



Report of Findings: 19/20-AP-154
Right to Information and Protection of Privacy Act
Regional Municipality of Tracadie

October 6, 2020

Note: 2019 amendments to New Brunswick legislation transferred the responsibility for the access and privacy mandates from the Office of the Integrity Commissioner to the Office of the Ombud for New Brunswick.

Summary: The Applicant made an access request to the Regional Municipality of Tracadie for information about the costs associated with the Municipality's fire service vehicles since 2014. The Municipality initially informed the Applicant that the requested records could not be found, but offered to provide the Applicant with total annual costs for its fire service as a whole instead. When the Applicant followed up nearly two months later, noting that the information the Municipality had offered to provide had not been received, and to submit a further request for more specific information, the Municipality failed to provide a response. The Applicant then filed a complaint with this Office about the Municipality's failure to respond.

This complaint was not resolved through the informal resolution process and became the subject of a formal investigation by the Ombud. The Ombud recommended that the Municipality process and provide a meaningful response to the Applicant's request. As the Ombud found that the Municipality had failed to meet its duty to assist the Applicant, the Ombud also recommended that the Municipality set up a dedicated email account to receive right to information requests and to review its processes and practices with respect to right to information requests to ensure that applicants receive timely responses.

Statutes Considered: [*Right to Information and Protection of Privacy Act*](#), SNB 2009, c. R-10.6, s. 9.

I INTRODUCTION

1. On June 6, 2019, the Applicant made an access request by email to the Regional Municipality of Tracadie (“the Municipality”) for the total annual costs for each of the vehicles used by the Municipality’s fire service from 2014 to present, and specifically, the amounts spent on fuel, gas, repairs, and inspections for each vehicle used by the fire service during each of these years.
2. On July 26, 2019, the Municipality issued a letter to the Applicant, acknowledging receipt of this request and explaining that, after conducting a search with its finance department, the Municipality did not find the records requested by the Applicant. The Municipality offered to provide the Applicant with annual costs for the entire fleet used by the fire service, but not per vehicle as requested.
3. On September 18, 2019, the Applicant followed up with the Municipality by email, acknowledging receipt of the July 26, 2019 letter and noting that the Applicant had not received the information that the Municipality had offered to provide. The Applicant also stated that, since the Municipality does not have the precise documents that were requested, the Applicant would like to have a copy of all the receipts, purchase orders and all other documents concerning the inspection and maintenance of fire trucks from 2014 to present.
4. On December 2, 2019, having not received any further communication from the Municipality in relation to this request, the Applicant filed a complaint with this Office.
5. On December 17, 2019, after receiving notice of this complaint, the Municipality provided some additional information to the Applicant, specifically a list of all the expenses relating to the fire service since 2014 from the Municipality’s accounting program. The list sets out the date, the payor, and the amount paid in each transaction, but the Applicant indicated that this was not satisfactory to resolve this complaint.
6. The complaint was not resolved informally and became the subject of the present Report of Findings.

II DECISION

7. During our initial discussions with the Municipality about this complaint, the Municipality stated that it had no knowledge or record of having received the Applicant’s email of September 18, 2019. This is despite the fact that the Applicant used the same email address at that time as when the initial request was submitted in June 2019. Both times, the Applicant emailed one of the senior officials with the Municipality who is routinely involved in right to information requests submitted to the Municipality.

8. After receiving our notice of complaint, the Municipality was able to retrieve the email from its server, thus confirming that the email had been successfully sent by the Applicant on September 18, 2019. The Municipality explained that the email must have been missed, given the large number of important communications it receives on any given day.
9. That being the case, the Municipality was then asked to provide us with explanations on when it could be expected to issue a response to the Applicant, given that the follow-up request was missed by the Municipality through no fault of the Applicant.
10. The Municipality initially expressed a reluctance to process this request at all, given that the Applicant had previously submitted a number of other access requests. This Office is aware of the history between the Applicant and the Municipality. This should not impact the Applicant's reasonable exercise of the right to request and receive information in a timely manner under the *Act*.
11. As for the work and time required to process this request, the Municipality informed us that the records at issue would require a manual search of paper files contained in approximately 60 bankers' boxes, as the Municipality does not maintain a single filing system for all records relating to the fire service. Given the Municipality's many other duties and staffing issues, the Municipality estimated that it could devote approximately 2-3 hours a week to conduct the search for records and to process this request. In January 2020, the Municipality estimated that it could issue a response by the end of May 2020.
12. Progress on this complaint was interrupted when the Province declared a state of emergency due to the COVID-19 pandemic on March 19, 2020. In light of this, our Office followed up with the Municipality in mid-June 2020 to determine what steps, if any, had been taken to address this matter. The Municipality indicated that its operations had been significantly impacted by the state of emergency and the pandemic and stated that it expects to be able to respond to the Applicant by October 30, 2020, and that it would try to respond sooner if possible.

Section 9: Duty to Assist

13. Section 9 of the *Act* states:

9 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.

14. The duty to assist provision compels all public bodies to be helpful and assist applicants throughout the processing of an access request. The duty to assist includes having discussions with applicants to ensure that the public body understands what information he or she is looking for, that a reasonable search for the relevant records is conducted, and that the public body provides a meaningful response to the access request.
15. In the present case, the Municipality's handling of this request left much to be desired.
16. The Municipality's letter of July 26, 2019 cannot be said to be a meaningful response to the Applicant's June 6, 2019 request, as it did not provide the Applicant with any of the requested information. At that time, the Municipality informed the Applicant that it could not find the requested information in its records and offered to provide total annual costs for the fire service for the requested years.
17. Nothing in the *Act* prevents the Municipality from communicating with applicants about their request and having good faith discussions about how access rights can be respected. This Office routinely encourages public bodies to have these kinds of discussions with applicants, as this can bolster the trust relationship and allow concerns to be addressed without the need of a formal complaint to this Office or having the matter referred to the courts.
18. In this case, it does not appear that the Municipality took any further steps with respect to this request after issuing the July 26, 2019 letter and apparently left it up to the Applicant to follow-up to ask again that this information be provided. Placing the burden on the Applicant to take further steps to exercise access rights after a clearly-worded and unambiguous request has been submitted is unhelpful and does not meet the Municipality's duty to assist.
19. This issue was further compounded when the Applicant did follow-up to ask not only that the total annual information be provided, but to further clarify the information sought in light of the Municipality's statement that the information initially requested was not found in its records. Despite using the same email as when the Applicant successfully submitted the initial request in June 2019, the Applicant received no reply to the follow-up email of September 18, 2019, until the Municipality sent a further letter to the Applicant after receiving notice of this complaint in December 2019.
20. The Applicant's subsequent email of September 18, 2019 was missed, which resulted in a further delay in the Applicant getting access to the requested information. After being notified of this complaint, the Municipality was not observed treating this as a priority to rectify its oversight, and instead provided our Office with explanations about other obligations and responsibilities that in its view take precedence over this request.

21. I find that the Municipality failed to meet its duty to assist the Applicant. Recommendations under my general powers and duties under s. 64.1(1) of the *Act* will follow.

V RECOMMENDATION

22. Based on the above findings, I recommend under s. 73(1)(iii) of the *Right to Information and Protection of Privacy Act* that the Municipality provide a full response to the Applicant's request.

23. As set out in s. 74 of the *Right to Information and Protection of Privacy Act*, the head of the public body must give written notice of its decision with respect to these recommendations to the Applicant and this Office within 20 business days of receipt of this Report of Findings.

24. Given my findings on the Municipality's failure to meet its duty to assist the Applicant, under the authority of s. 64.1(1)(h) of the *Right to Information and Protection of Privacy Act*, I also recommend that the Municipality:

- set up and monitor on a regular basis a separate email account that is to be dedicated solely to receiving access to information requests under the *Act*; and
- review its processes and practices with respect to right to information requests to better ensure that applicants receive timely responses to access requests.

25. As this recommendation is made under my general powers and duties under s. 64.1(1)(h) rather than s. 73 of the *Right to Information and Protection of Privacy Act*, the timelines for responding to these recommendations under s. 74 do not apply, nor do they trigger the appeal rights under s. 75 of the *Act*. Nevertheless, I ask that the Municipality notify this Office of its decision with respect to these recommendations as soon as practicable under the circumstances.

This Report issued in Fredericton, New Brunswick this 6th day of October 2020.

Original signed by

Charles Murray
Acting Ombud for the Province of New Brunswick