

Office of the Access
to Information and
Privacy Commissioner

New Brunswick



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

Nouveau-Brunswick

REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2013-1389-AP-720

Date: August 20, 2013

"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 North ("the School District").

INVESTIGATION

2. As part of our investigation, we met with officials from the School District to learn of the reasons why a response was not issued in this case. We were informed that the School District had received the access request on April 4, 2013 and was aware of its obligation to respond to the Applicant within the 30-day time limit in which to provide a response.
3. We understand the delay in responding was due in part to the fact that the request was different in nature and the School District was unsure as to how to process the request. The School District therefore sought clarifications from not only the Applicant, but also the Department of Education and Early Childhood Development, and the Department of Government Services' Information Access and Privacy Unit before being able to fully process the request. The processing of the request was set aside until such input was received; however, the time limit within which to respond was ending.
4. Despite knowing of the possibility to self-extend the time limit when waiting for the Applicant's clarifications (11(3)(b)) or to consult with another public body (paragraph 11(3)(d)), the School District did not proceed in that fashion and this resulted in the filing of the present complaint for the reason that the Applicant did not receive a response at all.
5. The School District was unable to comply with the legislated timeframe due to competing priorities and a lack of resources in existence at the time of the request. To its credit, officials at the School District readily admitted the error in having placed the processing of the request aside until the input was received instead of having a system which would have reminded the officials to continue with the request where input was not being received in short delay. The responsibility of providing a response was never discounted in this case; rather, it was a question of having failed to have a proper process in place to ensure that a response would be issued in a timely manner.

6. We understand that the School District is currently reviewing its internal procedure for the processing of access requests in order to effect significant improvements so that the processing is more efficient and responses are issued on time.
7. During our investigation of this matter and our discussions with School District's officials, the School District issued a response to the Applicant on August 8, 2013.

FINDINGS

8. We find that the Applicant was justified in filing the present complaint being that the School District did not issue a response as it is obligated to do under the *Act*. Even though the School District eventually issued a response to the Applicant, the response was not provided within the timeframe prescribed in the *Act*.
9. For this reason, we find that the School District was not in compliance with section 11 of the *Act* which states that a response must be issued to the Applicant within 30 days, unless the time limit for responding is extended or the request is transferred to another public body. We are however satisfied that the School District is taking appropriate steps to address the issues with its process for responding to access requests.
10. This being said, we commend the School District for exercising its duty to assist by contacting the Applicant to discuss the request and seeking clarifications, as well as for obtaining input by consulting other public bodies with a view to provide a better response to the Applicant.

RECOMMENDATION

11. Based on these findings, the Commissioner therefore recommends:

- That the School District establishes without delay a procedure by which access to information requests are processed properly in order to ensure that timely responses are provided to applicants; and,

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.

12. At the time of the writing of this Report, we were made aware that the School District had issued a response to the Applicant; on this basis, there is no need for the Commissioner to issue a recommendation in relation to that issue.

Dated at Fredericton, New Brunswick, this _____ day of August, 2013.

Anne E. Bertrand, Q.C.
Commissioner