

NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 07-36
November 27, 2007
Review File: 07-222-5

A. BACKGROUND

By letter dated June 11th, 2007, the Applicant requested documentation from the Department of Education, specifically the following:

- a) all documents (e-mails, memos, minutes of meetings, reports, notes desk diary notes or anything else in written form)
 - i) from Chris Purse to Lindsay Hudson regarding the Federation of Nunavut Teachers' position on my grievances and its treatment of me;
 - ii) sent to Chris Purse by the Federation of Nunavut Teachers about me or my grievances over the period December 1, 2001 to November 30, 2002;
 - iii) relating to communications between Chris Purse and "the Minister" about me

- b) copies of all documents created by Tom Rich and Ian Rose relating to their meetings with other people within and without the Department of Education about me

By letter of June 28th, 2007, the public body gave notice to the Applicant that they were extending the time for response to the request pursuant to section 11 of the *Access to Information and Protection of Privacy Act* for 30 days to August 10th. In advising the Applicant of the extension, the public body indicated that they had encountered delays in searching for the requested records since some or all of the individuals named in the request for information were no longer in the positions held at the time covered by the request, necessitating a more complex search of a large number of records.

In his Request for Review, the Applicant takes the position that the reason given for the delayed response is not one of the allowable reasons for an extension under section 11 of the Act, which outlines the circumstances in which an extension can be taken.

The public body provided a detailed explanation for the delay to me and the Applicant was given the opportunity to respond to that explanation. He did not provide any further comments.

B. ISSUE

The sole issue which I have been asked to address in this review is whether or not the public body properly applied section 11 of the *Access to Information and Protection of Privacy Act* in extending the time to respond to the Applicant's request for information by 30 days.

C. DISCUSSION

Normally, a public body has 30 days to respond to a request for information. The Act recognizes, however, that in some cases 30 days will not be long enough to locate the responsive records and respond. Section 11 of the Act, therefore, gives public bodies the discretion to extend the response time in certain circumstances. In particular, Section 11 states:

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).
- (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).

It is the Applicant's position that the reason given by the public body for extending the time is not included in section 11 and the extension was, therefore, invalid. In his words:

In short, section 11 of the ATIPP Act does not permit the Department to extend the time for responding to requests because 'some or all of the individuals named in the requests are no longer in the positions held at the time covered by the request'.

Furthermore, he did not understand why the absence of the named individuals should delay the response as any records created in 2001 or 2002 should have been properly managed in accordance with Government standards and practices and filed by 2007 when the request for information was made. He could not understand how the absence of those who created the records could create any barrier to recovery of the records. In its response to me, the public body provided further detail about the reason for the delayed response. In particular, they indicated that the specific section relied on was section 11 (1)(b) - a large number of records needed to be searched to find the records related to the request. They indicated that in responding to the Applicant in the way that they did, they were attempting to provide him with an explanation of the underlying reason for the extension by noting that some of the individuals named were no longer in the positions held at the time the records were created, meaning that both electronic searching of the individuals' stored electronic files and a physical search of records

storage locations was necessary in addition to searching the former work locations of the individuals named. In their explanation to me, the public body indicated that this not only increased the number of searches necessary to locate the requested records, but also greatly increased the volume of records that needed to be searched through.

Finally, they pointed out that the timing of the request made the search more difficult because it was during the summer months between school years, during which time many school employees and many Department of Education officials are away. They say that this can increase the time necessary to locate the documents because the employees most able to advise where to find the specific records requested might be found with a minimum of searching are often unavailable.

In this case it seems to me that the Applicant had a legitimate complaint based on the letter of explanation provided by the public body in advising him of the extension. The letter itself did not provide a full description of the specific subsection of section 11 that the public body was relying on. The letter did refer to "a large number of records" that needed to be searched, but that fact was almost hidden at the end of the explanation.

That having been said, I am satisfied that there was, in fact, good reason for the extension of time, even if that reason was poorly articulated to the Applicant. I understand the challenges that many public bodies face in dealing with and managing records in small, isolated communities with limited numbers of employees familiar with any particular issue. I also understand the particular challenges that the Department of Education faces in dealing with issues in the summer months when many of the teachers and other school employees are away on holiday all at the same time. The explanation for the delay provided to me was clear and reasonable. The only thing the public body did wrong in this case was in failing to properly articulate their challenges to the Applicant in their letter to him.

It is my understanding that the Request for Information was, in fact, responded to in full by the August 10th extended deadline and the Applicant has received the requested records.

D. CONCLUSION AND RECOMMENDATIONS

As noted above, it is my opinion that the public body in this instance was justified in delaying the response to the Applicant's request for information pursuant to section 11(1)(b) of the *Access to Information and Protection of Privacy Act* in that there were a significant number of records to search at a number of different locations during a time at which there were additional problems with staffing. The problem here was in the wording of the letter which was sent to the Applicant to advise him of the extension.

The letter used is, for the most part, a standard form provided to ATIPP Co-ordinators to assist them in responding to Requests for Information. I would recommend that the standard form be amended to ensure that the specific subsection of section 11 being relied on is included in the letter advising Applicants of extensions. So, instead of simply advising the Applicant that the public body is extending the time for response pursuant to section 11, the letter should reflect that the delay is pursuant to, for example, section 11 (1)(b).

Furthermore, I would recommend that public bodies actually articulate the reason rather than simply referring to the section of the Act. For instance, in this case, the letter might have read as follows:

The ATIPP Act, section 11, provides that a public body may extend this time limit. This will advise that we find it necessary to extend the time to respond to your request pursuant to section 11 (1)(b) because there are a large number of records that must be searched to identify the requested records and meeting the time limit would unreasonably interfere with the operations of our department.

If, as here, further explanation is appropriate or necessary, that explanation could then follow the specific statement of the section being relied on.

In making this recommendation, I hope that it will be shared with all public bodies, the Government's Manager of ATIPP and all ATIPP Co-Ordinators within the public sector so as to assist them in dealing with these issues in the future.

Elaine Keenan Bengts
Information and Privacy Commissioner