

2. The Petitioner is the Provincial Affairs Reporter with the Canadian Broadcasting Corporation in New Brunswick.
3. In the request, the Petitioner requested to simplify the processing of the request by providing the audio recording equipment and undertaking to delete or obscure any identifying personal information of individual employees.
4. The Minister provided a response dated July 2, 2009 and mailed July 14, 2009, in which the request for 911 tapes was forwarded to the Department of Public Safety for response as per subsection 3(4) of the Act and advising that Ambulance New Brunswick's records cannot be disclosed in accordance with sections 23 and 24 of the *Ambulance Services Act*.² The Minister's response was copied to the Minister of Public Safety and the CEO of Ambulance New Brunswick.
5. The Minister of Public Safety, who received the referral on July 20, 2009, provided a response dated August 10, 2009, stating that the requested records do not exist in provincial records, and further explaining that 911 calls are recorded and maintained by the municipality providing Public Safety Answering Point Services. In this case, the municipality that would have received the 911 call in question is the City of Fredericton, thus the Minister referred the Petitioner to the City and returned the \$5.00 application fee as municipalities are not subject to the Act.
6. The Petitioner appealed the Minister of Health's response on the grounds that the Minister's reference to the confidentiality provisions as per sections 23 and 24 of the *Ambulance Services Act* should not be applicable in this case as the Department of Health had commissioned and released an inquiry report on the subject of this request, in which detailed information about and direct quotations from the dispatch records were published and thus released publicly.

II. APPLICABLE LEGISLATION

7. The relevant provisions of the Act are as follows:
 - 3(1) Any person may request information by applying to the minister of the department where the information is likely to be kept or filed, and the appropriate Minister shall in writing within thirty days of the receipt of the application grant or deny the request.
 - 3(4) Where a minister receives a request for information that is not kept or filed in the department for which he is appointed, he shall, in writing, notify the applicant of such fact and advise the applicant of the department in which the information may be kept or filed.

² *Ambulance Services Act*, S.N.B. 1990, c. A-7.3.

- 4(4) When the document containing the information that is the subject matter of an application has been destroyed or does not exist, the appropriate Minister shall advise the applicant of such fact.
8. The cited provisions of the *Ambulance Services Act*³ in the Minister of Health's response are as follows:
- 23 A person employed in the administration of this Act shall not disclose information acquired by virtue of that employment, unless disclosure is required for the purposes of this Act.
- 24 A person employed in the provision of ambulance service shall not disclose information relating to the personal circumstances of patients, unless disclosure is requested by the patient or is required in the interest of the patient or of patient care in general.

III. ANALYSIS

9. First, I would like to explain my understanding of the complicated framework at play behind what, on its face, appears to be a relatively simple request for specific information. In order to understand the 911 intake and response system in the province, my staff met and consulted with six officials from the Departments of Health and Public Safety and it became clear through this process that neither department had a full understanding of the entire response system prior to this review, which was reflected in the responses provided to the Petitioner.
10. At present, the Department of Public Safety has a 911 Bureau branch within its mandate; however, the 911 Bureau contracts with six municipalities around the province to provide Public Safety Answering Point services (PSAPs). These services are located in the municipalities of Bathurst, Edmundston, Fredericton, Miramichi, Moncton, and Saint John. Services at the PSAPs are provided by municipal employees and call logs and records are stored within the respective municipalities. The role of the PSAPs is to obtain contact information and the nature of the problem in order to dispatch the call to the appropriate emergency response provider(s) (ambulance services, municipal fire stations, and/or the police). Once the caller has been successfully dispatched to the appropriate emergency response provider(s), the PSAP then terminates its connection to the caller.
11. Regarding the dispatch logs and records of the emergency response providers, requests for these records are further complicated by the various jurisdictional authorities under which they operate, as each is responsible for the storage and maintenance of its respective records. Ambulance services in the province are provided by Ambulance New Brunswick, Inc. (ANB), which is recognized as

³ *Ambulance Services Act*, S.N.B. 1990, c. A-7.3.

a public body under Schedule A of the Right to Information Regulation 85-68.⁴ Fire services are provided by local fire stations and are administered by municipalities, which are not currently subject to the Act. Police services, depending on the location within the province, are provided either by local police forces or the federal RCMP, neither of which are subject to the Act.

12. Simply stated, the Petitioner's request was two-fold: the record of the initial 911 call received by the City of Fredericton's PSAP, and the related dispatch records for ambulance services which are held by ANB. These records do not fall under the care or control of the Minister.
13. As provided above, the Petitioner directed the request to the Minister on the premise that as the Minister had commissioned an inquiry into the subject matter of the request and released the investigation report under its own authority, the records, or at least copies of the records, are under the care and control of the Minister.

IV. MINISTER OF HEALTH'S RESPONSE

14. The Minister's response raises a number of concerns, each of which I will address in turn.

A. FAILURE TO RESPOND WITHIN THE 30-DAY TIMEFRAME

15. The Minister's response was dated July 2, 2009, but the response was not mailed to the Petitioner until July 14, 2009. Departmental staff readily offered this information, explaining that the letter had been drafted earlier and should have been changed to reflect the date of the Minister's signature, and that the delay was exceptional as the request arrived in the context of a new Minister being appointed during the 30-day response timeframe.
16. Recognizing that all public bodies face various operational challenges at any given time, the Act does not provide extensions or exceptions to the 30-day response timeframe as per subsection 3(1).
17. It is also regrettable that the delay occurred in a case where the Minister was unable to provide access to the requested information and the request needed to be referred to another department for further response.
18. I would like to take this opportunity to note that in the new legislation, the *Right to Information and Protection of Privacy Act* which is expected to come into force by early 2010, provides in subsection 13(1) that public bodies have 10 days to transfer requests to other public bodies who have care and control of the requested information.⁵

⁴ *Right to Information Regulation*, N.B. Reg. 85-68.

⁵ *Right to Information and Protection of Privacy Act*, S.N.B., 2009, c. R-10.6 (not yet in force).

19. Where a request for information is received by a public body that does not have care or control of the requested information, steps should be taken to ensure that the request is forwarded as soon as possible to the appropriate public body.

B. ANB DISPATCH RECORDS

20. As explained above, the Petitioner's request is essentially two-fold: he is seeking access to records held under the two separate authorities for 911 calls and ambulance dispatch logs and recordings, which are held by the City of Fredericton and ANB respectively.
21. Despite the fact that departmental staff were aware that the requested ambulance dispatch records were held by ANB, the request was not forwarded on to ANB for response, despite the fact that ANB is listed as a public body under Schedule A of Regulation 85-68 under the Act.
22. In lieu of forwarding the Petitioner's request to ANB for response, the Minister's response preemptively responded on ANB's behalf by citing the confidentiality provisions under sections 23 and 24 of the *Ambulance Services Act*.⁶ This was done in an attempt to assist the Petitioner by informing him that ANB would likely not disclose the requested information; however, this has resulted in a circumvention of the right to information process and I find myself in the position of conducting a review of a response provided by a public body that does not have care or control of the requested information.
23. While there may be some situations where it is possible and even advantageous for a public body to provide a response on behalf of another public body,⁷ I do not find this to be the case in this situation. Had the Department of Health consulted with ANB to gather the relevant information with the aim of providing a comprehensive response to the Petitioner, this would have been acceptable; however, this is not the current situation as departmental staff have confirmed that they did not consult ANB in the process of responding to this request (although ANB was copied on the response provided to the Petitioner). Instead, the Minister has effectively provided a preemptive refusal of disclosure on behalf of another public body, on which I am precluded from properly reviewing at this time as the public body with care and control of the records was not provided with an opportunity to respond on its own behalf.
24. As the Department of Health does not hold the requested information, the Minister's response to the Petitioner should have clearly indicated this and the request should have been forwarded without delay to ANB for response.

⁶ *Ambulance Services Act*, S.N.B. 1990, c. A-7.3, s. 23-24, as reproduced in full above.

⁷ See *Brosseau v. Minister of Finance*, NBRIOR- 2009-07.

25. At my request, the Minister has since forwarded the Petitioner's request to ANB for response via letter dated October 14, 2009.

C. 911 PSAP RECORDS

26. At the time departmental staff was preparing the response to the Petitioner's request, they were not aware that the initial 911 calls fall under municipal jurisdiction. As the Department of Public Safety has jurisdiction over the 911 Bureau, the Petitioner's request was forwarded to the Minister of Public Safety for response for this aspect of the request. It is unfortunate that the Minister of Public Safety also does not have care or control of these records and that the Petitioner was then directed to address his request to the City of Fredericton, particularly in light of the already delayed referral of the request to the Minister of Public Safety.
27. While the duty to assist is not a requirement under the Act, I have been promoting it as a best practice in previous recommendations as it has been codified in other jurisdictions' access to information schemes.⁸ The duty to assist will be legislatively mandated in the newly minted *Right to Information and Protection of Privacy Act*, which is expected to come into force by early 2010. The duty to assist as set out in the new Act provides that "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."⁹
28. The parameters of the duty to assist will need to be fleshed out on a case-by-case basis once the new legislation comes into force, but I raise the point in this context as this result may have been avoidable had the Department of Health contacted the Department of Public Safety to inquire whether the request could be forwarded for response. Given that the Petitioner waited over two months for the request to be passed through two departments prior to being informed that the requested information was not held by a public body within jurisdiction of the Act, it does not seem unreasonable to suggest that public bodies have an obligation to make inquiries as to where to forward a request when they do not have care or control of the requested information and are uncertain about where it is held.
29. Without a clear explanation of the process for the handling of 911 calls in the province, the response provided to the Petitioner lacks context and failed to direct the request to the appropriate authorities for response.

⁸ *McHardie v. New Brunswick (Office of Human Resources)*, NBRIOR 2007-04 at para. 6.

⁹ *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6, s. 9.

D. PETITIONER'S SPECIFIC APPEAL OF THE MINISTER OF HEALTH'S RESPONSE

30. As mentioned above, the Petitioner specifically appealed the Minister of Health's response on the grounds that the Minister has or had care and control of the records as a result of the Minister's inquiry request and subsequent release of the inquiry report relating to the event that is the subject of this request. Further, the Petitioner appeals the response as the inquiry report set out a detailed chronology and quotations from the dispatch centres, arguing that the information is essentially part of the public record.
31. Regarding the first grounds of the Petitioner's appeal, my review revealed that while the Minister of Health requested the inquest and appointed an independent investigator, the investigator was granted authority to access all relevant information directly from the appropriate governing authorities for the purposes of the inquiry. Thus, the requested information did not pass at any time through the Department of Health, and departmental staff has confirmed that at no time did the Department hold either the originals or copies of the requested information.
32. Based on my review, I am satisfied that the Minister does not and did not previously have care or control of the requested information.
33. Regarding the second grounds of the Petitioner's appeal, as mentioned above, I am precluded from making any recommendation on whether the requested information is disclosable as the public body with care and control of the requested information has not yet had the opportunity to provide its own response to the Petitioner's request. As the request has since been forwarded to ANB for response, the Petitioner may refer ANB's forthcoming response for further review if he remains unsatisfied.

V. PETITIONER'S REQUEST

34. I would also like to address a point of concern raised in the Petitioner's initial request. The Petitioner, recognizing that the request may pose technological challenges in terms of accessing the requested information on the dispatch logs, proposed to provide his own audio recording equipment and to undertake to delete or obscure information in the recordings that would identify individual employees by name.
35. While requestors have the right to request alternative means of access to requested information from public bodies, public bodies remain bound by law to protect confidential information under their care and control. With regards to the Petitioner's request to personally undertake to delete or obscure personal information of employees contained in the records, section 6(b) of the Act provides:

There is no right to information under this Act where its release...

(b) would reveal personal information concerning another person;

36. While I continue to have concerns with the Court of Queen's Bench decision in the *Hayes* case that the names of civil servants constitute severable personal information for the purposes of subsection 6(b) of the Act,¹⁰ I am bound to respect and apply the Court's ruling on this point. In my view, this ruling applies in the same way to ANB, a Crown corporation, as it would to any other entity subject to the *Right to Information Act*.
37. Further, given the sensitive nature of the work done by ANB dispatch employees and the fact that the Petitioner is a prominent member of the media, the release of employees' names in this context could easily result in ANB being found in violation of the *Protection of Personal Information Act*¹¹ if access were granted in the manner requested by the Petitioner.
38. It thus follows that if I were in a position to recommend disclosure of this information, I could not recommend disclosure in the format proposed by the Petitioner in any event as I cannot make a recommendation that could indirectly lead public bodies to act in violation of the laws by which they are bound.

VI. RECOMMENDATION

39. **As the Petitioner's appeal relates to the Minister of Health's response and the Minister does not have care or control of the requested information, I cannot accede to the Petitioner's request to recommend disclosure of the requested information.**

Dated at Fredericton, this 9th day of December, 2009.

Bernard Richard, Ombudsman

¹⁰ *Hayes v. New Brunswick (Minister of Intergovernmental Affairs)*, 2007 NBQB 47.

¹¹ *Protection of Personal Information Act*, S.N.B. 1998, c. P-19.1.