



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

**REVIEW REPORT 23-07**

**August 3, 2023**

**Department of Community Services**

**Summary:** The Department of Community Services (public body) did not issue a decision to the applicant in response to an access to information request 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 (OIPC). The cause of the delay was that the public body did not provide the responsive records to the administrator responsible for processing the request in a timely fashion. The OIPC finds that the public body is in contravention of s. 7 of *FOIPOP* and recommends that a decision be issued within 14 days. She also recommends that a management-level public body official provides this report to all employees who were responsible for collecting records in response to this access request 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.

**INTRODUCTION:**

[1] The applicant submitted an application for access to records (access request) held by the Department of Community Services (public body) under the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for records related to housing initiatives. Section 7(2) of *FOIPOP* required the public body to issue a decision in response to the request by December 12, 2022, unless an authorized time extension was taken.

[2] The public body took a time extension of its own accord under s. 9(1)(b) of *FOIPOP*, which extended the time to respond to January 11, 2023. However, the public body did not issue a decision in response to the access request by that time. The applicant filed a review request with the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) about the public body'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 records. This circumstance is regularly referred to as "deemed refusal".

**ISSUE:**

[4] Did the public body 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:**

[5] For the reasons set out below, I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant’s access request within the required legislated time period.

[6] Section 7(1) requires public bodies to respond to access requests openly, accurately, completely and without delay. Section 7(2) requires public bodies to respond to access 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*. Section 7(3) states that when a public body fails to respond to an applicant within the statutory timelines, it is deemed to have refused access to the requested records.

[7] With respect to the duty to assist set out in s. 7, *FOIPOP* 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 public body who failed to make a decision in this case and who is in the best position to discharge the burden of proof.

[8] The applicant did not provide arguments (referred to as “representations”) in support of their position. The public body provided representations. Based on the information provided by the public body and collected by the OIPC, the following is a chronology of this matter:

<b>Date (month/day/year)</b>	<b>Actions</b>
11/10/22	Information Access and Privacy (IAP) Services <sup>1</sup> received the access request and sent a records collection request to the public body. The statutory deadline for response if no time extensions were later taken meant that the due date at this time was December 12, 2022.
11/23/22	The public body told IAP Services that there was about 25 inches of records that would have to be pulled in response to the access request. It did not provide the records to IAP Services.
12/6/22	The public body took a 30-day time extension under 9(1)(b) of <i>FOIPOP</i> and also notified the applicant. This extended its decision due date to January 11, 2023.

---

<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 Service Nova Scotia and Internal Services (now called the Department of 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.

12/16/22	IAP Services wrote to the applicant, provided a fee estimate and offered the applicant three options: (1) pay a fee deposit, (2) request a fee waiver, or (3) narrow the scope of the access request. IAP Services advised the applicant that with the provision of the fee estimate, the application was placed on hold effective December 16, 2022, and would be reactivated once the applicant decided on the options offered. The applicant responded the same day and chose option 3. The applicant narrowed the scope of the access request at the same time.
01/11/23	The public body told IAP Services that it was looking into the revised scope.
01/11/23	The applicant wrote to IAP Services asking what was going on as she'd not received a response to her December 16, 2022 email.
01/12/23	IAP Services wrote back to the applicant and explained the narrowed scope of the access request had been accepted but that the public body was still evaluating whether fees would apply to the revised scope. It said that the file would remain on hold until the fee estimate matter had been resolved.
03/03/23	IAP Services followed up with the public body to see the status of this file.
03/16/23	IAP Services asked the public body if the scope revision reduced the fee estimate. The public body said it was looking into how revised scope would impact the volume of records.
03/27/23	The applicant wrote again to see what was going on because they had not received any further communication since January 11, 2023.
03/28/23	The public body told IAP Services that the volume of records had been reduced to two inches and that it was waiting on a few additional files from off-site storage. It said that it would scan and send the documents over to IAP Services and that it did not think a fee estimate was warranted any longer with the revised scope.
03/29/23	IAP Services responded to the applicant and explained that fees would not apply to the revised scope, the application had been taken off hold and that processing was underway.
04/03/23	The public body provided the records to IAP Services.
04/14/23	The public body requested an additional time extension from the OIPC under s. 9(1)(b) and s. 9(1)(c) of <i>FOIPOP</i> . The OIPC denied the time extension request because the on-hold time to revise the fee estimate was not authorized, the deadline for responding to the access request had passed so the Information and Privacy Commissioner did not have jurisdiction to grant a time extension under s. 9(1) of the Act.
05/23/23	The applicant contacted IAP Services and asked when the public body would issue its decision. IAP Services responded and said a decision would be issued by approximately July 31, 2023.
05/31/23	The applicant asked the OIPC to review this matter.
06/18/23	The public body again asked the OIPC to approve a time extension. The OIPC did not approve the time extension request for the same reasons it denied the April 14, 2023 time extension request.

[9] The public body in this case provided extensive explanation in its representations on this file that essentially all amounted to making a case for why a time extension should have been granted after the statutory deadlines had already passed.

[10] I will first address the issue of the public body's decision to put the access request "on hold". As set out above, the public body wrote to the applicant on December 16, 2022, and told them the file would be put on hold until they chose one of three options offered in relation to fees. The applicant wrote back and provided instructions the same day. As set out in the OIPC's *Time Extension Request Guidelines for Public Bodies*,<sup>2</sup> statutory timelines can only be put on hold (i.e., the clock stopped) if the applicant has not met the requirements set out in s. 6(1) of *FOIPOP*.<sup>3</sup>

[11] Section 6(1)(b) allows the public body to suspend the 30-day time period when the applicant has not set out sufficient particulars to enable the identification of the record. Former Commissioner Tully has explained that s. 6(1)(b) should be used sparingly and should most often only involve a few days while the public body helps an applicant provide additional particulars.<sup>4</sup>

[12] In this case, the applicant provided sufficient particulars at the outset and the public body issued a fee estimate on December 16, 2022. Furthermore, the applicant responded and narrowed the scope to approximately less than 10% of the original volume on the same day that they were asked about fees (December 16, 2022). Section 6(1)(b) is not at issue here because it addresses times where an applicant has not given sufficient particulars. Here, the applicant narrowed the scope but not because there was an issue with sufficient particulars. The applicant narrowed the scope in an attempt to pay less for the requested information.

[13] Section 6(1)(c) requires an applicant to pay any fees required under s. 11 of *FOIPOP*. As set out in *NS Review Report 16-05*:<sup>5</sup>

With respect to fees it is clear that two types of fees may cause the request to be placed on hold. Section 6(1)(c) states that the person must pay fees required pursuant to s. 11. Section 11 requires that the applicant shall pay fees as prescribed by the Regulation. The *FOIPOP* Regulation provides that an applicant must pay a \$5.00 application fee and may also have to pay fees for services as specified in the Regulation.

[14] On the issue of fees, the clock can be stopped if an applicant has been issued a fee estimate and has not responded to it. That is not what happened here. Rather, on December 16, 2022, the applicant was provided a fee estimate and responded on the same day. Thus, the clock kept ticking. The narrowing of the scope in no way authorized the public body to wait until March 29,

---

<sup>2</sup> Office of the Information and Privacy Commissioner for Nova Scotia, *Time Extension Request Guidelines for Public Bodies* (November 2022), online: <[https://oipc.novascotia.ca/sites/default/files/forms/FOIPOP%20Forms/2022%2011%2001%20FOIPOP%20Time%20Extension%20Guidelines\\_0.pdf](https://oipc.novascotia.ca/sites/default/files/forms/FOIPOP%20Forms/2022%2011%2001%20FOIPOP%20Time%20Extension%20Guidelines_0.pdf)>, at p. 2.

<sup>3</sup> Section 6(1)(a) of *FOIPOP* is not at issue in this case.

<sup>4</sup> *NS Review Report 16-05, Nova Scotia (Department of Justice) (Re)*, [2016 NSOIPC 5 \(CanLII\)](#), at para. 18.

<sup>5</sup> *NS Review Report 16-05, Nova Scotia (Department of Justice) (Re)*, [2016 NSOIPC 5 \(CanLII\)](#), at para. 17. This quote ended in a footnote that provided additional support for why a request can be put on hold for payment of fees.

2023, to tell the applicant that fees would no longer be charged. Access requests cannot be put on hold indefinitely by the public body while it decides whether it is going to charge fees. Fees should be assessed within the first 30 days of receiving an access request. The actions of the public body in this regard are wholly inconsistent with the time extension provisions and with the purposes and spirit of *FOIPOP*.

[15] There is no question that this is a concerning situation. The public body failed to respond to the applicant and continues to contravene the law to this day. Even if I were to accept that the public body was authorized to put this file on hold for this fee issue (which I do not), as soon as the applicant narrowed the scope on December 16, 2022, the clock would have started ticking again, meaning a new due date would have been around January 16, 2023. The public body did not seek a time extension from the OIPC until April 14, 2023, some three months later. In reality, the due date for a decision remained on January 11, 2023. Now here we are in August 2023, almost seven months later, and the public body still has not issued a decision to the applicant.

[16] What is perhaps even more concerning is that the public body twice asked the OIPC to approve additional time extensions well beyond the dates it was already in a deemed refusal situation because of s. 7(3) of *FOIPOP*. The public body provided all kinds of explanations that to be frank, are not relevant. This is because, as set out in the law, the OIPC's *Time Extension Request Guidelines for Public Bodies*, and many reports out of this office, if the statutory deadline for responding has passed, the OIPC cannot grant a time extension under s. 9(1). We simply do not have discretion in this regard and no explanations or excuses provided by a public body can change this. It is concerning to me that the public body fails to appreciate this even though *FOIPOP* has been in force since 1994.

[17] Former Commissioner Tully pointed out in a previous review report 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 Municipality in this case, completely ignore their obligations to respond in a timely fashion, this should raise red flags for citizens."<sup>6</sup>

[18] The actions of the public body are raising alarms for me in this case. Employees appear to be either failing to appreciate that they cannot simply ignore statutory deadlines, or they do not have enough resources to deal with access requests in a timely manner. Regardless of what is causing these actions, they need to stop. Employees either need education on their role or more resources to ensure that they have enough time to respond as required by law. If the public body is unable to meet its statutory timelines, it must retain additional resources to ensure that it stays in compliance with the law.

---

<sup>6</sup> *NS Review Report 18-06, County of Kings (Municipality) (Re)*, [2018 NSOIPC 6 \(CanLII\)](#), at para. 14.

## **FINDING & RECOMMENDATIONS:**

[19] I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant's access request within the legislated time period.

[20] I recommend that:

1. Within 14 days of the date of this report, the public body issue a decision in response to the applicant's access request, along with a copy of the records,<sup>7</sup> and provide the OIPC with a copy of the decision letter sent to the applicant.
2. Within 30 days of the date of this report, a management-level public body official provides this report to all employees who were responsible for collecting records in response to this access request 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.

August 3, 2023

Tricia Ralph  
Information and Privacy Commissioner for Nova Scotia

OIPC File: 23-00204

---

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