

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 16-154

File: 16-169-4

December 1, 2016

BACKGROUND

On May 2, 2016, the Applicant made a request for information from the Department of Finance for access to his own personal information, including:

- a) his “official and current personnel file in the custody and control of human resources”,
- b) records created by his former manager containing his personal information, including any hand written notes,
- c) emails or other electronic records about him sent or received by his former manager.

He acknowledged in the Request for Information that some of this information may be located at the local office of his former employer, a regional health authority. On May 18th, the Applicant received an email from the Department of Finance indicating that they were having difficulty obtaining the responsive records from the health authority because key personnel had moved on and that there may be a delay in responding as a result. Two days later, the Department sent the Applicant a further email indicating that they had determined that it was more appropriate to transfer the second and third parts of the request to the health authority. This email was accompanied by a formal letter pursuant to section 12 of the Act advising the Applicant that those portions of the request had been transferred to the health authority. The letter also suggested that the health authority would respond to him “before June 20”. The Applicant did not hear anything further from the health authority, not even an acknowledgment that it had received the request. On August 15th, the Applicant asked my office to treat the lack of response as a refusal to disclose pursuant to section 8(2) of the Act and to conduct a review.

This review will address only the Request for Information which was transferred to the health authority.

As a preliminary matter, it is to be noted that as of August 1st of 2016, a number of regional health authorities in the Northwest Territories were amalgamated into one Territorial Health and Social Services Authority (NTHSSA). The Applicant's former employer was one of the authorities amalgamated. Responsibility for responding to the Request for Information, therefore, now lies with the NTHSSA.

Upon receipt of the Applicant's Request for Review, this office wrote a letter to the NTHSSA indicating that this office was treating the failure to respond to the Applicant as a refusal to disclose and asked for copies of all of the responsive records, together with an indication of any exemptions that the public body thought appropriate and reasons for any exemptions so identified. Finally, the public body was asked for an explanation for the failure to respond to the request in a timely manner. A response to this letter was requested by September 18th. No response was received. A second letter was written to the public body on October 24 making a second request for the required information. A brief response to the second letter was received on October 27th, apologizing for the failure to respond to the first letter and pointing to administrative errors, along with an intervening office move which had contributed to the lack of response. The letter indicated further response would be provided within the week. On November 2nd, the public body wrote another letter indicating that, as the Applicant's former supervisor was no longer employed with the health authority, nor living in the Northwest Territories, GNWT Technical Services Centre had been recruited to assist to recover any electronic records which might be responsive to the request. The letter indicated that those records were being reviewed and would be ready for disclosure within a week. In addition, a manual search was being conducted of the health authority's offices for paper records.

With respect to the failure to respond, NTHSSA explained that the health authority with which the Applicant had been employed had ceased to exist as an independent entity on August 1st, 2016 and was amalgamated under the NTHSSA on that date. Further, there had been a change in management during the health authority's last few months of operation and there were other vacancies in key roles which "may have led to the lack of responsiveness" to both the Applicant and to this office. NTHSSA advised that the organizational structure of NTHSSA was an ongoing project and that the development and implementation of policies, procedures and organizational details would help to address the delay issues in the future.

On November 10th, 2016, my office received a package of responsive records which were, at the same time, disclosed to the Applicant.

DISCUSSION

In light of the fact that NTHSSA has now completed its response to the Applicant, this review will address only the issues surrounding the delays in responding to the Request for Information and to this office. The Applicant is entitled to seek a review of the adequacy of the actual response within 30 days of his receipt of the records in question should the response still not meet his expectations.

THE ISSUES

The Act is quite clear with respect to the requirement for public bodies to respond to a Request for Information within 30 days. Section 8 of the Act provides:

- 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.

In this case, the health authority did not extend the time for its response pursuant to section 11, nor did it transfer the request for information to another public body. The health authority received the transferred portion of the Applicant's initial Request for Information on or about May 20th, which means it should have provided its response on or about June 20th. The Applicant did not even receive an acknowledgment that it had received the transfer. It is not the Applicant's responsibility to follow up in such a case. Section 8(2) allows Applicants to consider the failure of a public body to respond within 30 days as a refusal to provide any response and request a review by this office. The Applicant in this case was fairly patient, waiting until August to bring the matter to my attention, giving the public body nearly 90 days to provide its response. It is fairly obvious that the health authority either ignored the request, lost it, or actively chose not to respond.

This is troubling, particularly as this health authority is not the only one which simply did not respond to an access to information request during the months leading up to the amalgamation. It is likely possible to explain the failure to respond in each instance as being a result of the general disorganization within the health authorities during that transition period, as well as the huge amounts of additional work that was probably required to effect the transition. While I

understand the operational imperatives of such a transition, it is not an excuse for not complying with the legislated obligation imposed on public bodies to deal with access to information requests.

Also of note is that section 59(2)(b) of the Act provides that:

- (2) Every person who wilfully
 - ...
 - (b) fails to comply with any lawful requirement of the Information and Privacy Commissioner or any other person under this Act, ...
- is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

I am not convinced that the failure of the NTHSSA to comply with my request for their input on this matter was willful. I am, however, concerned that it was not treated with the appropriate level of urgency. Again, I understand that the demands of effecting an amalgamation of six health authorities into one is a colossal task and that an access request might be considered a lower priority task. The *Access to Information and Protection of Privacy Act*, however, imposes positive duties on public bodies and those duties cannot be secondary to other functions not clearly mandated by legislation.

CONCLUSIONS AND RECOMMENDATIONS

The initial lack of response to the Applicant in this matter is particularly concerning. Assuming the best case scenario, the Request for Information simply got lost, misplaced, or buried. How did that happen? This is a glaring failure of process. That said, as the organization no longer exists, it seems moot to make recommendations as to how to fix this problem. I do note, however, that in light of the amalgamation of the six health authorities, there are going to be a lot of challenges in terms of records management and I **recommend** that the public body take the time, as a priority, to set out thorough and clear policies and procedures with respect to the handling of access to information requests, including ensuring that there is at least one person in each of the regions who will be responsible for access to information and privacy issues under both the *Access to Information and Protection of Privacy Act* and the *Health Information Act*.

Elaine Keenan Bengts
Information and Privacy Commissioner