



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-019

April 24, 2024

Office of the Premier

Summary:

The Complainant made two requests under the **Access to Information and Protection of Privacy Act, 2015** to the Office of the Premier for travel and other expenses. The responses provided were not satisfactory, and the Complainant filed a complaint, suggesting that there was a political motive for the inadequate response. The Commissioner found the responses were inadequate and the Premier's Office had failed to comply with its obligations under the Act, in particular the 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. The Commissioner found there was no evidence to support the Complainant's allegation, although the Premier's Office had not provided a convincing explanation for the way in which it handled the requests. The Commissioner recommended that the Premier's Office take steps to develop policies to adequately respond to questions about all forms of payment, whether reimbursement or remuneration, to the Premier and Premier's Office officials, in the manner required by the Act.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 3, and 13.

BACKGROUND

- [1] The Complainant filed two access requests under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) with the Office of the Premier. One request was for “the total dollar value of any and all payments to [a Senior Advisor in the Office of the Premier] during his employment in the Premier's office. This should include travel claims, expense claims, etc.”
- [2] The Premier’s Office response to the first request provided only links to publicly available, partial, salary information, and nothing for expenses, which it claimed were not “payments” but “reimbursements.”
- [3] The second request was for “the total dollar value of any and all travel by Premier Furey and/or staff since he took office up to today December 21, 2023.”
- [4] The Premier’s Office response to the second request provided only links to online budget documents, which are hundreds of pages, and are mainly for future projections, not for costs.
- [5] The Complainant filed complaints about both responses with this Office. We assessed the response of the Premier’s Office to the access requests as inadequate. After receiving our assessment, the Premier’s Office agreed to provide revised responses with additional information, and did so.
- [6] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY’S POSITION

- [7] The positions taken by the Premier’s Office, both in response to the access request and in response to the complaint, will be addressed in the paragraphs below.

COMPLAINANT'S POSITION

- [8] The Complainant requested a formal investigation and report. His submission stated:

Given the blatant lack of duty to assist I am asking for formal investigation. Clearly, the information, which was readily available, was deliberately withheld and it is my view that was to protect [an employee of the Office of the Premier] during his run for political office. I asked for X and was given Y with no explanation? If I had not complained, I would never have gotten the correct information. Without your intervention, the Premier's Office would not have finally replied on March 12. This demands formal investigation.

ISSUES

- [9] Whether the Premier's Office has met its duty under section 13 of *ATIPPA, 2015* 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.

DECISION

- [10] The type of access request involved in the present case, for accounting of discretionary and other expenditures by a provincial government department, is clearly in the public interest, at the core of the purposes of *ATIPPA, 2025*:

3. (1) The purpose of this Act is to facilitate democracy through

- (a) ensuring that citizens have the information required to participate meaningfully in the democratic process;*
- (b) increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable;*

- [11] The response to the first access request was clearly inadequate. We would normally take no issue with a response stating that a staffer's salary can be found online – except, of course that the online figures are the nominal salary for the position, not the actual payments to the individual which were requested here and which may differ. Also, the online figures did not cover the entire period of the individual's employment, up to the date of the access request. An appropriate response would have taken account of that, and provided accurate and

complete information or, alternatively, an explanation if records could not be found. The Premier's Office response did neither.

[12] Even more difficult to accept was the statement by the Premier's Office that nothing was provided relating to expense claims because those would be "reimbursements" and not "payments." The access request was quite clear and explicitly included payment for travel and other expense claims. To any reasonable person, reimbursements for travel or other expenses are payments. That information should have been provided.

[13] We also do not accept the argument made by the Premier's Office that it does not have "a record containing a total dollar value." A response to an access request does not have to be a single responsive document. Responsive records might include various expense claim forms, and potentially periodic summaries. All such records for the period of the individual's employment could have been gathered and provided, subject of course to any applicable exceptions.

[14] It is true that the Complainant's access request used the words "total dollar value." However, in such circumstances a public body would be expected to contact the applicant, explain that there is no single record containing that information, and determine how the applicant wishes to proceed, either by amending the request or providing records for each transaction. The Premier's Office did not do that.

[15] We further do not accept the explanation provided by the Premier's Office that "employees often pay for other staff travel expenses" as a justification for withholding the records. The request was for "all payments to [a Senior Advisor in the Office of the Premier]." Any reimbursements for the expenses of other individuals would still be "payments to" that employee. The law is clear, that concerns about information being misunderstood are not a justification for withholding it in response to an access request. Rather, the public body, while providing the information, may provide any explanations to the requester that it may deem necessary to alleviate the problem.

[16] This access request may have presented challenges to the Premier's Office, but there are provisions in ATIPPA, 2015 for dealing with large or time-consuming requests. Our Office may grant extensions of time for completion, and often does. More rarely, the Commissioner may grant approval to disregard a request. The Premier's Office did not apply for any such relief in the present case.

[17] The second access request was for "the total dollar value of any and all travel by Premier Furey and/or staff since he took office up to today December 21, 2023." The response by the Premier's Office simply referred the Complainant to publicly available budget documents:

Total transportation costs, broken down by Department, are available via the budget documents, which are publicly available. (<https://www.gov.nl.ca/budget/>). As noted in the 2023-24 estimates, our office has budgeted \$279,000 for transportation and communications costs.

[18] A reasonable interpretation of the second request would be that it is asking for the amount of all expenditures actually incurred for travel, for the Premier and staff. What the Premier's Office referred the Complainant to was not the amount of actually incurred expenditures. Rather, the annual budget documents are simply estimates of what might be expected to be incurred in each coming year. Even those figures are not stated in the budget documents to be for travel. There is a line for "transportation and communications" but it is not clear how an ordinary reader would know whether "travel costs" would fall under the heading of "transportation" or under other lines, such as "employee benefits", "supplies", "purchased services", "allowances" and so on.

[19] During the course of our complaint investigation, the Premier's Office explained that there is a figure in the 2023-2024 estimates, under "transportation and communications" titled "revised". The Premier's Office confirmed that this represented the total of expenses actually incurred for the previous budget year, and that it consisted of travel costs. It is not clear how any ordinary requester would know that, and no such explanation was provided to the Complainant in the response to the access request. In any case, the figure is only for one budget year. It does not include the travel costs incurred for any of the earlier years, or for the current year up to the date of the access request.

[20] There is no doubt that the actual records of such expenditures are complex. We might expect that, as with other government departments, travel expenses would commonly include payments for airline tickets, taxis, hotel and meal costs, and so on. Those payments could be recorded in a variety of records, including requisitions or purchase orders, government credit card statements, reimbursements for personal receipted expenses or per diem amounts. It does not appear that the Premier's Office communicated with the Complainant, to confirm what information he was asking for, to discuss alternative ways of providing it, or to discuss whether the request could be modified. As with the first request, the Premier's Office did not contact our Office to ask for a time extension for responding to the request.

[21] In conclusion, the Premier's Office failed to meet the duty to assist the Complainant. It did not communicate with the Complainant to discuss the requests and how they might be fulfilled. The responses initially provided were neither accurate nor complete. While the revised final response was more accurate and complete, in technical compliance with the Act, it was almost 8 weeks late (55 business days, instead of the 20 business days required by the Act for a response).

[22] In some cases, where public bodies are inexperienced, under-resourced or subject to an unexpected deluge of access requests, it can result in a pattern of late or inadequate responses. This does not appear to be the problem here. During 2021-2022, the last year for which statistics are available, the Premier's Office dealt with 145 access requests. Of those, 136 were completed within the 20-day timeline, two were completed with extensions, and only in seven cases did it not meet the timeline. During that period there were relatively few complaints to our Office, which suggests that responses to those requests were satisfactory.

[23] A number of those access requests were for information about travel and associated expenses. For example, PRE/109/2022 was a detailed request for travel expenses for a 3-month period in 2022. The response provided to the Complainant appeared to be comprehensive and complete. It consisted of some 350 pages of records, including a list of meetings, and expense claims, airline tickets, hotel and restaurant receipts, journey authorizations and other documents associated with that travel. The only information redacted was a small amount of personal information.

[24] The fact that previous requests for travel and other expenses have been accommodated makes it all the more difficult to understand why the Premier's Office dealt with the requests in the present case in the way that it did.

[25] The Complainant has suggested a reason why these requests were handled in the way that they were. The requests were made in December 2023, and the response should have been completed no later than January 22, 2024. The Complainant points out that the Senior Advisor in question contested and won a by-election on January 30, 2024 as the Liberal candidate after his departure from the Premier's Office. The complete final response was not provided until March 12, 2024, after the complaint was made to our Office. The Complainant drew the conclusion that the Premier's Office deliberately withheld the information requested, in order to ensure that any information in it could not be used politically to harm the employee's campaign.

[26] We have no evidence that this was actually the case. The Premier's Office has denied that it had any such motivation. We cannot draw the same conclusion as the Complainant. However, the Premier's Office has not provided an explanation for its inadequate response.

[27] The Premier's Office eventually provided the appropriate records to the Complainant during the course of our investigation. At times, a complainant who has eventually received the requested records may choose to resolve the matter informally; but in this case, they did not. In the present case it is appropriate for us to make recommendations to the Premier's Office for improvement in the way in which it handles access requests related to all forms of payments to elected and appointed officials, whether remuneration or reimbursement or other, given the public interest in such matters and the purposes of ATIPPA, 2015.

RECOMMENDATIONS

[28] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that the Office of the Premier take immediate and effective steps to develop policies to adequately respond to questions about all forms of payment, whether

reimbursement or remuneration, to the Premier and Premier's Office officials, in the manner required by the Act.

[29] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the Premier's Office 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.

[30] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24th day of April, 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador