



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2014-003

February 6, 2014

### Department of Finance

**Summary:**

The Applicant made nine access to information requests to the Department of Finance (the “Department”) on August 6, 2012. While there was some initial correspondence from the Department, many communications were initiated by the Applicant requesting updates about the status of the access requests. The records were finally received four to six months after the initial access requests were made. The Commissioner found that the Department did not comply with the mandatory time period set out in section 11 of the *ATIPPA* and the Department failed to fulfill the duty to assist under section 9 of the *ATIPPA*. Furthermore, the Department did not avail of provisions under the *ATIPPA* that might have helped it in meeting the time limit under the *ATIPPA*. As the Department had already implemented a new system for responding to access requests, the Commissioner recommended that the Department review and assess the new system and provide an update regarding how this new system has been working.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, as amended, sections 9, 11 and 16.

**Authorities Cited:**

Newfoundland and Labrador OIPC Reports A-2011-012, A-2012-012 and A-2013-002.

**Other Sources:**

Office of the Information and Privacy Commissioner. New Release: January 8, 2013. Available at:

<http://www.releases.gov.nl.ca/releases/2013/oipc/0108n03.htm>

*Access to Information Policy and Procedures Manual*, August 2013. Government of Newfoundland and Labrador, ATIPP Office, Office of Public Engagement. Available at: <http://www.atipp.gov.nl.ca/publications/ATIPP Policy and Procedures Manual.pdf>

## I BACKGROUND

[1] Pursuant to the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) the Applicant made nine different access to information requests to the Department of Finance (the “Department”). The nine access requests were received by the Department on August 6, 2012 and sought disclosure of records as follows:

### **Request #1**

*I am requesting under the Access to Information Act any briefing notes completed on the Lower Churchill since September 2010.*

### **Request #2**

*I am requesting under the Access to Information Act any financial analysis completed on Lower Churchill since September 2010.*

### **Request #3**

*I am requesting under the Access to Information Act any briefing notes, information notes, fact sheets, etc on the Government Purchasing Agency (GPA) completed after September 2010.*

### **Request #4**

*I am requesting under the Access to information Act any briefing notes, information notes, fact sheets, etc completed after March 2011 with respect to government debt.*

### **Request #5**

*I am requesting under the Access to Information Act any briefing notes, information notes, fact sheets on debt servicing.*

### **Request #6**

*I am requesting under the Access to Information Act any briefing notes, information notes, fact sheets, etc on the government's long term financial outlook for the province.*

### **Request #7**

*I am requesting under the Access to Information Act any analysis completed on alternative energy sources for the province of Newfoundland and Labrador since September 2010.*

### **Request #8**

*I am requesting under the Access to Information Act any briefing notes, information notes, fact sheets, etc on the Low Income Seniors Benefit since September 2010.*

### **Request #9**

*I am requesting under the Access to Information Act for the most recent reviews/analysis for the province's tax system including a review of the tax systems in other jurisdictions.*

- [2] The Department acknowledged the Applicant's access requests with a letter on August 9, 2012 and on August 13, 2012 the Department's Coordinator contacted the Applicant to request clarification regarding the nine access to information requests. The Applicant responded on August 17, 2012 and provided the Department with clarifications to the access requests. The Applicant also advised that Request #1 and Request #2 were similar and could be combined into one request, that Request #5 could be covered in Request #4, and that the Department's Coordinator could delete Request #5. The result was that the nine original access requests were decreased to seven access to information requests. For ease of reference I will refer to the numbers of the original nine access requests even though some were combined.
- [3] The Department sought further clarification from the Applicant on August 23, 2012 and September 26, 2012, requesting that the Applicant provide a time period for Request #6. The Applicant responded on September 26, 2012 and provided a three year time period for Request #6.
- [4] The Department advised the Applicant on October 2, 2012 that there were no records in its possession responsive to Request #7 but that the requested information is within the custody of another public body, therefore Request #7 was transferred to that public body.
- [5] The Department further advised the Applicant on October 2, 2012 that Requests #1 and #2 (since they were combined) may contain information that, if disclosed, might affect the business interests of a third party as described in section 27 of the *ATIPPA* and therefore the Department was required by section 28 of the *ATIPPA* to give written notice to the third party that a request for access to these records was made. The Department advised that the third party notice was sent on October 2, 2012 and a response from the third party was required within 20 days. The third party provided a response on October 22, 2012.

