

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-33
October 5, 2007
Review File: 07-208-5

A. BACKGROUND

By letter dated July 9th, 2007, the Applicant asked my office to review "the failure of the Department of Human Resources to give me access to requested records in a timely manner". The Applicant made his original request for information to the Department of Community and Government Services by letter dated June 7th, 2007. That request was forwarded by the Department of Community and Government Services to the Department of Human Resources pursuant to section 12 of the *Access to Information and Protection of Privacy Act*. By letter dated June 8th, 2007, the Department of Human Resources acknowledged receipt of the Request for Information and advised that they hoped to respond sooner than July 6th to the request. A further letter was written to the Applicant, dated June 27th, 2007, indicating that, because of the large number of records involved in the Applicant's Request for Information, it could not be processed within the usual 30 day limit and for that reason, an extension was being taken to August 6th, 2007. The public body also provided me with a print out of tracking information obtained from Canada Post's web site indicating that this letter was posted in Iqaluit at approximately 2:00 in the afternoon of June 29th, 2007. It appears that the first attempted delivery of this letter to the Applicant in his home community was on July 11th and that it was, in fact eventually delivered on July 16th.

The Applicant's position is that since he had not received a response from the Department within 30 days, there was a "deemed refusal" to produce the records by virtue of Section 8(2) of the *Access to Information and Protection of Privacy Act*.

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.
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- 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 has been pointed out by the Applicant, section 8(2) of the Act provides that if no response is received to a Request for Information within 30 days of the request, 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 was bound by section 8(2) of the Act to respond to the Applicant on or before July 7th, 2007.

That response came in the form of the letter of June 27th in which the time to respond was extended.

Keeping in mind the wording of section 11, it is clear that a letter advising the Applicant of an extension of time to provide the requested records is a "response" as contemplated by section 8 of the Act.

The real question is whether the response has to be actually received by and in the hands of the Applicant within the 30 days or whether it merely has to be sent to the Applicant before the end of the 30 day period. 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 the letter is postmarked within the 30 days. If the legislators intended for there to be actual delivery of the response within the 30 days, it seems to me that they would have been more specific by providing that the response had to be "delivered" or "served" on the Applicant within the 30 days. The legislation does not go that far. It requires only that the public body respond within that period of time. In this case, the letter was put in the mail approximately one week ahead of the deadline. Once placed in the mail, there is no control over how long it might take to be delivered to the Applicant, particularly where, as in this case, the Applicant resides in a small, relatively isolated community. There is also no control over when the Applicant might pick up his mail as is evidenced by the fact that it took six days to deliver the correspondence to the Applicant after it was available to him in his home community.

I am satisfied that in this case, the public body acted in good faith and "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.

C. 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 will not be making any further recommendations with respect to the Applicant's Request for Review.

I would, however, repeat the following general recommendations which have been made in a number of recent recommendations out of my office so as to attempt to make the process more efficient and effective for the future.

1. Where the Applicant provides a private facsimile number, and the response is not excessively lengthy, 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.
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 it's delivery can be traced and verified, such as by registered mail.

Elaine Keenan Bengts
Information and Privacy Commissioner