



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

REVIEW REPORT 22-16

December 16, 2022

Municipality of the County of Pictou

Summary: The Municipality of the County of Pictou (Municipality) 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 Municipality did extend the time to respond to the applicant but did not issue a decision by the new due date. The applicant appealed to the Office of the Information and Privacy Commissioner for Nova Scotia. The Commissioner finds that the Municipality is in violation of s. 467 of the *MGA*. She recommends that the Municipality issue its decision to the applicant within 30 days of the date of this report.

INTRODUCTION:

[1] On September 16, 2022, the Municipality of the County of Pictou (Municipality) 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] On October 17, 2022, the Municipality took a time extension of 30 days on its own accord under s. 469(1) of the *MGA*, giving itself a new due date of November 21, 2022. However, the Municipality did not issue a decision by this date. On November 24, 2022, the applicant filed a review request with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) about the Municipality's failure to respond to his access request.

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

Did the Municipality 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 Municipality is required to respond to an applicant's access request within the legislated time period. For the following reasons, I find that the Municipality 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 Municipality 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 Municipality 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 Municipality two options: (1) issue a decision or (2) provide the documents requested by the OIPC and representations to explain its delay.

[11] The Municipality did not comply with either of these two options. The Municipality 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. The Municipality did confirm to the OIPC that it had received the access request and that it had not issued a decision.

[12] The applicant did not file any representations. However, he did provide us with information as part of his review request. The applicant said a response to his access request was not received.

[13] There is little analysis to be undertaken here. The law is clear. The Municipality is required to issue a decision to the applicant within 30 days unless a time extension is taken. In this case, the Municipality did take an extension, but it failed to respond to the access request within that extended timeframe. As such, the Municipality has not issued a decision within the statutory deadline.

FINDING:

[14] I find that the Municipality 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:

[15] I recommend that the Municipality 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.

December 16, 2022

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

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