- [6] The Department notified the Applicant on October 11, 2012 that there were no responsive records for Request #3.
- [7] On October 23, 2012 the Applicant requested an update on the status of the remaining access requests and questioned why the Department did not meet the timeline as set out in the *ATIPPA*. The Department's Coordinator responded the same day advising that the Department was working diligently to compile the information requested, however, the nine access to information requests were received at the same time as several others therefore the Department had been juggling numerous responses at the same time. The Department's Coordinator further advised that the information requested in the nine access to information requests required a significant amount of effort by a number of different individuals throughout the Department which required a significant amount of coordination. The Coordinator advised that there was significant progress made on the access requests and it was her hope to have them concluded within the next two weeks.
- [8] On November 22, 2012 the Applicant again contacted the Department for an update on the status of the remaining access requests. The Department's Coordinator responded on November 29, 2012 and advised that the records had been identified and reviewed in accordance with the *ATIPPA* and that they were in the final stages of the process, which involved obtaining the required approvals for the final response to each request. The Applicant responded on November 30, 2012 and expressed her disappointment that the Department did not respond within the time frames set out in the *ATIPPA* and that in her opinion insufficient effort was made to provide the information.
- [9] The Applicant completed a Request for Review in relation to Request #1, #2, #4, #5, #6, and #7 dated November 23, 2012 and received by our Office on November 27, 2012. The Applicant also completed a Request for Review in relation to Request #8 and #9 dated March 30, 2013 and received by our Office on April 15, 2013. Requests #8 and #9 were filed outside the 60 day time limit as outlined in section 45(1)(a) of the *ATIPPA*, however, section 45(1)(c) allows this Office the discretion to accept a request for review "within a longer period that may be allowed by the commissioner." I exercised my discretion in this case to accept the Request for Review in relation to Request #8 and #9 since they related to the six other requests for review and dealt with the same issue: a delay from the Department in responding to the Applicant.

- [10] The Applicant received records in relation to Request #8 on December 24, 2012. The Applicant did not receive any further records or correspondence from the Department, and on February 1, 2013 the Applicant emailed the Department requesting an update on the status of the remaining access requests. The Department responded on February 8, 2013 and advised that the remaining access requests (Request #1, #2, #4, #5, #6 and #9) were finalized and the responses would be sent to the Applicant in separate emails.
- [11] The Applicant, in her Requests for Review, expressed concern about the length of time it took for the Department to respond to her access requests. Efforts were made through this Office to resolve the Requests for Review informally, and an Analyst from this Office asked the Department to explain the lengthy delay in providing the records to the Applicant. The Analyst also asked the Department to provide a timeline or chronology of events detailing what specific actions were taken on the file and when, which the Department provided.
- [12] Ultimately, the Applicant was not satisfied with the Department's explanations and requested a formal investigation of the Department's handling of her access requests. By letters dated May 27, 2013 both the Applicant and the Department were advised that the Requests for Review had been referred for formal investigation pursuant to subsection 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47.

## II PUBLIC BODY'S SUBMISSION

- [13] The Department provided a written submission dated June 25, 2013 which set out the chronology of events, with supporting documentation, as outlined in the "Background" section above and addressed the delay in response time to the access requests. The Department explained that:

*As evidenced by the attachments, the Department was in contact with the Applicant over the course of this process and therefore did not determine it necessary to formally request a time extension. Additionally, the Department notes that a time extension would most likely had been warranted (pursuant to section 16 of the ATIPPA), given the following circumstances:*

- *The nature of the information requested was related to the core of the mandate of the Department of Finance. Therefore the identification and preparation of the responsive records required the coordination of numerous key senior officials within the Department and the search of a significantly large volume of records.*
- *In addition to the 9 information requests received from this particular applicant, four other requests were also being processed at the same time. The ATIPP capacity within the Department was not accustomed to addressing such a large number of requests in a concentrated period of time (i.e., the Department typically received one ATIPP request every 3 to 4 months). Additionally, the information requests were received during a time when the Department was transitioning to the new ATIPPA and the corresponding internal processes to support the new legislation.*
- *The information requested included the analysis, advice and recommendations made by this Department to Government, in support of the cabinet decision-making process. In exercising its due diligence to review the identified responsive records in accordance with the exemption to disclosure sections of the ATIPPA, the Department of Finance required additional time to develop its response.*
- *The Department considered its on-going communications with the Applicant as evidence of its active engagement in the response process. It is therefore believed that the absence of the final responses within the 30 day time frame was not intended to indicate that the Department was refusing access to the information. Furthermore, the Department considered this interaction with the Applicant as evidence of its duty to assist.*

[14] The Department advised that since the time of the Applicant's nine access requests, it has strengthened its capacity to respond to Access to Information and Protection of Privacy ("ATIPP") requests in a timely manner. The Department advised that it has implemented a sign-off protocol for each ATIPP request which requires all parties participating in the development of the response to sign, date and describe the action taken to obtain the requested information. The sign-off sheet clearly indicates the date the request was received and the date by which the response must be provided to the applicant.

[15] The Department further stated that it has a heightened awareness regarding the importance of responding to ATIPP requests in a timely manner and the duty to assist the applicant. In its submission the Department advised that since January 2013, it has received 13 ATIPP requests and that all 13 requests were responded to in accordance with the timelines outlined in the ATIPPA.

### III APPLICANT'S SUBMISSION

[16] In her submission, the Applicant set out the chronology of events, with supporting documentation, as outlined in the "Background" section above to illustrate the delay in response time to her access request. The Applicant was particularly concerned with the Department's response to her request for an update on the status of her access requests dated October 23, 2012 in which the Department's Coordinator stated:

*... As it so happened your requests were received at the same time as several others, so we have been juggling numerous responses at the same time...*

[17] The Applicant advised that on February 12, 2013 she submitted a new access to information request to the Department of Finance for a copy of all Form 1's (which is the Access to Information Request form) from April 2012 to February 2013. The Applicant explained that she did this to determine the number and dates of access to information requests submitted to the Department. The result was that the Department received 24 access to information requests from April 1, 2012 to February 12, 2013. The Applicant explained that prior to her August 6, 2012 access requests, the last access to information request submitted to the Department was dated July 6, 2012 and that the Department should have been finished dealing with that access request since it was submitted 30 days before hers. The first access to information request received after the Applicant's access requests was dated September 10, 2012. Based on this information, it is the Applicant's opinion that the Department's delay in responding to her access requests was not due to the fact the Department was dealing with several other access to information requests received at the same time as hers.

[18] The Applicant provided in her submission a detailed breakdown of the dates she received the responses from the Department as well as the number of pages of responsive records, if any, she received in relation to her access requests.

[19] On December 24, 2012 the Applicant received 37 pages of records in relation to Request #8, of which 21 pages were redacted completely.

[20] The Applicant received a response and some records in relation to Request #1, #2, #4, #5, #6 and #9 on February 8, 2013. While the Department denied access to information based on exceptions to disclosure claimed under the *ATIPPA* in relation to Request #1, #2 and #6, it did direct the Applicant to publicly available information for these requests. In relation to Requests #4 and #5 the Department provided the Applicant with 131 pages of records of which 28 pages were redacted completely based on exceptions to disclosure claimed under the *ATIPPA*. In relation to Request #9 the Department provided 84 pages of responsive records with 14 pages completely redacted based on exceptions to disclosure claimed under the *ATIPPA*.

[21] For the access requests the Department responded to there was a total of 252 pages of records provided to the Applicant and of those 252 pages of records 63 pages were redacted completely. Overall the Applicant feels that:

*The delay in responding to all ATIPPA requests submitted on August 6<sup>th</sup>, 2012 appears to be based on something other than the work required to compile and review this information.*

*My requests were received by the department on August 6<sup>th</sup>, 2012. The department completed the responses on February 8<sup>th</sup>, 2013 after much prodding on my part. That is a total time frame of 186 days. That in my opinion is completely unacceptable and inexcusable.*

[22] The Applicant is concerned that the Department violated sections 9, 11 and 16 of the *ATIPPA*. Section 9 of the *ATIPPA* is the duty to assist an applicant in making as access to information request and included in this duty to assist is the duty to respond without delay to an applicant in an open, accurate and complete manner. Sections 11 and 16 of the *ATIPPA* deal with timelines, section 11 being the time limit for a response and section 16 sets out the circumstances for extending the statutory time limit for a response.

#### IV DISCUSSION

[23] The following issues will be discussed:

(1) Did the Department comply with section 11 of the *ATIPPA* (time limit for response)?



(2) Did the Department comply with section 9 of the *ATIPPA* (duty to assist applicant)?

**(1) Did the Department comply with section 11 of the *ATIPPA* (time limit for response)?**

[24] Section 11 *ATIPPA* states as follows:

*11. (1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it, unless*

- (a) the time limit for responding is extended under section 16;*
- (b) notice is given to a third party under section 28; or*
- (c) the request has been transferred under section 17 to another public body.*

*(2) Where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record.*

[25] Section 16 provides for an extension of the time limit and states as follows:

*16. (1) The head of a public body may extend the time for responding to a request for up to an additional 30 days where*

- (a) the applicant does not give sufficient details to enable the public body to identify the requested record;*
- (b) a large number of records is requested or must be searched, and responding within the time period in section 11 would interfere unreasonably with the operations of the public body;*
- (c) notice is given to a third party under section 28; or*
- (d) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.*

*(2) In addition to the authority under subsection (1), with the approval of the commissioner, the head of a public body may extend the time for responding to a request as follows:*

- (a) where one or more of the circumstances described in subsection (1) apply for a period of longer than the 30 days permitted under that subsection;*
- (b) where multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other; or*

- (c) *where the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate.*
- (3) *Where the time limit for responding is extended under subsection (1) or (2), the head of the public body shall notify the applicant in writing*
- (a) *of the reason for the extension; and*
- (b) *when a response can be expected.*
- (4) *In addition to the requirements of subsection (3), where the time limit has been extended without the approval of the commissioner, the head of the public body shall notify the applicant in writing that the applicant may make a complaint under section 44 to the commissioner.*

[26] It is clear from the documents provided by the Department that notice was given to a third party in relation to Request #1 and #2 (as they were combined) and that Request #7 was transferred to another public body, however, this did not occur until October 2, 2012 almost 60 days after receipt of the access to information requests from the Applicant. The Department would have been justified in relying on section 11(1)(b) and (c) of the *ATIPPA* in relation to Request #1, #2, and #7 for not responding to the Applicant within the 30 day time frame but the Department did not notify the Applicant of this until almost 60 days later. The Department should have been able to ascertain within 30 days that consultation with a third party was necessary or that a request needed to be transferred to another public body. Based on section 11(2) of the *ATIPPA* once the initial 30 days has passed if there is no extension of time or response from the public body then the head of the public body is considered to have refused access to the records.

[27] The Department did not extend the 30 day time limit under section 16 of the *ATIPPA* which provides for an extension when there are a large number of records to be searched or where notice is given to a third party under section 28 of the *ATIPPA*. When the time limit for responding to an access request is extended the public body must notify the applicant, in writing, of the extension of time, provide the reason for the extension of time, provide the provision relied upon for the extension of time and advise the applicant when a response can be expected. The public body must also advise the applicant that a complaint can be made to this Office. In this case, the Department could have also considered section 16(2) which provides for an extension of time with my approval where multiple concurrent requests have been made by the same applicant. The Department had many time extension options available, however, it was the Department's opinion that:

*The Department considered its on-going communications with the Applicant as evidence of its active engagement in the response process. It is therefore believed that the absence of the final responses within the 30 day time frame was not intended to indicate that the Department was refusing access to the information. Furthermore, the Department considered this interaction with the Applicant as evidence of its duty to assist.*

[28] Section 11 of the *ATIPPA* requires a response within 30 days or an extended period. The Applicant waited almost two months for a response to Requests #7, over four months for a response to Request #8 and over six months for a response to Requests #1, #2, #4, #5, #6, and #9. Under section 11(2), failure to respond to an applicant within 30 days is deemed to be a refusal to provide access to records. The Department stated above that “the absence of the final response within the 30 day time frame was not intended to indicate that the Department was refusing access to the information.” Section 11(2) applies regardless of the intention of the public body.

[29] In Report A-2011-012 the Assistant Commissioner discussed the issue of deemed refusal at length. These comments are appropriate in this case and need to be reiterated to highlight the importance of a timely response to an access to information request. In Report A-2011-012, the public body did extend the timeframe for responding under section 16, but it did not provide any of the responsive records (which totaled more than 3500 pages) to the Applicant until more than six months after the request was made. In that Report, the Assistant Commissioner stated as follows:

[37] *In relation to the PSC’s statement that consultations were necessary with two other departments regarding the release of the responsive records, I note that the PSC did not provide this Office with any details to substantiate this claim other than simply identifying the department. This Office needs to understand why the PSC was unable to conclude its consultations within the response deadlines in order to consider this claim. To meet the burden of proof set out in section 64 of the ATIPPA, the PSC must provide sufficient evidence as the nature, complexity and/or number of the consultations undertaken. The evidence before me is insufficient for me to accept this as a satisfactory justification, or even a contributing factor, for the unreasonable delay.*

[38] *The PSC has also stated that this access request involved a large volume of records and that the redaction of information is a process that requires strict attention to detail. I accept this as true, however, these assertions do nothing to relieve a public body from its obligation to respond to an access request within the statutory timelines. A public body is limited to the reasons set out in section 16 when it comes to extending its response time beyond 30 days, and the absolute maximum is a 30 day extension, for a total of 60 days. If a public body does not provide the records within the statutory deadline, it will be in default of its statutory responsibility. While the volume of records involved and the strict attention to detail inherent in reviewing information may present challenges, it is not an acceptable justification for a public body to exceed the statutory response deadlines. In Report A-2008-001, the Commissioner stated:*

*There is no doubt that the ATIPPA can represent, at times, an inconvenience, or even a challenge for public bodies who find themselves struggling to meet statutory deadlines. It is apparent to me, however, that the 30 day time frame in section 11, in addition to the 30 day extension provided for in section 16, were meant to give public bodies the necessary time to respond to access requests. These time frames are designed to account for holidays, weekends, and other interruptions which may interfere with the search and retrieval of requested records, while still giving the public body enough time to meet its statutory deadlines...*

[39] *In the Federal Court of Canada case Canada (Information Commissioner) v. Canada (Minister of External Affairs), [1990] 3 F.C. 514 (Fed. T.D.), Justice Muldoon stated in the following paragraph that processing access requests in a less than expeditious manner was, in fact, breaking the law:*

*20. . . . Confession that such requests ought to be processed as expeditiously as possible may be good for an individual's soul, but it has no didactic energy in gaining the attention of government departments. It has no effect in actually providing legally that less than expeditious processing of requests for information is breaking the law, as it surely is. The purpose of the review is not just to make the particular respondent acknowledge unreasonable tardiness. It is, also, to let all other potential respondents know where they stand in these matters. The Court is quite conscious that responding to such requests is truly "extra work" which is extraneous to the line responsibilities and very raison d'être of government departments and other information-holding organizations of government. But when, as in the Access to Information Act, Parliament lays down these pertinent additional responsibilities, then one must comply.*

[40] *Similarly, the PSC must comply with the statutory timelines set out in the ATIPPA. There is nothing in the ATIPPA to excuse the PSC from its statutory duties because its Coordinator did not have time to carry out those duties. The PSC has to accept the fact that its obligations under the ATIPPA must be complied with despite the challenges presented by an access request.*

[30] At about the time the Department was dealing with the nine access to information requests of the Applicant, this Office was concerned about the number of deemed refusals coming before this Office. I issued a news release on January 8, 2013 indicating that this Office was dealing with 12 files involving deemed refusals and I stated:

*From time to time, my office has received complaints about a failure on the part of a government department or agency to meet these time limits, but for some reason there seems to be a lot more of this happening now than ever before, and I'm concerned about it. Applicants are being left hanging for months after filing a request that should usually only take 30 days to process, and in some cases no one from the public body is even bothering to pick up the phone and let the applicant know what's going on with their request. There is a saying in the access to information world that 'access delayed is access denied' – sometimes applicants need information within a certain period of time or it is simply no good to them anymore.*

[31] A similar concern regarding deemed refusals was expressed in the recently released Policy and Procedures Manual of the ATIPP office of the Office of Public Engagement, where it was stated on page 29 in a discussion of the duties placed on public bodies:

- *requests must be answered within 30 days, unless an extension is permitted – some public officials appear to have decided to amend the law to a “do-your-best” deadline;*

[32] A “do-your-best deadline” is not what section 11 of the *ATIPPA* intended. A public body must respond within the 30 day time period or an extended period. In this case the Department did not respond within the 30 day period nor did the Department extend the time period which they could have justifiably done with certain requests. The Department argues that as long as there was on-going communication with the Applicant, adhering to the timelines outlined in the *ATIPPA* was not necessary. However, a time period of four to six months to provide the Applicant with 252 pages of records is completely unreasonable and a clear violation of section 11 of the *ATIPPA*.

**(2) Did the Department comply with section 9 of the *ATIPPA* (duty to assist applicant)?**

[33] Section 9 *ATIPPA* states as follows:

*9. 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.*

[34] This Office has commented previously on the components of the duty to assist, most recently in Report A-2013-002 at paragraph 10:

*[10] To paraphrase my comments in Report A-2009-011, the duty to assist has three separate components: the public body must first assist an applicant in the early stages of making a request; it must then conduct a reasonable search for the requested records; and finally, it must respond to the applicant in an open, accurate and complete manner. It has been widely accepted by this Office and other Commissioners across the country that the standard against which the duty to assist is measured is reasonableness, not perfection, and the public body bears the burden of proving that the duty to assist has been fulfilled...*

[35] The Policy and Procedures Manual of the ATIPP Office (referred to above) sets out some of the obligations included in the duty to assist on page 29:

*In meeting the duty to assist an applicant, some additional obligations include the following:*

- *clear communication between the ATIPP Coordinator and an applicant is crucial;*
- *...*
- *it is incumbent on the ATIPP Coordinator to ensure that time limits are met – if a public body does not provide records within the statutory deadline, it will be in default of its statutory responsibility;*
- *...*
- *where a public body finds itself in a deemed refusal situation, they must take whatever actions are available to it to mitigate the imposition of the applicant's right of access and such measures should begin as soon as it is apparent that the extended time frame cannot be met;*
- *assign additional staff as early as possible, where necessary, to help process requests;*
- *designate a back-up ATIPP Coordinator who is trained and ready to assist in the processing of requests, as needed;*

