REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2012-728-AP-370
Date March 21, 2013
Office of the Access to Information and Privacy Commissioner of New Brunswick

Case about access to personal information and whether or not it constitutes the Applicant's personal health information

INTRODUCTION

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*").

2. This Report stems from a Complaint of February 24, 2012, in which the Applicant, represented by legal counsel, requested that the Commissioner carry out an investigation into the matter and provide recommendations pursuant to the *Act*, if applicable. The Applicant sought access to a copy of an incident report from Horizon Health Network ("Horizon") on January 20, 2012 ("the Request").

3. Horizon promptly responded to the Request on January 31, 2012 but did not release the name of the individual who authored the report:

> *On behalf of Horizon Health Network, I acknowledge receipt of your client's request for information under the Right to Information and Protection of Privacy Act (RTIPPA). (…) As you know, the incident report has already been provided to you by counsel for Horizon, subject only to the redaction of the name of the individual who authored that incident report. That is, the only additional information contained in the report is the name of the person who submitted it.*
>
> *Unfortunately, we are unable to accommodate your client's request for the reasons set out below.*
>
> *Legislation:*
> *Section 5 of the RTIPPA reads as follows:*
>
> *5(1) The head of a public body shall refuse to give access or disclose information to an applicant under this Act if the access or disclosure is prohibited or restricted by another Act of the Legislature.*
>
> *5(2) If a provision of this Act is inconsistent with or in conflict with a provision of another Act of the Legislature, the provision of this Act prevails unless the other Act of the Legislature expressly provides that it, or a provision of it, prevails despite this Act.*
>
> *Under the Personal Health Information Privacy and Access Act (PHIPAA), section 4 reads as follows:*
>
> *4(1)Unless otherwise provided in the regulations, if a provision of this Act is in conflict with a provision of another Act of the Legislature, this Act prevails.*
>
> *And at section 6, the PHIPPA reads:*

6(1) The Right to Information and Protection of Privacy Act does not apply to personal health information in the custody or under the control of a custodian unless this Act specifies otherwise.

The incident report, which relates to the medical services provided to [the Applicant], constitutes "personal health information." As a result, the RTIPPA does not have any application.

The PHIPAA further provides that:

14(1) A custodian is not required to permit an individual to examine or copy his or her personal health information under this Part…

(d) if the information was compiled and is used solely…

(iii) for the purposes of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian, … [or]

(f) if the information is protected by privilege, …

Horizon takes the position that the incident report meets the criteria established under sections 14(1)(d) and 14(1)(f) of the Act, and therefore need not be disclosed.

Conclusion:
In the circumstances, the requested information cannot be disclosed to your client, as the request is made pursuant to legislation which does not apply to […] personal health information, and also because the incident report is a document which is exempted from disclosure under the provisions of the PHIPAA. (…)

("the Response")

4. The individual who authored the incident report was the same person who had operated the equipment on that particular day, and the Applicant was the patient undergoing the health care procedure.

5. While the incident report had been provided to the Applicant, the Applicant was not satisfied with the Response for having not been provided the name of the operator of the equipment. The Applicant filed a complaint on that basis with our Office on February 24, 2012 ("the Complaint").

COMMISSIONER'S COMPLAINT PROCESS

6. As in all complaint investigations, both the applicant and the public body are advised at the outset of the Commissioner's Policy on the Complaint Process. That process is designed to

respect the law, to encourage both cooperation and transparency, all the while reaching for a satisfactory resolution for both the applicant and the public body in accordance with the requirements of the *Act*. This approach is based on the notion that it is preferable for all parties concerned to resolve complaints informally, and for all parties to become more familiar with their rights and obligations under the new legislation. Educating the public about the application of this law is an important part of the mandate of this Office.

7. Accordingly, our Office first seeks to resolve the matter informally, to the satisfaction of both parties, and in accordance with the rights and obligations set out in the *Act*. For all intents and purposes, in both the informal resolution process and the formal investigation, the Commissioner's work is the same: assessing the merits of the complaint and achieving a resolution that is in accordance with the *Act*. When this is not possible, the Commissioner concludes her work with a formal investigation and publishes her Report of Findings (*Note*: A full description of the steps involved in the Commissioner's informal resolution process can be found in **Appendix A** of this Report).

Informal Resolution Process in this case

8. After having considered the Request, the Response, and the comments made by the Applicant in the Complaint, we met with Horizon's officials and were provided the single relevant record in this case, namely, the incident report for review. We were also provided further explanation and documentation to demonstrate how Horizon had formulated the Response.

9. In accordance with our informal resolution process, we considered whether the Response was in conformity with the requirements of the *Act* with a view to determine if a revised response would be necessary in this case.

10. Meanwhile, the Applicant made a second related access to information request in which the complete requested information was disclosed. As a result, the issuance of a revised response by Horizon in this Complaint would not be necessary, although we were unable to solicit the Applicant's acceptance to conclude our process in that regard. For this reason, the informal resolution process came to an end.

11. Nevertheless, we found that an issue regarding how Horizon applied the rules in responding to the Request in this case, i.e., after its analysis of the interplay between the rules of access found in the *Right to information and Protection of Privacy Act* and those found in the

Personal Health Information Privacy and Access Act, to be of interest and an issue which needed to be addressed.

12. Horizon is both a public body[1] and a custodian (*a health care organization that handles personal health information*) and as such, it is subject to both statutes. We could well appreciate that this position can lead to some confusion when having to apply rules governing access and protection of the same type of information but from two statutes. This interplay of rules is especially difficult when it concerns personal information.

13. Our consideration and conclusion regarding this issue thus became the subject of the present Report of the Commissioner's Findings.

REVIEW AND ANALYSIS

14. As stated above, Horizon relied on three grounds to refuse access to the incident report:

a) that the Request was for the Applicant's personal health information;
b) that the Request was made pursuant to legislation that did not apply to the Applicant's personal health information;
c) that the incident report was a document exempted from disclosure under the *Personal Health Information Privacy and Access Act*.

First Ground

Request considered as access to personal health information

15. In seeking access to the incident report, a record held by Horizon, the Applicant made the Request in accordance with the *Right to Information and Protection of Privacy Act* as per subsection 8(1):

> 8(1) If a person wishes to request and receive information relating to the public business of a public body, the person shall made a request, in writing or by electronic means, for access to the record to the public body that the person believes has custody or control of the record.

16. On the Request Form, the Applicant ticked the box marked "My own personal information" in describing the kind of information sought.

[1] Under the *Right to Information and Protection of Privacy Act,* Horizon is designated as a *health care body*, which is incorporated by reference to constitute a *local public body*, which is in turn incorporated by reference to be a *public body* (See definitions found in section 1).

17. Horizon considered this Request form to access a record, but a record that was generated after a procedure was undertaken involving the Applicant in a hospital setting. The focus of this record, in Horizon's view, directly related to health care services provided to the Applicant and therefore, the record had to be treated as the Applicant's personal health information.

18. "Personal health information" is not defined *per se* in the *Right to Information and Protection of Privacy Act* but it is subsumed in its definition of "personal information". On the other hand, it is defined in the *Personal Health Information Privacy and Access Act* and that definition is broad, encompassing all identifying information about a person in relation to that person's health care, health care history, and health care services provided.

19. Horizon therefore treated the incident report as one which contained identifying information about the Applicant as the report related to a procedure that had been provided to the Applicant, and took the position that the request for the incident report constituted a request for access to the Applicant's personal health information.

20. Respectfully, we disagree with Horizon's description of the entire incident report as one constituting the personal health information of the Applicant.

21. The incident report, while containing some of the Applicant's personal health information, did not represent a report about the Applicant. The report concerned a prior *occurrence* that had involved the Applicant in a hospital. The report included all kinds of facts and details surrounding the incident: an account of what took place, notifications given to doctors and supervisors concerning the incident, follow-ups undertaken by management, functioning of the equipment, name of the attending physician, reason for the visit, a description of what occurred and what steps were undertaken and by whom when notified of the incident, and so on. The fact that the incident report contained some other type of information, i.e., personal health information belonging to the Applicant, did not have the effect of converting the entire document as anything other than a report about an incident.

22. As the majority of the information contained in the report related to an incident, it pertained to the affairs of the hospital, a public body. Accordingly, the report constituted information to which the *Right to Information and Protection of Privacy Act* applied.

23. The Request also sought access to the Applicant's personal health information and due to the definition of "personal information", which includes "personal health information"

under the *Right to Information and Protection of Privacy Act*, the Request could be processed under that statute for both types of information.

Second Ground

Request not brought under the proper legislation

24. This brings us to discuss the second ground relied upon in this case to refuse access to the incident report.

25. Being aware that all manner of requests for personal health information must be brought under the *Personal Health Information Privacy and Access Act*, Horizon believed that the Request, which Horizon considered was for access to personal health information, had been improperly brought under the *Right to Information and Protection of Privacy Act*, especially because of subsection 6(1) of the *Personal Health Information Privacy and Access Act*:

> 6(1) The *Right to Information and Protection of Privacy Act* does not apply to personal health information in the custody or under the control of a custodian unless this Act specifies otherwise.

26. Again, we find that Horizon was incorrect in arriving at this conclusion.

27. The incident report represented information concerning a procedure undertaken by a hospital, a public body, as part of its on-going operations. Thus, the incident report related to the *public business of a public body*. The Applicant was seeking to obtain a copy of the incident report and for this reason, the Applicant sought access to information pertaining to the affairs of the hospital.

28. Therefore, the Applicant was correct in making the Request under the *Right to Information and Protection of Privacy Act* despite indicating on the Request form that the report also contained personal health information belonging to the Applicant, which was also correct.

29. We add another point in support of the reasons why the Request was brought under the appropriate statute in this case.

30. While subsection 6(1) clearly defines the ambit of the *Personal Health Information Privacy and Access Act* as the authoritative statute in dealing with personal health information matters, subsection 6(2) has recognized cases where a custodian (under that statute) may also be a public body. In those cases, the custodian must treat and process a request for access to information under the *Right to Information and Protection of Privacy Act*:

> 6(2) If a request in made pursuant to section 7 that contains information to which the *Right to Information and Protection of Privacy Act* applies, the part of the request that relates to that information is deemed to be a request under section 8 of the *Right to Information and Protection of Privacy Act*, and the *Right to Information and Protection of Privacy Act* applies to that part of the request as if it had been made under section 8 of that *Act*.

31. In the present case, the Request was not made pursuant to section 7 of the *Personal Health Information Privacy and Access Act*, but even if it had been, subsection 6(2) would have directed Horizon to consider it as having been made pursuant to the *Right to Information and Protection of Privacy Act* because the request was for an incident report, a record containing information describing an incident involving the Applicant rather than a record containing information about the Applicant's health care.

Third Ground

Report exempt from disclosure

32. The third ground relied upon to refuse access of the incident report was in referring to exceptions in the *Personal Health Information Privacy and Access Act* that limit a person's right of access to his or her personal health information.

33. We reiterate that Horizon processed the Request as one where access was sought to the Applicant's personal health information because the incident report contained some of this information. This brought Horizon to apply the exceptions found in subparagraph 14(1)(d)(iii) and paragraph 14(1)(f) of the *Personal Health Information Privacy and Access Act*. We find that paragraph 14(1)(f) is a moot point and does not apply in this case. Subparagraph 14(1)(d)(iii) is an exception to disclosure where access to one's personal health information is restricted where the personal health information was compiled for the purpose of analysing an occurrence in health care, such as the one which took place in this case:

> 14(1) A custodian is not required to permit an individual to examine or copy his or her personal health information under this Part
>
> (…)
> (d) if the information was compiled and is used solely
>
> (iii) for the purposes of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian,

34. Having found this exception restricting access to information to the incident report, Horizon then relied on subsection 5(1) of the *Right to Information and Protection of Privacy Act* to refuse the Applicant access to the incident report because its disclosure was restricted by the other statute:

> 5(1) The head of a public body shall refuse to give access or disclose information to an applicant under this Act if the access or disclosure is prohibited or restricted by another Act of the Legislature.

35. Since we found that the Request for access to information was brought under the correct statute, we need not extensively analyse this ground for refusing to disclose the incident report under the *Personal Health Information Privacy and Access Act*; however, we believe it is important to provide our interpretation as to why a refusal under subsection 5(1) above was not appropriate in any event.

36. The purpose of subsection 5(1) is to protect information that is otherwise safeguarded from release by another Act of the Legislature, but it was not intended to apply to the exceptions to disclosure provisions found in the *Personal Health Information Privacy and Access Act* where an access to information is not made under that statute.

37. The explanation for this is found directly in the wording of subsection 14(1) of the *Personal Health Information Privacy and Access Act*, where it states that "*a custodian is not required to permit an individual to examine or copy his or her personal health information under this Part…*" Subsection 14(1) refers to Part II of the *Personal Health Information Privacy and Access Act,* which is a section dedicated to access requests made specifically in regards to one's personal health information. Therefore, Horizon could not rely on subsection 14(1) of the *Personal Health Information Privacy and Access Act* to prohibit the disclosure of the incident report because the access request in this case was to obtain a copy of the incident report itself, rather than being a request solely for personal health information.

38. For all these reasons, we find that Horizon was incorrect in responding to the Applicant's Request on all three grounds.

Duty to assist

39. The duty to assist provision creates a positive obligation on the public body to offer assistance to applicants in order to ensure that they receive timely, appropriate, and relevant responses to their requests for information, as per section 9 of the *Right to Information and Protection of Privacy Act*.

40. In our view, the discharge of this duty to assist applies throughout the request process up to and including the issuance of a response to applicants, which connects well with the principle that the response should be helpful and thoroughly answer the applicants' requests. The benefits of doing so are twofold: first, it allows the public body and the applicant to work collaboratively in having the request processed and a response provided on time; second, it will permit the ensuing discussion between the parties to ascertain specific subject areas of information sought (perhaps with a view to narrowing the scope of a large request) or even reach agreement on the issuance of partial responses during a period of time in cases of large requests.

41. In this matter, Horizon's officials did not engage in any communication with the Applicant prior to issuing its Response, even to share its concerns that the Request was not made pursuant to correct legislation. We wonder if this would have prevented asking for clarifications regarding the Request had it been complex or ambiguous.

42. The reason given not to communicate with the Applicant was because on-going litigation between the Applicant and Horizon. This was particularly sensitive given that the Applicant was represented by legal counsel who was also involved in the legal proceedings.

43. While we can appreciate the context that existed in this matter, the obligation to assist the Applicant nevertheless remained. In that regard, we believe that Horizon could have communicated with the Applicant's legal representative by letter; in this fashion, all parties would be kept abreast of the steps undertaken and Horizon could have fulfilled its duty under the *Act*.

44. In these circumstances, however, we do not find that Horizon failed in its duty to assist. We do suggest that in the future, careful consideration be made to adopting a process where asking for clarification or sharing concerns can be made in writing so that an applicant's request is processed fully in regards to all duties and obligations placed upon Horizon.

Format of Horizon's Response

45. It is important to mention that in preparing a response to a request, a public body is obligated to ensure that applicants receive meaningful responses (as per subsection 14(1) of the *Right to Information and Protection of Privacy Act*). A response must not only identify the record and name the specific exception to disclosure if access to any of the requested information is being refused, but to provide a brief explanation as to why the specified exception applies. Setting out a response in this manner assists an applicant to better understand what information is being withheld and why.

46. Although the Request in this case was neither complex nor ambiguous, the rules at play, given the dual role of Horizon as a public body and a custodian and its respect for both applicable statutes, certainly made the drafting of the Response that more difficult. We found that Horizon complied with the requirements for the contents of a response under subsection 14(1) for the most part by referencing the relevant record, naming and reciting the specific sections. We also found, however, that Horizon fell short of fully explaining to the Applicant which specific exceptions it was relying upon to refuse access to the incident report. In fact, we too found it difficult at first to ascertain the various grounds relied upon by Horizon. We would recommend that in the future, additional explanations be provided so that the Applicant receives a more meaningful response.

47. As for the issue regarding access to the name of the author of the incident report, Horizon did not identify the specific provision upon which it was relying to refuse access to the name of the author of the incident report. We believe it may have been under subsection 21(1) of the *Right to Information and Protection of Privacy Act*, as it pertained to the name of a third party, thus that person's personal information. Subsection 21(1) is a mandatory exception to disclosure of personal information due to privacy considerations. Not all personal information, however, is subject to mandatory protection under the *Act*.

48. In order to determine whether personal information falls within the protection of subsection 21(1), the *Act* gives us some helpful hints by stating in which circumstances the disclosure of personal information about a third party will be deemed to be an unreasonable invasion of his or her privacy (see paragraphs 21(2)(a) to (i)).

49. One of those circumstances is that the personal information relates to the third party's employment, occupational or educational history. Accordingly, reliance could be placed on subsection 21(1) as an exception to disclose the name of the author of the incident report because it can be said to relate to his/her employment history.

50. The analysis, however, does not stop there. In this case, the author of the incident report was an employee of a hospital, a public body. This brings into focus the application of subsection 21(3), which states the circumstances where the disclosure of personal information about a third party will be deemed <u>not</u> to be an unreasonable invasion of his or her privacy despite subsection 21(2).

51. In the case of employees of public bodies for instance, disclosure of personal information will not constitute an unreasonable invasion if the information is about that employee's job

classification, salary range, benefits, employment responsibilities or travel expenses (see paragraph 21(3)(f)).

52. Consequently, the disclosure of the name of the author of the incident report in this case which was an employee of a hospital, being a public body, would not be an unreasonable invasion of a third's party privacy and access to that information must be granted.

CONCLUSIONS

53. We therefore summarize our findings as follows:

- The Request was to obtain a copy of the incident report that was created as part of the affairs of a hospital, a public body. As such, Horizon could not qualify the incident report as one that constituted personal health information, and therefore process the Request under the *Personal Health Information Privacy and Access Act*;

- The Request to obtain a copy of the incident report and the name of the employee who authored the report was properly made pursuant to the *Right to Information and Protection of Privacy Act*;

- The incident report contained personal health information belonging to the Applicant, access to which was also requested. Under the *Right to Information and Protection of Privacy Act*, the definition of "personal information" includes "personal health information" and for that reason, the Request could be processed under that statute for this type of information also;

- The purpose of subsection 5(1) is to protect information that is otherwise safeguarded from release by another Act of the Legislature, but it was not intended to apply to the exceptions to disclosure provisions found in the *Personal Health Information Privacy and Access Act* where an access to information is not made under that statute. Therefore, the incident report could not be withheld on the basis of the exception found in section 14 of the *Personal Health Information Privacy and Access Act* because that exception was not applicable to the Request in this case;

- In the case of employees of public bodies, the disclosure of personal information will not constitute an unreasonable invasion if the information is about that employee's job classification, salary range, benefits, employment responsibilities or travel expenses. Horizon was therefore not authorized to withhold the name of the employee who authored the incident report; and,

- Horizon could have provided a more meaningful Response in this case to assist the Applicant in better understanding the grounds upon which it was refusing access to the incident report.

NO RECOMMENDATION

54. Given our findings above, and as stated at the outset of this Report of Findings that the Applicant has received access to the information requested, the Commissioner does not have any recommendation to make to Horizon Health Network in this Complaint matter.

Dated at Fredericton, New Brunswick, this ___ day of March, 2013.

_____
Anne E. Bertrand, Q.C.
Access to Information and Privacy Commissioner

Appendix A

Complaint Matter: 2012-728-AP-370
March 20, 2013
Office of the Access to Information and Privacy Commissioner of New Brunswick

"Complaint Process"

The Commissioner's Policy on the Complaint Process is designed to respect the Right to information and Protection of Privacy Act, to encourage both cooperation and transparency, and all the while reaching for a satisfactory resolution for both the applicant and the public body in accordance with the requirements of the Act. Below is an explanation of the distinction between what is referred to as an informal resolution process and a formal complaint investigation more commonly recognized by the public, along with timelines. This Complaint Process is communicated to both the applicant and the public body at the outset of a complaint matter filed with our Office.

Upon the receipt of a complaint, the *Act* allows the Commissioner to proceed in two ways: by investigating the complaint, or by taking any appropriate steps to resolve the matter informally. For all intents and purposes, in both the informal resolution process and the formal investigation the Commissioner's work constitutes an 'investigation' into the merits of the complaint; however, in the informal resolution process, the Commissioner takes all steps necessary to resolve the complaint to the satisfaction of all involved, and in a manner consistent with the purposes of the *Act*. When this is not possible, the Commissioner concludes her work by a formal investigation which leads to the publication of a formal Report of the Commissioner's Findings.

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. Our complaint process policy is premised on the notion that it is preferable for all parties concerned to resolve complaints informally, and to become more familiar with their rights and obligations under the legislation. Educating the public of the application of this new law is an important part of the mandate of this Office. We are of the view that such a process will make way for improved requests for information and response procedures in the future, which may limit the need to file complaints.

Informal Resolution Process
Step 1 – Review

In all cases, upon receipt of a complaint, we issue letters 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 full 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. This review of all relevant records may include requesting further information from the public body in order for us to fully understand which records may have been overlooked and which could be relevant to the request. Such a meeting is held shortly after receipt of the complaint to begin the process without delay.

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, or where the Commissioner believes there are issues regarding the application of the rules of the *Act* which inhibit a full review of all relevant records, our Office analyzes the initial response given by the public body against all records provided to the Commissioner in order to determine if the initial response conforms to the requirements of the *Act*.

The Commissioner communicates her preliminary findings to the public body by letter. Those preliminary findings inform the public body of the direction of the investigation and of the remaining issues, if any, which must be addressed before we can proceed to the next step, i.e., inviting the public body to submit a 'revised response' to the applicant's request for information. 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 and with a view to provide the applicant access to the information that the *Act* deems should be disclosed.

If the public body agrees to prepare a revised response, a timeline is set during which the 'proposed revised response' must be submitted to the Commissioner. That timeline is based on the complexity of the work involved to prepare the proposed revised response in each case.

Informal Resolution Process
Step 3 – Proposed Revised Response

When the public body provides a proposed revised response, the Commissioner reviews it 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 directly to the applicant as a revised response 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 as required in order for the public body to achieve a properly constituted revised response. It is important to note that it is not for the Commissioner to prepare nor to provide a revised response, but rather to encourage the public body to provide a lawful response to the request for access to information under the *Act*.

Informal Resolution Process
Step 4 – Applicant's Comments

In the case where the public body is ready to issue the vetted revised response to the applicant, the Commissioner issues letters to both parties indicating that a revised response will be submitted to the applicant and the public body sends the revised response directly to the applicant. In her letters to the parties, the Commissioner invites the applicant to review the revised response and to provide comments in relation thereto to the Commissioner. The applicant is usually accorded a period of 10 to 15 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 informs both parties that the initial response to the request for information was appropriate and in conformity with the *Act*. In such a case, the Commissioner invites the applicant to provide comments to the Commissioner as to why it is believed the initial response to the request was inappropriate. The applicant is usually accorded a period of 10 to 15 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 the above steps to date exceeds the initial 45 day timeframe allotted, the Commissioner 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. The timeframe at this stage is based on completing the process within the 90 day investigation deadline set by the *Act*.

In complex matters, the timeframe for the continued work on a revised response may extend beyond the 90 day period to complete the matter. In such a case, the Commissioner notifies both parties in writing of an extension of time to complete the matter as permitted by section 72. The notification indicates the new deadline within which the case will be concluded, and the

reasons why the extension of time is necessary, e.g., to bring an informal resolution to the complaint.

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, and all efforts are deployed within the allotted timeframe (or extension thereof permitted by the *Act*) to make this happen, whenever possible.

Informal Resolution Process
Step 5 – Revised Response Satisfactory

In the event that the applicant is satisfied with the revised response, the Commissioner concludes her investigation as one having been resolved informally to the satisfaction of both parties and in conformity with the *Act*. This conclusion of the matter is confirmed in writing to both parties stating that the complaint has been resolved informally.

In the event the applicant provides comments which accept the Commissioner's preliminary findings that the public body's initial response was in accordance with the *Act*, the Commissioner concludes her investigation. This conclusion of the matter is confirmed in writing to both parties stating that the complaint has been resolved informally to the satisfaction of both parties.

In both above instances, there is no requirement for the Commissioner to file a formal report under section 73 for the reason that 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

In the event that the Commissioner finds that the public body's revised response is not in conformity with the *Act* and the public body decides not to consider proposed changes thereto, or in the event that the applicant is not satisfied with the revised response, 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 which will eventually lead to the issuance of a formal report under section 73.

The Commissioner renders her findings and any recommendations in a formal report which is issued to both parties. The de-identified report will also be made available to the public on the Commissioner's Office website.

This complaint process is intended to encourage both cooperation and transparency, all the while remaining confidential and with the intent to reach a satisfactory resolution in accordance with the requirements of the *Act*.