



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

REVIEW REPORT FI-14-43(M)

June 27, 2014

Town of Springhill

Summary

The Applicant made an Application for Access to a Record [“Access Request”] to the Town of Springhill [“Springhill”], under *Part XX* of the *Municipal Government Act* [“Act”]. Springhill did not respond to this Access Request within 30 days. The Applicant filed a Request for Review [“Review”] of Springhill’s failure to provide a response [“deemed refusal”]. During the course of the Review, Springhill attempted to extend the time to provide a response; however since it was a deemed refusal this was not valid. The Applicant agreed to place the file on-hold to allow Springhill time to process the Access Request by the proposed time extension as an informal resolution. No disclosure decision was issued as promised. The Review Officer finds that Springhill 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 Springhill is deemed to have refused to provide access and recommends Springhill issue a decision that contains all of the required elements outlined in the *Act*.

Statutes Considered

Part XX of the *Municipal Government Act*, section 467(1)(a), 467(2), 467(3), 469, 468(1)(a)(i)

Other Sources

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

Background

The Applicant made an Access Request on April 11, 2014 to Springhill.

On May 16, 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 Review. Notice was given to Springhill on May 16, 2014 by the Review Officer who left a voicemail message requesting that Springhill call to discuss the file; contact was made on May 20, 2014. Springhill indicated that a decision was expected to be issued that week [by May 23, 2014]. No decision was issued. On May 27, 2014 the Review Officer contacted Springhill for a status update. The following day, the Review Officer received a copy of a letter sent by Springhill to the Applicant indicating that the response time was being extended by 30 days to June 10, 2014.

The Applicant agreed to keep the file on-hold to allow for this extended date. No disclosure decision was issued. On June 18, 2018 the Review Officer contacted Springhill for a status update. No response was received.

Given that Springhill 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 Springhill complied with the statutory timelines to respond to an Access Request, as required by section 467(2) of the *Act*.
2. Whether Springhill has met its statutory duty to assist the Applicant under section 467(1) of the *Act*.

Discussion

Issue #1: Whether Springhill complied with the statutory timelines to respond to an Access Request, as required by section 467(2) of the *Act*.

Section 467(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 responsible officer shall respond in writing to the applicant within thirty days after the application is received and the applicant has met the requirements of clauses 466(b) and (c), 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 Part on which the refusal is based;
- (b) that the record is not in the custody or control of the municipality; or
- (c) where the record would contain information exempted pursuant to Section 475 if the record were in the custody or control of the municipality, 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 municipality 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 April 11, 2014 by Springhill. The due date for a disclosure decision was May 15, 2014. No response has been given.

I find that Springhill has failed to comply with the timelines set out in section 467(2) of the Act; it is in default of its statutory responsibility.

Furthermore, to date no disclosure decision has been issued. Section 467(3) of the Act states:

A responsible officer who fails to give a written response is deemed to have given notice of a decision to refuse access to the record thirty days after the application was received

I find that Springhill has refused access to the record in accordance with section 467(3) of the Act. In other words, there is a deemed refusal to provide access to the requested records.

Issue #2: Whether Springhill has met its statutory duty to assist under section 467(1) of the Act.

Section 467(1)(a) of the Act imposes a duty to assist the Applicant on Springhill as follows:

*...the responsible officer **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, Springhill made any effort, let alone “every reasonable effort”, to assist the Applicant and Springhill has not responded “without delay”. On May 27, 2014 Springhill did try to take an extension under section 469 of the *Act*, but given it was already in a deemed refusal, the extension was not valid. The Applicant agreed to place the file on-hold to allow Springhill the time it needed to process the Access Request; Springhill did not meet the extended due date.

I find that Springhill has failed in its duty to assist the Applicant by not fulfilling these two components required by section 467(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 469 of the *Act* allows for extensions beyond the 30 day time limit and may have been justified in this case; however section 467(2) of the *Act* requires a decision within 30 days and if no decision is issued then a deemed refusal occurs. Time extensions under section 469 must be taken within the 30 day time limit set out in section 467 of the *Act*. Therefore the time extension taken by Springhill, on day 47, was not valid.

Springhill’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 Springhill’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 492 of the *Act*, I recommend that Springhill issue a decision to the Applicant, with a copy to the Review Officer that is compliant with section 467(2) of the *Act* and includes the reasons for the delay and either:

- a) In the case of refusal to disclose any part of the record, include 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
- b) In the case of disclosure of all or part of the record, include the copy of the record or part of the record as required by section 468(1)(a)(i) of the *Act*. 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