



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

REVIEW REPORT 24-17

November 1, 2024

Department of Service Nova Scotia

Summary: The Department of Service Nova Scotia (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 reason for the delay was that the public body has not signed off on the access to information decision. The applicant appealed to the Office of the Information and Privacy Commissioner. The Commissioner finds that the public body is in contravention of s. 7 of *FOIPOP* and recommends that a decision be issued to the applicant within 14 days of the date of this review report.

INTRODUCTION:

[1] On May 7, 2024, the applicant made a request for records (access request) held by the Department of Service Nova Scotia (public body) under the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. Section 7(2) of *FOIPOP* requires the public body to issue a decision in response to the access request within 30 days, unless an authorized time extension was taken.

[2] A public body may, on its own accord, extend the time to respond to an access request for up to 30 days if it meets one or more of the circumstances set out in s. 9(1) of *FOIPOP*. On June 3, 2024, the public body advised the applicant that it was taking a time extension under s. 9(1)(b) of *FOIPOP*. This section allows the public body to take a time extension if a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body. This extended the public body's time to respond to July 8, 2024.

[3] On July 4, 2024, the public body made an application the Office of the Information and Privacy Commissioner (OIPC) for a further time extension due to volume. The OIPC granted this time extension request under s. 9(1)(b) and extended the public body's deadline for response to October 7, 2024.

[4] The public body did not issue a decision in response to the access request by that time. On October 8, 2024, the applicant filed a review request with the OIPC about the public body's failure to respond to their access request.

[5] The OIPC’s efforts to informally resolve this matter and facilitate a decision being issued were not successful. As such, this matter proceeded to this public review report.

ISSUE:

[6] 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:

Burden of proof

[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.

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*?

[8] For the reasons provided 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.

[9] 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 time period, it is deemed to have refused access to the requested records. This circumstance is referred to as a “deemed refusal.”

[10] The reason for the delay in this case is because the access request is with the public body waiting for sign off. The public body explained in its submissions that the package of records that make up the access to information request response was provided to it by Information Access and Privacy (IAP) Services¹ on October 4, 2024. Over the following days, the package was updated, and a draft final version was provided to the public body by IAP Services on October 17, 2024 (10 days past the October 7, 2024 deadline). The public body also said that since October 17, 2024, additional changes have been made as the file progressed through its internal review and approval process. It did not provide me with any reasons for why these changes were necessary.

¹ Information Access and Privacy (IAP) Services 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.

[11] The public body said that it also sent a consultation to another public body on October 4, 2024. Consultations with other public bodies are discretionary and therefore should not be used to delay the decision further.²

[12] The OIPC's *Time Extension Request Guidelines*³ clarify that sign off is not an authorized reason for a time extension under s. 9 of *FOIPOP*. The actions of the public body in this case suggest that officials have failed to appreciate the importance of the access rights granted under *FOIPOP*. Access delayed is access denied. The timeliness of granting access to information is often very important to applicants and their ability to hold government accountable. In its submission, the public body acknowledged that a decision was due to the applicant on October 7, 2024 and that it "...intends to release a decision for this request once it has finished going through the [internal] review and approval process." No commitment date was provided. The public body knows the law and has chosen to disregard it. It is not open to government to arbitrarily choose its own timeline to respond to an access to information request.

[13] As noted by Justice Muldoon in *Canada (Information Commissioner) v. Canada (Minister of External Affairs)* (T.D.):

These are not cases for declining to exercise the salutary powers of review conferred on the Court by Parliament. Confession that such requests ought to be processed as expeditiously as possible may be good for an individual's soul, but it has no didactic energy in gaining the attention of government departments. It has no effect in actually providing legally that less than expeditious processing of requests for information is breaking the law, as it surely is. The purpose of the review is not just to make the particular respondent acknowledge unreasonable tardiness. It is, also, to let all the other potential respondents know where they stand in these matters. The Court is quite conscious that responding to such requests is truly "extra work" which is extraneous to the line responsibilities and very *raison d'être* of government departments and other information-holding organizations of government. But when, as in the *Access to Information Act*, Parliament lays down these pertinent additional responsibilities, then one must comply.⁴

[14] In reviews where deemed refusal is at issue, the only remedy is for the public body to issue a decision to the applicant. I have made that recommendation below.

FINDING & RECOMMENDATION:

[15] 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.

² *NS Review Report 22-05, Nova Scotia (Office of the Premier) (Re)*, [2022 NSOIPC 5 \(CanLII\)](#), at para. 16.

³ *Time Extension Request Guidelines for Public Bodies* (November 2022), online: Office of the Information and Privacy Commissioner for Nova Scotia
<https://oipc.novascotia.ca/sites/default/files/forms/FOIPOP%20Forms/2022%2011%2001%20FOIPOP%20Time%20Extension%20Guidelines_0.pdf>.

⁴ *Canada (Information Commissioner) v. Canada (Minister of External Affairs)* (T.D.), [1990 CanLII 12960 \(FC\)](#), [1990] 3 FC 514, at p. 524-525.

[16] I recommend that the public body issue a decision in response to the applicant's access request, along with a copy of the records, within 14 days of the date of this review report.⁵

November 1, 2024

Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

OIPC File: 24-00461

⁵ Per s. 8(1)(a)(i) of *FOIPOP*.