



## REPORT OF FINDINGS

*Right to Information and Protection of Privacy Act*

Matter No: 2018-4345-AP-2362  
June 22, 2018

## I BACKGROUND

1. This Report of the Commissioner's findings is issued pursuant to the *Right to Information and Protection of Privacy Act*<sup>1</sup> and, under section 67(1)(a)(i) of *Act*, the Office of the Integrity Commissioner investigated the Applicant's complaint.
2. The Applicant submitted an access-to-information request to the Regional Municipality of Tracadie (the "Municipality") on January 11, 2018 for the purposes of obtaining access to certain documents. In a letter dated February 9, 2018, the Municipality informed him that it had to extend the initial deadline for responding to his request for an additional 30-day period pursuant to section 11(3)(c) and that the Municipality would respond to his request by March 12, 2018.
3. The Applicant was not satisfied with the Municipality's decision to extend the deadline of its own accord and submitted a complaint to our Office on February 22, 2018. The complaint was initially assigned to one of my Senior Legal counsel for investigation purposes in an attempt to resolve the matter informally.

## II INVESTIGATION AND FINDINGS

4. Whenever a complaint is received concerning a decision made by a public body to extend the deadline for responding to an information request pursuant to section 11(3) of the *Act*, our investigation is focused solely on determining whether the public body had the right to extend the deadline. To that end, we must look into the reasons supporting its decision to extend.
5. In the matter at hand, in order to determine whether the Municipality was entitled to extend the deadline for responding to the Applicant's request pursuant to section 11(3)(c) of the *Act*, my Senior Legal counsel received and examined information concerning the relevant factors on which the Municipality had based its decision. These factors were as follows:
  - i. The deadline for responding to the request was not based on the fact that there was a large number of documents to be located, but rather on the fact that more extensive searches were required to respond to the request;
  - ii. The Municipality indicated that when the complaint was submitted, it was still in the process of locating the relevant documents; although the minutes of meetings were quite easy to locate, the other documents were harder to find because the Municipality believed that some correspondence stemmed from email exchanges involving former staff members no longer

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<sup>1</sup> SNB, ch. R-10.6

employed by the Municipality, and to which the Municipality would no longer have access without hiring an IT firm to recover the emails;

- iii. The Municipality receives a large number of access-to-information requests and when the Applicant's request was submitted, it was in the process of restructuring and was relocating to a new municipal headquarters; and,
- iv. The clerk tasked with processing access-to-information requests and locating documents is the only employee assigned to those tasks. The demands submitted by the municipal council and the requests by the general public occupied virtually all of her time; therefore, she could not devote more time to locating the documents for the Applicant's request at that particular time.

6. In light of those factors, my Senior Legal counsel shared her findings with the Applicant, informing him that she was of the opinion that the Municipality had based its decision to self-extend the deadline on relevant factors pursuant to section 11(3)(c) of the *Act*, in particular the fact that more extensive research was required to follow up on the Applicant's request. Notwithstanding this finding, my Senior Legal counsel asked the Applicant to submit his comments to our Office and to let us know whether he indeed had received a response to his information request by the extended deadline of March 12, 2018.
7. In an email dated June 7, 2018, the Applicant informed us that he understood why the Municipality had to extend the deadline for responding to his information request but mentioned that he had still not received a response to his request from the Municipality. That situation continues to this day and our Office has received no explanation from the Municipality, despite repeated efforts on our part to obtain one.
8. Notwithstanding the fact that we do not know why the Municipality has still not responded to the Applicant's request, the fact remains that the Applicant has yet to receive a response. Therefore, it seems to me that the Applicant's complaint deserves a response and that it is appropriate to issue a recommendation with a view to resolving this matter.

#### **IV RECOMMENDATION**

9. For the above reasons, my conclusion is that the Municipality failed in its obligation under the *Act* to respond to the Applicant's request in a timely manner under section 73(1)(a)(ii) of the *Act*. I therefore recommend that the Municipality respond to the Applicant's request in accordance with the conditions set out in section 14 of the *Act*.
10. In addition, under section 74(2) of the *Act*, the Municipality is required to notify the applicant of its decision concerning this recommendation. If the Municipality decides to accept it, section 74(3)

stipulates that it must take follow-up action within 15 days of receipt of this report; if the Municipality decides not to accept the recommendation or fails to notify the Applicant of its decision, the Applicant will be entitled to appeal to the Court of Queen's Bench pursuant to section 75 of the Act.

This report was issued in Fredericton, New Brunswick on the 22<sup>nd</sup> day of June 2018.

(Original signed by)

Hon. Alexandre Deschênes, Q.C.

Integrity Commissioner of New Brunswick