

# REPORT OF THE COMMISSIONER'S FINDINGS

## *Right to Information and Protection of Privacy Act*

Complaint Matter: 2013-1388-AP-719

Date July 22, 2013

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

*Case about failure to respond to a request*

## 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") and concerns the investigation where the Applicant complained of not having received a response to a request filed with the Anglophone School District East ("the School District").

## INVESTIGATION

2. We communicated with School District's officials to learn of the reasons why a response was not issued in this case. We were informed that the School District was not aware of that it had received the Applicant's request. The Applicant advised us that the request was sent by email to the employee listed on the School District's website as the Human Resources Director and contact person for matters related to access to information requests.
3. The contact person in question, however, had not worked for the School District or the Province of New Brunswick since December 2012 but the District had not realized that the employee was still listed on its website as the contact person for matters of access to information requests. The new Director of Human Resources' name and contact information was substituted on the website.
4. More importantly, we discovered that although the former employee no longer worked for the School District or the Province of New Brunswick, the employee's email account was still active, i.e., it had not been deactivated at the time the Applicant submitted the request to the School District. This explained why the Applicant believed the request had in fact been received by the School District because there was no indication of an unsuccessful transmission of the email request.
5. This is also why the Applicant filed a complaint when the School District failed to respond to the request in time.

## FINDINGS

6. We therefore find that the reason why the School District did not provide a response to the Applicant's request in this matter is because the School District did not have the correct contact information for its Human Resources Director posted on its website, i.e., the name

and contact information of the employee tasked with receiving access to information requests on behalf of the School District.

7. We also find that failure to provide a response was linked to the fact that the School District had not deactivated the email address of the former contact person when that employee was no longer employed with the School District for the reasons that not deactivating the said email address had the effect of making the Applicant believe the request had been properly sent and received by the School District.
8. When a response was not received in a timely fashion as per the requirements set out in the *Act*, the Applicant was justified in filing the present Complaint.

## RECOMMENDATIONS

9. Based on these findings, the Commissioner therefore recommends:
  - That the School District ensures that the former employee's name and contact information has been removed and any email address deactivated, and that all contact information in regards to the School District's employee tasked with the handling of access to information requests or answering questions in relation thereto is updated without delay; and,
  - That the School District issues a response to the Applicant's request within **30 days**, being no later than **August 21, 2013**.

In accordance with section 74 of the *Act*, the School District has 15 days from the date of this Report to decide whether it will follow or not follow these recommendations and so inform the Applicant and the Office of the Commissioner.

Dated at Fredericton, New Brunswick, this 22 day of July, 2013.

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Anne E. Bertrand, Q.C.  
Commissioner