



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

**REVIEW REPORT FI-13-101**

**February 20, 2014**

**Department of Natural Resources**

**Summary**

The Applicant made an Application for Access to a Record [“Access Request”] to Department of Natural Resources [“Natural Resources”], under the *Freedom of Information and Protection of Privacy Act* [“the Act”]. Natural Resources did not respond to this Access Request at all. The Review Officer found Natural Resources did not comply with the statutory time frame set out in the Act and failed to fulfill its duty to assist the Applicant. The Review Officer also found Natural Resources is deemed to have refused to provide access and recommends Natural Resources issue a decision that contains all the required elements as outlined in the Act.

**Statutes Considered**

*Freedom of Information and Protection of Privacy Act, section 7(1)(a), 7(2), 7(3), 8(1)(a)(i);  
Freedom of Information and Protection of Privacy Regulations, Regulation 22*

**Other Sources**

*Nova Scotia Review Report FI-10-41/FI-10-85/FI-10-86/FI-10-87*

**Background**

The Applicant first made an Access Request on July 23, 2013 to Natural Resources. On September 20, 2013 Natural Resources issued a significant fee estimate. The Applicant sought to work with Natural Resources to narrow the scope by asking for an Index of Records. No index was provided.

The Applicant filed a second Access Request on October 24, 2013 with Natural Resources which narrowed the scope of the original request. Natural Resources did not acknowledge this second Access Request and the Applicant heard nothing further.

On December 8, 2013 the Applicant filed a Request for Review with the Review Office. Notice was given to Natural Resources on December 11, 2013 and it agreed to contact the Applicant

with a status update. On the same date the Review Office requested that Natural Resources: issue a decision to the Applicant; provide various documents relating to the Access Request to the Review Office; and provide Representations regarding the reasons for not responding to the Applicant within the statutory timelines set out in the *Act*. In accordance with section 22 of the Regulations, the response to the Review Office was due on December 26, 2013. No subsequent response was received by the Review Office or the Applicant. On January 10, 2014 the Review Office contacted Natural Resources to advise that the response was outstanding and if not received by January 14, 2014 the file would be forwarded to the Review Officer for further action. Later that day Natural Resources indicated that it had been working on finalizing the partial release of documents which would be ready by early next week [i.e. by January 14, 2014]. Nothing further was received by the Review Office or the Applicant.

On February 6, 2014, I made one final attempt to resolve this matter informally. Natural Resources was asked: to provide the Review Office with a copy of the disclosure decision; or make a disclosure decision; or provide the outstanding documents and Representation. Nothing was received and the formal Review commenced on February 12, 2014.

Given Natural Resources has provided nothing to the Review Office, I am forced to rely solely on the information and evidence provided by the Applicant.

## **Issues**

The issues I must decide are the following:

1. Whether Natural Resources complied with the statutory timelines to respond to an Access Request, as required by section 7(2) of the *Act*.
2. Whether Natural Resources has met its statutory duty to assist the Applicant under section 7(1) of the *Act*.

## **Discussion**

### **Issue #1: Whether Natural Resources complied with the statutory timelines to respond to an Access Request, as required by section 7(2) of the *Act*.**

Section 7(2) of the *Act* sets out the time limit for providing a disclosure decision in response to an Access Request and the elements that are required to be included in the response, 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*

- (a) *whether the applicant is entitled to the record or part of the record and*
  - (i) *where the applicant is entitled to access, stating that access will be given on payment of the prescribed fee and setting out where, when and how, or the manner in which, access will be given, or*

- (ii) where access to the record or to part of the record is refused, the reasons for the refusal and the provision of this Act on which the refusal is based;
- (b) that the record is not in the custody or control of the public body; or
- (c) where the record would contain information exempted pursuant to Section 15 if the record were in the custody or control of the public body, that confirmation or denial of the existence of the record is refused, and stating
- (d) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the decision; and
- (e) that the applicant may ask for a review by the Review Officer within sixty days after the applicant is notified of the decision.

The Applicant's Access Request was received on October 28, 2014 by Natural Resources. The due date for a disclosure decision was November 27, 2013. No response had been given.

I find Natural Resources has failed to comply with the timelines set out in section 7(2) of the Act; it is in default of its statutory responsibility.

Furthermore, to date no disclosure decision has been issued. Section 7(3) of the Act states:

*The head of a public body who fails to give a written response pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.*

I find Natural Resources has refused access to the Record in accordance with section 7(3) of the Act. In other words, there is a deemed refusal to provide access to the requested Records.

**Issue #2: Whether Natural Resources has met its statutory duty to assist under section 7(1) of the Act.**

Section 7(1)(a) of the Act imposes a duty to assist Applicants on Natural Resources as follows:

*...the head of the public body to which the request is made **shall make every reasonable effort** to assist the applicant and to respond without delay to the applicant openly, accurately and completely...*  
**[Emphasis added]**

There is no indication that when it became aware that it would not meet the 30 day time frame, Natural Resources made any effort, let alone "every reasonable effort", to assist the Applicant and Natural Resources has not responded without delay.

I find that Natural Resources has failed its duty to assist the Applicant by not fulfilling these two components required by section 7(1) of the Act.

## **In Conclusion**

It is possible that there were reasons why more time was needed in order to process the Access Request. Section 9 of the *Act* allows for extensions beyond the 30 day time limit and may have been justified in this case, but no extension was taken or requested and no rationale for the delay was provided.

Natural Resources' non-responsiveness to the Review Office is certainly not consistent with the purposes of the *Act* or the duty to assist. As the Review Officer has said many times in the past:

*Public bodies must be sensitive to the need to respond in a manner that is, from the time of receiving the Application for Access to a Record and throughout the process until the conclusion of a Request for Review, consistently open, accurate and complete.*  
[NS Report FI-10-41/FI-10-85/FI-10-86/FI-10-87]

This non-responsiveness shows a lack of respect for the Applicant's fundamental right to access information guaranteed by the *Act* and shows a disregard for the Review Office as the independent impartial oversight body that has the statutory authority to review Natural Resources' decisions, acts and failures to act under the governing legislation.

The entire access to information process is dependent on Public Bodies being timely and comprehensive in their responses to Applicants, to the Review Officer and to Review Office staff. Our mutual goal must always be to serve the public in responding to their right to access information to which they are entitled.

## **Recommendation**

Under the authority of section 39 of the *Act*, I recommend that Natural Resources either:

1. In the case of refusal to disclose any part of the Record, issue a decision letter to the Applicant, with a copy to the Review Officer, including the reasons for the refusal and the provisions of the *Act* on which the refusal is based. The decision letter is to be sent immediately upon acceptance of this Recommendation; or;
2. Finalize the partial disclosure of the Record that Natural Resources indicated on January 10, 2014 it was close to completing and issue a disclosure decision that is compliant with section 7(2) of the *Act* and includes the reasons for the delay. As required by section 8(1)(a)(i) of the *Act*, a copy of the Record or part of the Record must be provided along with the response. The decision letter is to be sent immediately upon acceptance of this Recommendation.

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