

Office of the Access
to Information and
Privacy Commissioner

New Brunswick



Commissariat à l'accès
à l'information et à la
protection de la vie privée

Nouveau-Brunswick

REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2013-1670-AP-902

Date: April 7, 2014

Case about failure to respond to a correction of records request.

INTRODUCTION and BACKGROUND

1. The present Report of the Commissioner's Findings is made pursuant to subsection 73(1) of the *Right to Information and Protection of Privacy Act*, S.N.B. c.R-10.6 ("the Act"). This Report stems from a Complaint filed with this Office in which the Applicant requested that the Commissioner carry out an investigation into this matter.
2. The Applicant made a request to the Department of Social Development on September 11, 2013 to correct personal information found in records held by the Department, a request permitted under subsection 40(1) of the Act.
3. The Department failed to respond to the request and on December 10, 2013, the Applicant filed a complaint with our Office.

INVESTIGATION

4. As part of our investigation, we met with the Department's officials to learn of the reasons why a response was not issued to the Applicant in this case.
5. We were informed that the Department had received the request for correction and that it was aware of its obligation to respond to the Applicant within the 30-day time limit. The Department explained that it did not provide a response to the Applicant due in part to the fact that the information the Applicant was seeking to have corrected was not easily identifiable; for that reason, the Department did not know which records the Applicant was referring and had a difficult time locating the records.
6. The Department believed that the records in question might be those that were released to the Applicant in 2008 pursuant to an informal request for information to one of the Department's regional offices. That regional office had not documented which information had been given to the Applicant and this made it difficult for the Department to identify and locate the relevant records.
7. The Department eventually located the records believed to be those intended by the Applicant, albeit this took place only in mid-March 2014.
8. The Department has a process in place for access requests for information made pursuant to the Act but given the nature and size of the Department's operations, a process for documenting informal requests has not been standardized throughout the

whole Department. Moreover, the Department still encourages the public to submit informal requests for information although it is always prepared to respond to formal requests made under the *Act*.

Duty to assist and time limit to respond

9. According to subsection 40(3) of the *Act*, the Department had 30 days after having received a request for correction to make the requested correction and then notify the Applicant of the correction, or to notify the Applicant of its refusal to correct the information with reasons.
10. Further, subsection 40(4) stipulates that subsection 11(3) applies with the necessary modifications in relation to the time limit referred to in subsection (3). This signifies that the self-extension of time provision provided for under the *Act* for an access to information request also applies to a request for correction, for instance, if this involves not having been given enough detail to identify a record for correction (11(3)(a)) and to respond within 30 days.
11. The Department's officials were aware of the rules established under the *Act* to process a request for correction given that they had processed such a request prior to the Applicant's. Despite knowing the process, which includes the possibility to self-extend the time limit by up to an additional 30 days when an applicant has not given enough detail to enable the Department to identify a record for correction, the Department did not proceed in that fashion. This resulted in the filing of the present Complaint for the reason that the Applicant did not receive any response from the Department.
12. Moreover, the Department did not communicate with the Applicant in order to obtain clarifications.
13. The right to access information in a timely manner not only regards the Department's duty to assist required by section 9, but also serves to signify to the Applicant that the request is important and that the Department will undertake to process it in an expedient and transparent manner:

9 The head of a public body shall make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner.

14. The Department's officials readily admitted that, in retrospect, they should have sought the necessary clarifications in order to assist the Applicant and to permit themselves in identifying and locating the records sought to be corrected. We reiterate for the purpose of this Report that this is one of the positive outcomes of fulfilling the statutory duty to assist obligation found in section 9.
15. We add that the duty to assist applies throughout the request process and requires the Department to provide a timely, appropriate, and relevant response. When circumstances are such that this may not be possible, every reasonable effort must be made, as early as possible to avoid further delays, and to notify the Applicant the date upon which a response can be expected.
16. Therefore, when the Department was having difficulty identifying the records the Applicant was seeking to have corrected, it was the Department's duty to communicate with the Applicant to obtain clarifications and to notify the Applicant that more time would be needed to respond, as well as a date on which the Applicant could expect to receive the response.
17. As it turned out, the Applicant was not made aware of the difficulties encountered and was not informed that more time would be required. For the reasons that these efforts did not take place on the part of the Department, we find that the Department failed in its duty to assist the Applicant in this case in not assisting the Applicant and in not providing a timely response.

FINDINGS

18. The Applicant was justified in filing the present complaint as the Department did not communicate with the Applicant to seek clarifications, and did not issue a response when required to do under the *Act* contrary to its duty to assist obligation in section 9 of the *Act*.
19. We find the Department was not compliant with section 40(3) of the *Act* in not having notified the Applicant whether the requested corrections have been made or would be refused, with reasons, within 30 days.
20. The Department is currently reviewing its internal procedures and is in the process of standardizing them throughout its offices in order to document any release of

information in responses to informal requests. We applaud the Department's commitment to serve the public through the handling of informal requests. We also welcome the Department's undertaking to establish controls on those procedures as we believe those important steps will improve its records managements system, making the system better suited to process formal access to information requests under the *Act*.

RECOMMENDATION

21. Based on these findings, the Commissioner therefore recommends that the Department notify the Applicant within 20 days from the date of this Report, namely no later than **April 28, 2014** of its decision as to whether the requested corrections will be made or refused, along with reasons if the Department refuses to make the corrections.
22. In accordance with section 74 of the *Act*, the Department has 15 days from the date of this Report to decide whether it will follow or not follow this recommendation and to inform the Applicant and the Office of the Commissioner.

Dated at Fredericton, New Brunswick, this _____ day of April, 2014.

Anne E. Bertrand, Q.C.
Commissioner