



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

**REVIEW REPORT FI-13-97**

**August 27, 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”], for records from the period of time s/he was a youth in care.

No records were found. The Applicant continues to believe Community Services has records despite being referred to two other avenues.

The Review Officer finds that Community Services has conducted an adequate search but has not met its duty to assist, and recommends Community Services confirm that no records can be located and create a new webpage dedicated to access to information and protection of privacy.

**Statute Considered**

*Freedom of Information and Protection of Privacy Act, sections 7(1)(a) and 34(1)(d)*

**Other Sources**

*Nova Scotia Review Reports FI-07-60(M), FI-12-77, FI-12-106, FI-12-75 and FI-14-26; Donham v. Nova Scotia (Community Services), 2012 NSSC 384; and Searching for Justice, An Independent Review of Nova Scotia’s Response to Reports of Institutional Abuse, January 2002*

**Background**

The Applicant initially contacted Community Services via a district office on January 21, 2013, seeking access to child welfare records. The Applicant identified that s/he was a former youth in care under the Child Welfare Services and for a period of time resided in a provincial institution. Names and dates were provided.

On March 13, 2013, after discovering that such a request made to Community Services needs to follow a specific process, the person who received the initial request forwarded it to the person responsible for Freedom of Information and Protection of Privacy requests within Community Services [“FOIPOP department”]. The FOIPOP department began a search for the records the same day.

On April 15, 2013 additional details were sought from and provided by the Applicant, such as the names by which the Applicant and his/her family were previously known. The time to respond to the Applicant’s Access Request was extended for an additional 30 days to May 15, 2013, in accordance with section 9(1)(b) of the *Act* because a large number of records was requested or had to be searched. In response, on April 17, 2013, the Applicant contacted Community Services with the following comments: “I can’t imagine not being able to find records. My family was in the “system” for more than one generation – I grew up under the Child Welfare system basically.”

On April 18, 2013 Community Services issued its decision to the Applicant. Some records were provided to the Applicant; however the subject matter related only to a previous attempt by the Applicant to gain access to the same records in 1995. Community Services acknowledged that while the Applicant provided the names of family members to assist in the search, it “had no luck finding information that can be provided under your FOIPOP application. However, we recommend that you contact our adoption disclosure unit with the information you provided to us in April. Access to information regarding adoptions is subject to the *Adoption Information Act*.” The contact information was provided.

On July 29, 2013 the Applicant contacted Community Services. In summary, the Applicant’s email indicated that it was incredible that the records had been destroyed and that the Applicant felt as though they were getting “the run around”. The Applicant again mentioned having been brought up in the system and having been told records relating to child welfare are kept for years in storage. The Applicant requested that someone from Community Services meet to discuss the matter in person. On August 26, 2013 the FOIPOP department contacted the Applicant to set up a time to discuss the matter, but the Applicant did not respond and no further contact occurred.

On December 2, 2013 the Applicant filed a Request for Review [“Review”]. Along with the Review, the Applicant provided additional details for believing Community Service’s search for responsive records was not adequate [“representations”]. A summary is provided below in the discussion. This Review was submitted past the 60 days required by the *Act*. The former Review Officer exercised her discretion, under section 34(1)(d) of the *Act*, to accept it late.

On December 9, 2014 the Review Office had a discussion with the Applicant about the records that were provided by Community Services. According to the records, back in 1995 when the Applicant filed the first Access Request when Community Services found no records, it contacted the Department of Justice [“Justice”]. Justice indicated that it had records but those were subject to the Young Offenders legislation and had been destroyed in accordance with the retention schedule for that type of record. The Applicant confirmed his/her understanding of this but continued to believe that Community Services should have records.

On December 10, 2013 Community Services was contacted to find out if any records other than the records relating to the previous Access Request had been found but withheld from the Applicant. If no records had been found, Community Services was required to conduct a second search. If records were not found again, Community Services was asked to provide an explanation of its search for the records and its reason for the referral to the adoption disclosure unit [“representations”].

On January 28, 2014 Community Services provided a description of its efforts to locate any responsive records. Also included were two new referrals: Nova Scotia Hospital records fall under the jurisdiction of Capital District Health Authority and Nova Scotia School for Girls records (old case files), including those from 1979 to 1983, were taken over by the Internal Investigation Unit of Justice. Contacts for both were provided. An unclear explanation for the reason for the adoption disclosure unit referral was provided as was a copy of the retention schedule for Community Services’ records.

This information was shared with the Applicant on August 1, 2014. The Applicant was not satisfied with this information and on August 12, 2014, requested that the file proceed to formal Review.

## **Issues**

The issues I must decide are the following:

1. Whether Community Services has conducted a reasonable search for the responsive records in accordance with section 7 of the *Act*.
2. Whether Community Services has met its statutory duty to assist under section 7 of the *Act*.

## **Discussion**

### **Issue #1: 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 applicants requires the public body’s response to an Access Request to be open, accurate and complete. Where a public body fails to locate, or include in its decision, all or part of the records that an applicant believes should have been considered responsive to the Access Request, the issue is “search”. In these Reviews, the Review Officer examines whether or not the public body has conducted a reasonable search for the responsive records [*NS Report FI-07-60(M)*].

In past Review Reports, the Review Officer outlined who has the burden of proof and when in search Reviews. 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, an applicant may be

satisfied. If not, the burden of proof then shifts to an applicant if s/he continues to claim that the search was inadequate after the public body has demonstrated the reasonableness of its efforts. Applicants 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 [NS Report FI-12-77].

The following is a summary of the information provided by the Applicant in his/her December 2, 2013 representations:

- First attempted, unsuccessfully, to get access to the records in 1995;
- “I feel I have been going in circles”;
- Spent time in foster homes and group homes;
- Resided in three separate institutions:
  - One institution was outside of the province;
  - One institution was the Nova Scotia School for Girls in Truro;
  - One institution was the Nova Scotia Hospital in Dartmouth;
- A range of years was provided;
- Was a client of an independent non-profit organization;
- Was never adopted, so unsure why directed to that process;
- “I feel like I never existed in the system which has me frustrated.”

In addition to the above, the Applicant provided this office with a copy of the records that s/he received from Community Services and other documents. From those documents, the following information is relevant to this Review:

- “I am having a difficult time understanding that my records were destroyed because I was under the *Juvenile Delinquents Act* or the *Young Offenders Act*. That still doesn’t take away the fact that I was part of the child welfare system until I was almost 17 years old”;
- “I was a ward of the court for a brief period while I was living at the Nova Scotia School for Girls. But then it was lifted because my [relative] agreed to care for me when I was released from the school”;
- “[Two named individuals] were involved in my care. They were probation officers at the time”;
- “[Named Judge] was one of the Judges”;
- According to Community Services in 1995, Family Court was unable to identify any court proceeding involving the Applicant regarding wardship;
- According to Justice in 1995, pursuant to the *Young Offenders Act*, the Applicant’s Court and probation files were destroyed;
- According to a handwritten note attached to the Applicant’s 1995 Access Request: “I have checked our cards to see if [the Applicant] was in Perm. Care & custody – [s/he] wasn’t so we have no Dept. ward file here”.

By the Applicant’s own recollection of the facts, s/he was a resident of two institutions and was cared for by a relative after leaving one of those institutions instead of becoming a ward of the

court upon release. The Applicant acknowledges appearing before Judges and having Probation Officers.

According to online research that I conducted:

- In 1994 an investigation into incidents and allegations of abuse at five provincial institutions was undertaken. The Nova Scotia School for Girls was one of the five.
- The investigators examined files from Justice and Community Services.
- All of the records of the investigation, eight boxes, were submitted to Justice. These are sometimes referred to as the “Stratton Boxes”. The Chief Clerk for the Central Registry, Department of Justice has the boxes and a named Justice Lawyer is designated as the ‘custodian’ of the materials.
- The Nova Scotia School for Girls was taken over by Community Services in 1967.
- Girls were only admitted to the Nova Scotia School for Girls if they had been found guilty of an offence under the *Juvenile Delinquents Act* or were committed under the *Child Welfare Act*.

[*Searching for Justice, An Independent Review of Nova Scotia’s Response to Reports of Institutional Abuse*, January 2002, also known as “*The Kaufman Report*”]

Applicants must provide some evidence showing that the public body has the records in its custody or under its control; broad sweeping assertions or mere speculation will not suffice [*NS Report FI-12-106* and *Donham v. Nova Scotia (Community Services)*, 2012 NSSC 384].

The Applicant has not provided any evidence to show that s/he was a ward of Community Services. The Applicant was a resident of two institutions. One is under the responsibility of Capital District Health Authority and the records for the other are under the custody and control of Justice.

It would appear, given the involvement of Judges and Probation Officers, that the Applicant was involved in the court system, not the child welfare system.

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

The *Act* does not contemplate public bodies doing an intense “scavenger hunt” of other public bodies who may have the records, sought at an applicant’s behest. It is up to an applicant to make separate Access Requests to each public body that they believe have the records they seek [*NS Report FI-12-106*].

The Applicant has provided no indication of having contacted any of the public bodies Community Services made referrals to, including its own adoption disclosure unit.

I find that on the balance of probabilities, Community Services has conducted an adequate search for the responsive records in its custody or under its control.

## ISSUE #2: Am I satisfied that Community Services has met its duty to assist the Applicant?

As noted above, section 7(1)(a) of the *Act* imposes a duty on Community Services to assist applicants, as follows:

*7(1) 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...***

**[Emphasis added]**

In most cases, applicants will not have a detailed knowledge of the types and description of records that the public body has in its custody or control. Reasonable steps need to be taken to address this knowledge imbalance. “If there is no duty to assist, the right of access may be more illusory than real” [NS Report FI-12-77]. In this case, during the Review Community Services provided the Applicant with details of the search that was conducted and referred the Applicant to two other public bodies to make Access Requests for the records that are likely in the custody or under the control of those organizations. In cases where a search turns up negative results, a detailed response, as part of the duty to assist the Applicant, should be provided in the decision letter. The details could include a description of the history of the transfer of records, the retention period for that record type and details of the search that was conducted or confirmation that records never existed with an explanation of why [NS Review Reports FI-12-75 and FI-14-26].

I find that Community Services did not meet its duty to assist the Applicant at the time it issued its decision or during the Review because it did not openly, accurately and completely explain the reason why it referred the Applicant to the adoption disclosure unit, explain that records from the Nova Scotia School for Girls were transferred to Justice, or explain how a person may be placed into such an institution and Community Services’ role in the placement, if any.

The Applicant believes that s/he was getting “the run around” by Community Services during the Access Request process and has said how difficult it has been to follow “proper protocol”. The Applicant had originally contacted a district office, not the FOIPOP department, of Community Services. It was not until 51 days later that the Access Request was forwarded to the FOIPOP department. This shows lack of information within Community Services – staff did not know what to do when an Access Request is filed. In this case, the Applicant did not know how to file an Access Request. If Community Service had this information available on its website, this situation may not have occurred. While it may not seem like this delay was noteworthy to the general public, the Review Office regularly receives calls, forms and cheques from prospective applicants who have been misdirected by Community Services’ staff to the Review Office instead of its own FOIPOP department.

I find that Community Services did not meet its duty to assist the Applicant because staff did not know what to do with the Access Request when it was originally received, and because it did not provide information to the Applicant on how to file an Access Request.

Community Services has website pages for its Routine Access Policy and its Privacy Policy. Having a webpage that incorporates guidance on accessing information, formal and informal, and the protection of privacy would be consistent with Community Services' duty to assist.

## **Conclusion**

After examining the information provided by both parties and the information that is publicly available, 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 records responsive to the Applicant's Access Request.

Community Services should strive to better inform its own employees and the public about the processing of Access Requests and where to direct applicants.

The Applicant has been given a number of possible avenues to pursue the records s/he seeks and I encourage him/her to pursue these.

## **Recommendations**

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

1. Confirm that no records can be located. In order to correct its failure to assist the Applicant, Community Services' confirmation letter must openly, accurately and completely explain the reason why it referred the Applicant to the adoption disclosure unit, explain that records from the Nova Scotia School for Girls were transferred to Justice, explain how a person may be placed into an institution and Community Services' role in the placement. The letter is to be sent to the Applicant, and copied to the Review Officer, within 30 days of acceptance of this recommendation.
2. Add a page to its public website and its intranet site that is dedicated to access to information and protection of privacy with a link located on the main page. The content is left to Community Services discretion but there are a number of examples available within the provincial government that could be replicated. This webpage is to be made live within 90 days of acceptance of this recommendation.

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Acting Freedom of Information and Protection of Privacy Review Officer for Nova Scotia