



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

REVIEW REPORT FI-14-27

April 24, 2014

Dalhousie University

Summary

The Applicant made an Application for Access to a Record [“Access Request”] to Dalhousie University [“Dalhousie”], under the *Freedom of Information and Protection of Privacy Act* [“Act”]. Dalhousie did not respond to this Access Request at all. The Review Officer finds Dalhousie 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 finds Dalhousie is deemed to have refused to provide access and recommends Dalhousie 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 January 31, 2014 to Dalhousie.

On March 24, 2014 the Applicant filed a Request for Review with the Review Office for deemed refusal. The file was automatically forwarded to the Review Officer for Formal Review. Notice was given to Dalhousie on March 25, 2014 by the Review Officer who left a voicemail message requesting that Dalhousie call to discuss the file. No response was received and on March 31, 2014 the Review Office requested in writing that Dalhousie either: provide a copy of the decision that was already issued; issue a decision to the Applicant; or provide Representations regarding the reasons for not responding to the Applicant within the statutory timelines set out in

the *Act*; and provide various documents relating to the Access Request to the Review Office. In accordance with section 22 of the Regulations, the response to the Review Office was due within 15 days. No subsequent response was received by the Review Office or the Applicant.

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

Discussion

Issue #1: Whether Dalhousie 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 January 31, 2014 by Dalhousie. The due date for a disclosure decision was March 3, 2014. No response has been given.

I find Dalhousie 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 Dalhousie 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 Dalhousie 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 Dalhousie 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, Dalhousie made any effort, let alone "every reasonable effort", to assist the Applicant and Dalhousie has not responded "without delay".

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

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.

Dalhousie's non-responsiveness to the Review Office is certainly not consistent with the purposes of the *Act* or its 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 Dalhousie's 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 Dalhousie:

1. 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.

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