



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

REVIEW REPORT 22-15

November 29, 2022

Town of Trenton

Summary: The Town of Trenton (Town) 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. While the Town did issue a partial decision during this review process to the applicant, because there are outstanding records still awaiting a disclosure decision, the Commissioner finds that the Town is in violation of s. 467 of the *MGA*. She recommends that the Town issue its decision to the applicant within 30 days of the date of this report.

INTRODUCTION:

[1] On September 23, 2022, the Town of Trenton (Town) received an application for access to a record (access request) under *Part XX* of the *Municipal Government Act (MGA)* for records that relate to sewage.

[2] The Town did not issue a decision in response to the access request within 30 days. On November 1, 2022, the applicant filed a review request with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) relating to the Town's failure to respond to his access request.

[3] A failure by the Town 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 only partially successful in this case. As such, it proceeded to this stage of public review report.

ISSUE:

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

Did the Town 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 Town is required to respond to an applicant's access request within the legislated time period. For the following reasons, I find that the Town is in violation of s. 467 of the *MGA* in that it has failed to respond to the applicant's access request completely within the required legislated time period.

[8] The duty of the Town 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 Town 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 gave the Town two options: (1) issue a decision or (2) provide the documents requested by the OIPC and representations to explain its delay.

[11] In response, the Town issued a partial decision to the applicant on November 23, 2022, providing him with some of the records he requested. In terms of the remainder of the requested information, the Town explained that some of the requested records were produced by third parties and those records could not be released until notice had been given to the third parties and their timelines for response had expired, as required by s. 482 of the *MGA*. On November 23, 2022, the Town provided four third parties with notice that the applicant requested records produced by them, under s. 482 of the *MGA*. Also on November 23, 2022, the Town asked the OIPC for a time extension of 30 days to allow for the timelines associated with the third party notices to take place. However, as per routine OIPC practice, this time extension request was rejected because the statutory deadline for responding to the access request had already passed.¹ That being said, it is important to note that once third parties are given notice under s. 482 of the *MGA*, timelines for third party responses and for the Town to make a decision are engaged, even though the statutory deadline for issuing a decision to the applicant's access request has passed.

[12] The Town provided some information to the OIPC to explain its rationale for not issuing a decision to the applicant within the timelines set out in the *MGA*. The reason given for the delay was that the Town is currently engaged in litigation with the applicant and the Town was waiting for instruction from its solicitor before responding to the applicant's access request.

[13] The applicant did not file any representations. However, he did provide us with information as part of his review request.

[14] There is little analysis to be undertaken here. The law is clear. The Town is required to issue a decision to the applicant within 30 days unless a time extension is taken. In this case, the Town did make a decision for part of the access request, but not for all of it. The Town did try to take a time extension, but that request happened too late. As such, the Town has not issued a complete decision within the statutory deadline.

FINDING:

[15] I find that the Town 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:

[16] I recommend that the Town issue a decision to the applicant in response to his 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.

¹ NS OIPC, *Time Extension Request Guidelines for Municipalities* (November 2022), online: <<https://oipc.novascotia.ca/sites/default/files/forms/MGA%20Forms/2022%2011%2002%20MGA%20Time%20Extension%20Guidelines.pdf>> at p. 2.

[17] For the benefit of the applicant, I want to point out that once the Town issues its decision, by law it must wait 20 days to disclose any records to allow the third parties the opportunity to file a request for review with the OIPC if they do not agree with the Town's decision. This is part of the notice requirements set out in s. 482 of the *MGA*.

November 29, 2022

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

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