



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-038

August 20, 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 28.

Authorities Relied On:

NL OIPC Reports [A-2023-002](#), [A-2023-046](#), [A-2023-047](#), [A-2024-007](#), [A-2024-008](#), [A-2024-014](#), [A-2024-015](#), [A-2024-027](#), [A-2024-031](#), and [A-2024-036](#).

BACKGROUND

- [1] The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Justice and Public Safety on April 25, 2024 for the following records:

All records pertaining to meetings and exchanges between JPS and the Chief Justice of the Supreme Court of Newfoundland and Labrador, including but not limited to the meeting acknowledged by the Minister of Justice when introducing to the House of Assembly Bill 53 "An Act To Amend The Judicature Act" . . .

- [2] The Department wrote on May 9, 2024 to advise the Complainant that it was processing the request and that a final response would be provided on May 24, 2024. JPS did not request a time extension from our Office.
- [3] On May 24, 2024, the statutory 20 business day deadline for response, the Department wrote to the Complainant to acknowledge that its final response to the access request was late, but provided no estimated completion date. The Complainant filed a complaint with our Office.
- [4] On June 17, 2024 the Department provided our Office with a response to the complaint, giving no estimated completion date. As of August 20, 2024 (80 business days after receiving the request) the Complainant had still not received a final response to the access request.
- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

- [6] JPS provided our Office with an initial response to the complaint, acknowledging that its response to the request was late, and citing various factors that led to that result, which will be referenced below. No further submissions were received from the Department.

COMPLAINANT'S POSITION

[7] The Complainant provided submissions during the formal phase of the investigation which stated, in part:

JPS is among the least compliant with the ATIPPA's requirements among public bodies in Newfoundland and Labrador. Instead of being a role model, JPS turns out to be non-transparent.

JPS regularly misses statutory deadlines for responding to citizens' access to information requests. In 2023-2024, the Information and Privacy Commissioner made nine reports, including the most recent dated July 3, recommending additional JPS staff be assigned and training be provided to meet statutory requirements.

No other public body fails to respond to the requests in the timeframe required by the law so persistently.

ISSUES

[8] This report will address whether JPS has met its obligations under section 13 of ATIPPA, 2015 (duty to assist the applicant) and section 16 (time limit for final response).

DECISION

[9] Section 16(2) of ATIPPA, 2015 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.

[10] It is not disputed that the Department did not provide a final response to the access request in the time required by section 16, and in fact still has not done so. JPS, in its response to the complaint, has explained the failure to meet the statutory deadline by reference to a variety of factors, including the increasing workload of new access requests, requests for

consultation from other public bodies, and the need to respond to complaints received from our Office. In the present complaint the Department's response provides no indication of when the request may be completed, and advises that there is now a backlog of 111 active requests. During the timeframe for this access request and our investigation, JPS has indicated it experienced human resource challenges. The Department therefore anticipates that delays in responding to access requests and other related tasks may continue.

[11] There is no question that for JPS the access to information workload has increased. This, includes both the number of access requests and the number of requests for consultation. However, our experience indicates that the increase in access requests is widespread, and all public bodies need to respond appropriately.

[12] We know that some public bodies, especially smaller ones, have difficulty meeting their responsibilities under the Act simply through lack of resources. Others have difficulty because of inexperience. However, core government departments possess greater resources, and have processes in place for training and assignment of coordinators.

[13] 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.

[14] The ATIPP Office has produced an Access to Information Policy and Procedures Manual. This 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."

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.

The Manual accurately reflects the position of this Office on this subject. Therefore the Department has failed to meet its duty to assist the Complainant under section 13 of the Act.

[15] Recent communications from JPS have indicated it is making a concerted effort to improve responses to access to information requests through personnel and procedures. This Office welcomes these efforts and looks forward to significant reductions or the complete elimination of the need to issue deemed refusal reports.

RECOMMENDATIONS

[16] 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. 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;
3. Provide partial disclosure of records on an ongoing basis where appropriate;
4. 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,
5. Provide the Complainant with its final response to this request within 10 business days of receipt of this Report.

[17] 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.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of August, 2024.



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