



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-009

February 26, 2024

Town of Musgrave Harbour

Summary:

The Town of Musgrave Harbour received two access requests, one for audio recordings of Town meetings, and another for records related to rules of procedure. The Town responded to the first request by stating that the recordings could not be provided because of technical difficulties. It provided responsive records in response to the second request. The Complainant argued that the Town should be able to overcome the technical issues with the recordings and that the Town should be required to answer specific questions arising from the other records it provided. The Commissioner concluded that the Town had responded adequately to both requests, and that public bodies are not required by the *Access to Information and Protection of Privacy Act, 2015* to answer questions or provide interpretations. The Commissioner recommended that the Town provide the Complainant with an opportunity to listen to the recordings and provide copies if the technical issues were resolved.

Statutes Cited:

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

BACKGROUND

- [1] The Complainant made two access to information requests to the Town of Musgrave Harbour under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015 or the Act)*. The first request was for audio recordings of specific public Town meetings. The Town responded that, for technical reasons, they were unable to provide copies of the recordings.
- [2] The second request was for records relating to the adoption, and removal, of rules of procedure for Town meetings, relating to “points of order”. The Town responded that it had provided all of the records responsive to the request. The Complainant filed complaints with our Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

DECISION

- [4] The issue to be determined in this Report is whether the Town has responded adequately to each access request in compliance with its duty to assist the applicant under section 13 of *ATIPPA, 2015* and whether it has provided responsive records as required by section 20 of the *Act*.

Audio Recordings

- [5] With respect to the first request, there is no question that the Town has custody of the audio recordings of the public meetings requested by the Complainant. As the meetings were public, it is likely that there are no applicable exceptions to access. Normally that would mean that the Complainant is entitled to copies. However, the Town’s response has been that they are unable to provide them.
- [6] The problem appears to be purely technical: the meetings were recorded on an iPhone, and each meeting was recorded as one long, continuous audio file. Therefore, they are extremely

large files, and although they can be played back on the device on which they were recorded, the Town is having difficulty exporting them because of their size.

[7] In response to this issue, the Town has recently changed its method of recording meetings, by breaking each one into separate shorter audio files that are not too large to export via email. The Town is still trying to find a way to export the older, larger ones, but it is a small municipal administration, limited in its technical expertise, and has not yet found a solution.

[8] Section 20(2) of *ATIPPA, 2025* applies to a situation of this sort:

Provision of information

...

(2) *Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where*

(a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and

(b) producing it would not interfere unreasonably with the operations of the public body.

[9] We accept that producing a copy of those older meeting recordings is not currently possible with the Town's normal hardware, software and technical expertise. Therefore it was reasonable for the Town to respond to the request in the way that it did. The Town has confirmed that if and when it finds a method of exporting those large files, it will provide them to the Complainant.

[10] That is not, however, the end of the matter, because section 20(1) of the Act also provides that a public body must:

...

(b) permit the applicant to examine the record or part of it, where the applicant requested to examine a record or where the record cannot be reasonably reproduced.

[11] During the course of our investigation, the Town advised that it had offered the Complainant an opportunity to come to the Town office and listen to the recordings, and to re-

record them with his own equipment if he wished. The Town has confirmed that it is still willing to offer the Complainant that opportunity.

[12] In previous reports we have made recommendations for public bodies to obtain software and other technical means of producing copies of digital records such as audio or video recordings or severing personal information from such records. It is unnecessary to recommend that this much smaller public body immediately acquire the necessary hardware, software, or technical expertise to allow it to create a copy of those audio recordings when it has already agreed to allow the Complainant to listen to the recordings and create their own copy.

Rules of Procedure

[13] The Town advises that it has provided to the Complainant all of the records that relate to this issue. It has provided our Office with copies of those records. Included is a document setting out the rules of procedure for Council meetings, dated April 5, 2022, which appears to show that Robert's Rules of Order were incorporated into meeting procedures. That record states that the rules of order include a provision for "standing on a point of order." Also provided were the minutes of a council meeting dated May 25, 2023, in which Council approved a motion to remove Robert's Rules of Order from its meeting procedures.

[14] The Town has satisfied our Office that it has conducted a reasonable search for records responsive to the access request, and that those are all the records that were located. It has provided those records to the Complainant. The Complainant, however, asks that the Town explicitly confirm that "...standing on point of order, as well as Robert's Rules of Order existed in the rules of procedure prior to 2023..." and that "...no record exists prior to 2023 of removing these clauses."

[15] It is not uncommon for applicants to request that a public body answer specific questions. Unfortunately, however, that is a misunderstanding of the access to information process. The process is designed to make it possible to get access to **records** on a particular subject. When it works as intended, the applicant gets records containing the information that was requested, or, if exceptions to access are applied, an explanation of why some information

was refused in whole or in part. However, the public body is not normally required, in its response, to provide interpretations of, or draw conclusions from, the information in the records, or to answer additional questions.

[16] In the present case, the Town is not required, as part of its response to the access request, to answer the questions posed by the Complainant. It is, of course, free to do so, informally or outside of the statutory access to information process. Here the Town has provided records related to the request. The Complainant can draw his own conclusions from the information in the records, about when certain things may or may not have happened.

[17] In addition, we must emphasize that a public body is not required to prove with absolute certainty that a record does not exist. *ATIPPA, 2015* requires the public body to show that it has conducted a reasonable search for the records requested, and provided whatever records are located to the applicant, subject to any applicable exceptions. That is what the Town has done in this case.

[18] We conclude that the Town has responded adequately to both access requests, and therefore has fulfilled its duty to assist the applicant under section 13 of *ATIPPA, 2015*.

[19] In view of the concerns this Office has expressed in previous Reports it is encouraging to note the Town's recent progress in responding to access requests and complaints. We hope that this improvement continues.

RECOMMENDATIONS

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

1. offer the Complainant a reasonable opportunity to come to the Town Office to listen to the requested audio recordings; and
2. continue reasonable attempts to find a technical solution to export the requested audio recordings, and if successful, provide copies to the Complainant.

[21] 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.

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 26th day of February 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador