

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-38  
November 29, 2007  
Review File: 07-227-5

**A. BACKGROUND**

By letter dated June 20th, 2007, the Applicant requested documentation from the Department of Education, specifically the following:

- a) a copy of the letter of apology signed by [A.B., C.D., and E.F]
- b) all documents related to the said letter of apology such as records showing the date when it was faxed to different departments of the Government of Nunavut

In this case, A.B., C.D. and E.F. are named third parties who were not government employees. I have, therefore, not provided their real names and will not refer to them by name in this review recommendation.

It is to be noted that the Applicant sought exactly the same records in a Request for Information made by him in a letter dated June 13<sup>th</sup>, 2007. The only difference between that request and this one is that the Applicant sought additional records in the June 13<sup>th</sup> request.

By letter of July 19<sup>th</sup>, 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* to August 17<sup>th</sup>. 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 to August 17<sup>th</sup>, approximately 28 days beyond the date the response would otherwise have had to be given.

## **C. DISCUSSION**

The records requested, the issues and the explanations received from the Department in this case are identical to those discussed in my Review Recommendation 07-037. For that reason, I do not feel that it is necessary to repeat the background or explanations provided in any more detail than outlined above.

Section 11 of the *Access to Information and Protection of Privacy Act* provides public bodies with the discretion to extend the response time in certain circumstances and in this case the public body took advantage of that section to extend the time for responding to the Respondent.

Although the public body's letter to the Applicant explaining the reason for the delay was not entirely clear and could have been worded in way which outlined more specifically the reasons for the delay, I am satisfied that in all of the circumstances of

the case that the public body properly exercised its discretion and that the reasons that the delay was necessary were within section 11 (1 )(b). It is to be noted that this Applicant had filed a large number of Requests for Information from this and other public bodies within the space of approximately two months, putting considerable extra burden on the department over a very short period of time. Because the Government of Nunavut is relatively small, all ATIPP Co-Ordinators have responsibilities in their positions which extend well beyond their ATIPP responsibilities. This makes meeting a large demand in a short period of time all the more difficult. In the case of the Department of Education, for example, the ATIPP Co-Ordinator is also the Director responsible for the Planning and Policy Division of the Department. Although the public body has not relied on the volume of access requests which they were dealing with at that particular point in time to justify the delay in responding, I note that this is a consideration which I would have taken as relevant to a determination as to whether section 11 (1 )(b) was appropriately applied.

It is my understanding that the Request for Information has now been fully responded to. Although the public body might have put a hold on the response pending my decision in this review, they chose instead to proceed to collect the responsive records and to provide them to the Applicant.

#### **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 in which there were additional problems with staffing.

I would have no further recommendations to make other than the ones already made in my Review Recommendations 07-036 and 07-037, which generally relate to the

wording of the letter that was sent to the Applicant in advising him of the extension of time. I make no further recommendations with respect to this issue.

Elaine Keenan Bengts  
Information and Privacy Commissioner