



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-007

February 19, 2024

Department of Justice and Public Safety

Summary:

The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Justice and Public Safety. The Department did not respond to the request in the timeframe required by section 16 of the *Act* and was deemed to have refused access. The Complainant made a complaint to this Office. The Commissioner found the Department had not complied with its obligations under the *Act*, in particular sections 13 (duty to assist) and 16 (time limit for final response). The Commissioner recommended the Department comply with its statutory duties in the future, assign additional staff as early as possible, apply for extensions when necessary, provide updates to applicants if deadlines are missed, and provide periodic partial disclosure when appropriate.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 16, and 23.

Authorities Relied On:

NL OIPC Reports [A-2022-013](#), [A-2022-023](#), [A-2023-046](#), and [A-2023-047](#).

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

BACKGROUND

[1] On October 20, 2023, the Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015 or the Act)* to the Department of Justice and Public Safety for the following:

1. *All records, including emails and handwritten notes, pertaining to [a matter before the Supreme Court of Newfoundland and Labrador], the hearing of this matter on [dates] inclusive. Period covered: August 30, 2023 to date.*
2. *All records, including emails, pertaining to the commentary titled 'Transparency? You'll have to wait' published in The Telegram on June 23, 2023. Period covered: June 22, 2023 to date.*

[2] Pursuant to section 16 of *ATIPPA, 2015*, the Department'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 November 17, 2023. The Department did not apply to the Commissioner for approval to extend the time for responding to this request.

[3] Upon expiration of the statutory deadline without a final response from the Department, the Complainant filed a complaint with this Office.

[4] The Department provided its final response to the Complainant on January 16, 2024, however informal resolution was unsuccessful. The complaint therefore proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

[5] In its submissions to this Office, the Department acknowledged its response to the request was late. It pointed to a number of factors that contributed to its failure to meet the statutory deadline, in particular its workload, which included at that time:

- Receiving 35 new access requests;
- 9 requests from other public bodies to consult on other access requests;
- Assisting another division with its handling of a privacy breach; and

- Responding to other investigations by this Office.

[6] When asked to provide an estimated timeline to provide a final response to the request, the Department declined to do so, citing the general strain on resources and the potential for new access request or access complaints.

ISSUES

- [7] The following are the issues to be decided:
1. Did the Department comply with the deadline set out in section 16?
 2. Did the Department comply with the duty to assist set out in section 13?

DECISION

[8] 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.

[9] Clearly, the Department failed “to respond within the period of 20 business days or an extended period” with respect to the request. As the Department 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. It was not until January 16, 2024, 59 business days after the initial request, being 39 business days past the deadline that the Department provided the Complainant with a final response.

[10] As noted in Reports [A-2023-046](#) and [A-2023-047](#), the Department is going through a period of change and continues to do so. The Department agreed to the majority of

recommendations in those reports, however did not agree to assign additional staff as necessary to meet statutory deadlines. The Department did state that it understood the intent behind the recommendation and “works to assign staff to maximize the efficiency of existing resources.”

[11] It is also possible that had the Department followed the time extension process set out in section 23 of *ATIPPA, 2015* this Office may have approved additional time for responding to this request. However, as the Department did not apply for a time extension, it is impossible to make that assessment at this point in the process.

[12] 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.

[13] The ATIPP Office (formerly a division within the Department of Justice and Public Safety) has produced an [Access to Information Policy and Procedures 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.*

[14] As noted in Report [A-2022-013](#), the manual accurately reflects the views of this Office on this subject. The Department failed to meet its duty to assist the Complainant under *ATIPPA, 2015*.

[15] The Department should have informed the Complainant that the request would be late as soon as it became clear that it would not meet the statutory deadline. Preferably, such notice would occur in advance of the deadline and include an explanation for the lateness, an estimate for when a response would be received, and a notice that the Complainant has the right to make a complaint to the Office of the Information and Privacy Commissioner in the event that deadline expired. Even if the estimated new response date is difficult to establish, it is helpful for applicants to have at least a rough idea when to expect a response. Knowing that a response is coming in six days is much different than six weeks or six months. This would be in keeping with the duty to assist.

[16] The Department contacted the Complainant the next business day after the deadline had expired to acknowledge that the response was overdue and provided the information necessary to make a complaint to this Office. However, the Department did not provide details on what steps remained or an estimated time for a final response.

[17] As such, the Department has not met its duty to assist as required under section 13 of *ATIPPA, 2015*.

RECOMMENDATIONS

[18] As the Department of Justice and Public Safety failed to meet its duties under sections 13 and 16, under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department:

1. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of the Act;
2. Assign additional staff as early as possible, where necessary, to help process access requests;
3. Review its access to information policies and procedures to determine if they should be amended to include guidance on prioritizing the processing of requests when department resources are strained;
4. If a deadline is missed in future, provide regular updates to applicants, including work remaining and an estimated time frame for the final response;
5. Where appropriate, provide partial disclosure of records on an ongoing basis; and
6. Ensure time extension applications are made to this Office as soon as it becomes evident that a request may not be able to be processed in the legislative timeframe.

[19] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Justice and Public Safety 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.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 19th day of February 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador