



**Nova Scotia Freedom of Information  
and Protection of Privacy  
Report of Review Officer  
Carmen Stuart**

**REVIEW REPORT FI-12-17  
July 10, 2014  
Department of Community Services**

**Summary**

The Applicant made an Application for Access to a Record [“Access Request”] to the Department of Community Services [“Community Services”], under the *Freedom of Information and Protection of Privacy Act* [“Act”].

The Applicant believes more records exist and that the search was not adequate.

The Review Officer finds that the Applicant failed to provide any evidence to support his/her position and recommended Community Services confirm that no additional records can be located.

**Statutes Considered**

*Freedom of Information and Protection of Privacy Act, section 7*

**Other Sources**

*Nova Scotia Review Report FI-12-77*

**Background**

On February 8, 2012 the Applicant made an Access Request for any records relating to him/her under the custody and control of Community Services, for a specific period of time.

On February 17, 2012 Community Services provided the Applicant with a decision in response to his/her Access Request. Access was provided in part.

On March 2, 2012 the Applicant contacted Community Services about records s/he believed were missing.

On March 7, 2012 [received March 12, 2012] the Applicant filed a Request for Review [“Review”]. The Applicant took issue with the search that was conducted believing additional

records existed: a purchase order and correspondence with law enforcement. The Applicant was concerned that entire pages had been withheld, which could have been the reason why records appeared to be missing. The Applicant identified that these items were partial evidence of the missing records.

On March 30, 2012 Community Services responded to the three specific items identified by the Applicant as missing. The results of a second search were explained. Additional records were provided, that due to an oversight had not been provided with the original decision. The letter was sent to the Applicant and copied to the Review Office.

On April 4, 2012 the Applicant contacted the Review Office to indicate that s/he was not satisfied with Community Services' response.

On April 29, 2014 the Review Office contacted the Applicant to remind him/her that two of the items identified as missing were addressed by Community Services. The Applicant was given the opportunity to either confirm that the response was satisfactory or to provide evidence to support his/her belief that more records exist.

No representations were received from the Applicant regarding additional missing items; however s/he claimed to be unsatisfied with the search. The file was then forwarded to me to conduct the formal Review.

Upon review of the entire file, I discovered that the Applicant's reference to the partial evidence had not been explored and the April 29, 2014 letter overlooked one of the three specific items. On June 18, 2014 the Applicant was given the opportunity to provide a list of the missing items along with evidence to support his/her belief that more records exist.

No response was received from the Applicant. Given that the Applicant has provided nothing to the Review Office to support his/her position, I am forced to rely solely on the information and evidence provided by Community Services.

## **Issues**

The issue I must decide is the following:

Whether Community Services has conducted a reasonable search for the responsive records in accordance with section 7 of the *Act*.

## **Discussion**

### **Am I satisfied that Community Services has conducted a reasonable search?**

One of the primary purposes of the *Act* gives Applicants a right of access to all records that are in the custody or under the control of a public body. The duty to assist the Applicant requires the public body's response to an Access Request to be open, accurate and complete.

In *FI-12-77* the Review Officer outlined who has the burden of proof and when: a public body has the initial onus to demonstrate that the search was reasonable and to provide evidence in support of that claim. Once the public body has met its burden of proof and the information from the public body is shared, the Applicant may be satisfied. If not, the burden of proof then shifts to the Applicant if s/he continues to claim that the search was inadequate after the public body has demonstrated the reasonableness of its efforts. The Applicant must then provide some evidence showing that the records, or portion of the records, s/he seeks exist. The test for search is one of reasonableness, not perfection.

In response to the Applicant's identification of missing records, Community Services conducted a second search and located some additional records and explained how and where it searched. The onus then shifted to the Applicant, when s/he was not satisfied, to provide evidence showing that more records exist. The Applicant provided no arguments or evidence.

I find that the Applicant has failed to meet his/her burden to prove Community Services' search was inadequate.

I find that on the balance of probabilities, Community Services has conducted an adequate search for the responsive records.

### **Conclusion**

After examining the information provided by both parties, on the balance of probabilities, I am more convinced by the arguments and evidence provided by Community Services that a reasonable search was conducted. I am satisfied every reasonable effort was made by Community Services to identify and locate the records responsive to the Applicant's Access Request.

### **Recommendation**

Under the authority of section 39 of the *Act*, I recommend that Community Services:

- Confirm that no additional records can be located. This confirmation letter is to be sent to the Applicant, and copied to the Review Officer, immediately upon acceptance of this Recommendation.

Carmen Stuart, CIAPP – M  
Acting Freedom of Information and Protection of Privacy Review Officer for Nova Scotia