



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-027

June 14, 2024

### Department of Justice and Public Safety

#### Summary:

The Complainant made an access 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, apply for extensions when necessary, provide updates to applicants if deadlines are missed, provide periodic partial disclosure when appropriate, and provide a final response to the request within 10 business days of receipt of this Report.

#### 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](#), [A-2023-047](#), [A-2024-007](#), [A-2024-008](#), [A-2024-014](#), and [A-2024-015](#).

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

## BACKGROUND

[1] On February 12, 2024, the Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Justice and Public Safety for:

All emails sent/received by the Minister, Deputy Minister, and Assistant Deputy Ministers re Genesis Centre, C-Core, and Centre for Fisheries Innovation from January 1, 2022, to present.

[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 any responsive records, was due within 20 business days of receipt of the request, that deadline being March 11, 2024. The Department did not apply to the Commissioner for approval to extend the time for responding to the request.

[3] On February 28, 2024, the Department advised the Complainant it would provide its final response on or before March 4, 2024. On March 12, 2024 (after the 20 business days for a response had passed), the Department contacted the Complainant to advise that its response would be late, but that it anticipated providing a final response by March 22, 2024 and advised the Complainant of their right to file a complaint with this Office. The Complainant proceeded to file a complaint with this Office on March 13, 2024.

[4] The Department has not provided a final response to the request. As such, informal resolution was unsuccessful and 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 in early April, 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, including:

- 86 active requests, including 56 new requests since receiving the Complainant's access request;

- Multiple requests from other public bodies to consult on other access requests;
- Responding to other investigations by this Office.

[6] At that time, the Department advised that it had completed its search for records responsive to the Complainant's request but was unable to provide a specific timetable for completing the request and providing its final response to the Complainant.

## ISSUES

[7] The issues to be decided in this Report are whether the Department complied with the deadline set out in section 16 and 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] This investigation revealed that the Department failed to respond within the period of 20 business days or an extended period, as required in the legislation. Therefore, per section 16(2), it is considered to have refused access to the record in relation to the access to information request.

- [10] The Department has not provided a final response to the request and is now over 67 business days late, meaning that the Department has had 87 business days to process this request and still has failed to do so.
- [11] This issue was previously addressed in Reports [A-2023-046](#), [A-2023-047](#), [A-2024-007](#), [A-2024-008](#), [A-2024-014](#), and [A-2024-015](#). In response to these Reports, the Department agreed to the majority of this Office's recommendations; however, it 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". In its submissions, the Department noted that it has assigned a back-up access to information coordinator. The Department can determine the ways and means to meet its statutory obligations, which may include assigning additional staff.
- [12] 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 the 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.
- [13] It should be noted here that the purpose of applying for approval of an extension of time from the Commissioner is not a bureaucratic exercise. The starting point is that ATIPPA, 2015 provides for a statutory right of access to information in a timely manner (that is, within 20 business days). This time limit on public bodies is an acknowledgment that there is an inherent power imbalance between requesters (who wish to obtain information) and public bodies (that hold the information). The statute also recognizes that there may be circumstances in which it is difficult or impossible for public bodies to meet that deadline in certain circumstances. The requester, however, may need that information urgently, or certainly in a timely manner. By creating a regime in which public bodies may only extend the time limit with approval of the Commissioner, the power imbalance is somewhat mitigated, because the requester has the confidence that an independent party has assessed the circumstances. The Commissioner will only approve an extension where it is warranted and for the length of time that the Commissioner determines is necessary, based on review and consideration of the public body's application.

[14] When a public body misses the 20-day statutory deadline and does not apply for an extension of time, the requestor finds themselves in an information void. This is especially troublesome if the request is of a time-sensitive nature. Sometimes access requesters need information because they wish to appeal or dispute a decision or act of a public body that impacts them. A department's application for an extension will provide the requester with a level of assurance that there is oversight in the Department's response, and perhaps avoid the perception or belief that the public body is attempting to avoid responding to their access request. If the Commissioner has approved an extension request from a public body, the requester at least knows that the rationale for the extension has been found to be justifiable by an independent party, and they know that the extension is for a particular period of time.

[15] 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.

[16] The ATIPP Office 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.

[17] As noted in the numerous previous reports cited here, the manual accurately reflects the views of this Office on this subject.

[18] This Office recognizes that the Department contacted the Complainant after its response to the access request was late to acknowledge the delay, to advise the Complainant of their right to make a complaint, and to provide an estimate of when a response could be expected. Unfortunately, that estimate of March 22, 2024 proved to be unrealistic. While the Department's effort to proactively update the Complainant on the status of the request is acknowledged, overall the Department has not meet its duty to assist the Complainant under ATIPPA, 2015. Communication with a complainant in keeping with the duty to assist would include periodic updates on the status of the request, including revised estimated response times.

## RECOMMENDATIONS

[19] 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 the **Access to Information and Protection of Privacy Act, 2015** (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. Determine necessary ways and means to ensure it meets its legislative requirements related to access to information 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;
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; and,
7. Provide the Complainant with its final response to the request within 10 business days of receipt of this Report.

[20] 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.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14<sup>th</sup> day of June 2024.



Jacqueline Lake Kavanagh  
Information and Privacy Commissioner (Acting)  
Newfoundland and Labrador