



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

REVIEW REPORT 22-14

November 24, 2022

Cape Breton Regional Police Service

Summary: The Cape Breton Regional Police Service (Police) did not issue a decision to the applicant in response to an application for access to a record within the legislated time period required by *Part XX* of the *Municipal Government Act (MGA)*. The applicant appealed to the Office of the Information and Privacy Commissioner for Nova Scotia. The Commissioner finds that the Police is in violation of s. 467 of the *MGA*. She recommends that the Police issue its decision to the applicant within 30 days of the date of this report.

INTRODUCTION:

[1] In August 2022, the Cape Breton Regional Police Service (Police) received an application for access to a record (access request) under *Part XX* of the *Municipal Government Act (MGA)* for records that relate to a police matter involving the applicant.

[2] The Police did not issue a decision in response to the access request within 30 days. It also did not take an extension under s. 469 of the *MGA*. On October 12, 2022, the applicant filed a review request with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) relating to the Police's failure to respond to her access request.

[3] A failure by the Police to give an applicant a written decision within the legislated time period is, under s. 467(2) of the *MGA*, deemed to be a refusal to give the applicant access to the record. This circumstance is regularly referred to as a "deemed refusal".

[4] In reviews where deemed refusal is at issue, the only remedy is for municipalities to issue a decision to the applicant. Once a decision is issued to the applicant, the review 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 municipality, 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 despite the OIPC's efforts, the Police has still not issued a decision to

the applicant, despite being required by law to have issued it within 30 days of receipt of the applicant's access request.

ISSUE:

[5] Did the Police meet its duty to assist the applicant by responding openly, accurately and completely, without delay, as required by s. 467(1) of the *MGA*?

DISCUSSION:

Relevant statutory provisions

[6] Sections 467(1) and 467(2) of the *MGA* are straightforward. Section 467(1) requires the Police to respond to access requests openly, accurately, completely and without delay. Section 467(2) requires the Police to respond to access requests within 30 days unless an authorized time extension has been taken by the Police or granted by the OIPC under s. 469 of the *MGA*.

Did the Police meet its duty to assist the applicant by responding openly, accurately and completely, without delay, as required by s. 467(1) of the *MGA*?

[7] Section 467(2) of the *MGA* sets out that the Police is required to respond to an applicant's access request within the legislated time period. For the following reasons, I find that the Police is in violation of s. 467 of the *MGA* in that it has failed to respond to the applicant's access request within the required legislated time period.

[8] The duty of the Police to provide a response is set out in s. 467 of the *MGA*:

467 (1) Where a request is made pursuant to this Part for access to a record, the responsible officer shall

- (a) make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely; and
- (b) consider the request and give written notice to the applicant of the decision with respect to the request.

(2) The responsible officer shall respond in writing to the applicant **within thirty days** after the application is received and the applicant has met the requirements of clauses 466(1)(b) and (c), stating

...

(3) A responsible officer who fails to give a written response is deemed to have given notice of a decision to refuse to give access to the record thirty days after the application was received. [emphasis added]

[9] With respect to the duty to assist described in s. 467, the *MGA* is silent as to who bears the burden of proof. Therefore, the parties must each submit arguments and evidence in support of their positions. However, it is the Police who failed to make a decision in this case and who is in the best position to discharge the burden of proof.

[10] As part of this review process, the OIPC requested documents from the Police. Despite this request, the Police did not provide any of the requested documents. It also did not provide representations or arguments to explain its rationale for not meeting its legal obligations. In response to the OIPC's attempts to have the Police comply with its legal obligation, the Police confirmed that it had received the access request and acknowledged that it was being processed and third party consultations were being done but provided no indication of a timeline of when it would respond to the applicant.

[11] The applicant did not file any representations. However, she did provide us with information as part of her review request that shows the wording of her access request and an indication of the date it was submitted. She said she has not received a response to her access request.

[12] There is little analysis to be undertaken here. The law is crystal clear. The Police is required to issue a decision to the applicant within 30 days unless a time extension is taken, which was not done. This is concerning.

FINDING:

[13] I find that the Police is in violation of s. 467 of the *MGA* in that it has failed to respond to the applicant's access request within the required legislated time period.

RECOMMENDATION:

[14] I recommend that the Police issue a decision to the applicant in response to her access request within 30 days of the date of this review report and provide the OIPC with a copy of the decision letter sent to the applicant.

November 24, 2022

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File 22-00392