



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

A-2021-027

June 17, 2021

### Town of Salmon Cove

**Summary:**

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”) to the Town of Salmon Cove (the “*Town*”). The Town did not respond to the request within the 20 business days as required by the *Act*. The Complainant filed a complaint with this Office asking that the Town’s deemed refusal be investigated. The Commissioner found that the Town had not met its duties under the *Act* and recommended that the Town review its policies and obtain training.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 15, 16, and 17.

## I BACKGROUND

- [1] On February 17, 2021 the Complainant made an access to information request under the *Access to Information and Protecting of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the Town of Salmon Cove (the “Town”).
- [2] The Town did not respond to the request in the 20 business days required by the Act. Per section 16(2), where a public body fails to respond to an access to information request within 20 business days, that public body is deemed to have refused the request and the applicant automatically has a right of appeal to this Office. On March 18, 2021 the Complainant made a complaint to this Office requesting that the Town’s deemed refusal be investigated. This complaint is limited to the deemed refusal of the Complainant’s access to information request and will not deal with the content of the formal response or the reasonableness of any searches conducted by the Town.
- [3] On March 23, 2021 this Office began an investigation into the deemed refusal by providing notification of the complaint to the email address listed for the Town ATIPP Coordinator. On April 1, 2021, the Town contacted this Office regarding another matter, and at that time an update was requested in relation to the Town’s submissions for this complaint. The Town indicated that the Coordinator was on extended leave and the Town was not aware of the complaint, but indicated that it would undertake to respond to the complaint.
- [4] Throughout the informal resolution period, the Town was informed by this Office on a number of occasions that it was required to provide a formal response to the Complainant’s request. Some informal attempts were made by the Town to respond to the request and provide some records to the Complainant, including inviting the Complainant to the Town Office to view paper records. However, after the Complainant attended the Town Office they determined that the paper records were not responsive to the request and did not contain the information they were seeking. The Town did not provide a formal response to the request until 56 business days after the request was made, and after being informed that this Office would be conducting a formal investigation. This formal response noted that there were no responsive records.

[5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## II PUBLIC BODY'S POSITION

[6] Initially the Town indicated that it believed that a response to the request was not required, as the Complainant had declined to pay costs associated with an earlier, separate, request. Once the Town was informed that this was a wholly separate request that required a formal response, it began to look into how to fulfil the request.

## III COMPLAINANT'S POSITION

[7] The Complainant takes the position that the present request was a wholly separate request from their previous requests, and therefore required a response from the Town.

## IV ISSUES

[8] The issues to be addressed in this report are:

1. Has the Town breached their duty under section 13 by failing to respond to the applicant in an open, accurate, and complete manner?
2. Has the Town breached their duty under section 15 by failing to provide an advisory response within 10 business days of receiving the request?
3. Has the Town breached their duties under sections 16 and 17, by failing to provide the Complainant with formal response to their request?

## V DECISION

[9] The Town's response to the Complainant's access request failed to meet the minimum requirements as set out in sections 13, 15, 16, and 17 of the Act. It did not communicate with the Complainant upon receiving the request, did not provide an advisory response, and did not provide a formal response to the request until 56 business days after the request was made.

[10] Additionally, the ATIPP Coordinator went on extended leave and did not notify or set an automatic response in their email, to inform those attempting to make contact with the Town for matters related to *ATIPPA, 2015* that they were unavailable and should contact the backup coordinator. The backup coordinator did not seem to have the training or supports necessary to successfully manage the active requests and complaints while the regular Coordinator was unavailable.

## VI RECOMMENDATIONS

[11] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend that the Town of Salmon Cove:

- 1) Review its access to information policies and processes in detail to determine the causes of the delays and failures, and implement measures to reduce or eliminate them in future;
- 2) Comply in future with the statutory duties imposed upon it by sections 13, 15, 16 and 17 of the *Act*, to respond to an applicant in an open, accurate and complete manner, without delay, and in any event within the statutory deadlines, including keeping the applicant informed, maintaining open communication throughout the process, and providing the applicant with the necessary information so they can exercise their rights under the *Act*, including the right to file a complaint regarding a deemed refusal;
- 3) Within 90 days of release of this report arrange for training of the Coordinator and backup Coordinator regarding statutory requirements and appropriate procedures for responding to access requests;

[12] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Salmon Cove 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.

[13] Dated at St. John's, in the Province of Newfoundland and Labrador, this 17<sup>th</sup> day of June 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador