

REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2010-108-AP-050

March 8, 2011

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

INTRODUCTION and BACKGROUND

1. The present Report of 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 made by the Applicant ("the Applicant") dated December 7, 2010, in which the Applicant requests that the Commissioner carry out an investigation into the matter and provide recommendations pursuant to the Act.
2. The Request made on October 5, 2010 to the New Brunswick Liquor Corporation ("NB Liquor") was for:
 - "a copy of the report into NB Liquor's executive compensation package" ("the Request").
3. On November 3, 2010, NB Liquor advised the Applicant by letter that it was extending its 30-day time limit to respond to the Request until December 3, 2010 in order to consult with a public body. The name of the public body was not disclosed to the Applicant.
4. NB Liquor provided its Response to the Applicant by letter dated December 1, 2010. In short, NB Liquor acknowledged the Applicant's request for "a copy of the ANBL [Alcool NB Liquor] Executive Compensation study", and in refusing to disclose this document, NB Liquor added that "the study has not been implemented in whole or part, and no action has been taken based on the content".
5. The Response added that NB Liquor would consider the Request in the future "if the content of the study becomes a basis for future compensation adjustments".
6. Upon filing his Complaint, the Applicant asked the Commissioner to consider the following:
 - a) NB Liquor's refusal to identify the name of the public body consulted with as referenced in the time extension notification letter of November 3, 2010;
 - b) NB Liquor's failure to indicate whether the request was refused or granted as per paragraph 14(1)(a); and,
 - c) NB Liquor's failure to provide reasons for not granting the Applicant's request as required under paragraph 14(1)(c).

INFORMAL RESOLUTION PROCESS

7. As for all matters of complaints 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*. The informal resolution process is intended to provide guidance to the public body and to the applicants to better understand this new legislation, and in the process encourage a prompt, satisfactory outcome to the complaint. (*Note: A full description of the steps involved in the Commissioner's Complaint Process can be found in **Appendix A** to this Report.*)
8. The initial step undertaken by the Commissioner was to review the Request and the Response to the Request, and determine whether the Response met the requirements of the *Act*. In doing so, we held meetings with officials at NB Liquor and asked that they provide a complete copy of the records in response to the Request for inspection. In that regard, NB Liquor was prompt and did provide to us all relevant records for our review.
9. After reviewing those records, we then asked for further input from NB Liquor about its Response to the Applicant's Request, and provided comments about the process of responding to right to information requests generally and specifically as it pertained to the present case.
10. NB Liquor clarified that its decision to deny the Request in full was based on the exceptions found in paragraphs 26(1)(a) and (c) of the *Act*. In particular, NB Liquor's position is that the information contained in the relevant records constituted a plan to change the executive compensation scheme that had not yet been implemented, and thus that NB Liquor was not required to release this information.
11. As a result of these steps and those discussions, it became clear that NB Liquor's Response of December 1, 2010 did not meet the requirements of the *Act*, and the Commissioner invited NB Liquor on February 7, 2011 to reconsider its decision and to provide a revised response to the Applicant's Request.
12. On February 24, 2011, NB Liquor informed the Commissioner that it was declining to issue a revised response. NB Liquor acknowledged there were indeed two reports on the subject of its Executive compensation which could be considered within the scope of the Request, but that neither report would be disclosed for two reasons:

- a) that the internal review of compensation levels (“internal report”) as well as the consultant’s report on the Executive compensation package (“consultant’s report”) qualified as advice, opinions and recommendations developed by or for the public body, and therefore, not subject to disclosure under s. 26(1)(a) of the *Act*; and,
 - b) that the recommendations in both reports had never been implemented, and therefore are not subject to disclosure under s. 26(1)(c) of the *Act*.
13. We also invited the Applicant to make further representations as required under paragraph 71(1)(a) of the *Act*. The Applicant indicated that he had nothing further to add at that time.

THE LAW AND ANALYSIS

14. A number of issues surrounding the procedure adopted by NB Liquor in responding to the Request were discovered during our review process. All of these issues have already been discussed with NB Liquor with the view to provide some useful assistance in responding to future requests for information. This Report will address all of these issues.

Duty to Assist

15. The first issue which bore discussion in this matter was the failure on the part of NB Liquor to provide assistance to the Applicant upon first receiving the Request for information. The Applicant sought to obtain a copy of the Executive compensation report; however, no discussions were entertained with the Applicant to inform him that there was not one but instead two reports on the question of NB Liquor’s Executive compensation.

16. Section 9 of the *Act* sets out a “duty to assist” which provides as follows:

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.

17. This section creates a positive obligation on public bodies to offer assistance to applicants to help ensure that they receive timely, appropriate, and relevant responses to requests for information. Where there is any uncertainty about what information an applicant is seeking, it should be established as a best practice that the applicant be immediately contacted to ask what specific information he or she is seeking. For

instance, if a request for information is very broad in scope, a discussion with the applicant can simplify the request process. Once an applicant provides clarification, the public body will be able to inform the applicant of any existing relevant documents, thus allowing the applicant to identify specifically which documents he/she is seeking. Often, very broad-based requests are due to the fact that applicants do not know which specific information (or documents) to request.

18. NB Liquor's first decision not to grant the Applicant's Request was based largely on the fact that the consultants' report was a "study which had not been implemented" referring to the exception found in paragraph 26(1)(c) of the *Act*. There was no mention of the internal report at that time.
19. The investigation revealed that there were no discussions with the Applicant to clarify what information could be included in the Request, and as a result, the Applicant was not advised that NB Liquor had identified two relevant reports to be within the purview of its Response to the Request.
20. As indicated above, the first document was an internal study relating to executive compensation and the second, a consultants' report with recommendations which had been filed with NB Liquor. Both reports were relevant to the Request for "the report into NB Liquor's executive compensation package". Therefore, the decision to treat the consultants' report as the only record relevant to the Applicant's Request was based solely on NB Liquor's narrow reading of the Request. NB Liquor should have informed the Applicant that there were two reports and asked whether he wanted to receive copies of both reports.

Time extension - consultation with another public body

21. When the Applicant received a notice for NB Liquor's extension for time to respond to his Request, the Applicant asked NB Liquor to identify the "other public body" with which it was consulting and for which it required an extension of time under section 11(3)(d) of the *Act*. NB Liquor refused to do so. This became the subject of a specific question to the Commissioner's Office: *When a public body extends the time limit to respond to a request in order to consult with another public body, should that public body be identified?*

22. The Applicant wanted to know whether he could be informed of the name of the other public body with which NB Liquor was consulting before having to respond to his Request.
23. This was a question for interpretation, and it is to be noted for the purpose of this Report that, at the time this question was put to NB Liquor, it did not have the benefit of an interpretation of that provision by the Commissioner.
24. It is the Commissioner's view that, in keeping with the spirit of the legislation, public bodies should generally include the names of other public bodies when providing notice to applicants in the context of time extensions. The Commissioner has decided to issue a **Best Practice** on this topic for future questions of this kind.
25. In this case, NB Liquor required more time in order to provide a response to the Applicant because it wished to consult with the Minister of Finance, the Head of the Department of Finance. The identity of the "other public body" in this case ought to have been disclosed to the Applicant given that there was no reason not to do so.

Format of Response

26. It is useful to refer to the requirements of the *Act* when responding to a right to information request under this new legislation. Section 14 of the *Act* sets out these requirements, and in essence, the head of the public body shall inform the applicant in its written response:
 - (a) as to whether access to the record or part of the record is granted or refused,
 - (b) if access to the record or part of the record is granted, of the manner in which access will be given, and
 - (c) if access to the record or part of the record is refused,
 - (i) in the case of a record that does not exist or cannot be located, that the record does not exist or cannot be located;
 - (ii) in the case of record that exists and can be located, of the reasons for the refusal and the specific provision of this Act on which the refusal is based;
 - (iii) of the title and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal; and
 - (iv) that the applicant has the right to file a complaint with the Commissioner about the refusal or to refer the matter to a judge of The Court of Queen's Bench of New Brunswick for review.
27. In our initial discussions, NB Liquor indicated that the requested records were not subject to the *Act* as the information contained in the records had not yet been acted

upon or implemented. As such, it was NB Liquor's position that, given that the Applicant's Request was for records not subject to the *Act*, that NB Liquor was not obligated to comply with section 14 in responding to the Applicant's request.

28. With respect, this position is not in keeping with the spirit of the legislation, in particular the duty to assist provision found in section 9 which obligates public bodies to assist applicants, "fully and in an open and accurate manner." Section 14 obligates public bodies to provide specific detailed information to applicants in responding to requests, particularly where information is being withheld, in order to help applicants understand why their request is not being granted. By providing clear reasons why any information is being withheld in accordance with specific provisions of the *Act*, public bodies can better demonstrate that they are abiding by the *Act* both in spirit and in its practical application.
29. As a general principle, public bodies must always provide the details as set out in section 14 of the *Act* when responding to requests for information. If the public body is of the view that the requested information does not fall under the scope of the *Act*, this should be clearly stated in the response along with the specific provision of the *Act* upon which it is relying.
30. In this case, NB Liquor's Response to the Applicant's Request should have identified the responsive records and indicated that it was refusing to release both reports in entirety under paragraphs 26(1)(a) and (c) of the *Act*.
31. Further, NB Liquor's decision to refuse the Request should also have indicated the name of the appropriate contact person if the Applicant had questions about the refusal and the Applicant's right to make a complaint about the refusal to the Commissioner or refer the matter to the Court of Queen's Bench for review.

Discretionary decision to disclose - section 26

32. It is important to note that the new legislation provides both mandatory and discretionary exceptions to disclosure. Where a public body deems a record to fall under a mandatory exception to disclosure, the *Act* places a positive obligation on the public body to not release the record in question.
33. Where a public body deems a record to fall under a discretionary exception provision, the public body then has the option to release the requested information or to refuse

access. The application of the discretionary exception provisions by public bodies involves a two-step process. Firstly, the public body must consider releasing the information where it invokes a discretionary, rather than mandatory, exception provision. In reviewing the application of discretionary exceptions, the Commissioner will require that public bodies demonstrate that they have exercised their discretion, meaning that they must show that they have considered whether the requested information should be released even though they have the option to withhold it. Secondly, if the public body decides that the information should not be released, that decision must be based on the specific exception provisions as set out in sections 23 to 33 of the *Act*.

34. Section 26 of the *Act* provides a discretionary exception allowing public bodies—such as NB Liquor—the option of disclosing or withholding information that constitutes advice to a public body. In support of its decision to refuse disclosure to the Applicant in this case, NB Liquor indicated that it relies on the following provisions:

The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal:

- (a) advice, opinions, proposals or recommendations developed by or for the public body or a Minister of the Crown;
- (b) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Province of New Brunswick or the public body, or considerations that relate to those negotiations,
- (c) plans relating to the management of personnel or the administration of the public body that have not yet been implemented;
- (d) the content of draft legislation or regulations and orders of Ministers of the Crown or the Lieutenant-Governor in Council, or
- (e) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(Emphasis added)

35. Based on our initial review of the Complaint, we had concerns about whether NB Liquor had indeed exercised its discretion while considering whether to release or withhold the relevant records. As part of the informal resolution process, we invited NB Liquor to reconsider the Applicant's Request in light of the above.

Paragraph 26(1)(c): Plans that have not yet been implemented

36. In the course of our discussions, NB Liquor indicated that the decision not to disclose the requested records was based on its interpretation of paragraph 26(1)(c), which provides that:

The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal:

(...)

(c) plans relating to the management of personnel or the administration of the public body that have not yet been implemented...

37. The key words of this provision are “plans...that have not yet been implemented”. NB Liquor’s position was and remains that both the internal study and consultants’ report set out information for consideration of future changes to its executive compensation scheme, and thus fall within the scope of “plans” for the purposes of paragraph 26(1)(c). NB Liquor maintains that the information forms part of a plan that had not been implemented, and as such, is relying on paragraph 26(1)(c) as a valid basis for non-disclosure.
38. With respect, the Commissioner disagrees with NB Liquor’s interpretation of this provision and its application to the relevant records.
39. The first step in interpreting this provision is to consider the scope of the meaning of “plans” in this particular context. In order to assist us in our interpretation of the word “plans”, we considered both the dictionary meaning as well as the word’s treatment in other jurisdictions with similarly worded provisions in their access to information statutes.
40. The Oxford Dictionaries Online defines a “plan” as:
- a. *A detailed proposal for doing or achieving something;*
 - b. *An intention or decision about what one is going to do.*
41. The Ontario *Freedom of Information and Protection of Privacy Act* contains a similarly worded provision which has been interpreted by the Ontario Information and Privacy Commissioner. One case in particular provides a useful guideline in determining whether a consultants’ report containing recommendations constitutes a “plan” for the purposes of paragraph 18(1)(f) of the Ontario statute (see Order P-348). In that case, the Assistant Commissioner found that:

[the report] contains certain recommendations which, if adopted and implemented by the institution, might involve the formulation of a detailed plan, but the record itself is not a plan or a proposed plan.

(Emphasis added)

42. In this case, the internal study was an informal review that involved requesting information about executive compensation from other Canadian jurisdictions with similar organizations to that of NB Liquor. The consultants' report set out a more formal communication of information of this nature as well as that of the private sector. The consultants' report also provided recommendations for NB Liquor to consider in assessing its current executive compensation scheme. In our view, neither of these reports sets out a detailed plan for changing the current compensation scheme, nor do they set out a clearly defined intention or decision as to what changes NB Liquor intended to make.
43. Accordingly, we adopt these interpretations and we do not find that either record constitutes a "plan" pursuant to paragraph 26(1)(c) of the Act. Rather, these reports provide information and recommendations to NB Liquor to assist it in making a decision about possible changes to its executive compensation package.
44. As we find that the reports do not set out a "plan" for the purposes of paragraph 26(1)(c), we need not consider whether NB Liquor implemented or acted upon any of the information contained in the reports.

Paragraph 26(1)(a): Advice, opinions, proposals or recommendations

45. NB Liquor also indicated that it was relying on paragraph 26(1)(a) as grounds for refusing the Applicant's Request. Paragraph 26(1)(a) provides public bodies with the discretion to release or withhold information where disclosure could reasonably be expected to reveal advice, opinions, proposals or recommendations developed by or for the public body. This provision allows public bodies to protect these kinds of communications but generally does not extend to background or other information of a factual nature.
46. A large portion of the information contained in the consultants' report in this case, however, is factual in nature. The information includes the existing executive compensation scheme, the composition of NB Liquor's executive team, and salary ranges for executives at other Crown agencies and similar bodies in other jurisdictions, most of which is already public knowledge. In our view, this kind of information is not captured under the scope of "advice" under paragraph 26(1)(a) as it does not set out a clear course of action for NB Liquor to undertake to amend its existing executive compensation package.

47. Again, in looking to Ontario for assistance in interpreting the meaning of “advice” in this context, the Ontario Commissioner determined that to qualify as “advice,” “the information in question must reveal a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process of government policy-making and decision-making” (see Order PO-2028). Further, information that constitutes “advice” will manifest itself in one of two forms:
 - a) the information itself consists of advice; or
 - b) the information, if disclosed, would permit one to accurately infer the advice given.
48. The Ontario interpretation is in keeping with similarly worded provisions of access to information legislation in other Canadian jurisdictions. For example, the *Nova Scotia Freedom of Information and Protection of Privacy Act* provides a discretionary exception for information that would reveal advice or recommendations developed by or for a public body under subsection 14(1). Subsection 14(2) further provides that “a public body shall not refuse pursuant to subsection (1) to disclose background information used by the public body.” “Background information” is defined in paragraph 3(1)(a) as meaning “any factual material”.
49. Consequently, information of a factual nature such as that found in the internal report and the consultants’ report does not fall under the paragraph 26(1)(a) exception and should have been provided to the Applicant.
50. While we do not find that the factual information contained in the consultants’ report meets the criteria for the 26(1)(a) exception, we are satisfied that the consultants’ recommendations meet the criteria of “recommendations developed by or for the public body” and in that regard, this information was properly withheld.
51. Where we find that some of the information contained in the consultants’ report was properly withheld under the paragraph 26(1)(a) exception, this is not sufficient grounds to withhold the consultants’ report in its entirety. Subsection 7(3) of the *Act* provides that where “information can be reasonably be severed from the record, an applicant has the right to request and receive information from the remainder of the record.” Consequently, we find that the consultants’ report should have been released to the Applicant with the recommendations severed from the report.

52. There were no recommendations in the internal report, and thus we find that none of the information contained within this report falls under the paragraph 26(1)(a) exception.

Paragraph 18(1)(b): Confidentiality of information from other jurisdictions

53. Another portion of the consultants' report featured details regarding other jurisdictions' executive salaries which had been provided to NB Liquor on a confidential basis only. In such a case, we noted to NB Liquor of the importance of making a written reference to the continuing intent to treat this type of information confidentially, so as to respect the mandatory exception for information provided in confidence to a public body by another government under subsection 18(1). We are satisfied that this information was properly withheld.
54. Again, in reference to subsection 7(3) of the *Act*, both reports should have been released to the Applicant with the above information severed.

COMMISSIONER'S FINDINGS

55. **Duty to assist**—NB Liquor indicated that there was some uncertainty about what information the Applicant was seeking in making the Request but did not take steps to clarify with the Applicant. Instead, NB Liquor decided to process the Request based on a narrow reading of the Request and did not inform the Applicant of the existence of the informal report. As a result, NB Liquor did not meet its duty to assist under section 9 of the *Act*.
56. **Time extension for consultation with another public body**—NB Liquor did not identify the name of the public body being consulted in the notice of time extension provided to the Applicant on November 3, 2010 under paragraph 11(3)(d). In this case, NB Liquor extended the time limit for response to consult with the Minister of the Department of Finance. We have considered this issue and found that public bodies should generally provide the names of any other public bodies being consulted when issuing a time extension on this ground.

57. **Format of Response**—NB Liquor’s Response to the Request did not meet the requirements of the contents of a response as set out in section 14 of the Act. All responses to requests for information must provide the details required by section 14. When public bodies decide not to grant a request for information, they are obligated to indicate in their responses the specific provisions under which the information is being withheld and of the right of applicants to file a complaint with the Commissioner or to refer the matter to the Court of Queen’s Bench for review.
58. **Discretionary exception under paragraph 26(1)(c): “Plans that have not yet been implemented”**—NB Liquor raised this exception as grounds to withhold both the internal report and the consultants’ report. Our review of the reports showed that these reports set out a large amount of factual information along with recommendations for changes to the existing executive compensation scheme for NB Liquor’s consideration. It is our finding that neither of these reports sets out a plan that would fall within the scope of this exception.
59. **Discretionary exception under paragraph 26(1)(a): “advice, opinions, proposals or recommendations”**—NB Liquor also raised this exception as grounds to withhold both the internal report and the consultants’ report. Our review of the reports showed that they contained a large amount of factual information about executive compensation in other New Brunswick public bodies and similar organizations to that of NB Liquor in other jurisdictions. It is our finding that this kind of information cannot be withheld under the scope of this exception; however, the consultants’ report does clearly set out recommendations for NB Liquor to consider and we find that these recommendations meet the criteria for paragraph 26(1)(a) and were properly withheld.
60. **Mandatory exception under paragraph 18(1)(b): “Confidentiality of information from other jurisdictions”**— NB Liquor obtained information from other jurisdictions regarding their executive compensation on a confidential basis. We find that this information falls within the scope of the paragraph 18(1)(b) exception and we are satisfied that this information was properly withheld. While we have found that the reports should be released to the Applicant, this information can be severed from the reports prior to their release.

RECOMMENDATION

61. Based on all of the above, the Commissioner recommends that NB Liquor release to the Applicant both its internal report and the consultants' report on the subject of the executive compensation package, with the following redactions:
- a) the consultants' recommendations (as per paragraph 26(1)(a)); and
 - b) any information that was provided in confidence to NB Liquor with regards to executive compensation levels (as per paragraph 18(1)(b)).

Dated at Fredericton, New Brunswick, this 8th day of March, 2011.

Anne E. Bertrand, Q.C.
Commissioner

Appendix A

Complaint Matter: 2010-108-AP-050

March 8, 2011

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

“Complaint Process”

January 2011

Office of the Access to Information and Privacy Commissioner for 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).