

**THE MUNICIPAL GOVERNMENT FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

IN THE MATTER OF A REQUEST FOR REVIEW of a decision of the **TOWN OF NEW GLASGOW** not to respond to an Application.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **December 13th, 2002**

ISSUE: The failure of the town to respond to an application within the time line stipulated in the Act.

In a Request for Review, dated September 10, 2002 , under the **Act**, the Applicant asked that I review the failure of the Town of New Glasgow (the Town) to respond to his Application within the time line stipulated in the **Act**.

The Applicant, in an application to the Town dated August 6, 2002 asked for certain records, including his own personal information, that were collected by the Town.

In response to inquiries from this Office, the Town indicated that it needed a 30-day extension to deal with the application. That extension expired on October 7, 2002. At the request of the Applicant, further inquiries were made of the Town, and this Office was assured that a response would be forthcoming to the Applicant by October 11, 2002. Subsequently, a second

Request for Review was received from the Applicant dated October 16, 2002 and after considerable urging, this Office received extensive submissions from the Town on November 29, 2002.

S.467(3) says that a failure by a public body to respond in writing to an Application under subsection (2), is deemed a refusal to provide the information. Since there is no evidence before me that the Town has responded to the Applicant to date, I have no choice but to conclude that the Town intended to have its failure to respond interpreted this way.

Submissions of the Town

The Town submits that imbedded in the wording of the application, the Applicant's request for access to information can be broken down into four parts. The first part is a request for a record of the number of phone calls received by the town in relation to the Applicant. The Town submits that information contained in any records relevant to part one of the application would be contained in a transcript of the Supreme Court proceeding to which the Applicant was a party. The Town goes on to say, "The town does not have a copy of the transcript and has no reason to obtain one. As you are no doubt aware, the Provincial Court trials are taped and upon request by [the Applicant] or anyone else and payment of the costs to produce it, the Court will provide a transcript". The Town also contends that the information was already provided to the Applicant. Notwithstanding the above, the Town also submits that the matter in question is still on appeal and so s.463(2) applies.

With respect to part two of the application that the Town describes as court notes of the Crown Prosecutor's office the Town submits "... the notes requested do not exist nor have they ever".

The Town characterizes parts three and four of the application as a request for access to the Supreme Court Stenographer's notes for a specific date and for the full trial notes of Provincial Court trial of a specific date. In response to these parts of the application, the Town's submission is the same as that in part one above. The Town says that the Applicant should be aware of this as he was made aware of it by the Court.

The Town also points out that the Applicant "has made various, previous applications for other personal information and other information and the Town has either provided it or successfully defended its refusal to do so in the Supreme Court of Nova Scotia".

Frivolous and Vexatious

The Town submits that:

(I)t is the Town's position that the Form 1 Application dated August 6, 2002 and filed with the Town of New Glasgow on August 7, 2002 is a frivolous, vexatious, attempt to use the Freedom of Information provisions of the Municipal Government Act to circumvent and usurp other appropriate legal processes and procedures that deal with the issues raised in his Form 1.

Conclusions:

Failure of the Town to respond to the Applicant

The failure to respond to the Applicant has not been explained to me satisfactorily.

There is no doubt that the Town did not live up to its obligations under the **Act** with regard to this Application that are set out in the following sections:

467 (1) Where a request is made pursuant to this Part for access to a record, the responsible officer shall

(a) make every reasonable effect to assist the applicant and to respond without delay to the applicant openly, accurately and completely; and

(b) consider the request and give written notice to the applicant of the decision with respect to the request.

(2) The responsible officer shall respond in writing to the applicant within thirty days after the application is received, stating

(a) whether the applicant is entitled to the record or part of the record and

(i) where the applicant is entitled to access, stating that access will be given on payment of the prescribed fee and setting out where, when and how, or the manner in which access will be given, or

(ii) where access to the record or to part of the record is refused, the reasons for the refusal and the provision of this Part on which the refusal is based.

(b) that the record is not in the custody or control of the municipality;
or

(c) where the record would contain information exempted pursuant to Section 475 if the record were in the custody or control of the municipality, that confirmation or denial of the existence of the record is refused,

and stating

(d) the name, title, business address and business telephone number of an officer or employee of the municipality who can answer the applicant's questions about the decision; and

(e) that the applicant may ask for review by a review officer within sixty days after the applicant is notified of the decision.

(3) A responsible officer who fails to give a written response is deemed to have given notice of a decision to refuse to give access to the record thirty days after the application was received.

It is obvious that the Town, which, from its submissions has some experience dealing with Applications under this **Act**, was aware it was not meeting its obligations. The Review Officer should not be put in the position where he has to continually prompt a public body to respond to an Application.

I agree with the Town that the **Act** does not apply to the records containing information that are the subject of parts one, three and four of this application because they are publicly available, as contemplated by s.463(2) which reads in part:

463 (1) This Part applies to all records in the custody or under the control of a municipality.

(2) Notwithstanding subsection (1), this Part does not apply to

(a) published material or material that is available for purchase by the public;

(b) material that is a matter of public record;

(c) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;

...

(f) a record relating to a prosecution, if all proceedings in respect of the prosecution have not been completed.

With respect to part two of the application, I am satisfied that such records do not exist.

On the subject of the Town's contention that the application is frivolous and vexatious, this **Act**, unlike similar legislation in other jurisdictions, contains no such provision. After reviewing the extensive representations provided by the Town in this matter, I have sympathy for the Town's frustration. However, as much as the Applicant's actions seem to trivialize the access to information process in the **Act**, even in jurisdictions where there is a frivolous and vexatious clause, the public body is still obligated to respond to the Applicant as per s.467(2).

Recommendations:

The Town should review its procedures which led to the failure to meet its obligations with regard to this Application.

DATED at Halifax, Nova Scotia this 13th day of December, 2002.

Darce Fardy, Review Officer