

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-086

October 17, 2014

Review File: 13-122-5

BACKGROUND

The Applicant in this matter sought a review of the “unjustified extension” of the time for responding to a Request for Information which he made to the Department of Health. His request for information was dated December 2nd, 2012. A money order for the \$25.00 application fee, dated December 12th, appears to have accompanied the request. There is no clear indication as to when the request was actually sent to the department in Iqaluit or the method of delivery, but it appears that it was sent by mail.

The request was for documents outlining, for a stated period of time, information about:

- Calls for medevac services based out of Cambridge Bay, Nunavut;
- How many medvacs were dispatched out of Cambridge Bay to service the Kitikmeot and how many were dispatched out of Yellowknife;
- How were dispatch response times being recorded and was the department monitoring dispatch response times and how;
- How was the department tracking or following situations in which two medevacs are dispatched simultaneously from Cambridge Bay;
- Have there been any irregularities or violations of the contract between the department and the successful proponent for RFP 2011-21 since the contract was awarded;
- Have there been any problems with runway distance aircraft performance with the aircraft being used for medevacs;

By an email dated December 21st, receipt of the request was acknowledged by the public body and on December 28th, 2013, the public body followed up with a letter of acknowledgement.

On January 8th, 2013, the public body wrote to the Applicant seeking clarification of the meaning of the words “dispatch” or “dispatched”. That explanation was provided by email of January 17th. On January 18th, the public body advised the Applicant that they required “a little additional time” to respond to the request as they needed to consult with a Third Party - the contracting company. In the letter, the department advised the Applicant they required an additional 12 days from the original deadline date to respond and that the response would be ready no later than January 31, 2013.

By letter of January 30th, the public body disclosed three records to the Applicant which were apparently sent by Air Courier on January 31st.

The Department’s Submissions

I asked the public body to address the additional time they took to respond to the Request for Information. In their response to me, this issue was not really addressed.

I was advised that, because the Applicant had filed a lawsuit against the GN, the department approached the Department of Justice for advice for processing the request and this is why the initial response letter to the Applicant did not refer to the date on which the Request for Information had been received.

They further advised that the responsive records had been provided to the Applicant “in unedited form only, because the records have been prepared by the Department with third party consultations as necessary.”

Neither of these statements addresses the issue, which is the need for the extension of time for consultation purposes.

Discussion

Section 8 of the *Access to Information and Protection of Privacy Act* requires public bodies to respond to access to information requests within 30 days of the date that they

receive the request unless the time limit is extended under Section 11. Section 11 allows for an extension of the time limit in three narrow circumstances:

- 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).

Subsection (2) of Section 11 provides that when the time for responding is extended, the public body must tell the Applicant, without delay, the reason for the extension, when the response can be expected and that the Applicant may ask for a review of the extension under subsection 28(1).

In this case, the public body followed all of the necessary formal steps to extend the time limit pursuant to section 11(2). It apparently relied on Section 11(1)(c) as the reason for the extension. The length of the extension (12 days beyond the original deadline date) was, in my opinion a “reasonable” period of time.

The only question for me is whether or not more time was really needed to “consult with third parties”. Normally a consultation with third parties would involve inviting a third party to consider whether or not they have any objections to the disclosure of records in the possession and/or control of the public body. This process is a lengthy one and can add up to 90 days to the response time. The Act sets out the process for such

consultations. In this case, however, what the public body appears to have done is to seek information from the third party with respect to the questions posed because the department itself did not have any responsive records and wanted to provide the Applicant with something responsive. While I have significant concerns about the apparent lack of responsive records within the Department of Health, that is not the issue before me. The issue before me is whether or not section 11 allowed for the extension of time and whether the public body followed the appropriate steps in taking the extension. The issue, at this point, is in fact somewhat moot in that the response has long since been provided to the Applicant and, in fact, was probably provided within days of the Request for Review being submitted to my office.

While I believe that section 11(1)(c) was intended to apply to situations in which third party consultations are necessary pursuant to section 26 of the Act, there is nothing precluding a consultation in other circumstances. I am therefore of the opinion that the extension was appropriately taken by the public body.

CONCLUSIONS AND RECOMMENDATIONS

As noted above, I am satisfied that the public body in this case properly applied section 11 of the *Access to Information and Protection of Privacy Act* in taking a short extension to the initial 30 day response time. It is, however, very concerning that the Department of Health could find virtually no records in their own possession which were responsive to the Request for Information. At best, this suggests that the public body's record keeping is lacking. At worst, it suggests that the public body is not keeping relevant records. This is a huge contract with a new contractor after many years with one service provider and there has been considerable public interest and comment as a result. One would expect, in such situations, that there would be glitches and hiccups in terms of service delivery and that the public body would monitor these problems. I would expect the public body to be monitoring the contract very closely so that they can answer fairly basic questions about the quality of service delivery. The contractor is being paid with public funds and the public is entitled to know whether it is living up to its obligations under the contract. On the other hand, if this monitoring is the

responsibility of another government department, the Request for Information should have been sent to that other department. This, however, is not an issue before me in this review and I raise it only as a point of concern in terms of the stated purposes of the Act, which is to make public bodies more accountable to the public. This cannot happen if public bodies do not maintain adequate records. This is a situation in which I would have expected the responsive records to be fairly numerous and I am surprised and concerned about the apparent lack of records.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner