

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 14-131**

Files: 14-119-4, 14-113-4 and 14-120-4

October 14, 2014

BACKGROUND

The Applicant in this case has made many Requests for Information from a number of public bodies. In each case, the request has been for information about himself. This review deals with three requests made to the Department of Human Resources. In each case, the public body took an extension of time to respond to the requests pursuant to Section 11(1)(b) of the *Access to Information and Protection of Privacy Act*. In each case, the Applicant has asked me to review the extensions of time.

The first Request for Information, made on December 6th, 2013 requested

...all information / documentation / manager notes / notes, diary's (*sic*) / daily logs / electronic files / emails / printed emails / telephone logs, phone records / pictures / recorded, written notes from meetings, discussions / letters from Feb. 23/13-Dec. 6/13 pertaining to the harassment case filed by [a department employee] against [the Applicant] dated [date], 2013.

All documentation surrounding [the Applicant] in relation to harassment towards [the department employee] under prohibited grounds. All documentation / correspondence regarding the investigations that took place regarding these cases; including all information related to the investigation of each safety allegations / complaint / concerns made by [the department employee] towards [the Applicant].

The Applicant then named 20 individuals from whom records should be provided.

The second request was for:

all information / documentation / manager notes / notes, diary's (*sic*) / daily logs / electronic files / emails / printed emails / telephone logs, phone company records / pictures / recorded notes from meetings, discussions / letters etc. where the subject matter concerns or pertains to [the Applicant] and [the department employee] for the period between September 1st, 2011 to December 13th, 2013 from the following employer Representatives...

He then named 21 department employees. All of those named were the same as in the previous request with one additional name.

The third Request for Information, made on December 16th, 2013, sought information about a complaint made to the RCMP about him on a specific date. He sought records which would identify the names of the individuals within the department who filed the complaint or who provided information to the department which led them to file the complaint. Specifically, he requested

...all information / documentation / manager notes / notes, diary's (*sic*) / daily logs / electronic files / emails / printed emails / telephone logs, phone company records / pictures / recorded notes from meetings, discussions / letters, etc. where the subject matter concerns or topic pertains to [the Applicant and his job position] on [date] and subsequent information up until December 16th, 2013.

He specifically asked for this information from two employees.

In each case, the public body advised the Applicant by letter that time for responding to the request was being extended for approximately 30 days because "there may have to be extensive consultations with the Department of Justice before we can fully process your request" in the case of the first two requests and, in the case of the third, because of the possibility that the department may need to consult extensively with

the Department of Justice and the Department with whom the Applicant was employed (Department "A").

In each case, the Applicant asked me to review the extension because he did not believe that the Department of Human Resources required a 30 day extension to provide the information he had requested.

THE DEPARTMENT'S SUBMISSIONS

In its submissions to me, the public body began by advising that, after consultation with, and the consent of, the Applicant it had decided to combine its response to the first two of the requests because of the similarity of the information being requested in each of them. The ATIPP Coordinator for the Department had confirmed this in writing with the Applicant, advising him that he would be provided with only one response to both requests, but that response would provide all of the records requested in both requests. There is no indication that the Applicant objected to this approach.

The Department advised in their submissions to me that the extensions with respect to all three requests were to allow for a consultation with Department "A" (though this is not what the letters to the Applicant said). The public body argued that section 11(1)(c) allows for an extension of time for responding in such circumstances. It indicated that the consultation was not with respect to any decision making regarding the request, but was rather so that the records could be reviewed in order to confirm the information to be handled by each Department, noting that the Applicant had also requested the same or similar information from Department "A". It also made the point that the Applicant had since submitted three additional requests for information to the Department of Human Resources and that it was becoming a problem for the department to meet even the extended deadline. Finally, I was provided, on a confidential basis, with a list of all of the responsive records in relation to the three (now two) requests. This document listed approximately 1230 records consisting of at least 3,000 pages.

DISCUSSION

Section 8 of the *Access to Information and Protection of Privacy Act* requires public bodies to respond to access to information requests within 30 days of the date that they receive the request unless the time limit is extended under Section 11. Section 11 allows for an extension of the time limit in three narrow circumstances:

- 11.(1) The head of a public body may extend the time for responding to a request for a reasonable period where
- (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 to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
 - (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record; or
 - (d) a third party asks for a review under subsection 28(2).

Subsection (2) of Section 11 provides that when the time for responding is extended, the public body must tell the Applicant, without delay, the reason or the extension, when the response can be expected and that the Applicant may ask for a review of the extension under subsection 28(1).

In this case, the public body followed all of the necessary steps to extend the time limit pursuant to section 11(2). It apparently relied on Section 11(1)(c) as the reason for the extension. The time of the extension (30 days beyond the original deadline date) was, in my opinion, reasonable, given the number of records and pages that had to be prepared.