[36] I am pleased that the Department sought clarification from the Applicant initially regarding the nine access requests and tried to narrow some of the requests and combine similar topic requests where possible. Nine access requests at the same time is a large number of requests to handle and as indicated previously the Department could have justifiably availed of time extension provisions had they adhered to the *ATIPPA*. While the Department did contact the Applicant and provide some updates and responses to the Applicant during the first few months, many communications after that time with respect to the status of the requests were initiated by the Applicant. This lack of communication does not help to foster a cooperative and respectful relationship between an applicant and a public body.

[37] In the present case, the time it took the Department to respond was not reasonable. The Applicant received a total of 252 pages of records and was denied access completely in relation to certain requests. In my opinion, a thorough review could have been done in far less than the four to six months it took the Department to complete this task. I find that the Department failed to

“respond without delay to an applicant in an open, accurate and complete manner” and therefore the Department has failed to fulfill the duty to assist imposed on it by section 9 of the *ATIPPA*.

[38] I am pleased that the Department has implemented a sign-off protocol for each access to information request which requires all parties participating in the development of the response to sign, date and describe the action taken to obtain the requested information. The Department has advised that the sign-off sheet clearly indicates the date the request was received and the date by which the response must be provided to the applicant. As of the date of the Department’s submission, it indicated that there had been 13 access to information requests and that all 13 requests were responded to in accordance with the timelines outlined in the *ATIPPA*. I hope this trend continues and that there is full compliance with the mandatory time limits set out in the *ATIPPA*.

## V CONCLUSION

[39] The Applicant did not receive a response to Request #7 until almost 60 days after she filed the request and the response was simply to indicate that the request had been transferred to another public body. It was over four months before she received a response for Request #8 and over six months before she received a response to Requests #1, #2, #4, #5, #6, and #9. With these excessive delays and the failure of the Department to use the time extension provision, I find that both sections 9 and 11 of the *ATIPPA* have been breached.

[40] The conclusion I reached in Report A-2012-12 is applicable here. I stated at paragraph 16 that:

*...One of the main purposes of access to information is to make public bodies more accountable to the public. This purpose would certainly be undermined if disclosure of records was intentionally delayed so that government could not be legitimately questioned on issues of public importance in the House of Assembly. In many cases information requested by applicants is needed for a specific purpose which is often time sensitive. The timelines for responding to an access request as set out in the ATIPPA are there for this very reason - to ensure timely access to records. Thus, applicants have a right to expect public bodies to abide by these timelines and receive requested records while the information is still relevant and useful to them.*

## VI RECOMMENDATIONS

[41] Under the authority of section 49(1) of the *ATIPPA*, I recommend as follows:

1. that the Department be mindful of the statutory duties imposed on it by sections 9 and 11 of the *ATIPPA*;
2. that the Department review section 16 of the *ATIPPA* and use the tools available to it under the *ATIPPA*, when necessary, to prevent deemed refusals; and
3. that the Department review and assess its policies and procedure for handling access to information requests for the purpose of ensuring that it complies with section 9 and 11 of the *ATIPPA*. Specifically, the Department is to review and assess the new sign-off protocol and provide this Office with a written update regarding how this new system has been working and if it has helped decrease the number of deemed refusals for the Department. Included in this update should be the number of access to information requests received since the new system has been implemented and the number of access requests that have been responded to within and outside the legislated time periods.

[42] Under the authority of section 50 of the *ATIPPA*, I direct the head of the Department to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the Department with respect to this Report.

[43] Please note that within 30 days of receiving the decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60 of the *ATIPPA*.

[44] Dated at St. John's, in the Province of Newfoundland and Labrador, this 6<sup>th</sup> day of February, 2014.

E. P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador