

2002-024

SEEKING THE OMBUDSMAN'S AGREEMENT TO EXTEND TIME

**FIPPA – Access (submission for extension longer than 30 days) – Manitoba
Education, Training and Youth**

s. 11, 15(1)(2)

Introduction: Under section 11 of The Freedom of Information and Protection of Privacy Act (FIPPA), a public body shall, with two exceptions, make every reasonable effort to respond to a request within 30 days after it is received and a failure to do so is to be treated as a decision to refuse access. Section 15 specifies four situations where a public body may extend the time for responding to an application for access for up to an additional 30 days, or for a longer period if the Ombudsman agrees.

The following case is instructive as the first instance under section 15 of FIPPA where a public body sought the Ombudsman's agreement to extend the time for responding to a request for a longer period than an additional 30 days. To date, it represents one of only two such requests to the Ombudsman and the only time that our office has approved such a request.

The case is also a good example of when it is useful for a public body to communicate with our office about a matter requiring a longer extension as we were able to draft written guidelines for making a submission to our office. This was helpful in assisting the public body to put together information we needed for our consideration.

Additionally, this case caused us to consider the meaning and intention of section 15. The guideline document that we produced in this first case, and which we have referred to since, reads as follows:

Submission to the Ombudsman for an Extension Longer than 30 Days under section 15(1) of *The Freedom of Information and Protection of Privacy Act*

The following guidelines are intended to assist the public body in making a written submission to the Ombudsman for an extension of the time limit for a period that is longer than 30 additional days:

The submission should be a concise presentation of relevant supporting information including:

- copy of the dated access application,
- the number of days being sought in this request for an extension period that is longer than 30 additional days,
- identification of what clause under section 15(1) forms the basis for the request,
- description and discussion of the situation and context in sufficient detail to:
 - support the applicability of the clause quoted under section 15(1), and
 - support the need for an extension longer than 30 days,
- supporting documentation attached as appropriate.

In some cases, a public body may be asked or may wish to attend the Ombudsman's Office to provide additional information.

Since this first request in the case summarized below, our office has considered another request for an extension in excess of 30 days under section 15. In that matter, the Ombudsman did not agree to the extension. In the second case, the basis for the public body requesting an extension was section 15(1)(c) of FIPPA, the need to consult with third parties before the public body could decide whether or not to grant access to the requested records. What differentiated this case from the one summarized below is that the request to the Ombudsman for an extension of more than 30 days was made after the public body had already exercised its discretion to extend the response time by an additional 30 days as permitted by section 15.

*In considering the issue of when a request could be made to the Ombudsman for extending the time limit for responding, our office reviewed the wording and intention of the legislation and the processes required to comply with FIPPA. We noted that the wording of section 15 permits a public body to extend the time limit for responding to an access request for up to an additional 30 days **or** (not **and**) for a longer period if the Ombudsman agrees. We also noted that the legislation clearly acknowledges the time sensitivity of access to information by consistently constraining the periods available for responding to access requests. On this basis, the Ombudsman could not agree to the request for extension made after, and not within, the public body's first 30 days after receiving an access request.*

Beyond the issue of interpretation, there is an interesting wrinkle to section 15 of FIPPA. As section 15(2)(c) recognizes, the individual may make a complaint to the Ombudsman about an extension taken by the public body. Section 15, of course, presents two situations: one where the public body takes an extension of up to an additional 30 days and the second where the public body requests that the Ombudsman agree to an extension for a longer period.

In an instance where the Ombudsman agrees to an extension and where an individual complains about the extension, it is evident from the process that the Ombudsman has already taken a position in the matter. Because section 15(2) requires the public body's notice of extension to the individual to include information that the individual may make a complaint to the Ombudsman about the extension, we thought it was very important that the public body be clear that the Ombudsman agreed to the extension. In the case summarized below, the public body's response to the individual advised that it was taking an extension beyond the 30 additional days referred to in section 15(1), that the Ombudsman had agreed to this extension of time, and indicated that the Ombudsman was being copied with the public body's response and that a copy of the Ombudsman's letter agreeing to the extension was attached. In short, the process was very open and transparent.

Ultimately, even where the Ombudsman agrees to a request for extension of more than 30 days, it is the public body's decision to extend the response time. Further, it remains our position that it is the public body's responsibility to process a request as soon as it can regardless of the timelines in the legislation. In other words, public bodies ought not work to the timelines if the processing of a request can be completed sooner.

On January 10, 2002, an individual submitted 57 applications for access to Education, Training and Youth for records regarding “financial irregularities, audits, or investigations into Ministry-sponsored adult-learning centres and institutions of the like in Manitoba.”

On January 25, 2002, the Access and Privacy Coordinator for the Department telephoned our office and advised us that the Department would be seeking the agreement of the Ombudsman to extend the time limit for responding to the individual. Section 15(1) of FIPPA sets out:

Extending the time limit for responding

15(1) *The head of a public body may extend the time for responding to a request for up to an additional 30 days, or for a longer period if the Ombudsman agrees, if*

(a) the applicant does not give enough detail to enable the public body to identify a requested record;

(b) a large number of records is requested or must be searched, and responding within the time period set out in section 11 would interfere unreasonably with the operations of the public body;

(c) time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record; or

(d) a third party makes a complaint under subsection 59(2).

We were pleased that the Department contacted our office at the outset to discuss the process for seeking the Ombudsman’s agreement for a longer extension under section 15(1) of FIPPA. Such a request had never before been made to the Ombudsman. The contact with our office provided us with an opportunity to draft written guidelines for making a submission to our office under section 15(1) so that we could advise the Department of the specific information we needed in order to consider its request.

On January 29, 2002, we provided the Department with our draft “Submission to the Ombudsman for an Extension Longer than 30 Days under section 15(1) of *The Freedom of Information and Protection of Privacy Act*”. These guidelines are set out in the “Introduction” to this case summary.

By a memorandum dated January 31, 2002, the Department provided our office with its written request for extension, identifying the number of days it was seeking beyond the additional 30 days. The Department cited and quoted the specific provisions supporting why it was seeking the extension, specifically section 15(1)(b) and (c). It was the Department’s position that, given the large number of records requested, responding within the 30-day period would interfere unreasonably with its operations and it clearly explained why this was the situation. It was also the Department’s position that there was a need to consult with several third parties, including other public bodies, before a decision could be made whether to grant access to the requested records and, again, this was clearly explained in writing. The Department requested an extension totaling 41 days.

The submission, which was a simple memorandum, contained detailed information, including the approximate number of pages the Department had to review and possibly sever; the approximate number of pages that the Department was considering to release; the estimated hours required to conduct the work; an estimate of the percentage of time that the Access and Privacy Coordinator could work on the task in view of other work and other circumstances then affecting the Department; and the status of discussions with one third party and the identification

of other third parties that would be contacted in order to properly process the request. During our consideration of the request for an extension of longer than 30 days, the Department continued to process the applications for access.

Based on the specific details outlined by the Department, the request was, in the Ombudsman's opinion, reasonable. On February 5, 2002, the Ombudsman wrote a letter to the Access and Privacy Officer stating that the Department's request and attached documentation had been reviewed and that he agreed with the Department's request for an extension of 41 days, to March 22, 2002.

During this time, the Department had been in verbal communication with the individual who had made the requests. By letter to the applicant dated February 11, 2002, the Department discussed the handling of the requests and indicated that it was extending the time period for responding for an additional 41 days. In addition to citing, quoting and explaining the provisions of FIPPA on which it was relying, the Department stated that it had requested and obtained the agreement of the Ombudsman to the extension of time as permitted by subsection 15(1). Promoting transparency of the process, the Department attached a copy of the letter in which the Ombudsman agreed to this extension.