



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-042

September 23, 2024

Department of Environment and Climate Change

Summary:

The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** to the Department of Environment and Climate Change. The Department did not respond to the request within the timeframe required by section 16 of the Act. Section 16 says that a failure to respond by the deadline is considered to be a refusal of access, so the Complainant asked the Commissioner to investigate the Department's deemed refusal. The Commissioner found that the Department had not complied with its obligation under the Act, in particular section 16 (time limit for final response). A final response to the access request was provided to the Complainant during the informal resolution period, 80 business days after the request had been made to the Department. The Commissioner recommended that the Department maintain communication with applicants and comply with its statutory duties in the future.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 16 and 23.

Authorities Relied On: NL OIPC Report [A-2022-023](#).

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

BACKGROUND

[1] On March 21, 2024, the Complainant made an access to information request pursuant to the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Environment and Climate Change seeking the following information:

All submissions regarding World Energy GH2's updated environmental impact statement, including but not limited to those submitted by government departments or offices, public submissions, and those from other stakeholders.

[2] Pursuant to section 16 of ATIPPA, 2015, the Department's final response to the Complainant, consisting of its decision letter and accompanying responsive records was due within 20 business days, on April 19, 2024. On March 28, 2024, the Department applied to this Office under section 23 (extension of time limit) for an additional 20 days to respond to the request, which was approved, making the new due date May 17, 2024. On April 10, 2024, the Complainant was notified in writing of the extension approved by this Office and the new deadline. The new deadline passed and approximately a month later, on June 21, 2024, the Complainant made a complaint to this Office. On July 16, 2024, during our investigation, the Department provided its final response to the Complainant. This was the only communication the Complainant received from the Department subsequent to notifying the Complainant of the deadline extension on April 10, 2024.

[3] Though the Complainant received a response to its access to information request, the matter was not resolved informally and, therefore, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

[4] The Department provided this Office with a timeline for what appears to be each course of action the Department employed to respond to the Complainant's access to information request. From April 15, 2024 to April 26, 2024, the Department completed their review and redaction of the records. On May 1, 2024, consults were sent to eight other government departments. All consults were received by the Department on or before May 14, 2024. On

May 15, 2024, corrections from the consults were made to the draft Final Response letter to the Complainant.

[5] On May 16, 2024, the final version of the Final Response letter was sent to the Department's Assistant Deputy Minister (ADM) for review. Between May 16 and July 16, the Final Response letter was with Departmental executives awaiting approval. The Deputy Minister approved the final version for release on July 16, 2024.

[6] The Department noted that during the processing of this request it was occupied with nearly 30 other access to information requests, several of which were large; as well as with hosting the 2024 meeting of the Canadian Council of Ministers of the Environment.

COMPLAINANT'S POSITION

[7] Although the Complainant received a response to their access to information request, the Complainant takes issue with the Department not meeting the deadline and not receiving extension notices.

ISSUES

[8] Did the Department comply with the time limits as set out under section 16 of ATIPPA, 2015?

[9] Did the Department comply with the notification requirements for an extension, as set out in section 23(6) of ATIPPA, 2015?

DECISION

Did ECC comply with the time limits as set out under section 16(1) of ATIPPA?

[10] A public body must respond to an access to information request within the legislative time frame set out 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.

[11] The Department successfully obtained an extension for the deadline from this Office on April 3, 2024, extending the due date to May 17, 2024. The Final Response was provided to the Complainant July 16, 2024, 40 days beyond the extended due date. Clearly, the Department failed to respond to the Complainant by the extended deadline, despite the fact that the final version was complete on May 16, 2024, except for approval from the Assistant Deputy Minister and Deputy Minister.

[12] The Department did not request a second extension and this Office takes issue with the prolonged process for obtaining approval from the Assistant Deputy Minister and Deputy Minister. Even after the Complainant filed an access to information complaint with this Office, the Department's final response to the Complainant continued to be delayed and was not provided until almost two weeks later.

Did the ECC comply with the notification requirements for an extension, as set out in section 23(6) of ATIPPA?

[13] Where the Commissioner grants a public body an extension of the time limit for responding to an access to information request pursuant to section. 23(6), the head of the public body must notify the Complainant as set out by section 26(6) of ATIPPA, 2015, which states:

23(6) Where the commissioner approves the application and the time limit for responding is extended, the head of the public body shall, without delay, notify the applicant in writing

(a) of the reason for the extension;

(b) that the commissioner has authorized the extension; and

(c) when the response can be expected.

[14] The Department complied with the notice requirements as set out in section 23 of ATIPPA, 2015 when this Office granted a 20 business day extension on April 3, 2024. Nonetheless, the Department failed to keep the Complainant updated on the status of their request when the deadline and anticipated response date passed. Moreover, the Department did not apply for a second time extension while the Department awaited approval from the Assistant Deputy Minister and Deputy Minister to release the responsive records to the Complainant. Such a request, if approved, would have offered the Complainant a measure of reassurance that this Office was actively monitoring this matter.

RECOMMENDATIONS

[15] As the Department of Environment and Climate Change failed to meet the requirements set out in section 16 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department:

1. Comply in future with the statutory duties imposed upon it by section 16 of ATIPPA, 2015, to respond to an applicant within the statutory deadlines;
2. Apply for extensions where the anticipated statutory deadlines cannot be met; and
3. Maintain open communication throughout the process with the Complainant to keep them informed as to the status of the request, especially where it is known or anticipated that a deadline will not be met.

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

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 23rd day of September 2024.



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