

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 16-152**

File: 16-167-4
October 26, 2016

BACKGROUND

The Applicant in this case made a request for information from the Sahtu Health and Social Services Authority on July 4, 2016. The information requested was fairly narrowly focused. The Applicant was seeking copies of correspondence to Sahtu Health and Social Services from the Department of Human Resources (Labour Relations) with respect to a particular workplace investigation report which involved the Applicant. There was some initial response to the Applicant in the form of emails acknowledging the request and subsequently to clarify the request fairly early in the process (July 5th and 12th). On July 28th, the Applicant received two phone calls from a second ATIPP Coordinator, once again seeking to clarify the request for information. On July 31st, the Applicant received a letter from this second ATIPP Coordinator, giving him notice that the time for responding to the Request for Information was being extended to August 30th pursuant to section 11(1)(c) of the *Access to Information and Protection of Privacy Act*. The letter did not outline what consultations the Health Authority required. The Applicant sought a review of the extension of time.

THE AUTHORITY'S EXPLANATION

On August 1st, 2016, the day after the Applicant received the letter advising him of the extension of time, the Department of Health amalgamated six of the eight Health Authorities in the Northwest Territories into one - the Northwest Territories Health Authority. This amalgamation included the Sahtu Health and Social Services Authority. I therefore sought an explanation for the delay from the new NTHSSA. Because of the nature of the request (time extension), I requested that the public body

respond to me within one week, outlining the specifics of the consultation required. No response was received. On August 24th, I wrote a second letter to the Health Authority seeking their response. I received that response on August 1st, 2016.

The explanation provided was as follows:

A consultation on this matter is taking place with the Department of Human Resources, Labour Relations division. The consultation with Labour Relations is primarily in relation to advice provided by the division staff. This consultation will allow us to carefully consider if there is a requirement for the application of exceptions in relation to Section 14 of the Act.

In my initial letter to the Authority, I asked them why it took more than three weeks after the Request for Information was received to identify the need for a consultation. NTHSSA advised that there was confusion as to who should be responding to the request as both the SHSSA and the Department of Human Resources had received the same request and they needed to determine which of the two departments should be responding.

DISCUSSION

It is to be noted that I received a letter from the NTHSSA on September 2nd advising that the Applicant's response had been sent out to him, via email, on August 30th, 2016 at 5:39 pm. In these circumstances, the comments that follow are for future reference only.

Section 8(1) of the *Access to Information and Protection of Privacy Act* requires that public bodies respond to applicants not later than 30 days after a request is received unless the time limit is extended under section 11 or the request has been transferred to another public body pursuant to section 12.

Section 11 provides for very narrow circumstances in which the time for responding can be extended:

- 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).

The public body relies on subsection (c).

They note that they identified a need to consult the Department of Human Resources to determine whether they should be applying section 14 to refuse access to some or all of the records in question. Also of note is that the Health Authority appeared to be confused about which of the two public bodies - the Health Authority or the Department of Human Resources - both of whom received the same request for information, should be responding to it.

I have concerns about both of these statements. Firstly, if a public body receives a request for information, and they have responsive records, they should be responding. If two public bodies receive the same request for information, they should each be responding to the request separately. Each of the public bodies should consider separately what, if any, exemptions apply. If there is some question, the Manager of GNWT Access and Privacy might be consulted or, in some cases a legal opinion might be sought. However, two public bodies being asked for the same records should not be, or be appearing to be “comparing notes” on exemptions. This

could suggest collusion or cover-up to someone who is already suspicious of the *bona fides* of a particular public body. It is not at all unusual for an Applicant to seek the same records from two public bodies specifically for the purpose of testing the completeness or thoroughness of the responses being provided. Accountability of government is one of the purposes of the Act and Applicants are entitled to receive responses to requests for the same information from two or more public bodies without those public bodies “consulting” one another with respect to what they are prepared to disclose.

I am, further, concerned, that it took more than three weeks to identify the “need” to consult. If a consultation is necessary, that requirement should be identified early in the process. NTHSSA has not provided me with any information which would explain why extra time was needed for the consultation. There are no special circumstances that were identified, nor do the responsive records appear to be numerous. While section 11 does provide for an extension in certain circumstances and when necessary, this should be reserved for situation in which needed consultations cannot be completed within the first 30 days. A 30 day response should always be the goal, and extensions should be taken only in unusual circumstances. The public body has given me no reason why the consultation, in this case, could not have been done much sooner in the process and completed within the first 30 days.

CONCLUSIONS AND RECOMMENDATIONS

The time lines in the Act are provided for a reason. In most cases, a response to a Request for Information should be able to be completed within thirty days. There are circumstances in which that is not going to be possible, but those should be relatively few and, when there is an extension, it should only be taken when absolutely necessary. In this case, I am not convinced that the responsive records could not have been provided within the 30 days, even with any necessary consultation. Because the Applicant has, by now, received his response, any recommendations I might make in terms of this specific case would be moot. I did, however, feel that it was necessary and appropriate to address the Applicant’s concerns. My only recommendation,

therefore, is that NTHSSA (and all public bodies) make every reasonable effort to respond to all access to information requests within the initial 30 days and that the need for any consultations be identified early in the process so that extensions will be required only in unusual circumstances or where the consultations required are more extensive.

Elaine Keenan Bengts

Information and Privacy Commissioner