



## Issues

- [4] The issues in this review are:
- a. Did the Department of Human Resources correctly apply section 11(1)(b) when claiming a time extension?
  - b. If so, is the time extension taken by the Department of Human Resources “for a reasonable period”?

## Facts

[5] The Applicant is former employee of the GN. They worked in the education system. On April 21, 2022, the Applicant filed an ATIPP request for their GN personnel file. The ATIPP request says that records are requested from “Department of Education/Human Resources”.

[6] There is no indication in the file material I have seen that the ATIPP request was ever sent to, or transferred to, the Department of Education.

[7] Processing of the ATIPP request within HR began on April 22, 2022. On April 26, 2022, HR contacted the Applicant to acknowledge receipt, and to inform the Applicant that the due date was May 27, 2022.

[8] On June 6, 2022, HR wrote a time-extension letter to the Applicant. The letter cited section 11(1)(b) of the ATIPPA, and added:

The Department of Human resources is currently facing a backlog in processing ATIPP requests. We require an additional delay of four (4) weeks to complete the processing of your request. We are hoping that you will receive a decision by no later than July 08, 2022.

[9] On July 11, 2022, the Applicant filed a Request for Review with this office. The Applicant had not heard from HR by the new deadline of July 8, 2022, and had not received another extension letter.

[10] On July 13, 2022, HR began looking for records that were responsive to the Applicant’s request.

## Law

### *Time extensions*

**[11]** Section 11 of the ATIPPA lays down the rules for time extensions:

11. (1) The head of a public body may extend the time for responding to a request for a reasonable period where
- (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 to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
  - (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record;
  - (d) a third party asks for a review under subsection 28(2); or
  - (e) a requested record exists in the control of the public body only in a language other than the Official Language of Nunavut requested by the applicant and additional time is required for translation.
- (2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay
- (a) the reason for the extension;
  - (b) when a response can be expected; and
  - (c) that the applicant may ask for a review of the extension under subsection 28(1).

**[12]** The list of acceptable circumstances in section 11(1) is an exhaustive list. If a case does not fit within one of the five paragraphs, then a time extension is not allowed. Even if a case does fit within one of the five paragraphs, the time extension is limited to “a reasonable period”.

**[13]** In the present case, HR relies on section 11(1)(b). That section lays down two criteria, and both must be satisfied to justify a time extension: a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body.

**[14]** In *Department of Education (Re)*, 2021 NUIPC 21 (CanLII) at paragraphs 12 to 16 and paragraph 25, I reviewed the precedents from Nunavut on what “a reasonable period” is. I can summarize the law in one sentence: a time extension of 25 business days, beyond the initial deadline of 25 business days, is the outer limit of reasonableness, and should not be exceeded except in very unusual circumstances.

### **Analysis**

**[15]** My analysis of this case is substantially the same as in *Department of Human Resources (Re)*, 2022 NUIPC 12 (CanLII). I will not repeat the whole analysis here.

**[16]** The Department of Human Resources has a backlog of ATIPP files. HR has not devoted any additional resources to the backlog, and has chosen to deal with its ATIPP files in chronological order. The inevitable result is that HR is now missing the statutory deadlines in every case, including this one.

**[17]** The ATIPPA allows for a time extension in certain circumstances. There are five allowable circumstances listed in section 11(1), which is quoted in the Law section above. None of those circumstances applies in this case. Having a backlog is not one of the allowable circumstances.

**[18]** HR has gotten into the habit of citing section 11(1)(b) in its time extension letters, regardless of the circumstances. It should stop. As in *Department of Human Resources (Re)*, 2022 NUIPC 12 (CanLII), this is not a case in which “a large number of records is requested or must be searched”, nor is it a case where “meeting the time limit would unreasonably interfere with the operations of the public body”. The Applicant’s request is a routine request for records related to their service as a GN employee. The only wrinkle is that the Applicant’s service ended in 2014. Some of the files, if they are hard-copy files, may have been archived. But this is not enough to bring the case within section 11(1)(b) or any other part of section 11(1).

**[19]** The reality is that HR missed the statutory deadline simply because, according to HR’s processing system, the Applicant had to wait their turn.

**[20]** Even if the case fit within section 11(1)(b) – and I have found that it does not – the extension is not “for a reasonable period”. As explained in the Law section above, the outer limit of reasonableness for a time extension is 25 more business days after the initial 25 business days. The period should not be exceeded except in very unusual circumstances, which this case is not.

**[21]** In this case, HR did not begin looking for the requested records until more than 50 business days had passed. When they did begin, in mid-July, some people who might have been able to help locate the requested records were away on leave, which is normal in the education system in summer. As I wrote in *Department of Education (Re)*, 2021 NUIPC 22 (CanLII) at paragraph 19, “delay begets delay”.

**[22]** It is also possible that this particular ATIPP request should have been transferred under section 12, in whole or in part, to the Department of Education, since Education does its own staffing. But since HR did not begin looking for responsive records until July 13, almost three months has gone by without that possibility being considered.

**[23]** The ATIPPA is the law of Nunavut. It gives applicants a right to receive records from public bodies. It also sets deadlines for how long a public body can take to respond. A public body cannot lawfully ignore those deadlines and make up its own processing rules. When it does, the public body defeats the statutory objectives of the ATIPPA.

**[24]** As I wrote in *Department of Human Resources (Re)*, 2022 NUIPC 12 (CanLII) at paragraph 83, “This is not an isolated case. The ATIPP problems within the Department of Human Resources are chronic and will continue unless changes are made, either to the legislation or to ATIPP administration or both.”

## Conclusion

[25] The Department of Human Resources did not correctly apply section 11(1)(b) when claiming a time extension.

[26] In any event, the time extension taken by the Department of Human Resources was not “for a reasonable period”.

## Recommendations

[27] **I recommend** that the Department of Human Resources respond to the Applicant’s request for records no later than thirty days from the date of the minister’s decision under section 36 of the ATIPPA.

[28] As I wrote in *Department of Human Resources (Re)*, 2022 NUIPC 12 (CanLII) at paragraph 87, **I recommend** that the Department of Human Resources devote more resources, by whatever means necessary, to reduce its backlog of ATIPP files to zero before the end of 2022. For greater certainty, “zero backlog” means there is no ATIPP file still open in HR more than 50 business days after HR received the request for records.

Graham Steele

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