



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-005

January 30, 2024

### Town of Musgrave Harbour

**Summary:**

The Complainant made two access requests to the Town of Musgrave Harbour for records relating to business taxes and fees. The Town failed to respond to the requests, but during the complaint investigation provided a single record to the Complainant. The Commissioner concluded that this was likely the only existing responsive record. The Commissioner made recommendations to the Town including making arrangements for ATIPP training and additional support, creation of records management and access to information policies and procedures, and future compliance with statutory requirements.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 15, 16, 17, 18 and 20.

**Authorities Relied On:**

NL OIPC Reports [A-2023-001](#); [A-2023-018](#); [A-2023-024](#) and [A-2023-033](#).

## BACKGROUND

- [1] The Complainant made a request dated September 26, 2023 under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* to the Town of Musgrave Harbour for business tax records. The Complainant also made a request dated November 26, 2023 for records about fees charged to outside contractors. The Town initially failed to respond to either of those requests. The Complainant therefore filed complaints with our Office.
- [2] It has taken our Office some time to establish the necessary level and quality of communication with the Town conducive to investigating access to information complaints. However, following correspondence and discussions with the Town, we received a copy of an email dated January 18, 2024 from the Town to the Complainant, which provided a record that is relevant as a response to both requests.
- [3] That record is a three-page document entitled “Permits and Fees 2023.” It lists both the different kinds of business tax and the outside contractor fees. On the second page of that record is the statement “Approved by Council January 6, 2023.” The Town stated that this is the only record responsive to either of the requests.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*. While these are two different complaints, they can now be dealt with together.

## PUBLIC BODY’S POSITION

- [5] The Town states that, along with the minutes of council meetings, which have already been provided to the Complainant, the three-page list of taxes and fees is all the documentation that the Town has located relevant to these requests.

## COMPLAINANT'S POSITION

- [6] The Complainant argues that the Town must have criteria to identify who is to be charged with a business tax, as well as a policy or procedure for appeal, and a way to engage with citizens to discuss the matter. The Complainant also argues that the Town must have a policy, procedure or appeal process supporting charging "outside businesses" a fee.

## DECISION

- [7] The sole issue to be determined in these two complaints is whether to accept the position taken by the Town that it has conducted a reasonable search for records responsive to the two access requests, and has provided all responsive records to the Complainant, in accordance with sections 13, 15 through 18, and 20 of *ATIPPA, 2015*.
- [8] In the body of the email providing the single document to the Complainant, the Town's ATIPP Coordinator stated: "This is all we have on permits and vendor fees, no other document exists to my knowledge." This result has since been confirmed verbally in subsequent conversations.
- [9] Our Office initially expressed the view that one would normally expect there would be policy and procedure documents explaining in some detail how such taxes and fees would be applied, giving instructions for how they are to be paid, and providing for appeals. The Town however maintains that this is the only existing document at the present time.
- [10] From our discussions and previous experience with other access complaints involving the Town (see the previous reports from this Office listed above) we are prepared to conclude that, unfortunately, this is likely true. It may be difficult to accept that a municipality could have a list of taxes and fees but have no additional documents explaining how they apply, how they are calculated, or how a taxpayer might appeal. However, a lack of documentation is sometimes the situation, particularly with smaller municipalities that have not, so far, acquired the resources and training to implement adequate record-keeping and policy development practices.

[11] It is also the case that the Town, as in previous complaints, has not followed the procedures that it is required by statute to follow in processing access requests and in responding to complaints from this Office. In particular, the Town failed to provide any response to either of these access requests within the mandatory period of 20 business days set out in *ATIPPA, 2015*. Although there have been some improvements in recent months, the Town still has a way to go.

[12] In investigating deemed refusal cases such as these, we have two immediate goals. The first is to simply get the public body to explain why it failed to respond within the statutory deadline, and the second is for the public body to issue a response to the applicant, whether that involves providing records or issuing a response that refuses access, citing the applicable exceptions in *ATIPPA, 2015*. In the present case, although the Town has not adequately explained why it failed to respond to these access requests in a timely manner, the Town has, belatedly and informally, sent records to the Complainant. We therefore conclude that the Town has responded as adequately as it can to both of these complaints and therefore make no recommendation to the Town to search for and provide additional records.

[13] As with previous reports involving the Town of Musgrave Harbour and other public bodies, we do make recommendations that, if followed, would go a long way toward resolving the issues that have led to so many access complaints.

## RECOMMENDATIONS

[14] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town of Musgrave Harbour:

- I. Within 30 days of receipt of this Report, make arrangements for *ATIPPA, 2015* training with the Municipal Liaison of the ATIPP Office, for the Head of the Public Body, the ATIPP Coordinator, Mayor, members of Town Council and any assisting staff, regarding statutory requirements and procedures for responding to access requests and complaints;

- II. Obtain additional support to help process access requests, for example by seeking approval for time extensions from this Office or assistance from the Municipal Liaison of the ATIPP Office, where necessary;
- III. Review and update, or create, access to information policies and procedures in accordance with *ATIPPA, 2015*. To make such policies meaningful, the Town may have to review, update or create as necessary records management policies and procedures, with particular emphasis on the orderly creation, retention, storage, and retrieval of records essential to the proper functioning of a municipal government;
- IV. Comply in future with the statutory duties imposed upon it by sections 13, 15 through 18 and 20 of the *Act* to respond to an applicant in an open, accurate and complete manner, without delay, and in any event within the statutory deadlines, including keeping the applicant informed, maintaining open communication throughout the process, and providing the applicant with the necessary information so they can exercise their rights under the *Act*, including the right to file a complaint; and
- V. Comply in future with the statutory duties imposed upon it by the complaint process under section 44 of the *Act*, and in particular with the duty to respond to requests made by the Commissioner under section 97 of the *Act*.

[15] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Musgrave Harbour 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.

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 30th day of January, 2024.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador