



Information Commissioner's final report

Institution: Immigration and Refugee Board of Canada

Date: 2023-08-15

OIC file number: 5822-04290

Institution file number: A-2022-00784

Complaint

The complainant alleged that the extension of time Immigration and Refugee Board of Canada (IRB) took under subsection 9(1) of the *Access to Information Act* to respond to an access request was unreasonable. The request was for internal correspondence and/or documents about triage automation and artificial intelligence between January 1, 2020 and July 22, 2022. The complaint falls within paragraph 30(1)(c) of the Act.

Investigation

Time limits for responding to access requests

Section 7 requires institutions to respond to access requests within 30 days unless they have transferred a request to another institution or validly extended the 30-day period for responding by meeting the requirements of section 9.

IRB received the access request on July 22, 2022 and the fees on July 25, 2022. On several occasions, IRB placed the request on hold in order to clarify the scope including whether the requester sought emails from all IRB employees or from specific one. The requester confirmed that they in fact wished to obtain information from IRB employees DG level and above. This resulted in an amended request submitted by the requester on August 18, 2022.

On September 16, 2022, IRB extended the period for responding to the request by 616 days under paragraphs 9(1)(a), (b) and (c). If the extension were valid, the time limit for the response would be May 27, 2024. The investigation revealed that in fact, IRB took the extension only under paragraphs 9(1)(a).

Extensions of time

Notification

To extend the period for responding to access requests, institutions must notify requesters of the following no more than 30 days after receiving the request:

- they are extending under paragraph 9(1)(a), (b) and/or (c) the period for responding to the request;
- the duration of the extension (for extensions under paragraphs 9(1)(a) and (b)); and
- the requester has the right to complain to the Information Commissioner about the extension.

Institutions must also show that the requirements of the paragraph of subsection 9(1) they are relying on to extend the 30-day period are met.

Paragraph 9(1)(a): extension of time due to volume of records

Paragraph 9(1)(a) allows institutions to extend the 30-day period for responding to an access request when they can show the following:

- the request is for a large number of records or requires searching through a large number of records;
- meeting the 30-day time limit would unreasonably interfere with the institution's operations; and
- the extension of time is for a reasonable period, having regard to the circumstances.

Did the institution properly notify the complainant of the extension of time?

IRB sent a notice to the complainant within 30 days of the request being received. The notice indicated that the extension of time was for 616 days and it was taken under paragraphs 9(1)(a)(b)(c). In the notice, IRB also informed the complainant of their right to complain to the Information Commissioner about the extension of time.

The complainant was properly notified.

Did the institution show that it met the requirements of paragraph 9(1)(a)?

Was the access request for a large number of records?

IRB stated that an estimated 8,500 pages of records fall within the scope of the access request at the time the extension was taken.

I am satisfied that IRB demonstrated that the request is for a large number of records. The first requirement of a valid extension under paragraph 9(1)(a) is therefore met.

Would meeting the 30-day deadline unreasonably interfere with the institution's operations?

IRB showed that searching for and processing this many records and responding to the access request within 30 days—assuming it were even possible—would have monopolized resources. Consequently, I am satisfied that completing the necessary work within 30 days would unreasonably interfere with the institution's operations. The second condition set out in paragraph 9(1)(a) is therefore also met.

Is the extension for a reasonable period?

IRB explained that the extension taken was calculated based on the following timeframes/schedule allotted for the completion of various steps:

- a rate of 500 pages a month for review
- 17 weeks for director review (100 pages an hour)
- 8 weeks for final approval (legal review and senior management approval)
- 3 weeks to account for potential miscellaneous delays

In its representations, the IRB explained that the timeframe allotted for an assigned analyst to conduct a preliminary review of the records is based on the assumption that the analyst will review 500 pages per month. With regard to the latter, the IRB indicated that given they are short staffed, analysts import their own records into AccessPro Redaction (APR), which takes a significant amount of time because their software does not allow them to 'select all' and print. IRB added that it had estimated that it takes 1-5 minutes per document, depending on the size of the document in question. In addition, while importing records into the APR, the APR software cannot be used to process other requests.

In support of the limited resources devoted to this initial review, the IRB submitted that it has initiated multiple non-productive staffing processes and referred to a shortage of staff in its ATIP office, a team in which the amount of analysts has fluctuated since 2020. In terms of the IRB's operational capacity, the information provided during the investigation suggests that ATIP team has a substantial workload of informal requests associated with the IRB's mandate and that ATIP analysts are each expected to devote 20 hours per month depersonalizing refugee decisions for online publication, in addition to their ATIP related functions. In its defence, the IRB affirmed that it is currently working at establishing a separate team to depersonalized refugee decisions, however the team is currently not

operational. IRB added that it would make its best effort to respond to the complainant before the extension date.

Finally, the IRB submitted that its ATIP office aims to work on each file diligently and as fairly as possible to maintain transparency. It also explained that external consultations with other government departments and third party would be necessary as the responsive records did not originate from the IRB. These consultations were planned to take place alongside its analyst's review, so the time extension was taken only in consideration of the volume of record.

In my view, the ATIP office's ongoing staffing shortages and competing priorities of responding to informal requests and sanitizing records for publication, cannot reasonably absolve the IRB of its statutory obligation to provide timely access to records requested under the Act. In addition, as I have indicated in a number of orders already, including a decision issued in November 2021 (Department of Justice Canada (Re), 2021 CI 33 (oic-ci.gc.ca), it is expected that institutions will equip themselves with the proper tools to process an average 1000 pages a month. This includes the time it should take for indexing, sorting, and reviewing records as well as internal approvals.

As for the additional time claimed in order to account for potential miscellaneous delays, IRB was unable to demonstrate that the work required to provide access within a materially shorter timeframe than that requested would hinder its operations.

Based on the information and representations provided, I am not satisfied that the calculation of the time extension under paragraph 9(1)(a) is sufficiently logical and supportable, or that access to the records within any materially lesser period of time than the one asserted would unreasonably interfere with its operations. (see: [Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\), 2015 FCA 56](#)).

In light of the foregoing, I am of the view that the extension taken pursuant to paragraph 9(1)(a) is not reasonable. In addition, the investigation demonstrated that even if the notice of time extension indicated that the extension was also taken under subsections 9(1)(b) and 9(1)(c), this was an error. IRB's analyst explained that consultations will take place alongside the review and that the review calculation was based solely on the number of records.

Subsection 10(3): deemed refusal of access

Under subsection 10(3), when institutions do not respond to an access request within 30 days or by the end of the period for which they validly extended the time they had to respond, they are deemed to have refused access to the requested records.

Given that IRB did not establish that the requested extension of time was reasonable, the extension is invalid, and the IRB is deemed to have refused access pursuant to subsection 10(3).

During the course of the investigation, IRB confirmed that there are in fact a total of 17,500 pages to review. In addition to the review, the analyst needs to index the records, and consult internally/externally. The IRB did not provide my office with the most recent update of the work to be done before disclosure. Having considered the amount of pages to be processed and also the fact that the IRB has now had this request for about a year (12 months), I find that a response should be provided to the complainant without undue delay.

Result

The complaint is well founded.

Order

Under subsection 36.1(1) of the Act, I order the Chairman of IRB to provide a complete response to the access request as soon as possible but no later than on the 60th business day following the date of the final report.

On July 5, 2023, I issued my initial report to Chairman, setting out my order.

On August 4, 2023, the Chairman of IRB gave me notice that the IRB plans to implement my order, provided I am able to accept an additional period of 6 months in accordance with the OIC methodology.

I must remind the Chairman that if he does not intend to fully implement my order, he has to apply to the Federal Court for a review by the following deadline.

When a complaint falls within the scope of paragraph 30(1)(a), (b), (c), (d), (d.1) or (e) of the Act, the complainant and institution have the right to apply to the Federal Court for a review. They must apply for this review within 35 business days after the date of this report and serve a copy of the application for review to the relevant parties, as per section 43. If no one applies for a review by this deadline, this order takes effect on the 36th business day after the date of this report.



Caroline Maynard
Information Commissioner of Canada