



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-031

July 3, 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](#), [A-2024-015](#) and [A-2024-027](#).

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

## BACKGROUND

- [1] On March 4, 2024, the Complainant made three access to information requests under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Justice and Public Safety for:

All information notes, decision notes, briefing notes, meeting notes, and key messages that mention pay equity. Timeline for search: March 8, 2017 to Dec. 31, 2022;

All information notes, decision notes, briefing notes, meeting notes, and key messages that mention pay equity. Timeline for search: Jan. 1, 2023 to present; and

All communications (including but not limited to email, video conference, messages, track edits, etc) about pay equity, pay transparency, and the regulations for the Pay Equity and Pay Transparency Act (please do separate searches for 'pay equity,' 'pay transparency,' 'pay transparency regulations,' 'pe,' 'pt,' 'pt regulations,' 'Pay Equity and Pay Transparency Act' – in other words, I do not ONLY want communications that mention all three of these topics, rather I want communications that capture all of them, such as emails that might only mention one of them, for example). Please include incoming and outgoing communications (as an example: not just emails SENT by the people in the department, but also RECEIVED by the people in the department). Please include the contents of all attachments. Please search directors, ADMs, DMs, Minister, and all communications staff. Timeframe for search: Oct. 1, 2023 to present.

- [2] Pursuant to section 16 of ATIPPA, 2015, the Department's final responses to the Complainant's access requests, consisting of its decision letters and any responsive records, were due within 20 business days of receipt of the requests, that deadline being April 2, 2024. The Department did not apply to the Commissioner for approval to extend the time for responding to either of the requests.

- [3] On March 19, 2024, the Department advised the Complainant it would provide its final responses on or before April 3, 2024. On April 3, 2024 (after the 20 business days for a response had passed), the Department contacted the Complainant to advise that its responses would be late, but gave no estimate of the date a final response would be provided, and advised the Complainant of their right to file a complaint with this Office. The Complainant proceeded to file the complaints with this Office on April 3, 2024.

[4] The Department has not provided any final response to the requests. 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 dated April 19, 2024, 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:

- 87 active requests, including 41 new requests since receiving the Complainant's access request;
- Multiple requests from other public bodies to consult on other access requests; and
- 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 requests, and had identified the need for the application of exceptions under the Act and for consultations, but was unable to provide a specific timetable for completing the requests and providing its final responses 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 timeframe 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 sixty business days late, meaning that the Department has had more than eighty 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](#), [A-2024-015](#) and [A-2024-027](#). 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 best 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 one or all of the requests. 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. 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 public body's application for an extension provides the requester with a level of assurance that there is oversight of the response deadline, and perhaps may avoid the perception or belief that the public body is attempting to avoid responding to the 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. Failure to even apply for a time extension when the 20 business day response deadline cannot be met is contrary to not only the letter but the spirit of ATIPPA, 2015, because the inherent power imbalance becomes inordinately tilted in favour of the public body holding the information.

[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, and advised the Complainant of

their right to make a complaint, although it did not provide an estimate of when a response could be expected. The Complainant has received no further communication from the Department. Overall the Department has not met 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 departmental resources are strained;
4. Provide regular updates to applicants, including work remaining and an estimated timeframe for the final response if the department determines that a deadline will be missed;
5. Provide partial disclosure of records on an ongoing basis where appropriate;
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 responses to these requests 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 3<sup>rd</sup> day of July 2024.



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