



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2018-027

December 19, 2018

Town of Placentia

Summary:

An Applicant made three access to information requests to the Town, addressed to the Mayor. After receiving no response or acknowledgment of the requests from the Town, the Applicant complained to this Office. While the Town processed the requests after intervention by this Office, significant issues remained with the completeness of the responsive records, the reasonableness of the Town's search and the Town's compliance with the *ATIPPA, 2015*. The Commissioner recommended that all Town employees and Council members receive formal access to information training.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 16, 109 and 110.

Authorities Relied On:

Newfoundland and Labrador OIPC Report [A-2018-020](#)

I BACKGROUND

- [1] The Complainant submitted an access to information request to the Town of Placentia on June 28, 2018 and two further requests on June 29, 2018. The requests sought information relating to a dispute between the Complainant and the Town regarding the Complainant's property and enforcement action taken by the Town. The Complainant submitted the requests using the appropriate form via email to mayor@placentia.ca. The Complainant received no response or any acknowledgement that the Town received the requests.
- [2] On August 7, 2018, 26 and 27 business days after submission of the Complainant's requests, he filed a complaint with this Office alleging that the Town refused the three requests. We commenced an investigation and confirmed that the Mayor received and viewed the requests and that the Town took no action to respond to the requests.
- [3] During the course of our investigation, the Town responded to the access requests. As significant concerns remained as to the completeness of the responsive records, we also investigated the substance of the Town's responses.

II COMPLAINANT'S POSITION

- [4] In his three requests, the Complainant sought copies of two residential development applications and "...a copy of information received to order the removal of my trailer located on my property @ [address] on [date]."
- [5] The Complainant noted in his complaint that published minutes of a public meeting of the Town council held on April 17, 2018 stated:

"Head of the Body

The Executive Committee recommended that Council approve the motion to appoint the Mayor of the Town of Placentia as head of the municipality in consideration of ATIPP requirements.

Motion #18-130 Councillor Smith/Deputy Mayor Pearson

Be it resolved that the motion to appoint the Mayor of the Town of Placentia as head of the municipality in consideration of ATIPP requirements is adopted.

(Carried: Mayor Power, Deputy Mayor Pearson, Councillors Collins, Hynes and Smith voted in favour of the motion.)”

Based on this information the Complainant submitted the three access requests via the mayor@placentia.ca email address.

- [6] After the Town acknowledged and responded to the Complainant’s three requests, the Complainant alleged several deficiencies in the responsive records:
- a. Several records were poorly reproduced and were difficult to read;
 - b. The identities of several councilors and Town employees were withheld from correspondence discussing Town business;
 - c. Records from the Town’s Municipal Enforcement Officer (the “MEO”) appeared incomplete, including references to “documented” complaints which did not appear in the responsive records;
 - d. It appeared that a third party, and not the MEO, took several of the pictures documenting the Complainant’s property, but the identity of the third party was not disclosed.

III PUBLIC BODY’S POSITION

- [7] The Town noted that while it designated the Mayor as the head of the Town for the purposes of the *ATIPPA, 2015*, it designated the Town’s Chief Administrative Officer as the coordinator and that person should receive all access to information requests. The online directory of coordinators maintained by the ATIPP Office reflect this designation with an email address of townofplacentia@placentia.ca.
- [8] The Town acknowledged that it received the three access to information requests at the mayor@placentia.ca address, and that the Mayor read the requests. However, the Town

contended that the Mayor assumed that the Complainant also sent the requests to the coordinator. Accordingly, the Mayor took no action on receiving the three requests.

[9] Following the further complaints related to the substance of the Town's response, the Town was able to address some of the issues in the course of our investigation. The Town was able to provide an explanation for the poor quality of several records, being that the copies in the Town's custody or control were similarly poor. The Town also agreed to provide the Complainant with un-redacted copies of internal correspondence, accepting the Complainant's position – and that of this Office – that the names and other personal information did not qualify for an exception to disclosure as they related to the public functions of Town employees and elected officials.

[10] With regard to the records relating to the receipt of complaints and the MEO's investigation of same, the Town maintained that no records existed as the MEO likely received the complaint over the telephone.

IV DECISION

[11] Section 109 of the *ATIPPA, 2015* requires every public body to designate a head for the public body. Municipalities must pass a by-law or resolution designating the head. Motion 18-130 satisfied this requirement of the *ATIPPA, 2015* and duly appointed the Mayor as the head of the Town of Placentia for the purposes of the *Act*. While in practice the head may delegate many responsibilities under the *Act* to the coordinator or other staff, the head bears ultimate responsibility for ensuring that the public body complies with the *ATIPPA, 2015*.

[12] Section 110 of the *ATIPPA, 2015* further requires a head of a public body to designate a person on the staff of the public body as the coordinator. The duties of the coordinator include receiving and processing requests made under the *ATIPPA, 2015*. When the Complainant made his three access to information requests, the Town's Chief Administration Officer was the designated coordinator. Ordinarily applicants address

requests to a public body's coordinator but the *Act* simply references "making a request to the public body".

[13] While the Town properly designated its head and its coordinator, the Town has a duty under section 13 to assist applicants. Even though the Complainant addressed the requests to the head of the public body rather than the coordinator, the expectation of this Office is that staff and elected officials of a public body recognize an access request and ensure that the coordinator responds. The Mayor, as designated head of the Town, should have confirmed that the Town was processing the access requests when he received them through his direct email account, especially as the Complainant did not copy any other Town staff on the emails.

[14] To the Town's credit, it immediately processed the Complainant's three requests when our Office became involved. The responses however were 23 and 24 days outside of the mandatory 20-business day deadline in the *Act*. Further, several significant issues remained with the Town's response to the access requests and the records provided to the Complainant.

[15] While all issues were resolved prior to the conclusion of our investigation and the preparation of this Report, the most significant deficiencies related to a series of emails between Town councillors and employees discussing enforcement efforts against the Complainant's property. The version provided to the Complainant on August 30 redacted the names of councillors and employees. Further, the emails clearly referred to the Town's receipt of complaints and to further documentation of the issues. However, the Town's response did not include responsive records relating to these topics.

[16] In response to suggestions from this Office, the Town agreed to provide a copy of the emails including the names of councillors and employees. The Town also provided excerpts from two reports submitted by the MEO to the Town's Public Safety Committee wherein the MEO reported on matters that were responsive to the Complainant's requests. Statements from the MEO in these reports referred to efforts to obtain quotes from third parties to remediate the Complainant's property. Notwithstanding the comments from the MEO in the

reports, the Town stated that no further documentation existed relating to any complaints received about the Complainant's property. The Town further indicated that it was likely any complaints were either in person or over the telephone.

[17] Following our review of this information, this Office asked the Town to provide the full reports rather than excerpts and to provide records related to the MEO's solicitation of quotes from third parties. The Town provided emails between the MEO and various contractors, albeit with the names of the third party businesses improperly redacted and, in one case, without also providing attachments. These issues were eventually rectified. In addition to the two MEO reports noted above, the Town also managed to find a third responsive record that consisted of the MEO's notes.

[18] Despite providing a further batch of responsive records, it became apparent that the Town had still not made full disclosure of all responsive records in its custody or control. The newly discovered notes from the MEO referred to pictures that the MEO had taken of the Complainant's property. The Town did not provide these pictures, or acknowledge their existence. This necessitated a further request from this Office that the Town locate and provide these records.

[19] The Town provided the Complainant with nine pictures. However, following his review of these new records, the Complainant noted that it appeared someone other than the MEO had taken several of the pictures. This raised new questions about the Town's initial claim that it did not have responsive records related to complaints received about the Complainant's property. Following prompting from this Office, the Town eventually admitted that responsive records relating to a complaint received by the Town about the Complainant's property did exist in the form of a series of text messages sent to the MEO. This Office previously noted in Report A-2018-020 that text messages, Blackberry Messages (BBM's) and similar electronic communications are records in the custody or control of a public body and subject to disclosure in response to an access to information request. Fortunately, in the present matter, the text messages still existed and the Town provided screenshots to the Complainant. The screenshots also disclosed a tenth photograph not previously disclosed.

V CONCLUSIONS

[20] The Town failed to respond to the Complainant's access to information requests within the legislated timelines. While receiving and processing access to information requests is not amongst the duties of a head of a public body, the head is responsible for designating a coordinator and should have taken steps to ensure that the access to information requests were processed by the coordinator.

[21] Further, as can be seen in the lengthy history of this investigation and the frequent involvement of this Office to identify responsive records and to recommend their release, the Town failed in its duty to assist the Complainant under section 13 generally and in particular, it failed in its obligation to conduct a reasonable search. The Town's efforts to locate responsive records were markedly deficient. Furthermore, in responding to the Office's investigation, the Town frequently made assurances (such as the lack of any records relating to a complaint and that the MEO had taken the pictures himself) that later proved to be inaccurate.

VI RECOMMENDATIONS

[22] Having concluded that the Town failed to meet the duty to assist in accordance with section 13, including a failure to conduct a reasonable search; and that the Town failed to adhere to the deadline for responding to a request set by section 16 of the *ATIPPA, 2015*, I recommend that the Town take steps to:

- a. Put into effect policies and procedures for responding to access to information requests; and
- b. Ensure that all staff and councillors receive formal privacy training within 90 days of the date of this Report and provide confirmation to the OIPC once complete.

[23] As set out in section 49(1)(b) of the *ATIPPA, 2015*, the head of the Town of Placentia must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[24] Dated at St. John's, in the Province of Newfoundland and Labrador, this 19th day of December 2018.

Donovan Molloy, Q.C.
Information and Privacy Commissioner
Newfoundland and Labrador