NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER

Review Report 15-134

Files: 14-111-4, 14-118-4 and 14-117-4
January 21, 2015

BACKGROUND

The Applicant in this case has made many Requests for Information from a number of public bodies. In each case, the request has largely been for information about himself. This review deals with three requests made to the department with whom the Applicant was employed. 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 is dated December 6th, 2013. In this request, the Applicant sought all records over a specified period of time in relation to a specific harassment complaint involving the Applicant. The Request for Information named 7 specific individuals and one group from whom he was seeking records.

The second request, dated December 13th, 2013 was similar, but cast a wider net in that it did not limit the records sought to those in relation to the harassment complaint. Rather, he sought all records which in any way related to himself or to another individual. The list of named individuals who he thought might have responsive records was also slightly different. It contained five of the same names, and added three new names. Two of the names on the original list were not included in the second request.

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 records

> 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.

In this case, he also included a list of individuals (employees) from whom he was seeking these records. That list included several of the same names as in the two previous requests, with some new additions and some omissions.

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 Human Resources and Justice". In each case, the Department noted that:

> The consultation is necessary for us to deal completely with the records which are the subject of your request.

In each case, the Applicant asked me to review the extension because he did not believe that a 30 day extension was necessary to provide the information he had requested and there was nothing in any of this requests that might have required consultation with any other department. He wanted this department to identify all of the records it had. This had nothing to do with records that might have been in the possession of other departments. He had made separate requests of each of the departments for a reason.

THE DEPARTMENT'S SUBMISSIONS

The department responded to all three matters in one letter, with my consent. The three cases are clearly related and the same issues apply to all of them.

The Department advised in their submissions to me that the extensions with respect to all three requests were to allow for a consultation with the Department of Human Resources. There was no reference in the submissions to the Department of Justice, as noted in the original letter to the Applicant. It was noted that the purpose of the consultation was not to discuss any decision making in relation to the request, but rather from an administrative perspective, to "confirm the information to be handled by each department". Presumably this is because similar records had been requested from the Department of Human Resources. In their submissions to me (but not in the letter to the Applicant with respect to the extension of time) the Department also stated that the extension of time was needed because of the volume of information requested by the Applicant. They had identified more than 2750 pages of responsive records.

The Department also made the point that the Applicant had since submitted three additional requests for information to them. They wanted me to consider the "repetitious nature of the requests being received" noting that the same records were being requested over and over again and that the nature and number of the Applicant's requests were beginning to interfere with the operations of the Department's ATIPP Office in that they were unable to complete one request before another one was coming in the door. They asked me to consider section 53 of the Act.

I was provided, on a confidential basis, with a list of all of the responsive records in relation to the three requests.

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 four narrow circumstances:

> 11.(1) The head of a public body may extend the time for responding to a request for a reasonable period where
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> (a) the applicant does not give enough detail to enable the public body to identify a requested record;
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> (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;
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> (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
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> (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 other departments. When responding to me, however, it appears that they were claiming only a need to consult with the Department of Human

Resources because the Department was aware that similar Requests for Information had been made to that agency.

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. As far as I can tell from the submissions received, the only consultation that might have been necessary with Department of Human Resources was, perhaps, which of records would be the responsibility of each of the departments to disclose. That said, if the Department of Human Resources was in possession of most or even some of the responsive records, that part of the request should simply have been transferred pursuant to section 12 which provides as follows:

> 12.(1) The head of a public body may transfer a request for access to a record and, if necessary, the record, to another public body where
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> (a) the record was produced by or for the other public body;
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> (b) the other public body was the first to obtain the record; or
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> (c) the record is in the custody or under the control of the other public body.

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 do acknowledge, however, that there was a large volume of records involved in these three Requests for Information consisting of more than 2750 pages, 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. The public body did not, however, initially 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.

The public body has asked me to consider section 53 of the Act. That section provides that the Information and Privacy Commissioner may, at the request of a public body, disregard a Request for Information that is:

a) frivolous or vexatious;
b) not made in good faith;
c) concerns a trivial matter;
d) amount to an abuse of the right to access; or
e) would unreasonably interfere with the operations of the public body because of its repetitious or systematic nature.

The department in this case stopped short of asking me to allow them to disregard any or all of the Applicant's Requests for Information. I am not, therefore, required to make a decision with respect to whether or not the number and subject of these requests is sufficient to justify authorizing the public body to decline to respond to the request. I would say only that I don't think that the circumstances of this case amount to that level of abuse of the system. Clearly the requests involve some, perhaps significant, duplication. That said, there is no evidence in this case that the public body made any efforts to work with the Applicant to combine or focus the requests to avoid that duplication.

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.

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 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