

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 20-220**

File: 19-152-4
March 29, 2020
Citation: 2020 NTIPC 14

BACKGROUND

The Applicant made a request for records from the Department of Finance, Human Resources on February 21st, 2019. The request was for emails and attachments between August, 2018 and December, 2018 regarding himself or his business which were written or received by seven named GNWT employees, all co-workers or former co-workers of the Applicant.

In a letter to the Applicant dated February 25th, the public body acknowledged receipt of the request on February 21st and indicated that a response would be provided by March 23, 2019. In an undated letter which the Applicant says he received on March 27th, the public body wrote to the Applicant indicating that they were extending the time for a response to April 26th pursuant to section 11 of the *Access to Information and Protection of Privacy Act* because the request “involves a large number of records”.

On April 29th, the Department wrote to the Applicant as follows:

As your request involves a large number of records we have separated our response into two sets of records. A copy of the first set of records is enclosed. The second and final set of records which are currently being processed will be provided to you by May 17, 2019.

On May 2nd, the Applicant, unhappy with the continued delays, asked my office to review the “deemed refusal” of the Department to respond within 30 days as required by Section 8(1) and 8(1)(a) of the Act.

This office wrote to the Department on May 11th advising them of the Request for Review and encouraging them to continue in their efforts to respond to the Applicant notwithstanding the review of the proposed extension of time.

On May 29th, in the late afternoon, the Applicant confirmed that he had received the remaining responsive records.

ISSUE

The issue in this case is not about the response itself, but is about whether or not the public body met its legislated procedural obligations under the *Access to Information and Protection of Privacy Act*. In particular, the issue is whether the delay in responding was within the reasonable parameters provided for in the legislation.

RELEVANT SECTIONS OF THE ACT

The following are the relevant sections of ATIPPA:

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
 - (a) giving the public a right of access to records held by public bodies;
 - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;

7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

- 8.(1) The head of a public body shall respond to an applicant not later than 30 days after a request is received unless
 - (a) the time limit is extended under section 11...

- (2) The failure of a head to respond to a request in time is deemed to be a decision to refuse access to the record.

- 11.(1) The head of a public body may extend the time for responding to a request for a reasonable period where...
 - (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...

- (2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay
 - (a) the reason for the extension;
 - (b) when a response can be expected; and
 - (c) that the applicant may ask for a review of the extension under subsection 28(1)

DISCUSSION

The Department's initial response to the Applicant, acknowledging receipt of the Request for Information, was appropriate and indicated, appropriately, that a response would be provided with the thirty day time frame provided by section 8(1) of the Act. This was the last time that the public body responded to the Applicant within a stated or legislated time frame. On March 29th a letter advising the Applicant of the extension of time pursuant to section 11(1)(b) of the Act was provided. This letter was dated four days after the end of the 30 day time frame. By that time, the deemed refusal provision in section 8(2) had already been triggered. At that point the Applicant could have asked this office to review the matter as a deemed refusal. He did not, however, do so, deciding instead to await the response date indicated in the extension letter - April 26th.

Three days after the April 26th deadline, the public body provided only a partial response, extending the time to provide the remaining response to May 17th. The final response was not provided until May 29th, more than 90 days after the initial request for information had been made.

Clearly, the public body failed to comply with the time frame provided in section 8. While they did take all the required steps to extend the time for the response under section 11, they did so only after there had been a deemed refusal. Furthermore, they failed to meet the extended deadline as well - not once, not twice but three times.

In the letter written to the Applicant on April 26th, they indicated that the extension was needed because of the "large number" of records involved. However, in their explanation to me, they provided the following statement:

- March 22, 2019 - The review of collected records was complete. There were several records which needed to be reviewed internally

prior to release. It was decided that additional time would be required to complete the review of the records and the exceptions proposed.

- March 27, 2019 - A letter indicating that an extension of time would be required in order to complete processing the records was drafted and sent to the applicant

So, while they advised the Applicant that the delay fell within section 11(1)(b) of the Act, this was not, in fact, an accurate statement. Section 11(1)(b) requires that:

- 1) a large number of records is requested or must be searched, and
- 2) meeting the time limit would unreasonably interfere with the operations of the public body.

The Department did not provide me with any information about the number of records involved nor how meeting the time limit would “unreasonably interfere with the operations of the public body”. This is a two part test and even if I accept, without proof, that a large number of records were involved, I have absolutely no evidence that the operation of this large department with many employees would be disrupted unreasonably by responding within the 30 day time frame. For a large department such as Finance, the threshold to establish an “unreasonable interference” with the operations of the public body would be very high. This is not whether it would unreasonably interfere with the operations of the ATIPP Coordinator, or even the departmental division that deals with ATIPP requests. This is about unreasonable interference with the operation of the public body, writ large.

It is important to note, however, that in the Department’s explanation to my office, they indicated that the extension was necessary because of the internal review process, not

the number of records involved. They argued that there were “several records which needed to be reviewed internally”. This is not an authorized reason for an exception under section 11. It is troubling that the Department has indicated to the Applicant that the extension was required because of a large number of records when it appears that it had more to do with internal processes. While it is possible that there were also a large number of records, the Department’s submissions clearly indicated to me that the primary reason for the extension was the need to review records internally - whatever that means in the context of a request for information which should not require review by anyone but for a well trained ATIPP Coordinator applying sections 13 to 25 of the legislation.

The following comments from the Department are also interesting:

In dealing with this file, the Department made every effort to meet the deadlines established by the Act, but unfortunately, due to workloads within the department and lengthy review processes, these deadlines were missed.

Again, there is nothing in section 11 that justifies an extension of time to respond based on heavy workloads or a lengthy review process. It is incumbent on public bodies to ensure they have adequate and adequately trained staff to meet their obligations under the Act. I am aware that many public bodies are currently finding it difficult to fill positions involving ATIPP responsibilities. The Department of Finance is not alone in this. This indicates that it may be time to review the necessary training and expertise required to do the work of an ATIPP coordinator and to adjust pay scales accordingly. That, however, is a larger issue than can be dealt with in this review.

The Department’s failure to respond to the Applicant in accordance with section 8 and section 11 also points to a failure of the public body to comply with section 7, which

requires public bodies to make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay. While efforts were made, I cannot conclude that they took “every reasonable effort” to respond without delay. The public body simply did not provide me with enough information to allow me to come to this conclusion.

RECOMMENDATIONS

The Applicant did, eventually, receive a full response to his Request for Information. The response was not, however, timely. I make the following recommendations:

1. I recommend that the Department of Finance ensure that it has a sufficiently trained and dedicated cohort of staff to address access to information requests in accordance with the time frames provided for in the *Access to Information and Protection of Privacy Act*, keeping in mind the volume of requests received.
2. I recommend that the Department of Finance create internal guidelines and procedures so as to address efficiently those requests for information that involve a large number of records, including providing guidelines to determine what constitutes a “large number of records” and what might contribute to a situation in which responding within 30 days might “unreasonably interfere with the operations of the public body”.

Elaine Kennan Bengts
Information and Privacy Commissioner