That said, in the letter sent to the Applicant in each case, the Department indicated that it “might” have to consult with the Department of Justice. Only in one case did it also refer to the possibility that it also might have to consult with Department “A”. When responding to me, however, it appears that the Department required the extension to consult only with Department “A”. As I understand it, though this was not well articulated in the public body’s submissions, the Department of Human Resources took the position that it needed to consult with Department “A” in order to avoid duplication of responsive records. The Department was aware that similar Requests for Information had been made to Department “A” and the Applicant was concerned about cost. The consultation with Department “A”, therefore, was in an attempt to save the Applicant some money and was undertaken after confirming with the Applicant that he did not want or need duplicate records.

I was not provided with copies of the requests that had been made to Department “A” so I cannot confirm these statements. I am, however, aware that this Applicant was very actively pursuing records from at least two, if not three departments. What confuses me, however, is the statement in the Department’s extension letters to the Applicant which indicated that it needed time to consult with the Department of Justice. The Department of Justice was, as far as I am aware, not involved in the complaints against the Applicant for which he was seeking information. There is no indication that the Department of Human Resources was seeking a legal opinion with respect to the disclosure of any of the records being sought.

It seems to me that, while all the right steps were taken by the department in claiming an extension, I have a hard time accepting that the need to consult in this case was such that a delayed response was justified. The public body has provided me with no real details about what it needed to consult with other departments about. The subject matter of the third request is such that it may have required a legal opinion from the Department of Justice, but the public body does not suggest that that was the case. As far as I can tell from the submissions received, the only consultation that might have been necessary with Department “A” was, perhaps, which of records

would be the responsibility of which department to address. That said, if Department "A" was in possession of most or even some of the responsive records, that part of the request should simply have been transferred. Clearly, the two departments should not have been "comparing notes" to see how each of them was handling the requests each of them received. Because the public body has not given me any real understanding of the nature of the consultations, however, I simply cannot conclude that the need to consult was such that "more time" was needed for the consultation.

I would note, on the other hand, that there are a large volume of records involved in these three Requests for Information (1223) and an even greater number of pages (3185), all of which would have to be reviewed page by page, line by line. This is a time consuming process and I might have agreed that a delay of 30 days was justified by the large volume of records involved, at least with respect to the first two requests. The third request was much narrower and should not have required any extension of time on the basis of volume. The public body did not, however, take the extension based on section 11(1)(b) which deals with extensions where there are a large number of records, but on 11(1)(c) where there is a need to consult with other public bodies.

CONCLUSIONS AND RECOMMENDATION

As the extension has long since passed and the Applicant has by now received a response to his Requests for Information, my recommendations will have no effect on the Applicant's situation. However, I believe that some further comment is appropriate for guidance in the future handling of requests.

I have three real concerns here.

Firstly, it concerns me that the public body in this case claimed that they needed more time to consult with other departments. Section 11(1)(c) is one of those sections that would be fairly rarely used. It is meant mostly for those situations in

which there are third parties involved who have to be consulted pursuant to the provisions of the Act. I could also understand the possibility that a department might need to consult with the Department of Justice in order to get a legal opinion on the interpretation or application of the Act. While, it may be appropriate to consult with another department so as to avoid duplication where an Applicant has made the same or similar requests from two or more departments, and has indicated that he does not want duplicate records from the two departments, this should never be done except with the consent of the Applicant. Where this happens, it seems to me that the consultation would involve the exchange of a list of responsive records to determine which ones are duplicates, and for the public bodies involved to decide which of the two departments will release those duplicates. This should not be a time consuming process and in most cases would not justify an extension of time.

The second concern that I have is that the extension was taken based not on the department's need to consult other departments, but on the possibility that they might have to do so. The Act does not provide for an extension of time based on a possibility that more time may be needed to consult others, but only where more time **is** needed. When the letters to the Applicant were written, the public body was, apparently, unsure about whether or not they would need to consult. No extension was available to them until such time as they knew, with certainty, that they needed to consult **and** that they would need more time to do so. I can only conclude that at the time the extension was taken, there were no grounds for that extension.

The third concern raised for me in this case is that the public body seemed confused about who it was consulting and why. If a public body takes an extension of time pursuant to section 11, it needs to be ready to defend that extension. If it advises the Applicant that the reason for the extension is so that it can consult with the Department of Justice, then it must be prepared to defend the need for THAT consultation. It is not appropriate, when that extension is questioned, to change the reason for the extension. It creates confusion and suggests, frankly, that the public

body simply manufactured a reason to extend the time for response, whether or not that is actually true.

In the circumstances, and because any specific recommendations that I might make at this point would be completely moot, I make no specific recommendations in this matter. I do, however, urge the Department of Human Resources to ensure that if and when they take extensions, they do so for a valid reason pursuant to section 11 and that they accurately articulate that reason to the Applicant.

Elaine Keenan Bengts
Information and Privacy Commissioner