

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-31
October 2, 2007
Review File: 07-209-5

A. BACKGROUND

By letter dated July 9th, 2007, the Applicant asked my office to review the failure of the Department of Human Resources to respond to his Request for Information within 30 days as required by section 8 of the *Access to Information and Protection of Privacy Act*. The Applicant indicated in his letter that he had made a request for certain information on June 7th, 2007. The request was originally made to the Department of Community and Government Services, but had been transferred to the Department of Human Resources. The Department of Human Resources responded to the Request for Information in writing, acknowledging the receipt of the request and indicating that the Request would be dealt with by July 6th. The Applicant indicated that, as of July 9th, the date of his request to me, he had not received the requested records.

On July 16th, I wrote to the department and asked them to confirm whether or not they had, in fact, responded to the Applicant and to provide the details of the response provided.

By letter dated July 18th, 2007, the Department provided me with a copy of the letter they had sent to the Applicant, dated June 27th, 2007, in which they extended the time for response to the request to August 3rd, 2007 pursuant to section 11 of the Act. The public body included copies of the tracking sheets from Canada Post showing that the letter was posted on June 29th and arrived in the Applicant's home community on July 11th and that there had been an unsuccessful attempt to deliver the letter on that same date.

It appeared from this tracking sheet that the letter was actually picked up by the Applicant on July 16th.

The Applicant was provided with a copy of the Department's response by letter dated August 2nd, 2007 and he was asked for any further comments he might have. Although the Applicant responded, he did not address the issue raised in this review. He was given further opportunity to respond, but no further submissions were received.

B. DISCUSSION

Part I of the *Access to Information and Protection of Privacy Act* outlines the procedure for requesting information from a public body. The relevant portions of the legislation are the following:

- 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; or
 - (b) the request has been transferred under section 12 to another public body.

- (2) The failure of a head to respond to a request in time is to be treated as 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
 - (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).

Section 8(2) of the Act provides that if no response is received to a Request for Information, the matter is to be treated as if there was a refusal to disclose the records requested. In order for this "deemed refusal" to arise, however, the public body must fail to "respond" to the Request for Information within 30 days that the completed application is received. In this case, the public body had 30 days from June 7th, or until July 7th to "respond" to the request. The Department wrote to the Applicant on June 27th advising him that they were extending the time for providing their full response pursuant to section 11 of the Act.

As noted in Recommendation #07-27, the wording of section 11 makes it clear that a letter advising the Applicant of an extension of time to provide the requested records constitutes a "response" as contemplated by section 8 of the Act. I am satisfied, therefore, that in this case the response was mailed well before the end of the 30 day deadline provided for in the Act.

The question, however, is what the word "response" means. Does it mean that a letter has to be in the hands of the Applicant within 30 days, or does it mean that the public body has to have the response written and on its way to the Applicant within 30 days? As I noted in Review Recommendation 07-027, although public bodies should always endeavor to have responses actually delivered into the hands of Applicants within 30 days, in my opinion it is sufficient if a letter of response is postmarked within the 30 days. If the legislation intended otherwise, it would have been more specific. The Meriam-Webster Dictionary provides the following definition for the term "response":

something constituting a reply or a reaction

In my opinion, the Act requires only that the public body have written a letter to the Applicant within the 30 days and sent that response by some reasonable means in order to have "responded" within 30 days. Otherwise, the legislation should have specifically stated that the public body was required to "deliver" its response within 30 days. In this case, I am satisfied, based on the materials provided to me that the public body, in good faith, posted its response to the Applicant well ahead of the deadline.

Mail delivery, although slow, is a completely acceptable means of responding to an Applicant. In this case, the public body mailed the response at least a week before the 30 day deadline.

I am satisfied that in this case that the public body "responded" to the Applicant within 30 days and that there was, therefore, no deemed refusal to disclose pursuant to section 8(2) of the Act.

D. CONCLUSION AND RECOMMENDATIONS

As noted above, it is my opinion that the public body in this instance complied with section 8(1) of the Act by mailing a letter to the Applicant prior to the end of the 30 day response period.

In the circumstances, I therefore make no specific recommendations with respect to the Applicant's Request for Review.

As this issue has been raised in a number of recent requests for review, I repeat the general recommendations which I made in my Recommendation 07-027, which should be used in responding to all access requests.

1. Where the Applicant provides a private facsimile number, it would be appropriate for public bodies to send responses by fax before dropping them in the mail to ensure a timely delivery. It is to be noted that, in this case, the Applicant does not appear to have a private fax machine available to him. It appears that the Applicant has from time to time used a fax machine owned by a public body to send fax transmissions, however it would be inappropriate for responses to be sent to him through that number for a number of reasons, including concerns about confidentiality.
2. It may be appropriate, in some circumstances and where a telephone contact number has been provided, to contact the Applicant by telephone to advise him or her that a response has been forwarded and by what means it has been sent.

3. When a response is sent to an Applicant by mail, it should be sent in such a way that its delivery can be traced and verified, such as registered mail.

Elaine Keenan Bengts
Information and Privacy Commissioner