



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
Tricia Ralph

REVIEW REPORT 21-01

January 7, 2021

Department of Business

Summary: The Department of Business (Department) did not 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 (FOIPOP)*. The applicant appealed to the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC). The cause of the delay was that the Department did not provide the responsive records to the administrator responsible for processing the request in a timely fashion. The Commissioner finds that the Department is in violation of s. 7 of *FOIPOP* and recommends that a decision be issued and a copy of this review report, along with a reminder about the importance of statutory timelines being respected, be sent to all employees responsible for responding to access to information requests under *FOIPOP* by March 31, 2021.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [SNS 1993, c 5](#), ss. 7(1), 7(2), 7(3); *Interpretation Act*, [RSNS 1989, c 235, s. 19\(k\)](#).

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

INTRODUCTION:

[1] On October 5, 2020, the Department of Business (Department) acknowledged receipt of an access to information request it received on October 2, 2020, under the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for “any correspondence at the executive director level and above regarding the film incentive fund - January 2020 to present.” Section 7(2) of *FOIPOP* required the Department to issue a decision in response to the request by November 2, 2020¹ (or longer if the Department met the criteria for a time extension pursuant to s. 9 of *FOIPOP*).

¹ Note that the 30-day time period ended November 1, 2020. However, per s. 19(k) of the *Interpretation Act*, since November 1 was a Sunday, the due date became Monday, November 2, 2020.

[2] The Department did not issue a decision in response to the access to information request by November 2, 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 their access to information request.

[3] A failure by a public body to give an applicant a written decision within the statutory 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”.

ISSUE:

[4] 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

[5] 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, no time extensions were taken under s. 9 of *FOIPOP*.

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

[6] The applicant did not provide a submission in response to the notice of formal review. Based on the representations and records provided by the Department, the following is the chronology of this matter.

Date	Day #	Actions
10/02/20	0	IAP Services ² received the access to information request.
10/05/20	3	IAP Services sent acknowledgement to the applicant. Response due date: 11/02/20.
10/05/20	3	Notification sent by IAP Services to the Department that the access to information request was received. Record request email sent to the Department by IAP Services confirming records due to IAP Services by 10/13/20.
10/16/20	14	The Department questioned IAP Services if it was able to take an extension to the 30-day deadline to issue a decision to the applicant based on the volume of records.
10/19/20	17	IAP Services responded: “Once I receive the final records and can do an accurate page count then I can review and decide the best course of action to process the request.”

² 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 and Service Nova Scotia. 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.

10/22/20	20	IAP Services sought an update on the status of the records collection from the Department.
11/02/20	31	IAP Services followed up with the Department noting the deadline for providing the response to the applicant was due and unless an extension could be taken, the file would be considered to be a deemed refusal.
11/02/20	31	Response to IAP Services from the Department: “having serious computer challenges” and asked for one more day to provide the records to IAP Services.
11/03/20	32	The Department provided IAP Services with the records. At that time, IAP Services determined that an extension for volume and consultation should have been taken. However, the file was already in deemed refusal. The responsive records are approximately 3817 pages.
12/02/20	61	Request for Review (Form 7) received by the OIPC from the applicant.
12/03/20	62	IAP Services was notified of the request for review and was given 15 days (to 12/18/20) to either issue a decision to the applicant or provide information to the OIPC in response to the matter. Both parties were given an opportunity to provide representations on the matter and were notified that the file was under formal review.
12/18/20	77	No decision was issued by the Department. The OIPC received representations from the Department. The Department provided an estimate that it would take until approximately March 31, 2021 to process the request, given the volume of records and the need to conduct consultations with third parties or other public bodies.

[7] Over the last few years, delays of decisions in response to access to information requests 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. However, that is not the reason for the delay on this file. The problem here appears to be that the Department did not provide the records to the IAP administrator in a timely manner, thereby delaying the processing of the access to information request.

[8] *FOIPOP* requires the public body to both retrieve the records and “process” them (i.e. apply any applicable exemptions and provide a copy to the applicant) within 30 days. In this case, despite IAP Services keeping the Department informed of timelines, actions required and consequences, as well as regular follow-ups, the Department took 32 days to achieve only the first step of retrieving the records. While it is up to the public body to set its own internal timeframes to ensure that an access request is responded to within the 30-day timeframe required by *FOIPOP*, taking 32 days to retrieve the records is too long. The records should have been provided to the IAP administrator as soon as possible upon receipt of an access to information request. This would allow for time to consider whether a time extension was warranted and if not, to get the records processed and a decision issued to the applicant within the 30-day statutory timeframe.

[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 months after the decision was due. The actions of the Department in this case suggest that employees have failed to appreciate their

obligation to comply with the legislated access rights granted under *FOIPOP*. This situation highlights the importance for those who are tasked with retrieving records for the IAP administrator who will be responding to the access to information request to recognize the importance of their role in the process and to complete their task in a timely manner.

[10] 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 *FOIPOP*.³ That is why *FOIPOP* places a deadline on public bodies. It is not open to the Department 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 report⁴ that access to information laws are fundamental to the health of our democracy. In that report, she stated, “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.”

[12] If the Department had not missed the due date to respond to the applicant’s access to information request, it may have been able to take a 30-day time extension and/or request a further time extension from the OIPC. Given the large volume of records that were responsive to the request, provided the Department could also establish that meeting the time limit would have unreasonably interfered with its operations (s. 9(1)(b) of *FOIPOP*), the OIPC would have likely approved the time extension request. In this case, the Department identified in its representations that the typical size of its access to information requests are around 30-50 pages, which is significantly smaller than the 3817 pages at issue for this request. Furthermore, the Department stated that more time would be needed to consult with third parties or other public bodies before releasing the records. Given the need for consultations, the OIPC would also have likely approved the time extension request on this basis in accordance with s. 9(1)(c) of *FOIPOP*. In its representations, the Department proposed that it could fully respond to this request by March 31, 2021. In this context, I agree that a due date of March 31, 2021 is reasonable.

FINDING:

[13] I find that the Department of Business 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 timeline.

³ Per s. 2(a) of *FOIPOP*.

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

RECOMMENDATIONS:

[14] I recommend that the Department of Business issue a decision in response to the applicant's access to information request, along with the copy of the records,⁵ on or before March 31, 2021 and provide the OIPC with a copy of the decision letter sent to the applicant.

[15] I recommend that, on or before March 31, 2021, a Department of Business senior official provide this review report to all employees responsible for *FOIPOP* within the Department and remind them of the importance of providing records to the IAP administrator in a timely fashion to ensure statutory access to information rights are respected.

January 7, 2021

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File: 20-00539

⁵ Per s. 8(1)(a)(i) of *FOIPOP*.