed refusal review files if deadline dates to issue a decision are not met at the initial stage of the review process.

[9] There is no question that this is a concerning situation. The Department failed to respond to the applicant and continues to be in violation of the law two months after the decision was due because it is waiting for the Deputy Minister to sign off on the decision. The actions of the Department in this case suggest that officials have failed to appreciate the importance of the access rights granted under *FOIPOP*. Access delayed is access denied. The timeliness of granting access to information is often very important to applicants and their ability to hold government accountable. Ensuring that public bodies are fully accountable to the public goes to the heart of the purpose of this Act.<sup>3</sup> That is why *FOIPOP* places a deadline on public bodies. In its submission, the Department states, “The department is reviewing the records and does intend to provide a decision to the applicant.” No commitment date was provided and no explanation for the delay was provided. The Department knows the law and has chosen to disregard it. It is not open to government to arbitrarily choose its own timeline to respond to an access to information request.

[10] Catherine Tully, former Information and Privacy Commissioner, pointed out in a previous review report<sup>4</sup> that 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 Department in this case, completely ignore their obligations to respond in a timely fashion, this should raise red flags for citizens.

[11] Based on the information available, it appears that IAP Services has been working hard to facilitate the decision being issued to the applicant, including regular follow-ups with the Department and keeping the Department informed of the timelines, actions required and consequences. The evidence shows the Department ignored the repeated follow-ups by IAP Services and the OIPC review process.

## **FINDING:**

[12] I find that the Department of Fisheries and Aquaculture is in violation of s. 7(2) of the *Freedom of Information and Protection of Privacy Act* in that it has failed to respond to the applicant’s access to information request within the required 30 days.

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<sup>3</sup> Per s. 2(a) of *FOIPOP*.

<sup>4</sup> NS Review Report 18-06, [2018 NSOIPC 6 \(CanLII\)](#), para 14.

**RECOMMENDATION:**

[13] I recommend that the Department issue a decision in response to the access to information request, with the copy of the record,<sup>5</sup> immediately upon receipt of this report and provide the OIPC with a copy of the decision letter sent to the applicant.

January 30, 2020

Carmen Stuart  
Acting Information and Privacy Commissioner for Nova Scotia

OIPC File 19-00645

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<sup>5</sup> Per s. 8(1)(a)(i) of *FOIPOP*.