



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-046

October 18, 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 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 and 16.

**Authorities Relied On:** NL OIPC Reports [A-2024-041](#), [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 request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Justice and Public Safety on behalf of their client on June 10, 2024 seeking the following:

All my personal information held by the Department of Justice and Public Safety, including but not limited to information contained in any of the Province's Correctional facilities (including juvenile facilities), both on paper and electronically.

- [2] The Department wrote to the Complainant on June 26, 2024 to advise that it was processing the request and a final response would be provided on July 9, 2024. The Department did not apply for a time extension from our Office.

- [3] The July 9, 2024, deadline passed with no further update from the Department on the status of the Complainant's access request. The Complainant contacted the Department on July 24, 2024 seeking an update on their access request. The Department replied the same day, stating it was still working on its response to the access request but that it could not provide a specific date for a final response.

- [4] On July 24, 2024, the Complainant file a complaint with this Office. As of October 18, 2024 (90 business days after the Department received 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. 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. In their submission, the Complainant stated the following:

A difficult and traumatizing process is more difficult and traumatizing. The delays feed anxiety. The Department of Justice and Public Safety (JPS) has understaffed its ATIPP office, in complete and utter contempt for the law it has authored and the law [the Government of Newfoundland and Labrador] enacted to ensure access to information . . . Whether the withholding of personal information is due to totalitarianism or due to understaffing is of little significance to the Applicant.

## 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 of 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. The Department has provided this same explanation for delays in response to previous investigations by this Office, The continued repetition is becoming more troubling, and it is vital that the Department address these issues.

[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 eliminating the need to issue deemed refusal reports regarding this Department.

## 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 18<sup>th</sup> day of October 2024.



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