

REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2011-530-AP-273

February 28, 2012

Office of the Access to Information and Privacy Commissioner of New Brunswick

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 matter stems from a Complaint received by this Office on October 11, 2011.
2. On September 9, 2011, the Applicant submitted a request for information to Ambulance New Brunswick ("Ambulance NB"). The Request contained many questions surrounding an incident that occurred on May 13, 2011, including questions about staff members and video surveillance from that day.
3. Specifically, the Applicant requested the following:
 - That "Employee A" and "Employee B" are not supervisors or managers;
 - You [Ambulance NB] stated that there is an ongoing investigation of the "Employees" in question on May 13th, and I would like to know when this investigation started and who is conducting same;
 - Confirmation that you do not have the police reports or the pictures of my [injuries];
 - Confirmation that you do not know the names of the police officers involved [in the incident of May 13, 2011];
 - That "Employee C" is not yet a paramedic and request for information concerning who was in charge on that date;
 - What company is your video server;
 - Who is your video installer and what is the number of this licensed agency and installer;
 - Has the installer and their agency met all the requirements under the *Private Investigator and Security Services Licenses [Act]* (NB Public Safety);
 - Where are the rest of the video cameras located in the premises at 24 Doherty Court, Fredericton location? Why do the cameras not seem to be in a consecutive arrangement? I want what is on the remainder of the rest of the cameras;
 - I need the name and phone number and address of your video agency;

- Who are the people at Ambulance NB who have access to the video and making any alterations to it, outside of the Agency and the installer who is licensed to do so; and,
- Are the video cameras on a “network” which is connected to say, Moncton or other Cities across the Maritimes or strictly in NB.
(“the Request”)

4. On October 3, 2011, Ambulance NB responded to the Request by stating the following:

Ambulance New Brunswick (ANB) has reviewed your numerous requests and is of the view that they are not requests for documentary disclosure but are requests for ANB to carry out various investigations. The purpose of the *Act* is to provide a right of access to records in the custody of public bodies. ANB confirms that all records relating to your numerous requests that are in its custody have been disclosed. ANB also confirms that it has provided you with a copy of all records within its possession that you are entitled to receive.
(“the Response”)

5. The Applicant filed a complaint about the Response with the Office of the Right to Information and Privacy Commissioner on October 11, 2011.

INFORMAL RESOLUTION PROCESS

6. As with any complaint under investigation by the Commissioner’s Office, we first seek to resolve the matter informally, to the satisfaction of both parties, and in accordance with the rights and obligations provided by the *Act*.
7. The informal resolution process provides guidance to public bodies and applicants with a view to better understand this new legislation. Ideally, this process will encourage a prompt and satisfactory outcome to the complaint. (*Note: A full description of the steps involved in the Commissioner’s informal resolution process can be found in **Appendix A** of this Report.*)
8. The initial step undertaken by the Commissioner was to review the Request and the Response and determine whether the Response met the requirements of the *Act*. In that regard, steps undertaken included meeting with officials at Ambulance NB to determine how the Response was prepared and a review of the relevant records.

9. During the meeting with the Commissioner, officials from Ambulance NB explained that they had previously provided responses to the Applicant's numerous requests for information, both formally and informally. Those past responses had included most of the information that was asked for in the Request of September 9, 2011.
10. In addition, Ambulance NB highlighted the fact that a large part of the Request was not for access to a specific record, but rather, asked for various actions to be carried out.
11. In our review of the Request, we agreed with Ambulance NB that there were indeed questions and comments from the Applicant which were neither relevant nor applicable to a request for information under the *Act*; however, we were able to identify portions of the Request where the Applicant was seeking specific information to which the *Act* applies, interspersed among the contents of the Request.
12. While some of this information had previously been provided to the Applicant, this was not properly addressed in the Response. As a result, we invited Ambulance NB to consider issuing a revised response to the Applicant through our informal resolution process with a view to issue a properly constituted Response to the Request.
13. Ambulance NB agreed to provide a revised response to the Applicant's specific requests for information.
14. In preparing the revised response, Ambulance NB further agreed to reproduce and include responses and records previously provided to the Applicant which were directly connected to the Request. Ambulance NB also agreed to provide direct answers to questions found in the Applicant's Request which were not fully addressed in the original Response. This was intended to give the Applicant a full and clear response to the Request.
15. Our Office reviewed the revised response and determined that it was in compliance with Ambulance NB's obligations under the *Act*. Ambulance NB then issued the revised response to the Applicant on February 9, 2012. The next step in the informal resolution process called for the Applicant to review the revised response and to provide our Office with comments as to whether the revised response was acceptable as a means of resolving the Complaint.

16. On February 13, 2012, the Applicant submitted comments to our Office stating that the revised response did not provide enough information in response to the Request. The Applicant questioned the content of the Response and raised further concerns about the information released. For instance, the Applicant believed that the information provided, specifically the CCTV surveillance footage of the day in question, had been altered. The Applicant also believed that information withheld under paragraph 20(1)(a) should have been released.
17. As a result of the Applicant's dissatisfaction with the revised response, the informal resolution process was not successful. In order to determine whether further investigation was necessary, our Office proceeded to review the matter once again in light of the Applicant's comments.

FORMAL INVESTIGATION

18. As part of our formal investigation into the matter, we reviewed the Request and the revised response provided by Ambulance NB one more time in conjunction with the Applicant's comments.
19. We found that Ambulance NB fully answered the Request in its revised response. In addition, we reviewed the information which had been disclosed to the Applicant in previous requests. This was important because previous responses that were of the same context formed part of the revised response.
20. In particular, we confirmed that the CCTV video surveillance provided to the Applicant was the same copy as that held by Ambulance NB. The video recording system in question is set up to record only when there is movement near the camera itself. Therefore, the video footage appears disconnected i.e., it starts and stops, making it appear to have been edited when it in fact was not.
21. Ambulance NB refused to disclose some of the requested information in relation to an investigation into the conduct of some of its employees. This information was withheld under paragraph 20(1)(a) of the Act:

20(1) The head of a public body shall refuse to disclose information to an applicant that would reveal

(a) the substance of records made by an investigator providing advice or recommendations of the investigator in relation to a harassment investigation or a personnel investigation...

22. This is a mandatory exception to disclosure which directs a public body to withhold information that would reveal the elements of a personnel investigation. A public body must respect this rule whenever access to this type of information is requested. Upon our review of this information, we found that Ambulance NB applied paragraph 20(1)(a) properly in withholding the information regarding its personnel investigation.
23. Other comments from the Applicant questioned the content of the revised response and whether documents had been altered or falsified. After our thorough investigation into the matter, we could not find any evidence that the revised response given by Ambulance NB was anything but forthright, factually correct, and in conformity with the *Act*.

COMMISSIONER'S FINDINGS

24. Based on all of the above reasons, we are satisfied that Ambulance NB provided a full and frank disclosure to the Applicant's Request that is in accordance with its obligations under the *Act*. We see no reason to alter our findings upon the further investigation of this Complaint.
25. In that regard, it is not necessary to make a recommendation in this matter.

Dated at Fredericton, New Brunswick, this 28th day of February, 2012.

Anne E. Bertrand, Q.C.
Commissioner

Appendix A

Complaint Matter: 2011-530-AP-273

February 28, 2012

Office of the Access to Information and Privacy Commissioner of New Brunswick

“Complaint Process”

January 2011

Office of the Access to Information and Privacy Commissioner of New Brunswick

Complaint Process

***Right to Information and Protection of Privacy Act* (chap. R-10.6)**

The New Brunswick *Right to Information and Protection of Privacy Act* allows for the Access to Information and Privacy Commissioner to establish the process in investigating a complaint. In that regard, the *Act* allows the Commissioner to proceed in two ways upon the receipt of a complaint: by investigating the complaint, or by taking any appropriate steps to resolve the matter informally.

Upon a thorough analysis of the *Act*, including a strong adherence to its purpose and spirit, the Commissioner has adopted a policy to treat all complaints in the first instance by way of informal resolution. The complaint process policy is premised on the notion that it is preferable for all parties concerned to resolve complaints informally, and for both parties to become more familiar with their rights and obligations under the new legislation. Educating the public of the application of this new law is an important part of the mandate of the Commissioner's Office.

It is hoped that such a process will pave the way for improved requests for information and response procedures in the future and limit the need for the filing of complaints. The informal approach to the investigation of all complaints is intended to encourage both cooperation and transparency, all the while intending to reach a satisfactory resolution to both the public and the public body in accordance with the requirements of the *Act*.

In an informal resolution process, it is incumbent upon the Commissioner to resolve the complaint to the satisfaction of all the parties, and in a manner consistent with the purposes of the *Act*.

Below are the 6 Steps involved in the complaint investigation process.

Informal Resolution Process

Step 1 – Review

In all cases, upon receipt of a complaint, letters are issued to both the applicant and the public body indicating that the Commissioner seeks to resolve the matter informally. A deadline is initially set to try to do so within 45 days of the date of receipt of the complaint to our Office.

Although it is called an 'informal resolution process', the Commissioner's Office must review the nature of the substance of the complaint, which includes the initial request for information and the response by the public body, which are the same steps undertaken in any investigation process.

Our Office then meets with the public body's officials to review all relevant records relating to the request, and this may include requesting further information in order for us to fully understand which records may be relevant to the request. This meeting should be held shortly after the initial letter to the parties.

Informal Resolution Process

Step 2 – Preliminary Findings

Where the Commissioner is satisfied that the public body has made an adequate search and has identified and provided to the Commissioner all records relevant to the request for information, our Office then examines the initial response given by the public body against all records now provided in order to determine if the initial response conforms to the requirements of the *Act*.

The Commissioner communicates her preliminary findings in writing to the public body by letter, with a suggestion that a 'revised response' to the applicant's request for information be considered, if necessary. If a revised response is not required, the complaint process proceeds to Step 4.

The suggestion to consider a revised response is made with the continued intent of resolving the complaint informally.

In the event the public body chooses to proceed by proposing a revised response, a timeline during which the 'proposed revised response' must be submitted to the Commissioner is set based on the complexity of the work involved to prepare the proposed revised response. In most cases, and depending upon the complexity of the matter, it is hoped that the proposed revised response can be submitted to the Commissioner within 30 days of the date of receipt of the complaint.

Informal Resolution Process

Step 3 – Proposed Revised Response

In the event the public body chooses to provide the Commissioner with a proposed revised response, the Commissioner reviews the proposed revised response to ensure that it also meets the requirements of the *Act*. If the proposed revised response meets the requirements of the law, the Commissioner invites the public body to submit it to the applicant as a revised response, i.e., as a revised response in answer to the applicant's initial request for information.

If the proposed revised response does not meet the requirements of the law, the Commissioner will provide additional comments to the public body. It is important to note that it is not for the Commissioner to prepare nor to provide a revised response, but rather to assist the public body in its obligations under the *Act* to encourage the public body to provide a lawful response to the request for access.

Informal Resolution Process

Step 4 – Applicant's Comments

If the public body has provided and is prepared to issue a revised response which honors its obligations under the *Act*, the Commissioner issues letters to both parties indicating that a revised response will be submitted to the applicant. The public body issues the revised response directly to the applicant. In her letters to the parties, the Commissioner invites the applicant to review the revised response which he or

she will receive from the public body, and to provide comments regarding the revised response to the Commissioner. The applicant is usually accorded a period of 10 days within which to do so, depending on the complexity of the revised response. The Commissioner then reviews the applicant's comments on the revised response.

Or, in the event that a revised response was not required, the Commissioner issues letters to both parties informing them that the initial response to the request for information was appropriate and in conformity with the *Act*. In her letters to the parties in such a case, the Commissioner invites the applicant to provide comments to the Commissioner as to why he or she is of the view that the initial response to the request was inappropriate. The applicant is usually accorded a period of 10 days within which to do so, depending on the complexity of the matter. The Commissioner then reviews the applicant's comments.

If the culmination of these steps in the informal resolution process to date have gone beyond the initial 45 day timeframe allotted, our Office may decide to continue with the informal resolution process if there is a belief that a satisfactory resolution in accordance with the *Act* is possible.

Again, it is important to reiterate that our complaint process policy is premised on the notion that it is preferable for all parties concerned to resolve complaints informally. In this regard, both parties will become more familiar with their rights and obligations which will lead to improved requests for information and response mechanisms in the future.

Informal Resolution Process

Step 5 – Revised Response Satisfactory to Both Parties

In the event the applicant is satisfied with the revised response, or that the applicant provides comments which indicate that he or she is satisfied with the Commissioner's preliminary findings that the initial response is in accordance with the *Act*, the Commissioner concludes her investigation. This conclusion of the matter is confirmed by letters to both parties stating that the complaint has been resolved informally to the satisfaction of both parties.

In such an instance, there is no requirement for the Commissioner to file a formal report as there is no recommendation to be made to the public body on its response (revised or initial) to the request for information.

Informal Resolution Process – Formal Investigation

Step 6 – Revised Response Not Satisfactory to Both Parties

In the event the applicant is not satisfied with the revised response, and upon reviewing the comments obtained from the applicant, the Commissioner may decide to further investigate the matter. This step brings the informal resolution process to an end and converts the matter into a formal investigation process.

At the conclusion of the further investigation, if any, the Commissioner renders her findings and any recommendations in a formal report which is issued to both parties. The report will also be made available to the public on the Commissioner's Office website after de-identification (website has not yet been created).