



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-041

September 20, 2024

Department of Justice and Public Safety

Summary:

The Complainant made a 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 respond to the Complainant's request without further delay, 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 with 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 and 16.

Authorities Relied On:

NL OIPC Reports [A-2024-038](#), [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](#).

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

BACKGROUND

- [1] The Complainant made an **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) request to the Department of Justice and Public Safety on May 24, 2024 seeking the following:

The requester's personal information "TRIMMED", stored on, and managed through Justice – Records Centre (HP Records Manager (TRIM) including files with the .TR5 extension. Search Terms: [named individual], [named individual], [named individual]. Format requested: the format that does not materially change the electronic information that was originally created, sent, or received.

- [2] The Department wrote to the Complainant on June 7, 2024 to advise that it was processing the request and a final response would be provided on June 21, 2024. The Department did not apply for a time extension from our Office.
- [3] The June 21, 2024 deadline passed with no further update from the Department on the status of the Complainant's access request. The Complainant filed a complaint with our Office.
- [4] On July 17, 2024, the Department provided our Office with a response to the complaint giving no estimated completion date. As of September 20, 2024 (82 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] The Department 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 asserts that their access request should be processed with no further delay given that the Department has already missed its legislative deadlines.

ISSUES

- [8] This report will address whether the Department 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] The section 16(2) of ATIPPA, 2015 states:

16. (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 of ATIPPA, 2015, and in fact still has not done so. The Department, 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 it now has a backlog of 110 active requests. During the timeframe for this access request and our investigation, the Department has indicated it experienced human resource challenges. The Department anticipates that delays in responding to access requests and other related tasks may continue.

- [11] Pursuant to section 13(1) 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.

[12] The provincial ATIPP Office has produced an Access to Information Policy and Procedures Manual that 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 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 can 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.

[13] Recent communications from the Department 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 the complete elimination of the need to issue deemed refusal reports.

RECOMMENDATIONS

[14] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Justice and Public Safety:

1. Respond to the Complainant's request without further delay, and no later than 10 business days after receipt of this Report;
2. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of the Act;
3. 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;
4. Provide partial disclosure of records on an ongoing basis where appropriate; and
5. 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.

[15] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of 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.

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



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