



Office of the Information and Privacy Commissioner for Nova Scotia  
Report of the Commissioner  
Tricia Ralph

**REVIEW REPORT 20-03**

**July 14, 2020**

**Department of Fisheries and Aquaculture**

**Summary:** The Department of Fisheries and Aquaculture has failed to issue a decision in response to an access to information request to the applicant within the legislated time period 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 of the *Freedom of Information and Protection of Privacy Act* and recommends a decision be issued immediately and the fees paid be refunded.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [SNS 1993, c 5](#), ss. 7(1), 7(2), 7(3).

**Authorities Considered: Nova Scotia:** Review Report 18-06, [2018 NSOIPC 6 \(CanLII\)](#), Review Report 20-01, [2020 NSOIPC 1 \(CanLII\)](#).

**Other Sources Considered:** [Time Extension Guidelines](#), [Accountability for the Digital Age](#).

**INTRODUCTION:**

[1] On February 6, 2020, 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 two types of records: aquaculture licences and leases for five sites and applications for adjudicative amendments submitted for two sites.

[2] During the processing of the access request, a fee estimate was issued, and two time extensions were taken. The Department provided a response due date of May 22, 2020.

[3] The Department did not issue a decision in response to the access to information request by May 22, 2020. 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.

[4] 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”.

[5] 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 as no decision has been issued by the Department.

**ISSUE:**

[6] Did the Department 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:**

**Relevant statutory provisions**

[7] 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 were two time extensions taken under s. 9 of *FOIPOP*.

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

[8] Neither party provided a submission in response to the notice of formal review. 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
02/05/20	0	IAP Services <sup>1</sup> received the access to information request.
02/06/20	1	IAP Services sent acknowledgement to the applicant. Response due date: 03/06/20.
02/24/20	19	Fee estimate provided to the applicant (\$1,050). The file was placed on hold.
02/26/20	-	Applicant requested a fee waiver.

---

<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.

03/12/20	-	Applicant paid fee deposit (\$525).
03/12/20	-	IAP Services requested the Department provide the responsive records for processing by 03/19/20.
03/20/20	27	IAP Services notified the applicant it was taking a 30-day extension, with a new response due date of 04/22/20. The reason given for the extension: searching for the records and meeting time limits would unreasonably interfere with the operations of the public body (s. 9(1)(b)).
04/03/20	41	IAP Services provided a third party with notice of the access to information request. The third party's view on the disclosure of 8 of 114 pages was due on 04/14/20.
04/03/20	41	IAP Services gave applicant notice of the third party consultation.
04/21/20	59	Third party consultation response received by IAP Services.
04/22/20	60	IAP Services notified the applicant that it sought and was approved for a 30-day extension from the OIPC, with a new response due date of 05/22/20. The reason given for the extension: additional time to finish consulting with a third party (s. 9(1)(c)).
04/23/20	61	IAP Services sent proposed redactions to another Department for approval to release the 114 pages as severed, before being sent to the Deputy Minister of Fisheries and Aquaculture for final disclosure approval. IAP Services informed the Department that the decision was due to the applicant on 05/22/20.
05/14/20	82	IAP Services sent proposed redactions to the Department's Deputy Minister for sign-off of the disclosure decision (114 pages). IAP Services informed the Deputy Minister that the decision was due to the applicant on 05/22/20.
05/22/20	90	Follow up by IAP Services to the Deputy Minister – response due end of day.
05/26/20	94	Applicant sought an update on the status of the overdue decision. IAP Services confirmed it was with the Deputy Minister for sign-off but it was "taking a little longer than usual with the current working environment." No estimated completion date provided.
06/02/20	101	Request for Review (Form 7) received by the OIPC from the applicant.
06/03/20	102	IAP Services notified the Department that the applicant filed a review request with the OIPC because of the deemed refusal status. IAP Services requested a status update from the Department and provided its understanding of what would be expected by the OIPC's process – the OIPC would require a decision to be issued in the next couple of days.
06/23/20	122	IAP Services provided file correspondence to the OIPC. The OIPC requested a status update from IAP Services. No new information provided.
06/24/20	123	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.
06/26/20	125	OIPC provided notice to the parties that the file had moved to formal review with submissions due by 07/09/20.

07/09/20	138	The OIPC received no submissions and no decision was issued by the Department.
----------	-----	--

[9] 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*.
- 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.
- On January 30, 2020, the former acting Commissioner issued a review report,<sup>3</sup> where the issue was deemed refusal due to delay in Deputy Minister sign-off.

[10] 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 months after the decision was due because it is waiting for the Deputy Minister to sign off on the decision. The Department did not provide any submissions as to why the Deputy Minister was not signing off on the release. The actions of the Department in this case suggest that officials have failed to appreciate their obligation to comply with the legislated access rights granted under *FOIPOP*. 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>4</sup> That is why *FOIPOP* places a deadline on public bodies. No commitment date was provided and no explanation for the delay was provided. It is not open to government to arbitrarily choose its own timeline to respond to an access to information request.

[11] Catherine Tully, former Information and Privacy Commissioner, pointed out in a previous review report<sup>5</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.

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

<sup>3</sup> NS Review Report 20-01, [2020 NSOIPC 1 \(CanLII\)](#).

<sup>4</sup> Per s. 2(a) of *FOIPOP*.

<sup>5</sup> NS Review Report 18-06, [2018 NSOIPC 6 \(CanLII\)](#), para 14.

[12] Based on the information available, it appears that IAP Services has been working to facilitate the decision being issued to the applicant, including follow-ups with the Department and keeping the Department informed of the timelines and actions required. There was no information provided to show that the Department responded to IAP Services' efforts.

[13] Recently, an applicant in another deemed refusal case,<sup>6</sup> where the delay was also due to Deputy Minister sign-off, pointed out that having to file a request for review in deemed refusal cases and allowing the process to unfold further delays a decision being issued. In this case, the public body has essentially been given another two months to issue a decision – which is more than five months after the access request was first filed. We have considered this point and are looking at how our process can be amended to reduce the additional delay in future.

#### **FINDING:**

[14] 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 legislated timelines.

#### **RECOMMENDATIONS:**

[15] I recommend that the Department of Fisheries and Aquaculture issue a decision in response to the access to information request, with the copy of the records,<sup>7</sup> immediately (within 2 days) upon receipt of this report and provide the OIPC with a copy of the decision letter sent to the applicant.

[16] I recommend that the Department of Fisheries and Aquaculture waive any outstanding processing fees owed by the applicant and refund the \$525 in processing fees already paid<sup>8</sup> immediately (within 2 days) upon receipt of this report and provide the OIPC with proof that this has been done.

July 14, 2020

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia

OIPC File 20-00237

---

<sup>6</sup> That case was informally resolved because the Department issued a decision before the review report was issued, resolving the issue of deemed refusal.

<sup>7</sup> Per s. 8(1)(a)(i) of *FOIPOP*.

<sup>8</sup> The [Accountability for the Digital Age](#) Special Report issued by the OIPC in 2017 recommended that the legislation be amended to require refund of fees when decisions are issued late (see Recommendation #5(f)).