

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-32  
November 5<sup>th</sup>, 2007  
Review File: 07-213-5

**A. BACKGROUND**

By letter dated July 27<sup>th</sup>, 2007, the Applicant asked my office to review the failure of the Department of Education to respond to his request to correct certain of his personal information within 30 days as required pursuant to section 45(3) of the *Access to Information and Protection of Privacy Act*. The Applicant indicated in his letter that he had made a request that the correction be made on June 8<sup>th</sup>, 2007. It appears, however, that the original letter of request was not legible and the department requested that certain parts of the request be re-sent on June 9<sup>th</sup>. It appears that the Applicant provided a new request on the same day, completing the Request for Correction.

At the time of his request to me (July 27<sup>th</sup>, 2007) the Applicant claimed that he had, as yet, received no response to his request. He has asked me to "direct the head of the public body involved in this case, the Department of Education, to comply with the provisions of sections 45 and 46 of the ATIPP in relation to my request for correction of errors and omissions in my personal information forthwith".

On July 31<sup>st</sup>, 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. In response to this request, the public body provided the following explanation:

In reply to your request for a response to the above ATIPP Request for Review, please find attached the extension letter dated 28 June, 2007 and sent by mail to the requester

The letter attached was a letter dated June 28th addressed to the Applicant, referring to the Applicant's "request of the 9th of June, 2007 for access to information under the Access to Information and Protection of Privacy Act". It goes on to state that, normally requests for information are responded to within 30 days after receiving the request.

The ATIPP Act section 11 provides that a public body may extend this time limit. We have encountered delays in searching the records since some or all of the individuals named are no longer in positions held at the time covered by this request, necessitating a more complex search of a large number of records to locate the records in question.

A response is promised by August 7th.

Because the correspondence did not appear to address the issue before me (i.e., a request for correction to personal information), I asked the public body for a further explanation and confirmation that they had quoted the correct file number. By letter dated September 13th and received in my office on September 20th, the public body provided the following explanation:

I have reviewed the files for this request and have determined that the fax sent to you dated August 15th, 2007 was for the correct file.

The extension letter attached in that fax, dated 28 June, 2007 indicated we needed more time to search for all copies of the letter [the Applicant] wanted corrected. In the letter I said "request of the 9th of June, 2007 for access to information ..." when it should have stated "request for correction of the 9th of June, 2007".

The request in question has since been completed and [the Applicant] was sent a letter informing him of the correction on 7 August, 2007.

Tracking sheets provided by the public body show that the letter confirming that the correction was made was posted to the Applicant on August 7th , 2007, although it was not delivered until August 29<sup>th</sup>.

The public body did not send me tracking information relating to the delivery of the June 28th extension letter, but I am satisfied that it was posted either on June 28th or within the next few days, but clearly within the 30 day response period provided for in the Act.

The Applicant was given the opportunity to provide any further comments he might have based on the public body's response, but no further comments were received.

## **B. DISCUSSION**

Section 45 of the Access to Information and Protection of Privacy Act provides as follows:

- (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
- (2) Where a correction is not made in response to a request under subsection (1), the head of the public body shall make a note of the requested correction on or cross-referenced to the information to which it relates
- (3) Within 30 days after the request is received, the head of the public body that receives the request shall give written notice to the individual that
  - (a) the correction has been made; or
  - (b) a note of the requested correction has been made under subsection (2).

- (4) Section 11 applies with such modifications as the circumstances may require to permit the extension of the period set out in subsection (3).

Section 11 deals with the extension of time for responding to a request for information. It states as follows;

- 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).

As I see it, there are several points to be made in this matter.

#### 1. Extension of time

One of the first issues that occurs to me in reviewing this matter is whether the public body's extension of time was properly done. I am cognizant of the fact that this Department has had significant demands made on their time with access to information requests of various descriptions over the last four or five months and that they are, understandably, feeling somewhat overwhelmed by the unusual number of matters they are being asked to deal with. My impression from the correspondence, whether

accurate or not, is that the Department simply could not meet the 30 day deadline imposed by the Act for responding to the Applicant because of the significant case load faced by them currently and, as a stop gap measure, sent the Applicant a form letter under section 11 without appropriate editing or proper thought being given to whether or not any of the provisions of section 11 actually applied. I am not satisfied, based on the material provided to me, that the explanation for the extension was genuine or supportable in this particular case. The Applicant's request was very narrowly focused. He requested that a certain document, which he clearly identified, be corrected. The public body's explanation that they needed more time to "search for all copies of the letter" the Applicant wanted corrected simply does not hold water. I therefore find that the extension of time was not properly taken.

## 2. Time Limit for Responding

Quite apart from whether or not the extension of time was properly taken, the next question is whether the public body's response was "given" within 30 days as required by section 46. Does it mean that the written response has to be in the hands of the Applicant within 30 days, or does it mean that the public body has to have the written the response and sent it on its way to the Applicant within 30 days?

Section 46 provides that the public body must give written notice to the individual who requested correction within 30 days of the date the request is received. Although public bodies should always endeavor to have responses actually delivered into the hands of Applicants within 30 days one has to be cognizant of the length of time that it takes for mail to be delivered, particularly to fairly remote communities. As a case in point, it appears that a letter sent to the Applicant by the public body in this very case took three full weeks to be delivered. Using some application of common sense, it seems to me that the intention of the legislators was to ensure that the Applicant receives a timely response in these kinds of situations and reasonableness dictates that it is likely to take more than a week to process a request such as this one, even if it is a fairly simple matter. In my opinion, in order for the public body to "give written notice" of the public body's position, it is sufficient that they have written the response and sent it on its way

in some reasonable fashion within the 30 days. Although the world is becoming more and more dependant on speedy electronic and fax communications, mail is still a proper mode of communication in matter such as this and I accept that the public body has met its obligations under the Act if the response is mailed within the time frame provided in the Act, even if not delivered within that time frame. Fax communication may be a reasonable alternative where the Applicant has provided a secure, private fax number and where the number of pages is reasonable. E-mail, for many reasons, is not an appropriate means of responding to an Applicant except, perhaps to advise that a response has been sent by mail.

In this case, I am satisfied that the public body use the most efficient means of secure communication available to them.

3. The Applicant's request that I "direct" the public body to make the requested correction.

My role as Information and Privacy Commissioner is constrained by the legislation under which I act. The *Access to Information and Protection of Privacy Act* provides me with the mandate to investigate complaints and make recommendations. Only in very narrow circumstances does the Act give me any jurisdiction to "direct" either a public body or an Applicant to do or refrain from doing anything. I have no jurisdiction or authority to "direct" the public body in this instance to do anything.

4. The Correction requested

It appears to me from the correspondence received from the public body that the requested correction, although not done on a timely basis, has now been made. The Applicant was given the opportunity to challenge the correction but he did not do so. I assume, therefore, that he is satisfied that it has been done. I will not, therefore, make any further recommendation with respect to the correction requested.

#### **D. CONCLUSION AND RECOMMENDATIONS**

As noted above, it is my opinion that the public body in this instance did not properly extend the time for responding to the Applicant's request for a correction to his personal information. The consequence of that is a "deemed refusal" to make the correction. That having been said, the correction has now been made and the intended result for the Applicant has been accomplished. I therefore see no purpose in making any recommendation other than to recommend that no further action be taken with respect to this matter.

Elaine Keenan Bengts  
Information and Privacy Commissioner for Nunavut.