



REPORT
Nova Scotia Freedom of Information
and Protection of Privacy
Report of Review Officer
Dulcie McCallum
FI-12-70

- Report Release Date:** November 7, 2012
- Public Body:** Department of Community Services
- Record at Issue:** The sole issue is the time extension taken by Community Services. During the formal Review stage, the Review Officer decided to review the original copy of the Record on-site pursuant to s. 38 of the *Freedom of Information and Protection of Privacy Act* [“*Act*”] to better understand the size and complexity of the Record. At no time are the contents of the Record disclosed or the Record itself released to the Applicant by the Review Officer or her delegated staff.
- Issues:**
1. Has Community Services extended the time in which to respond to the Applicant’s Request in accordance with s. 9 of the *Act*?
 2. Has Community Services met its statutory duty to assist pursuant to s. 7 of the *Act*?
- Key Words:** best practices, delay, gaps, human resources, “respond without delay”, statutory duty to assist, time extension, vacancies.
- Statutes Considered:** *Freedom of Information and Protection of Privacy Act, Stats NS 1993, c. 5, ss. 2, 7(2), 9.*
- Cases Authorities Cited:** *FI-07-58; NL OIPC Report A-2011-010.*

REVIEW REPORT FI-12-70

BACKGROUND

The only issue relevant in this Review is whether or not the Department of Community Services [“Community Services”] has taken time extension in accordance with the *Freedom of Information and Protection of Privacy Act* [“Act”]. As part of the duty to assist, public bodies are required to “respond without delay” when an Application for Access to a Record is received. If unable to do so, public bodies are able to take one 30-day extension of the timelines under the statute and/or to seek permission of the Review Officer for a longer period [FI-07-58].

The Applicant filed an Application for Access to a Record by filing a Form 1 with Community Services dated June 4, 2012. On July 4, 2012 a 30-day extension was taken by Community Services.

On July 27, 2012 Community Services requested a second extension from the Review Officer pursuant to s. 9(1)(b) of the *Act*. On the same day, the Review Office responded to Community Services as follows:

Your request for a time extension is granted until September 21, 2012. In accordance with the Review Office Time Extension Request Procedure, the information provided in your request is being accepted at face value and an investigation will not be done at this stage.

Please notify the Applicant in accordance with s. 9 of the FOIPOP Act that you are extending the response time to September 21, 2012. Please also advise the Applicant the reason for the delay and about his/her right to complain about the time extension to this office including contact information for the Review Officer: local (424)-4684, toll free phone number (1-866-243-1564), TDD/TTY number (1-800855-0511) and the fax number (902-424-8303). Please copy the Review Officer on this letter to the Applicant.

On July 31, 2012 Community Services contacted the Applicant to advise it had sought an extension from the Review Officer beyond the initial 30-day extension in its earlier letter dated July 4, 2012. The notification letter went on to state:

The reason for this additional extension is that a large number of records has been requested and we are thus seeking this extension under s. 9(1)(b). An extension has been granted until September 21, 2012.

On August 16, 2012 a Request for Review dated August 8, 2012 was received from the Applicant by the Review Office, which stated:

The applicant requests that the review officer review the following decision, act or failure to act of the head of the public body; the departments request for an additional extension now to September 21, 2012.

The applicant requests that the review officer recommend that: I feel that 15 weeks for the dept to comply is unreasonable. Please compel compliance immediately.

The same day, August 16, 2012, the Review file was fast-tracked at the Review Office because it is a policy to expedite all time extension complaints.

RECORD AT ISSUE

The sole issue is the time extension taken by Community Services. During the formal Review stage, the Review Officer decided to review the original copy of the Record on-site pursuant to s. 38 of the *Act* to better understand the size and complexity of the Record. At no time are the contents of the Record disclosed or the Record itself released to the Applicant by the Review Officer or her delegated staff.

ISSUES UNDER REVIEW

1. Has Community Services extended the time in which to respond to the Applicant's Application for Access to a Record in accordance with s. 9 of the *Act*?
2. Has Community Services met its statutory duty to assist pursuant to s. 7 of the *Act*?

REVIEW FINDINGS

ISSUE #1: Has Community Services extended the time in which to respond to the Applicant's Application for Access to a Record in accordance with s. 9 of the *Act*?

The Applicant has a right to access information under the *Act*, as provided for in the purpose section, which provides, in part, as follows:

- 2 The purpose of this Act is*
- (a) to ensure that public bodies are fully accountable to the public by . . .*
- (i) giving the public a right to access records,*

Section 7(2) of the *Act* provides as follows:

The head of the public body shall respond in writing to the applicant within thirty days after the application is received and the applicant has met the requirements of clauses (b) and (c) of subsection (1) of Section 6, stating . . .

Section 9 of the *Act* provides as follows:

The head of a public body may extend the time provided for in Sections 7 or 23 for responding to a request for up to thirty days or, with the Review Officer's permission, for a longer period if

- (a) The applicant does not give enough detail to enable the public body to identify a requested record;*

- (b) 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; or
- (c) more time is needed to consult with a third party or other public body before the head of the public body can decide whether or not to give the applicant access to a requested record.

The statute is very specific about the timelines placed on public bodies to respond to the applicants. The rationale is a simple one: a critical aspect of an effective access to information process is the timeliness of the response by the public body to the applications received.

The sole reason given by Community Services to the Applicant was the volume of the Record. This is actually a two-part requirement; there must be a large number of records *and* meeting the time limit would unreasonably interfere with the operations of the public body.

The Record is comprised of files located in three program areas. It is unknown when these files were received, but as of August 27, 2012 processing had not yet started. Once processing began, the FOIPOP Administrator removed all duplicate copies and the result was the Record provided to the Applicant was approximately 1,000 pages, which the Applicant agrees is large. This is 40% larger than the average record that Community Services processes under the *FOIPOP Act*. At the time the Form 1 was received, Community Services had two vacancies in the FOIPOP Office and only had one Administrator working on half-time basis. Community Services has taken steps to fill up the vacancies and has expressed an interest in consulting with the Review Office regarding Best Practices. No evidence was provided to address how this file would unreasonably interfere with operations.

While it is unknown when copies of the Records were received in Community Services' FOIPOP Office, it is clear that file sat dormant waiting to be processed for at least the time-period between the first extension and the second time extension. Once the half-time FOIPOP Administrator began to work on the file (some time after August 27, 2012), the time that it took for her to process the file was reasonable and on a professional par with the size of the Record and the level of difficulty it would take to process the Record. (i.e. 1 week)

I find it was not the size of the Record that resulted in the delay, which turned out to be more than 250% longer than contemplated by the *Act*, but the inability of Community Services to turn its attention to processing it, due to vacancies. If the Record was received within a timely fashion (i.e. 1 week) and severing was started right away, no extension would have been required and the file could have been disclosed within 30-days, as is required by the statute. Vacancies anticipated or not, are not a reason contemplated by the *Act* as justification for delaying a response to the Applicant. I find that the time extension in which to respond to the Applicant's Form 1 was not in accordance with the *Act*. Legislated timelines cannot be ignored, relaxed or circumvented to manage gaps in resources and must be done in accordance with s. 9 of the *Act*.

ISSUE #2: Has Community Services met its statutory duty to assist pursuant to s. 7 of the Act?

Section 7 of the *Act* lays out the statutory duty to assist imposed on all public bodies in processing an Application for Access to a Record, which provides as follows:

Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

- (a) make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely;*

The requirement is that the public body respond “without delay” to the Applicant. While the Applicant was informed of the time extensions, the response to the Application for Access to a Record was not without delay. This is in accordance with the finding above – that the reason for the delay was vacancies not the size of the Record and how that interfered with the operations of the public body. I find the decision was in fact delayed due to absence of adequate resources devoted to FOIPOP and therefore I find that Community Services has not met its duty to assist the Applicant under s. 7 of the *Act*. In addition, I find that where a public body is under a statutorily imposed timeline, human resources should make every effort to assist the public body by making provision to expedite competitions in order to prevent a gap in service that has statutorily imposed time limits.

REVIEW RECOMMENDATIONS

I make the following Recommendations to Community Services:

1. Community Services make a declaration of its unequivocal commitment to the principles underlying the *Freedom of Information and Protection of Privacy Act*, by, for example, seizing the opportunity to hire additional staff at this time given the recently held competition, staff who will be devoted to FOIPOP in order to manage the high volume of access requests Community Services receives;
2. Community Services approach its human resources consultant to explore a solution to a situation where a public body will be in breach of FOIPOP legislation due to the length of the competition process; and
3. Community Services follow through with its invitation to have the Review Officer set up a process to explore best practices with the FOIPOP Office staff.

Respectfully submitted,

Dulcie McCallum, LLB
Freedom of Information and Protection of Privacy Review Officer for Nova Scotia