



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2025-002

January 21, 2025

Town of Point of Bay

Summary:

The Complainant made an access request to the Town of Point of Bay on September 20, 2024 under the **Access to Information and Protection of Privacy Act, 2015**. The Town did not respond to the request in the timeframe required by section 16 of the Act and was deemed to have refused access to the Complainant. The Commissioner found the Town had not complied with its obligations under the Act, in particular sections 13 (duty to assist the applicant) and 16 (time limit for final response). The Commissioner recommended the Town respond to the Complainant's request without further delay, comply with its statutory duties in future, obtain training, and apply for extensions of time when necessary.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13 and 16.

Authorities Relied On: [Report of the 2014 Statutory Review of the Access to Information and Protection of Privacy Act, Newfoundland and Labrador](#). Volume II Full Report.

[ATIPP Guide for Municipalities](#).

BACKGROUND

- [1] The Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Town of Point of Bay on September 20, 2024. Through their request, the Complainant was seeking council minutes from 2020 and 2021. Per section 16 of the Act, the Town’s final response to the access request was due 20 business days later, on October 21, 2024.
- [2] On September 23, 2024, the Town advised the Complainant the request was being processed and that the request would be brought to council for its approval. The October 21, 2024 deadline passed without a response from the Town and the Complainant filed a complaint with this Office the next day, on October 22, 2024.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [4] The Town did not provide written submissions in response to our investigation. However, in conversations with this Office, officials from the Town noted several challenges with completing this access request, as well as access requests generally, including that the Town’s office is only open for two days each week and that some of the responsive records were in paper format and in storage. The Town also advised it was seeking council’s approval to process the request.

ISSUES

- [5] This Report will address whether the Town has met its obligations under sections 16 (time limit for final response) and 13 (duty to assist the applicant) of the Act.

DECISION

[6] Section 16 of the Act 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.

[7] It is clear the Town did not provide its final response to the access request within the time required by section 16 of the Act. As of January 21, 2025, it is now 82 business days since the Complainant submitted their request to the Town and they have still not yet received a response.

[8] Under section 13(1) of the Act, 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.

[9] As noted above, the Town did not provide written submissions as required in response to this complaint and investigation. The Complainant did provide details of their correspondence with the Town and it appears the last communication the Complainant received from the Town was on September 23, 2024, when the Town advised, in reference to the receipt of the Complainant's access request, "I have printed this off and will take it to council as soon as possible. As soon as I have the councils OK I will send it to you."

[10] The Act provides for an access to information request to be received and processed by a coordinator designated by the public body. Final decisions on releasing records are to be made by the head of a public body, as designated by either section 2(j) or section 109. There should not be a role for a municipal council in processing a request or approving whether a request will be accepted or acted on. By involving a municipal council in this way, a public body risks violating its obligation to protect the identity of an access to information applicant under section 12. Further, the 2014 Statutory Review Committee noted the importance of protecting the access to information process from political interference with

recommendations that the coordinator be given authority to handle a request and to limit interference with the processing of a request:

The Committee recommends that

2. The Act be amended to give delegated authority for handling a request solely to the ATIPP coordinator.
3. No officials other than the ATIPP coordinator be involved in the request unless they are consulted for advice in connection with the matter or giving assistance in obtaining and locating the information.

(from the Report of the 2024 Statutory Review of the Access to Information and Protection of Privacy Act, page 47)

[11] We are mindful of the fact that public bodies subject to the Act will have varying resources with which to meet their obligations; and the Town is one of the smaller public bodies in the province. Nonetheless, the Town is required to comply with the Act. The provincial ATIPP Office has produced resources for municipalities, including a Guide for Municipalities which provides guidance to municipalities with respect to the duty to assist, applying for extensions of time, and the availability of the ATIPP Office to assist municipalities. The ATIPP Office's guide reflects the position of this Office on these subjects.

RECOMMENDATIONS

[12] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Town of Point of Bay:

1. Respond to the Complainant's access 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. Apply for extensions of time where appropriate and as soon as it becomes evident a request cannot be processed within the 20 business days provided by the Act, and
4. Within 30 business days of receipt of this Report, make arrangements for training from the provincial ATIPP Office about the statutory requirements and procedures for responding to access to information requests and complaints for the Head of the Public

Body, the ATIPP Coordinator, and any other staff who may be involved in processing access to information requests.

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

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 21st day of January 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador