

NEWFOUNDLAND AND LABRADOR
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

REPORT 2007-012

Town of Torbay

Summary:

The Applicant applied under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) for access to records relating to a right of way in the Town of Torbay. The Town did not acknowledge the request until over three months after receiving it and did not provide any of the responsive records to the Applicant until nearly four months after the request was made. The Commissioner found that there was a deemed refusal to provide access to the records pursuant to section 11(2). The Commissioner also concluded that the Town had failed to comply with the statutory duties imposed on it by sections 3, 9, 11, and 12 of the ATIPPA and had acted irresponsibly toward the Applicant and the Commissioner’s Office. The Commissioner made recommendations to the Town to improve its process for handling access to information requests. The Commissioner found that some of the records were subject to solicitor-client privilege and the Town was, therefore, entitled to deny access under section 21, with the exception of information regarding the total amount of legal fees charged by the Town’s solicitor. The Commissioner found that copies of records held by the Town and registered in public registries should be disclosed including personal information found in those records. The Commissioner found that the Town had properly severed the names of individuals found in some of the records because the names constitute personal information.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A – 1.1, as am, ss. 2(o), 3, 7, 9, 11, 12, 21, 30, 46, 50, 60, 64, and 67; *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 2; *Municipalities Act, 1999*, S.N.L. 1999, c. M-24; *Registration of Deeds Act*, R.S.N.L. 1990, c. R-19, ss. 3, 36, and 37(8); *Lands Act*, S.N.L. 1991, c. 36, s. 37.

Authorities Cited: British Columbia OIPC Order 00-47 (2000); Newfoundland and Labrador OIPC Reports 2007-004 (2007), 2007-007 (2007), 2005-003 (2005) and 2006-006 (2006); Alberta OIPC Orders F2005-020 (2005) and F2004-015 (2004); *Solosky v. The Queen*, [1980] 1 S.C.R. 821.

Other Sources Cited:

Access to Information and Protection of Privacy Act Policy and Procedures Manual, Access to Information and Protection of Privacy Coordinating Office, Department of Justice, updated September 2004, available at <http://www.justice.gc.ca/just/civil/atipp/Policy%20Manual.pdf>.

I BACKGROUND

- [1] Under authority of the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) the Applicant submitted an access to information request dated 10 April 2007 to the Town of Torbay (the “Town”), wherein he requested access as follows:

All records relating to the Right of way (also referred to as Public Path/Public Right of Way, Old Jones Pond Trail and Old Jones Pond Road) on the southern boundary of my property at [Applicant’s Property], Torbay, NL. Records to include correspondence, e-mails, faxes, sent or received by the Town of Torbay on this issue by, its Solicitor, or the Developers Solicitor [Name of Developer] any official of the town, any Councillor or the Mayor in their official capacities or the Developer of the noted subdivisions [Name of Subdivision] concerning the noted Right of Way, and all internal documents of the town or Council relating to this including minutes memos, internal notes, internal correspondence, e-mails, faxes and legal opinions.

I would like the records on the above back to January 1, 2004.

- [2] The Applicant’s access request was in the form of a letter addressed to the Town’s Access and Privacy Coordinator (the “Coordinator”). The Town received the Applicant’s request on 12 April 2007.
- [3] The Applicant, having received no response to his access request, sent an e-mail to the Coordinator on 14 May 2007, asking for information on the status of the request. The Coordinator did not respond to this e-mail. As a result, the Applicant filed with my Office a Request for Review dated 17 May 2007 in which he stated:

The Town of Torbay has not fulfilled its obligation under the access to information legislation to acknowledge the request or provide the records stated. I would like the Town of Torbay to fulfill its duty under the legislation and honor the access to information request.

- [4] On 17 May 2007 my Office sent a registered letter to the Coordinator advising her of the Request for Review and requesting that a copy of the records responsive to the Applicant’s

access request be forwarded to my Office within 14 days of receipt of the letter. This registered letter was received at the office of the Town on 23 May 2007.

[5] On 28 May 2007 the Coordinator spoke by telephone with an Investigator from my Office (the “Investigator”) and advised the Investigator that because she was new to her position (having started in the position in October 2006) she wished to discuss the process involved in a Request for Review. The Investigator explained the process to her and indicated that she was obligated to forward the responsive record to my Office within 14 days of receipt of the letter advising of the Request for Review (which meant a response by 6 June 2007).

[6] On 6 June 2007 in a telephone conversation with the Investigator, the Coordinator advised that she would not be able to meet the 14 day deadline for forwarding the responsive record to my Office and asked for an extension of time, explaining that she was new in the position and indicating that her predecessor had “displayed poor records management.” In addition, the Coordinator advised that she was not aware of the Applicant’s access request until 23 May 2007 when she received the letter from my Office advising of the Request for Review. The Investigator explained that the Request for Review was based on a deemed refusal to respond pursuant to section 11(2) of the *ATIPPA*, which states that where the public body fails to respond within 30 days the public body is considered to have refused access. The Investigator further explained that the 14 day period for responding was a statutory deadline that could not be waived by my Office and the Coordinator should forward the requested documents as soon as possible.

[7] Later on 6 June 2007, following the telephone conversation with the Investigator, the Coordinator sent an e-mail to the Investigator advising that the responsive record would be sent to my Office by noon on Friday, 8 June 2007 and stated in the email:

As discussed, circumstances beyond my control and being new to the job did not enable me to follow process. I have been in contact with the ATIPP office and will get well versed in policy for future reference.

[8] On 7 June 2007 the Coordinator sent an e-mail to the Investigator asking if she could still disclose the records to the Applicant as part of the informal resolution process. The Investigator

advised the Coordinator in an e-mail dated 8 June 2007 that the role of my Office was to attempt to resolve the matter informally and if the Coordinator wished to disclose the records as part of the informal resolution process, then she could do so.

- [9] On 8 June 2007 my Office received correspondence dated 7 June 2007 from the Coordinator enclosing the records responsive to the Applicant's request. The correspondence indicated that none of the records had been released to the Applicant and stated as follows:

*As stated there are distinguishing circumstances around this request. I am making ever [sic] effort to become versed in proper process.
Please advise if I can still comply with an informal resolution.*

- [10] On 8 June 2007 the Coordinator sent an e-mail to the Investigator stating as follows:

. . . You should have the package of materials – staff delivered this morning. I am still on a learning curve with my job and will be complying with legislation. I find it frustrating as the file was before my time and have to get up to speed myself. Will be sending materials to [the Applicant].

- [11] On Wednesday, 13 June 2007, the Investigator sent an e-mail to the Coordinator inquiring as to when the records would be sent to the Applicant. The Coordinator responded in an e-mail later the same day stating that the records would be sent by Friday of that week and explaining that she had been attending meetings most of the week.

- [12] On 22 June 2007 the Investigator sent an e-mail to the Coordinator inquiring as to whether the records had been sent to the Applicant as per the Coordinator's previous e-mail.

- [13] On 27 June 2007 my Office received an e-mail from the Applicant in which he stated as follows:

I mailed my ATIPP request to the Town of Torbay on April 10, 2007. I did not receive any response from the Town of Torbay during the required 30 day time frame under the Legislation. I then proceeded to file a formal complaint/review with your office. . . . To date I have not received any records. It will be over 75 calendar days since the ATIPP request was mailed.

[14] On Wednesday, 27 June 2007, the Investigator received an e-mail from the Coordinator indicating that the “[l]etter to acknowledge request will be sent today. Copy of materials by week’s end.” The Coordinator further indicated that there had been a major delay due to internal human resource issues.

[15] On 3 July 2007 the Investigator contacted the Applicant by e-mail to inquire as to whether he had received the records from the Town. On 4 July 2007 the Applicant responded to the Investigator by e-mail, indicating that to date he had not received a letter or any records from the Town.

[16] On 4 July 2007 the Investigator again contacted the Coordinator by e-mail to inquire as to when the records would be sent to the Applicant. There was no reply by the Coordinator to this e-mail. On 5 July 2007 the Investigator telephoned the Coordinator and left a message on her voice mail requesting the Coordinator to call him. The Coordinator did not return the Investigator’s telephone call.

[17] On 6 July 2007 the Investigator sent an e-mail to the Coordinator referring to his previous e-mail and telephone message and again asking if the package of materials had been sent to the Applicant.

[18] On 10 July 2007 the Coordinator sent an e-mail to the Investigator as follows:

Sorry for the extreme delay in all of this. I had to [perform other duties] 2 weeks ago and it is only now that I am back to my own work.

...

[Applicant’s] request – materials are copied – just need to check if any require 3rd party notice. Should be in the mail today.

[19] On 16 July 2007, the Investigator again sent an e-mail to the Applicant inquiring as to whether he had received the records from the Town. The Applicant replied by e-mail that he had received no correspondence from the Town. The Applicant stated in his e-mail that “it is

becoming frustrating to continually [sic] hear it is 'in the mail' from the Town. Please advise on what further can be done to resolve."

[20] On 17 July 2007 the Applicant and the Coordinator were sent registered letters by my Office advising them that because attempts to resolve the matter by informal means were not successful the Request for Review had now been referred to the formal investigation process and advising them that each had until 31 July 2007 to provide any representations in writing. The Town received its registered letter on 18 July 2007.

[21] On 18 July 2007 the Coordinator sent an e-mail to the Applicant which stated as follows:

Being new to the Town and due to extreme circumstances, I have experienced a delay in complying with your access request. The issue will be resolved very shortly. I met with a representative from the Office of the ATIPP Coordinator on Monday to help me process this request. I have sent correspondence to outside parties to advise I will be releasing this information. I have provided them with a deadline of this Friday (July 20th) should they have any concerns. I will also be attending a training session next week – to gain a greater understanding on the entire access to information process. Therefore all documents will be ready for you on Monday, July 23.

[22] On 18 July 2007 the Coordinator sent an email to the Investigator indicating that the Applicant's access request would be complied with and asking if my Office would require anything in writing to explain the delay. The Investigator responded indicating that the notice of formal investigation had been sent and received by the Town and further stating:

One of the issues that will be reviewed by the Commissioner in the formal investigation and in his report will be the delay in complying with the request, therefore, it would be quite appropriate for you to address the issue of the delay in any written representation you wish to submit.

[23] On 27 July 2007 my Office received a written representation from the Applicant. The Town did not submit a written representation to my Office before the deadline. However, I do note that my Office received a letter from the Coordinator on 13 August 2007 providing her explanation for the delay in responding to the Applicant's request.

[24] On Thursday, 9 August 2007, the Investigator received an e-mail from the Applicant indicating that he had received a package from the Coordinator containing some of the requested records with some information severed in accordance with specified exceptions. In the e-mail, the Applicant pointed out that his review of the records received showed that a number of records that he was expecting to be included were not contained in the package and he provided the Investigator with a list of those expected records.

[25] In response, the Investigator contacted the Coordinator indicating that my Office should receive a copy of the letter sent to the Applicant enclosing the records and should receive a copy of the records sent to the Applicant. The Investigator also indicated to the Coordinator that the Applicant was expecting to receive other records that he believed to be in the possession of the Town and provided the Coordinator with a list of those other records. In a reply later that day, the Coordinator indicated that she would forward to my Office by Tuesday, 14 August 2007, a copy of the letter sent to the Applicant as well as a copy of the records. The Coordinator also indicated that she would search for the other records that the Applicant had stated he was expecting to receive.

[26] On 13 August 2007 my Office received from the Coordinator two letters dated 11 August 2007. The first letter enclosed a copy of a letter dated 6 August 2007 sent by the Coordinator to the Applicant as well as a copy of the records sent to the Applicant. This first letter also pointed out that the Coordinator had reviewed all its files but could not locate any of the expected records referred to by the Applicant in his e-mail dated 9 August 2007. The second letter set out the Coordinator's explanation for the delay in replying to the Applicant's access to information request.

II APPLICANT'S SUBMISSION

[27] The Applicant's submission is set out in correspondence from him dated 26 July 2007 as follows:

Under the Access to Information and Protection of Privacy Act (ATIPPA) section 3 "The purposes of this act are to make public bodies more accountable to the public and to protect personal privacy".

*Additionally under section 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".*

In my opinion the Town of Torbay has failed in meeting these most fundamental obligations under ATIPPA.

As per your letter dated July 17, 2007 the only additional information I can provide is an email (attached) I sent to [the Coordinator] on May 14, 2007 requesting if my access to information was received and a status update. There was no response to this request.

[28] The Applicant attached to his submission a copy of an e-mail sent directly to the Coordinator on 14 May 2007 as follows:

On April 10, 2007 I mailed an Access to Information Request to the Town of Torbay c/o your attention. I was wondering if this was received and if it was could I have a status update.

As indicated earlier, the Coordinator did not respond to this e-mail.

III DISCUSSION

[29] Before discussing the issues arising in this Request for Review, I will make some general comments on the ATIPPA.

[30] The purposes of the *ATIPPA* are set out in section 3, as follows:

3. (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records;*
- (b) giving individuals a right of access to, and a right to request correction of personal information about themselves;*
- (c) specifying limited exceptions to the right of access;*
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and*
- (e) providing for an independent review of decisions made by public bodies under this Act.*

(2) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

[31] Section 7 of the *ATIPPA* establishes the principle that there is a general right of access to records in the custody or control of a public body, subject to limited and specific exceptions, as follows:

7. (1) A person who makes a request under section 8 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of a fee required under section 68.

[32] Section 64 of the *ATIPPA* sets out the burden of proof to be applied on a Request for Review made to the Information and Privacy Commissioner as follows:

64. (1) On a review of or appeal from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.

(2) On a review of or appeal from a decision to give an applicant access to a record or part of a record containing information that relates to a third party, the burden is on the third party to prove that the applicant has no right of access to the record or part of the record.

[33] A reading of sections 3, 7, and 64 indicates that the purpose of the *ATIPPA* is to make public bodies more accountable to the public by giving the public a general right of access to records in the custody of or under the control of a public body subject only to limited and specific exceptions. When a public body has denied access to a record and the Applicant has requested a review of that decision by the Information and Privacy Commissioner then the public body bears the burden of proving that the applicant has no right of access to the record or part of the record pursuant to section 64(1).

[34] As I discussed in my Report 2007-004, the *ATIPPA* does not set out a level or standard of proof that has to be met by a public body in order to prove that an applicant has no right of access to a record under section 64(1). In my Report 2007-004, I adopted the civil standard of proof as the standard to be met by the public body under this section. In order for the public body to meet the burden of proof in section 64(1), the public body must prove on a balance of probabilities that the applicant has no right to the record or part of the record.

[35] There are two separate issues to deal with in this Request for Review:

- (a) The Town's Response, and
- (b) The Responsive Record.

(a) The Town's Response

[36] This Request for Review is in many respects unlike others on which I have written a report. The Town received the access to information request on 12 April 2007 but did not send the Applicant any acknowledgement of the request until the Coordinator sent the Applicant an e-

mail on 18 July 2007 promising the Applicant that all documents would be ready for him on 23 July 2007. This promise from the Coordinator was the fifth and final commitment from the Coordinator that she would disclose the records to the Applicant, the four previous commitments having been made to an Investigator from my Office. The Coordinator eventually sent the records to the Applicant as an enclosure to a letter dated 6 August 2007, nearly four months after the Applicant's initial request. The repetitive lateness of the responses by the Town is indicative of neglect, poor management, and lack of respect for the Applicant, for the access to information process and, quite frankly, for this Office.

[37] The Applicant in his submission quite appropriately refers to section 3 of the *ATIPPA* which states that the purposes of the *Act* are to make public bodies more accountable to the public. The conduct of the Town in this matter is the complete opposite of accountability; its behaviour must be categorized as irresponsible.

[38] The accountability of public bodies under access to information legislation was discussed by the British Columbia Information and Privacy Commissioner in Order 00-47. The Commissioner commented on the opening words of section 2(1) of the British Columbia *Freedom of Information and Protection of Privacy Act*, which are identical to the opening words of section 3(1) the *ATIPPA*. The Commissioner stated on page 11 of that Order:

As the first lines of s. 2(1) make clear, the Act's dual purposes are to protect personal privacy and promote accountability to the public of institutions covered by the Act. The Act's accountability objective is achieved, as is acknowledged by s. 2(1)(a), by giving "the public" a right of access to records. That right is, necessarily, exercised by individual applicants on a case-by-case basis. But the 'right' articulated in the section belongs to "the public", not to individual applicants. This provision acknowledges the sea-change effected by the Act in relations between the public, on the one hand, and governments and other public institutions, on the other. The public's right of access to information under the Act compels public bodies to share information with citizens, within prescribed limits, so as to enable them to participate more effectively in society and government.

[39] The actions of the Town in relation to the Applicant and his access to information request demonstrate a complete lack of awareness of the "sea-change" that has been brought about by the *ATIPPA* which now "compels public bodies to share information with citizens". The Town

has in effect said to the Applicant and other members of the public that it is too busy or too apathetic to be concerned with an access to information request. The attitude displayed by the Town toward members of the public is that the Town will not “enable them to participate more effectively in society and government.”

[40] In order to bring about the “sea-change” discussed by the British Columbia Commissioner, the *ATIPPA* places statutory duties on public bodies such as the Town of Torbay. Section 11 sets out a time limit in which a public body is required to respond to an access to information request 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.

[41] I can see no evidence that the Town made any attempt to comply with the mandatory obligations imposed on it by section 11. In fact, quite the opposite of compliance occurred; either the Town was unaware of or simply ignored section 11. The Applicant’s access to information request addressed to the Coordinator is stamped as having been received by the Town on 12 April 2007. It appears that the Town made no response to the Applicant within the 30-day period. Therefore, pursuant to section 11(2) the Town is considered to have refused access to the records.

[42] The Applicant, not having received any response within the 30-day period, sent an e-mail to the Coordinator on 14 May 2007 asking for a status report on his request. The Coordinator did not respond to the e-mail. Regardless of how busy the Coordinator may have been or how little she understood about the *ATIPPA*, it is difficult to understand how the Coordinator could have

neglected to extend at least the basic courtesy of a brief response or acknowledgement to the Applicant. In fact, a standard Acknowledgement of Request letter is found in Form 2A of Appendix 1 of the *ATIPPA Policy and Procedures Manual*, produced by the Access to Information and Protection of Privacy Coordinating Office with the Provincial Department of Justice (the “*ATIPPA Manual*”).

[43] The Town has completely failed to comply with the statutory duty imposed on it by section 11 of the *ATIPPA*.

[44] The Town also disregarded its statutory duty by failing to comply with section 12(1) of the *ATIPPA*, which provides as follows:

12. (1) In a response under section 11, the head of a public body shall inform the applicant

(a) whether access to the record or part of the record is granted or refused;

(b) if access to the record or part of the record is granted, where, when and how access will be given; and

(c) if access to the record or part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may appeal the refusal to the Trial Division or ask for a review of the refusal by the commissioner, and advise the applicant of the applicable time limits and how to pursue an appeal or review.

[45] Section 12(1) obligates the public body to inform the Applicant within 30 days as to which records will be disclosed and if access to certain records is to be refused to provide the reasons for the refusal and the provisions of the *ATIPPA* on which the refusal is based. The Coordinator on four separate occasions (8 June 2007, 27 June 2007, 10 July 2007, and 18 July 2007) sent e-mails to the Investigator stating that she would comply with the access request and would

forward the “materials” to the Applicant. On 18 July 2007, the Coordinator sent an e-mail to the Applicant stating that “all documents will be ready for you on Monday, July 23.” The “materials” however were not sent to the Applicant until 6 August 2007, nearly four months after the access request was received on 12 April 2007.

[46] Furthermore, the Town has failed to meet its duty to assist an applicant as required by section 9 of the *ATIPPA*, which provides 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.

[47] The Applicant in his written representation commented on the accountability of public bodies mandated by section 3 of the *ATIPPA* and on the duty to assist set out in section 9 by making the following comment: “In my opinion the Town of Torbay has failed in meeting these most fundamental obligations under *ATIPPA*.” I could not agree more with this comment by the Applicant. Rather than assist the Applicant, the Town chose to ignore the Applicant.

[48] In my Report 2007-007 at paragraph 9, I indicated that the *ATIPPA Manual* provides a useful summary of section 9. Section 3.3 of the *ATIPPA Manual* states:

The duty to assist the applicant is an important, underlying provision of the Act. It is a statutory duty throughout the request process, but it is critical during the applicant’s initial contact with the public body. The public body, through its Access and Privacy Coordinator, should attempt to develop a working relationship with the applicant in order to better understand the applicant’s wishes or needs, and to ensure that he or she understands the process.

Instead of complying with the statutory duty imposed by section 9 and attempting “to develop a working relationship with the applicant,” the Coordinator at the Town disregarded the Applicant and his request.

[49] Also in my Report 2007-007, I indicated that in considering the duty to assist I was guided by a number of Orders of the Office of the Information and Privacy Commissioner of Alberta and at

paragraph 10 of my Report I quoted from Order F2005-020 of the Alberta Commissioner as follows:

[para 16] Interim Order 97-015 stated that how a public body fulfills its duty to assist will vary according to the fact situation in each request. In Order 2001-024, it was stated that a public body must make every reasonable effort to assist an applicant and respond openly, accurately and completely to him. The standard directed by the Act is not perfection, but what is “reasonable”. In Order 98-002, Commissioner Clark adopted the definition of “reasonable” found in Blacks’ Law Dictionary (St. Paul, Minnesota, West Corp., 1999) as “fair, proper, just, moderate, suitable under the circumstances. Fit and Appropriate to the end in view.”

In my opinion, the conduct of the Town toward the Applicant was neither fair, nor appropriate, nor reasonable.

[50] I have previously described the conduct of the Town as showing disrespect for the Applicant, for the access to information process, and for my Office. My comments thus far have demonstrated the lack of respect shown for the Applicant and the access to information process. I now wish to comment on the conduct and attitude of the Town toward my Office.

[51] Section 46 of the *ATIPPA* mandates my Office to attempt to negotiate an informal resolution of a request for a review by providing as follows:

46. (1) The commissioner may take steps that he or she considers appropriate to resolve a request for review under section 43 or a complaint under section 44 informally to the satisfaction of the parties and in a manner consistent with this Act.

[52] In order to have successful negotiations leading to an informal resolution of a request for review the parties must negotiate in good faith. Two vital components of good faith negotiating are honesty and a willingness to honour a commitment made during the negotiation process. The Coordinator on 5 separate occasions committed to disclose the responsive record to the Applicant, but did not do so until nearly four months after the request was received. The impression given is that the Coordinator was not acting in good faith when these commitments were made. The Applicant and my Office have no other alternative than to conclude that either the Coordinator did not intend to disclose the records when those commitments were made or

that responding to the access request had such a low priority that it was continually bumped from the Coordinator's "to do" list by any other newly arising matter.

[53] There is another aspect of the Coordinator's conduct that is troubling. In a telephone conversation with the Investigator on 6 June 2007, the Coordinator advised the Investigator that she was unaware of the Applicant's access to information request until she received a letter from my Office advising of the Request for Review (this letter was received by the Town on 23 May 2007). However, the Applicant's access request was addressed to the Coordinator and was stamped as received by the Town on 12 April 2007. In addition, the Applicant sent an e-mail directly to the Coordinator on 14 May 2007 asking for a status update on his request. The evidence suggests, therefore, that the Coordinator certainly ought to have been aware of the Applicant's access request prior to 23 May 2007.

[54] I now wish to comment on the explanations put forward by the Coordinator in an attempt to justify the excessive delay in responding to the Applicant's access request. These comments are contained in a number of e-mails sent by the Coordinator and in her letter dated 11 August 2007, which was received at my Office on 13 August 2007. The letter states as follows:

As explained in our initial contact, I began my employment with the Town of Torbay on October 23, 2006 as Chief Administrative Officer/Town Clerk.

On April 12, 2007 the Town received a request for access to information from [the Applicant] regarding the right of way on [location in Town of Torbay].

As Chief Administrative Officer/Town Clerk, I have a responsibility to reply to all requests for access to information and to follow process as explained in the legislation. There was an extreme delay in replying to this request for the following reasons:

- 1. Lack of knowledge of the issue – Town has experienced a turn over in staff – which lead to no consistency or understanding of the issue by current staff and they could not explain it to me;*
- 2. This was the first request the Town had received – no one was versed in legislation nor process;*
- 3. Previous CAO was very disorganized and displayed poor records management. There were no documents in his files that related to the right of way issue;*

4. *There were severe internal human resource issues to deal with – suspension of a [town employee], a work stoppage by [town employees], and the subsequent discipline issues that followed. In addition to my CAO duties, I am also the acting Supervisor of Operations and Public Works. This means in addition to delegating work to the employees on a daily basis, I am front line contact regarding any public works issue – ie. garbage collection, snow clearing damage, recreation infrastructure, resident complaints/inquiries, road maintenance, capital works etc;*
5. *Torbay is the lead town in the Northeast Avalon Regional Arena – a lot of time was expended in finalizing the municipalities agreement;*
6. *When any member of staff was on annual leave – I was the main point of contact – there was one week where I was “wearing 5 different hats”;*
7. *As acting Supervisor of Public Works, I was responsible for all logistics related to the annual Town Days and Hillside Festival over a span of 10 days;*
8. *The Town of Torbay is twinned with a village in France known as Maily-Maillet. I was responsible for coordinating all activities related to the twinning ceremony, accommodations, transportation. etc.;*
9. *All the above plus my role as Chief Administrative Officer/Town Clerk.*

On July 16 and 26, 2007 I attended 2 training sessions with representatives from the Department of Justice to become versed in process. I have my binder of materials compiled and am well aware of the time sensitivity of responding to requests.

There were extreme circumstances around this issue. Mechanisms are being put in place to deal with this and to ensure that the Town of Torbay complies with the legislation.

[55] In relation to the Coordinator’s explanation that she was new to her job, I note that she commenced work with the Town on 23 October 2006. The Applicant’s access request was received by the Town on 12 April 2007, nearly 6 months after the Coordinator started in her position. This six month period was quite a sufficient period of time for the Coordinator to have become familiar with the access to information process, with the *ATIPPA Manual*, and with the *ATIPPA* itself. If the Coordinator was not familiar with the access to information process at the time the Applicant’s request was received, then it was incumbent on her to become familiar with it, rather than ignoring the Applicant’s request and his subsequent e-mail. Furthermore, the obligations imposed by sections 9, 11, and 12 of the *ATIPPA* are imposed on the head of the

public body. In addition, section 67 of the *ATIPPA* obligates the head of a public body to appoint a person to act as an Access and Privacy Coordinator, as follows:

67. (1) The head of a public body shall designate a person on the staff of the public body to

- (a) receive and process requests made under this Act;*
- (b) coordinate responses to requests for approval by the head of the public body;*
- (c) educate staff of the public body about the applicable provisions of this Act;*
- (d) track requests made under this Act and the outcome of the request; and*
- (e) prepare statistical reports on requests for the head of the public body.*

(2) The head of a public body may delegate to a person on the staff of the public a duty or power of the head under this Act.

When an Access and Privacy Coordinator is designated by the head of a public body, it is the duty of the head to ensure that the Coordinator becomes properly trained and familiar with the access to information process. The head of the Town of Torbay had a statutory obligation to make certain that the Coordinator was appropriately qualified such that she was able to properly perform her duties. The six month period between the Coordinator's commencement of her duties and the Applicant's request was more than ample time to have the Coordinator suitably trained.

[56] Therefore, I am not convinced that the Coordinator's statements that she was new to her position provide an adequate explanation for the abysmal failure of the Town to meet its obligations under the *ATIPPA*.

[57] Likewise, I do not accept the Coordinator's statements that she had other responsibilities as a justification for not performing the statutory duties imposed by the *ATIPPA*. I appreciate that the Coordinator is not a full-time Access and Privacy Coordinator and has other duties to perform in her position with the Town. However, the statutory obligations imposed by sections 9, 11, and 12 of the *ATIPPA* must be met. Again, these three **statutory duties** are imposed on the head of the public body and it is the responsibility of the head of the Town to ensure that there are adequate

staff to fulfil these statutory obligations. The duties imposed on public bodies by the *ATIPPA* are not duties to be performed when and if there are staff and time to perform them. They are statutory duties that must be carried out.

[58] Furthermore, the Town is a local government body within the meaning of section 2(j) of the *ATIPPA*, which defines a “local government body” in paragraph (iv) as including “a municipality as defined in the *Municipalities Act, 1999*.” As a municipality under the *Municipalities Act, 1999*, the Town must comply with the duties imposed on it under this *Act*. In the same manner, the Town must comply with the duties imposed on it under the *ATIPPA*. Both Acts have been enacted by the provincial legislature and both require the performance of statutory obligations. Both must be complied with. Neither Act excuses a Town from its statutory duties because the Town was not familiar with the duties imposed on it or because the Town’s staff did not have time or resources to carry out those duties. The Town has to accept the fact that its obligations under *ATIPPA* must be complied with in the same manner as its duties under the *Municipalities Act, 1999*, or any other Act.

(b) The Responsive Record

[59] As I have indicated, the Town by letter dated 6 August 2007 sent to the Applicant some of the records responsive to his request. The Town has refused to disclose other records responsive to the request claiming that those records are subject to solicitor-client privilege and, therefore, excepted from disclosure by section 21 of the *ATIPPA*. In addition, some information has been severed from the records disclosed, with the Town claiming that the severed information is personal information and, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*.

[60] I have reviewed the responsive record and wish to make the following comments on the exceptions to disclosure claimed by the Town.

[61] The responsive record consists of 25 numbered documents. The Town has disclosed to the Applicant Documents #4, #5, #11, #13, #16, #18, #19, #20, and #25. The Town has severed information in each of the documents, claiming it is personal information and, therefore,

excepted from disclosure by section 30(1) of the *ATIPPA*. I will discuss these documents in more detail later.

[62] As part of the responsive record sent to our Office by the Town there are three documents identified as Documents #1, #2, and #3. Document #1 is a copy of the Applicant's access to information request. Documents #2 and #3 are copies of two e-mails dated 26 March 2007 and 14 May 2007, respectively, sent by the Applicant to the Town. These documents are not, in fact, responsive to the Applicant's request and are documents of which the Applicant has copies. The Applicant has indicated that he does not wish to receive copies of these documents and I will make no further comment on them.

[63] First, I will discuss Documents #7, #8, #9, #12, #15, #17, #21, #22, #23, and #24 for which the Town has refused disclosure, claiming the documents are subject to solicitor-client privilege pursuant to section 21 of the *ATIPPA*. With the exceptions of Documents #7 and #15, the Documents consist of correspondence sent by the Town's solicitor to the Town.

[64] Document #8 consists of a fax cover sheet and a letter, both dated 27 October 2005, from the Town's solicitor to the Town. The fax cover sheet and the letter are both marked as "Solicitor/Client Privileged." (Note: This document is one of two documents in the responsive record labeled by the Town as Document #9, with no document labeled as Document #8. I have, therefore, as a matter of clarification and convenience referred to this document as Document #8)

[65] Documents #9, #12, #17, #21, #22, #23, and #24 are letters dated 2 November 2005, 2 December 2005, 3 February 2006, 19 April 2006, 28 April 2006, 3 May 2006, and 11 July 2006, respectively, from the Town's solicitor to the Town. Document #17 is marked as "Solicitor/Client Privileged." Document #22 has a fax cover sheet indicating that it is "Solicitor-Client Privileged" and a letter marked as "Private and Confidential."

[66] Document #7 is a letter dated 14 October 2005 from the Town's solicitor to the Applicant's solicitor, listing the names and addresses of the clients of the Applicant's solicitor, including the Applicant.

[67] Document #15 is a letter dated 17 January 2006 from the Town's solicitor to another solicitor which encloses a copy of a letter dated 20 December 2005 sent by the Applicant's solicitor to the Town.

[68] Section 21 of the *ATIPPA* provides as follows:

21. The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege; or

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

[69] In Order F2004-015, the Alberta Information and Privacy Commissioner discussed a decision of the Supreme Court of Canada which established the criteria that must be met in order for a document to be subject to solicitor-client privilege. The Commissioner stated at paragraph 43:

[para 43] As set out in Solosky v. The Queen, [1980] 1 S.C.R. 821 (discussed in Order 96-015) a document must meet the following criteria for solicitor-client privilege to apply:

(i) it is a communication between solicitor and client,

(ii) which entails the seeking or giving of legal advice, and

(iii) which is intended to be confidential by the parties.

[70] In determining whether any of the documents in the responsive record are subject to solicitor-client privilege pursuant to section 21 of the *ATIPPA*, I have applied the above criteria stated by the Supreme Court of Canada in *Solosky*.

[71] I have reviewed the documents for which the Town has claimed the exception under section 21 and I find that all of the information in Documents #8, #17, #21, #22, and #23 is subject to solicitor-client privilege. Therefore, the Town was entitled to refuse disclosure of those documents to the Applicant.

[72] Document #7 is a letter from the Town's solicitor to the Applicant's solicitor and, therefore, does not meet the necessary criteria for solicitor-client privilege because it is not a communication between a solicitor and a client that involves the seeking or giving of legal advice. Furthermore, there is no indication that the information in the letter was intended by the parties to be confidential. Not being subject to solicitor-client privilege, Document #7 should have been disclosed to the Applicant. However, the names of the clients of the Applicant's solicitor referenced in the letter constitute those clients' personal information as defined in section 2(o)(i) of the *ATIPPA*, which provides as follows:

2. (o) "*personal information*" means recorded information about an identifiable individual, including
- (i) *the individual's name, address or telephone number,*

Therefore, the names of the clients (except the name of the Applicant) should be severed pursuant to section 30(1) of the *ATIPPA*, which provides as follows:

30. (1) *The head of a public body shall refuse to disclose personal information to an applicant.*

The name of the Applicant is his personal information but it need not be severed because of the operation of section 30(2)(a), which provides as follows:

30. (2) *Subsection (1) does not apply where*
- (a) *the applicant is the individual to whom the information relates;*

[73] Document #15 is not subject to solicitor-client privilege because it does not meet the necessary requirements set out above. As with Document #7, it is not a communication between a solicitor and a client that involves the giving or seeking of legal advice. Document #15 should have been disclosed to the Applicant, again following the rationale outlined above, with the names of the clients of the Applicant's solicitor severed (except the name of the Applicant).

[74] I note that Documents #9, #12, and #24, for which the Town has claimed solicitor-client privilege, all include a Statement of Account sent to the Town by the Town's solicitor. I discussed the issue of whether a solicitor's Statement of Account is subject to solicitor-client privilege in my Report 2006-006 and stated at paragraph 50:

Another point the Applicant wished to address was that in many instances, cover letters and additional pages detailing the legal work performed were not forwarded to him. His original request appears to focus on the release of legal costs. Even were one to conclude that the Applicant's request was broader in nature, it should be noted that the most recent and relevant case law, Ontario (Attorney General) v. Ontario (Assistant Information & Privacy Commissioner) 251 D.L.R. (4th) 65 (Ont. Ct. Appeal) 2005 CarswellOnt 947 (eC), acknowledges that there is a presumption that information as to the amount of fees paid is protected by privilege. In that case, the Court supported an order releasing only the total amount of legal fees paid, and the dates of those payments. The decision indicates that solicitor – client privilege has been differentiated from other exceptions in access to information legislation, removing part of the onus typically borne by the public body to explain why information should not be released, and placing it on the Applicant to explain why it should be released. The Court goes on to say that “the presumption will be rebutted if there is no reasonable possibility that disclosure of the amount of fees paid will directly or indirectly reveal any communication protected by the privilege.” The test used by the Court in this case is as follows:

If there is a reasonable possibility that the assiduous inquirer, aware of background information available to the public, could use the information requested concerning the amount of fees paid to deduce or otherwise acquire communications protected by the privilege, then the information is protected by the client/solicitor privilege and cannot be disclosed. If the requester satisfies the IPC that no such reasonable possibility exists, information as to the amount of fees paid is properly characterized as neutral and disclosable without impinging on the client/solicitor privilege.

[75] I find that there is no reasonable possibility that disclosure of the total amount of the fees charged by the Town's solicitor in the three Statements of Account will directly or indirectly reveal any communication that is protected by solicitor-client privilege. Therefore, in relation to Documents #9, #12, and #24 the information that discloses only the total fee amount charged by the Town's solicitor in the three Statements of Account should be disclosed to the Applicant. All other information in those three documents is subject to solicitor-client privilege and the Town

was entitled to refuse disclosure of that information. (Unfortunately, it appears that the final page of the Statement of Account for Document #24 was not included in the responsive record sent to my Office).

[76] The second group of documents I wish to discuss consists of Documents #6, #10, and #14, which are three letters (dated 12 October 2005, 10 November 2005, and 20 December 2005, respectively) sent by the Applicant's solicitor to the Town (the three letters reference the names of the clients of the Applicant's solicitor, including the Applicant). Although these three documents were not disclosed to the Applicant, in her letter dated 6 August 2007 to the Applicant, the Coordinator did not offer any reasons for the refusal to give access to the documents other than to state that the letters "were not included with the attached records." I have reviewed these documents and find that there is no exception under the *ATIPPA* which would allow the Town to refuse access to these documents and, therefore, they should be disclosed to the Applicant, with a severing of the names of the clients of the Applicant's solicitor (other than the name of the Applicant) pursuant to section 30(1) of the *ATIPPA*.

[77] I now wish to discuss Documents #4, #11, and #25. Document #4 is a Deed of Confirmation dated 1 August 2005 and registered at the Registry of Deeds on 5 August 2005. The document has been disclosed to the Applicant but information has been severed by the Town pursuant to section 30(1) as constituting personal information. Document #11 consists of the following individual documents: a fax cover sheet sent to the Applicant's solicitor by another solicitor advising of the results of a search conducted by a professional searching service at the Registry of Deeds and the Registry of Crown Titles and Records, a summary of the documents located during the search, copies of the documents found during the search, and a copy of the invoice from the searching service sent to the solicitor. The Town has disclosed this document to the Applicant but has severed certain information claiming that it is personal information and, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. Document #25 is a Right of Way Agreement dated 3 May 2006 and registered at the Registry of Deeds on 26 January 2007. The Town has disclosed this document to the Applicant but has severed certain information, again claiming that it is personal information and, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*.

[78] Document #4 and Document #25 have been registered at the Registry of Deeds, a public registry created by section 3 of the *Registration of Deeds Act*, R.S.N.L. 1990, c. R-19, which provides as follows:

3. (1) There shall be a Registry of Deeds for the registration of deeds and other documents for this province.

(2) The registry shall be situated in St. John's, at the place that the Lieutenant-Governor in Council shall appoint.

(3) The registry shall be provided with fireproof safes or vaults for the preservation of records, books, papers, microfilm, microfiche, tapes, negatives, computer software and computer hardware belonging to the registry, and of all deeds and other documents deposited there for registration.

[79] The Town has disclosed a copy of these two documents to the Applicant but has severed the names of individuals contained therein claiming that the names are personal information which should not be disclosed in accordance with section 30(1) of the *ATIPPA*.

[80] Section 30(1) contains a mandatory prohibition against the disclosure of personal information, which is defined in section 2(o) of the *ATIPPA* as follows:

2. (o) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, address or telephone number,

...

(iii) the individual's age, sex, sexual orientation, marital status or family status,

[81] I find that the names of the individuals contained in Document #4 and Document #25 constitute personal information as defined in section 2(o)(i) of the *ATIPPA*.

[82] Having found that the names constitute personal information, I must now look to Section 30(2) which provides for a number of exceptions to the general rule set out in section 30(1). Section 30(2) states in part as follows:

30. (2) *Subsection (1) does not apply where*

...

(d) *an Act or regulation of the province or Canada authorizes the disclosure*

[83] I commented on section 30(2)(d) of the *ATIPPA* in my Report 2005-003, in which I had to decide if the names of the members of the Board of Directors of a corporation listed in a record of a government department should have been disclosed. I stated at paragraph 25:

[25] Section 2(o) defines personal information, and this definition includes “an individual’s name.” Some access legislation, such as Nova Scotia’s Freedom of Information and Protection of Privacy Act, uses a “harms test” to determine whether disclosure of personal information, (a person’s name, for example), would be an unreasonable invasion of the third party’s privacy. Instead of taking this route, the ATIPPA contains specific exceptions, and only these exceptions can be used to justify the release of personal information. The Department has confirmed that it believes that Section 30(2)(d) would apply in this case, because the Third Party is a legally incorporated entity, and under the Corporations Act, the names of Boards of Directors are to be publicly disclosed. I am satisfied therefore that the names of the Board of Directors of the Third Party are already publicly available as authorized by the above-noted Act and should not therefore be severed.

[84] Following the reasoning from Report 2005-003, the names of the individuals contained in Document #4 and Document #25 should be disclosed even though they constitute personal information if there is an Act or regulation of the province or of Canada that authorizes the disclosure of the names.

[85] The Registry of Deeds is a public registry and the information contained in the documents registered in that registry is readily accessible by members of the public. The public nature of the Registry of Deeds is provided for in sections 36 and 37 of the *Registration of Deeds Act*:

36. (1) The registrar shall, when requested in writing for the purposes of the Quieting of Titles Act, make searches and furnish copies of all deeds and other documents registered in the registry.

(2) The registrar shall, when requested in writing, provide certified copies and extracts of deeds and documents which shall be signed by the registrar.

37. (8) *During the regular office hours of the registry, a person may on filling out a requisition form indicating with reasonable certainty the object of search and on payment of the prescribed fee, inspect the books, documents, microfiche, microfilm and the computer storage and retrieval system in the registry relating to his or her stated object.*

[86] Therefore, the disclosure of all information in documents registered in the Registry of Deeds is authorized by the *Registration of Deeds Act*, which is an Act of this province. The result being that the disclosure of the names of the individuals contained in Document #4 and Document #25 is authorized by an Act of this province and the disclosure is, therefore, by the operation of section 30(2)(d) of the *ATIPPA*, not prohibited by the mandatory non-disclosure rule in section 30(1) of the *ATIPPA*.

[87] As such, the names of the individuals contained in Document #4 and Document #25 should not be severed as personal information pursuant to section 30(1) of the *ATIPPA*.

[88] I adopt the same approach I took in relation to Documents #4 and #25 for Document #11. As I have indicated above, Document #11 consists of a number of individual documents, which I will discuss next.

[89] Document #11 contains a copy of four documents that have been registered at the Registry of Deeds. The Town has disclosed the four documents to the Applicant but has severed the names of individuals found in the documents. As I did in relation to Document #4 and Document #25, I find that while the names of the individuals contained in the four documents constitute personal information within the meaning of section 2(o)(i) of the *ATIPPA*, this information should be disclosed to the Applicant pursuant to section 30(2)(d) of the *ATIPPA* and section 37(8) of the *Registration of Deeds Act*.

[90] Document #11 also contains a copy of a Crown Grant which is registered at the Registry of Crown Titles and Records. This is a public registry maintained by the Crown Lands Administration Division of the Department of Environment and Conservation under authority of the *Lands Act*, S.N.L. 1991, c. 36. Section 37 of the *Lands Act* provides the following in relation to the registry:

37. (1) All applications and duplicates of all grants, leases, licences or easements and copies of surveys shall be kept and recorded in the division and all those records shall be open to the inspection of the public for a prescribed fee during normal business hours.

(2) A person may obtain a copy of a grant, lease, licence, easement or application kept in the division upon the payment of a prescribed fee.

[91] The Town has severed the names of individuals found in the Crown Grant contained in Document #11 claiming that the names constitute personal information and are, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. I agree that the names constitute personal information within the meaning of section 2(o)(i) of the *ATIPPA* but disagree with the Town in relation to its refusal to disclose the names pursuant to section 30(1). I find that disclosure of the names is authorized by section 30(2)(d) of the *ATIPPA* and section 37 of the *Lands Act*.

[92] Document #11 also contains a summary compiled by the professional searching service of the information found in the documents registered in the Registry of Deeds (four documents) and in the Registry of Crown Titles and Records (one Crown Grant). The Town has severed the names of individuals recorded in the summary, claiming that the names are personal information and, therefore, should not be disclosed pursuant to section 30(1) of the *ATIPPA*. I agree that the severed names constitute personal information within the meaning of section 2(o)(i) and should not be disclosed. I find that the exception set out in section 30(2)(d) does not apply to the personal information found in the summary, nor do any of the other exceptions set out in section 30(2).

[93] Document #5 consists of four affidavits sworn to on 18 November 2005. The contents of the four affidavits are essentially the same with the exception of information on the name, age and family status of the four individuals who swore to the affidavits. The Town has disclosed the four affidavits to the Applicant but has severed certain information claiming it is personal information and, therefore, should not be disclosed pursuant to section 30(1). Although the contents of the four affidavits are essentially the same, the information that has been severed by the Town is not the same on the four affidavits. The result being that the only information not disclosed to the Applicant consists of the name, age, place of residence, and family status of

some of the persons who swore to the affidavits and the names of other individuals referred to in the affidavits. I find that this information constitutes personal information as defined in paragraphs (i) and (iii) of section 2(o) and was properly severed pursuant to section 30(1) of the *ATIPPA*.

[94] Document #13 is a letter dated 15 November 2005 from a solicitor to the Applicant's solicitor. The Town has disclosed this document to the Applicant but has severed the names of a number of individuals and the age of one individual referred to in the letter, claiming that the names and the age constitute personal information and are, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. I find that the severed names constitute personal information as defined in section 2(o)(i) and the severed age constitutes personal information as defined in section 2(o)(iii). As such, I find that the names and ages were properly severed pursuant to section 30(1) of the *ATIPPA*.

[95] Document #16 is a letter dated 26 January 2006 from a solicitor to the Town's solicitor. The Town has disclosed this document to the Applicant but has severed information containing a family name claiming that it is personal information and, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. I agree with the Town in this regard.

[96] Document #18 is a letter dated 4 April 2006 sent to the Minister of Municipal Affairs (with a copy sent to the Town and to the Applicant's solicitor) and signed by the Applicant and other individuals. The Town has disclosed this document to the Applicant but has severed the names of individuals (including that of the Applicant) claiming that the names constitute personal information and are, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*.

[97] In relation to Document #18, I find that the severed names (except the name of the Applicant's solicitor) constitute personal information as defined in section 2(o)(i) of the *ATIPPA*. I find also that the Town has properly severed the names as personal information pursuant to section 30(1), with the exception of the name and signature of the Applicant. The Applicant's name and signature constitute personal information but they are not subject to the non-disclosure rule in section 30(1) because of the operation of section 30(2)(a). Therefore, I find that the Town

has properly severed the names of the individuals referred to in Document #18 with the exceptions of the Applicant's name and signature and the name of the Applicant's solicitor (who received the letter in a professional capacity).

[98] Document #19 is a letter dated 7 April 2006 sent to the Minister of Municipal Affairs by the Town (with copies sent to the Town's solicitor, the Applicant's solicitor, the Applicant, and four other individuals). The letter has a number of attachments. The Town has disclosed the letter and the attachments to the Applicant but has severed the names of individuals mentioned in the letter and the attachments, including the names of the persons to whom a copy of the letter was sent, claiming that the names are personal information and, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. I find that the names of all the individuals (except those of the Town's solicitor and the Applicant's solicitor, who received the letters in their professional capacities) referred to in the letter and attachments constitute personal information as defined in section 2(o)(i) of the *ATIPPA*. As such, I find that the Town has properly severed those names as personal information pursuant to section 30(1), with the exception of the name of the Applicant. The Applicant's name constitutes personal information but is not subject to section 30(1) by the operation of section 30(2)(a).

[99] Document #20 is an unsigned Right of Way Agreement. The Town has disclosed this document to the Applicant but has severed the names of individuals referred to in the agreement, claiming that the names constitute personal information and are, therefore, excepted from disclosure by section 30(1) of the *ATIPPA*. I agree with the Town in this regard.

IV CONCLUSION

[100] The Town of Torbay has failed to achieve the most basic purpose of the *ATIPPA*, to be more accountable to the public as mandated by section 3 and has failed to meet the statutory duties imposed upon it by sections 9, 11, and 12. Furthermore, the Town has demonstrated a complete lack of understanding of the purposes of access to information legislation and of how a request under the *ATIPPA* should be properly handled.

[101] The Town of Torbay has acted irresponsibly toward the Applicant and toward my Office and must adopt a more courteous, efficient, and helpful attitude toward Applicants and my Office.

[102] In relation to the disclosure of the responsive records, the Town should have disclosed to the Applicant Documents #4 and #25 in their entirety.

[103] The Town was entitled pursuant to section 21 to refuse disclosure of information in those records which are subject to solicitor-client privilege, namely Documents #8, #9, #12, #17, #21, #22, #23, and #24.

[104] The Town was entitled to sever personal information contained in the responsive record but not the personal information found in documents that have been registered in public registries and not the personal information of the Applicant. Specifically, the Town was correct in relation to the personal information it severed in Documents #5, #13, #16, and #20.

V RECOMMENDATIONS

[105] Under the Authority of section 49(1) of the *ATIPPA*, I hereby make the following recommendations:

1. That the Town release to the Applicant Documents #4 and #25, with no information severed;

2. That the Town release to the Applicant Documents #6, #10, and #14, with a severing of the names of the clients of the Applicant's solicitor severed, except for the name of the Applicant;
3. That the Town release to the Applicant Documents #7 and #15 with the names of the clients of the Applicant's solicitor severed (with the exception of the Applicant's name);
4. That in relation to Documents #9, #12, and #24, the Town release to the Applicant the information disclosing the total amount of the fees charged by the Town's solicitor as set out in the Statements of Account found in those three documents;
5. That the Town release to the Applicant Document #11 with the names of the individuals contained in the summary prepared by the professional searching service severed;
6. That the Town release to the Applicant Document #18 with the names of the mentioned individuals severed, with the exception of the Applicant's name and signature and the name of the Applicant's solicitor;
7. That the Town release to the Applicant Document #19 with the names of the mentioned individuals severed, with the exception of the names of the Applicant, the Applicant's solicitor, and the Town's solicitor;
8. That the Town forward a letter to the Applicant apologizing for the manner in which it dealt with his access to information request, with a copy of that letter forwarded to this Office;
9. That the Town ensure that its Access and Privacy Coordinator has received adequate training from the ATIPP Office of the Department of Justice and provide written confirmation to this Office that such training has been received;
10. That the Town appoint an Alternate Access and Privacy Coordinator, who is to perform the required duties of the Access and Privacy Coordinator when that Coordinator is away from

the Town's office or is performing other duties, and the Town is to ensure that the Alternate Access and Privacy Coordinator receives adequate training from the ATIPP Office of the Department of Justice, with written confirmation of the appointment and the training of the Alternate Access and Privacy Coordinator to be forwarded to this Office; and

11. That the Town ensure that both its Access and Privacy Coordinator and its Alternate Access and Privacy Coordinator have a copy of the *ATIPPA Policy and Procedures Manual*, produced by the Access to Information and Protection of Privacy Coordinating Office with the Provincial Department of Justice.

[106] Under authority of section 50 of the *ATIPPA* I direct the head of the Town of Torbay to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the Town's final decision with respect to this Report.

[107] Please note that within 30 days of receiving a decision of the Town of Torbay 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*.

[108] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of September 2007.

Philip Wall
Information and Privacy Commissioner
Newfoundland and Labrador