



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-013

March 28, 2024

### Town of Musgrave Harbour

**Summary:**

The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* to the Town of Musgrave Harbour for records relating to legal costs. The Town did not respond to the request, or to the complaint filed by the Complainant. The Commissioner concluded that the Town had failed to comply with its statutory obligations and recommended that the Town respond to the access request, providing all records responsive to the request, subject to any necessary redactions.

**Statutes Cited:**

[\*Access to Information and Protection of Privacy Act, 2015\*](#), SNL 2015, c. A-1.2, sections 13, 15, 16, 17, 19, 20, 23, 43, 44, 49, 50, and 97.

## BACKGROUND

- [1] The Complainant made an access request to the Town of Musgrave Harbour under the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* for documents, emails and receipts in relationship to a legal matter.
- [2] The Town did not respond to the request within the statutory time limit of 20 business days. The Complainant filed a complaint with this Office.
- [3] Despite correspondence from this Office, and several telephone discussions, the Town has not responded to the access request. Neither has it responded to the notification of complaint as required by the *Act*.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## DECISION

- [5] The Complainant filed the access request with the Town on November 26, 2023, using the appropriate form. The Town did not apply to this Office to extend the time for responding to the request and per section 16 of the *Act*, a response was due December 22, 2023. On December 26, 2023, the Complainant filed a complaint with our Office, stating the Town had not responded in any way to the request. Our Office notified the Town of the complaint on January 4, 2024.
- [6] That notification requested that the Town respond within 10 business days, as required by the *Act*, providing our Office with copies of the records responsive to the request, a copy of the access request and all relevant correspondence, and an explanation for why it had not responded to the access request.
- [7] On January 5, 2024, the Town replied to the notification of complaint by sending our Office copies of some records, which it stated were “the documents for the request”. The records

consisted of two pages of statements from a law firm, listing half a dozen invoices, though not the invoices themselves, nor any other records.

- [8] We discussed the matter with the Town, explaining that at this stage it cannot provide records to our Office in the expectation that we would advise the Town about what information to provide, nor could our Office forward them to the Complainant. As we state in our correspondence, our Office cannot disclose records to an applicant or to any other party under any circumstances. The decision to disclose records always rests with the public body.
- [9] We also explained that when no response has yet been provided to an applicant, our Office cannot give advice to a public body about whether certain records are responsive, or complete, or whether some information may or must be withheld. We advised that if the Town needed assistance in deciding how to respond to the access request, it should contact the ATIPP Office. In the present case, given that the records appear to be third party records, we strongly suggested that the Town contact the ATIPP Office.
- [10] As there appear to be responsive records, we urged the Town to make a decision, without further delay, whether or not to provide them to the Complainant.
- [11] We sent reminders to the Town in January, February and March, 2024. Apart from occasional “Read” receipts there was no response. Up to March 25, 2024 there was no indication that the Town had contacted the ATIPP Office about this matter, and it had not sent a response to the Complainant. It is therefore clear that the Town has failed to comply with numerous provisions of *ATIPPA, 2015*.
- [12] First, with respect to the provisions of the *Act* governing access to information requests, the Town has failed to meet its duty, under section 13, to 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.

[13] The Town has failed to meet the requirement to provide an advisory response within 10 business days, under section 15 of the *Act* and the requirement to provide a final response within 20 business days, under sections 16, 17 and 20.

[14] Given that the records in its custody appear to be third party records, the Town has a duty under section 19 to assess whether to notify the third party of the request. There is no indication that it has done so.

[15] In addition, the Town could have assessed whether a time extension was required in order to process the access request, and could have applied to our Office for such an extension under section 23 of the *Act*, but it has not done so.

[16] Second, with respect to the provisions of the *Act* governing complaints, the Town has failed to respond appropriately to this complaint under section 44. As noted above, our Office received copies of some records but nothing else.

[17] The Town has failed to engage with our Office in any meaningful way, despite the authority of this Office under section 97 of the *Act* to require a response.

[18] It is clear that the Town of Musgrave Harbour does have custody or control of records that are responsive to the access request from the Complainant. Under section 43 of the *Act* the burden of proving that the Complainant has no right of access to those records lies with the public body, but the Town has provided no evidence to support that conclusion.

## RECOMMENDATIONS

[19] Under the authority of section 47 of *ATIPPA, 2015* I recommend that the Town of Musgrave Harbour, within 20 business days of receiving this Report, provide a response to the Complainant's access request, enclosing copies of all records responsive to the request, subject to any necessary redactions.

[20] 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.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28<sup>th</sup> day of March, 2024.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador