



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

**A-2021-004**

**January 21, 2021**

**Town of Gander**

**Summary:**

The Town of Gander (the “Town”) received an access request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) for records relating to the Town’s Wastewater Treatment Plant. The Town responded providing 89 records to the Complainant. The Complainant made a complaint to this Office stating that they had not received all requested records and that they believed that further records existed. Through the informal investigation process some further records were located and provided to the Complainant, but five items requested by the Complainant remained outstanding. The Town described its search and the Commissioner concluded that the Town had fulfilled its duty under section 13 (duty to assist) of *ATIPPA, 2015*.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#),  
S.N.L. 2015, c. A-1.2, section 13

**Authorities Relied On:**

NL OIPC Reports [A-2009-011](#) and [A-2019-023](#)

OIPC Practice Bulletin – Reasonable Search

## I BACKGROUND

- [1] The Complainant made an access request under the *Access to Information and Protection of Privacy Act, 2015*, (“*ATIPPA, 2015*” or “the *Act*”) to the Town of Gander (the “Town”) for various records related to the Town’s Wastewater Treatment Facility. The Town responded to the request providing a total of 89 records to the Complainant.
- [2] The Complainant made a complaint to this Office indicating that there were a number of records that had not been provided, or only partially provided.
- [3] The Complainant’s request included 14 items. After the Town’s final response to the request, there were 6 items outstanding or partially outstanding. During informal resolution efforts, the Complainant identified one additional issue, and two of the original issues were resolved, leaving the following items outstanding:
- 1) Information on grit requirements
  - 2) Individual Committee members’ evaluations of RFPs
  - 3) Minutes related to debriefing with disqualification bidder
  - 4) Minutes relating to hiring of new technical consultant
  - 5) Information relating to change order #10
- [4] As informal resolution was unsuccessful with regard to the above outstanding items, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## II COMPLAINANT’S POSITION

- [5] The Complainant argues that the Town failed to provide all of the requested records, thus failing in its duty to assist.

## III PUBLIC BODY’S POSITION

- [6] In terms of reasonableness of search, the Town provided a detailed description of the search. It was conducted by the ATIPP Coordinator with the assistance of the Town’s

Information Technology Manager and Director of Engineering, using key word searches of Town employee emails, as well as the Town's electronic filing system. The organization of the electronic filing system allowed for a search of all records related to the Wastewater Treatment Facility. All related folders and sub folders were searched and all results were reviewed by the ATIPP Coordinator. Given the volume of information requested, and the difficulty in narrowing down the request, the Coordinator made the decision to err on the side of inclusion.

- [7] After the Town was notified by this Office of the complaint, a second search was completed in which the Town specifically searched for the records the Complainant identified as missing from the original response and did locate some further records which were subsequently provided to the Complainant. The Town also did an additional search of all offices of employees who may have had paper records which had inadvertently not been included in the electronic filing system. No further records were identified during this search. Additionally, despite having no obligation to do so, the Town created a summary document to clarify the financial information previously provided to the Complainant.
- [8] The Town has indicated that there are no further records and that it has provided all related records in its possession.

#### IV DECISION

- [9] A public body's duty to conduct a reasonable search for records responsive to an access request is found in section 13 of *ATIPPA, 2015*, the relevant portion of which reads as follows:

*13.(1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.*

- [10] This Office has elaborated on the content of this provision in a number of previous Reports, as outlined in Report A-2009-011:

*[80] ...First, the public body must assist an applicant in the early stages of making a request. Second, it must conduct a reasonable search for the requested records. Third, it must respond to the applicant in an open, accurate and complete manner.*

[11] For a more recent Report summarizing the duty to assist and reasonable search, see Report A-2019-023.

[12] Our Practice Bulletin on Reasonable Searches outlines that a reasonable search is one conducted by knowledgeable staff in locations where the records in question might be reasonably located. The standard for assessing a public body's efforts is "reasonableness", not perfection.

[13] With respect to the issue 1 identified above, the Complainant requested:

*Information on the original design requirements as outlined in the RFP and the logic behind these requirements and in particular the requirements that all proposals must include a mechanical grit chamber. Please include all discussion (emails, meeting minutes etc) on this issue*

[14] The initial search did not find any relevant records on the issue of the requirement for a mechanical grit chamber. During the investigation, the ATIPP Coordinator looked further into this issue and discovered that the requirement is a provincial requirement. Having this information, the Coordinator was able to locate an email between the Town and the Department of Municipal Affairs and Environment. This email was provided to the Complainant.


[15] Regarding issue 2, the Town indicated that it provided the Complainant with all of the evaluation material it had. The Town provided the Complainant with a two page document including a scorecard and notes on the evaluation of each bidder. In an effort to ensure there were no further records, the ATIPP Coordinator specifically asked the Director of Engineering if there were any additional records and requested that a second search be completed. No further records were located during this second search.

- [16] In reference to issues 3 and 4, the Town indicated that 13 sets of minutes related to the Wastewater Treatment Facility had been released, which constitute all of the minutes on the subject. The Town has no further minutes to provide, and no minutes on the subject have been withheld.
- [17] Finally, in relation to issue 5, the Town has provided the Complainant with change order #10 and 18 pages of correspondence relating to the change order. We find no evidence to conclude that additional records should exist.
- [18] The Complainant's original request was very substantial and while the Town did miss some information in its original response, once the investigation process began the Town worked diligently to provide the Complainant with any missing information. In fact, the Town went as far as to create records to assist the Complainant.
- [19] In summary, the Town provided a description of the areas and record types searched; identified knowledgeable officials who conducted the search and additional searches; and created a document to summarize the financial records provided. As such, there is no evidence that the Town failed to conduct a reasonable search or failed in its general duty to assist.

## V RECOMMENDATIONS

- [20] Under the authority of section 47 of *ATIPPA, 2015*, I find that the Town of Gander has conducted a reasonable search for records and responded to the Complainant appropriately under section 13 of *ATIPPA, 2015*. Therefore, I recommend that the Town of Gander maintain its position regarding these matters.
- [21] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Gander 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.

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 21<sup>st</sup> day of January, 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador