



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2024-002

January 16, 2024

Town of Victoria

Summary:

The Complainant made an access to information request to the Town of Victoria. The Town did not respond to the request within the 20 business days as required by the Act. The Complainant filed a complaint with this Office asking that the Town's deemed refusal be investigated. During the investigation, this Office discovered that the Town had passed a motion purporting to disregard any access requests from the Complainant as well as investigations of same by this Office. The Commissioner found that the Town had not met its duties under the Act and recommended that the Town review its policies, obtain training, and comply with its legislative duties in future.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 8, 11, 13, 15, 16, and 21.

Authorities Relied On:

NL OIPC Report [A-2022-013](#) and [A-2023-025](#).

ATIPP Office Manual: [Access to Information Policy and Procedures Manual, Dec 2021](#).

BACKGROUND

- [1] The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* (the Act or *ATIPPA, 2015*) to the Town of Victoria (Town). The Complainant submitted the request to the Town on September 7, 2023.
- [2] Pursuant to section 16 of *ATIPPA, 2015*, the Town's final response to the Complainant's access request, consisting of its decision letter and accompanying responsive records, was due within 20 business days of receipt of the request, being October 5, 2023. The Town did not apply to the Commissioner for approval to extend the time for responding, nor did it apply to the Commissioner for approval to disregard the request.
- [3] Upon expiration of the October 5, 2023 deadline without a final response from the Town, the Complainant filed a complaint with this Office
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [5] The Town claimed that it never received the Complainant's access request. Due to a strained relationship between the Complainant and Town, the Town has blocked the Complainant's email address. The Town argued that it has the right to block the Complainant's email address, and the Complainant knew their email was blocked and should have submitted their request via regular mail.
- [6] The Town has also expressed frustration with the volume of correspondence from the Complainant, including the Complainant's requests for answers to questions outside of the formal access to information process.
- [7] Additionally, on August 30, 2022 the Town Council unanimously passed the following motion:

Motion 2022-205 Snooks/Kelloway

Be it resolved, that with the exception of receiving a payment and issuing a receipt from the town's accounting program, Council, the authority of the Town of Victoria, direct the Town Clerk Manager not to engage in any further communication by any means, with the identified individual [identifying information removed] associated with 3-ATIPP Requests For Information, 2-OIPC Investigations, to delete all emails received from the identified individual, and further resolved not to respond to any new ATIPP Requests For Information or OIPC Investigations.

Favour 7; Opposed 0; Carried

[8] After this Office notified the Town of the request and complaint, the Town eventually provided a final response to the Complainant. The Town noted that it sent the final response via mail on November 16, 2023. However, due to a mistake in the mailing address the package was returned to the Town by Canada Post. The Town corrected the mistake and resent the package. The Complainant did not actually receive the final response until December 19, 2023.

[9] The Town has offered to amend the above-noted motion to remove the following statement: "and further resolved not to respond to any new ATIPP Requests For Information or OIPC Investigations."

COMPLAINANT'S POSITION

[10] The Complainant argues that they are entitled to submit access requests to the Town via email and they are entitled to receive a response within the timeframe set in the *Act*.

ISSUES

[11] The following issues have not been resolved:

- a. With respect to the Town's response to the Complainant's current access request:
 - i. Has the Town breached its duty under section 13 by failing to respond to the Complainant in an open, accurate, and complete manner?

- ii. Has the Town breached its duty under section 15 by failing to provide an advisory response within 10 business days of receiving the request?
 - iii. Has the Town breached its duties under section 16, by failing to provide the Complainant with formal response to their request?
- b. With respect to the Town's general approach to access requests from the Complainant:
- i. Has the Town breached its duty under section 8 by passing a motion restricting the Complainant's right to make access requests to the Town?
 - ii. Has the Town breached its duty under section 11 by requiring the Complainant to make any access requests to the Town via regular mail and refusing to accept electronic requests?
 - iii. Does the Town have the authority to unilaterally disregard all access requests made by the Complainant without making disregard applications and receiving approval from this Office as described in section 21?

DECISION

[12] As noted above, the Town did eventually respond to the Complainant's access request during the course of our investigation and provided a response in December 2023. Nonetheless, the Town's handling of the access request and outlook on its obligations under *ATIPPA, 2015* merit further review and recommendations.

Deemed Refusal (Sections 13, 15, and 16)

[13] According to section 15, a public body must provide an applicant with an advisory response no more than 10 business days after receipt of the request. The Town failed to do so, therefore breaching its duty under section 15 of the *Act*.

[14] A public body must respond to an access to information request within the time frame set by section 16 of *ATIPPA, 2015*, which states:

16.(1) The head of a public body shall respond to a request in accordance with section 17 or 18, without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended under section 23.

(2) *Where the head of a public body fails to respond within the period of 20 business days or an extended period, the head is considered to have refused access to the record or refused the request for correction of personal information.*

[15] The Town did not apply to this Office for an extension of time for responding to the Complainant's requests and clearly failed "to respond within the period of 20 business days or an extended period" with respect to the request. As the Town did not respond to the request within the deadline set out in section 16, it is, per section 16(2), "considered to have refused access to the record" in relation to the access to information request.

[16] Pursuant to section 13 of *ATIPPA, 2015*, a public body has a duty to assist an applicant who makes an access to information request:

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

(2) The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.

[17] The ATIPP Office has produced an [Access to Information Policy and Procedures Manual](#) (the "Manual"). The Manual sets out some of the obligations included in the duty to assist:

The duty to assist the applicant is an important, underlying provision of the Act. It is a statutory duty that must be upheld throughout the entire request process. The duty to assist is generally summarized as "a duty to make every reasonable effort to identify and locate records responsive to a request, and to provide the applicant with information regarding the processing of the request in a timely manner."[Footnote: *The Duty to Assist: A Comparative Study*, Office of the Information Commissioner of Canada]

The duty to assist also entails clear communication between the ATIPP Coordinator and an applicant occur at all stages of the request to keep the applicant informed throughout the process. Subsection 13(2) of the Act requires that all communications between an applicant and the head of a public body occur through the ATIPP Coordinator. The Coordinator is also the point of communication for third parties (subsection 19(9)).

The ATIPP Coordinator should develop a working relationship with the applicant in order to better understand the applicant's request and what information they are looking for, and to ensure that he or she understands the process.

In meeting the duty to assist an applicant, some general obligations may include, but are not limited to:

- *providing the necessary information to an applicant so that they may exercise their rights under the Act;*
- *clarifying the request with an applicant, where necessary;*
- *performing full and adequate searches for records responsive to an access request; and*
- *responding to an applicant openly and without delay.*

[18] As noted in Report [A-2022-013](#), the Manual accurately reflects the views of this Office on this subject. The Town failed to meet its duty to assist the Complainant under *ATIPPA, 2015* when it failed to communicate with the Complainant at all regarding this request and failed to respond to the access request until it was notified of a complaint filed with this Office.

General Issues (Sections 8, 11, and 21)

[19] Section 8 of *ATIPPA, 2015* creates a right for any person to request access to records in the custody or control of public bodies. The only limit to this right is with respect to information specifically exempt from disclosure by the Act.

[20] The Act does not provide for any mechanism allowing a public body to unilaterally decide not to comply with its duties under the Act. As noted in Report [A-2023-025](#), *ATIPPA, 2015* is a complete code; therefore, the Town has no authority to pass a motion declaring that it would no longer respond to access requests made by a specific individual or that it would no longer respond to investigations by this Office.

[21] Section 8 of the Act does not, however, require a public body to provide answers to questions or to create records in response to an access request. In circumstances where an access request consists of questions rather than a request for specific records, a public body is only required to search for and provide records that may answer those questions. A public body is not required to provide answers to those questions if records answering those questions do not exist at the time that the request is made.

[22] Section 11(4) of *ATIPPA, 2015* states, “a request under subsection (2) may be transmitted by electronic means.” As such, it is the right to an applicant to submit their request by electronic means; this includes the use of email. By requiring the Complainant to submit

access to information requests via paper form only, the Town has violated the right of the requestor to choose an electronic method.

[23] For the sake of clarity, this Office has no jurisdiction over general communications between an individual and a public body outside of the access to information process. However, the Act does require public bodies to accept requests electronically under section 11(4) and there is a general duty on public bodies at section 13 to assist applicants, including to communicate with applicants and respond to them openly and without delay

[24] Section 21 of *ATIPPA, 2015* sets out the procedure that must be followed should a public body wish to seek approval to disregard an access request. The section states:

21. (1) The head of a public body may, not later than 5 business days after receiving a request, apply to the commissioner for approval to disregard the request where the head is of the opinion that

(a) the request would unreasonably interfere with the operations of the public body;

(b) the request is for information already provided to the applicant; or

(c) the request would amount to an abuse of the right to make a request because it is

(i) trivial, frivolous or vexatious,

(ii) unduly repetitive or systematic,

(iii) excessively broad or incomprehensible, or

(iii) otherwise made in bad faith.

(2) The commissioner shall, without delay and in any event not later than 3 business days after receiving an application, decide to approve or disapprove the application.

(3) The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to in subsection 16 (1).

(4) Where the commissioner does not approve the application, the head of the public body shall respond to the request in the manner required by this Act.

(5) Where the commissioner approves the application, the head of a public body who refuses to give access to a record or correct personal information under this section shall notify the person who made the request.

(6) *The notice shall contain the following information:*

- (a) *that the request is refused because the head of the public body is of the opinion that the request falls under subsection (1) and of the reasons for the refusal;*
- (b) *that the commissioner has approved the decision of the head of a public body to disregard the request; and*
- (c) *that the person who made the request may appeal the decision of the head of the public body to the Trial Division under subsection 52 (1)*

[25] In this case, the Town made no such application and thus was not granted approval to disregard the request. As noted above, the motion passed by the Town in August 2022 cannot be relied upon by the Town to disregard requests. For added clarity, *ATIPPA, 2015* is a law passed by the Provincial legislature. The Town can no more enforce a motion selectively invalidating *ATIPPA, 2015* than it can do so regarding the *Highway Traffic Act*. To think that it even contemplated such a measure is surprising and disappointing. It is particularly concerning that the Town thought not only to disregard access requests but also, prospectively, to not cooperate with OIPC investigations. Municipalities are a level of government, capable of passing and enforcing its own by-laws, and are therefore expected to uphold and respect the laws of this Province.

RECOMMENDATIONS

[26] As the Town of Victoria has failed to meet its duties under sections 8, 11, 13, 15 16, and 21, under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town:

1. Comply in future with the all statutory duties imposed upon it by sections 13, 15, and 16 of the Act;
2. Amend, by whatever mechanism necessary, the August 2022 motion to remove any reference to ignoring/disregarding/not responding to access requests or investigations by this Office.
3. Unblock the Complainant's email address to allow them to make electronic access requests in compliance with section 11 of the Act.

4. All staff and Council must obtain training and education from the ATIPP Office related to *ATIPPA, 2015* and the duties it imposes within 90 days of the release of this Report.
5. Review its access to information policies and processes in detail (create such policies and procedures where none exist), and implement measures to ensure legislative compliance in future; and
6. Commit to full and open communication with this Office on future investigations including timely responses to notification letters and requests for records within the legislated time periods.

[27] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Town of Victoria must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[28] Dated at St. John's, in the Province of Newfoundland and Labrador, this 16th day of January 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador