



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2022-022

October 13, 2022

### Town of Bauline

**Summary:**

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Town of Bauline for information relating to a councillor's alleged use of Town property for personal use. The Town compiled answers to the Complainant's questions and provided a responsive email chain. The Complainant filed a complaint with this Office as they believed that there should be more records. The Commissioner found that the Town had conducted a reasonable search for records, and recommended no further action be taken.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 8 and 13.

**Authorities Relied On:**

NL OIPC Report [A-2009-011](#), [A-2017-023](#).

OIPC Practice Bulletin – [Reasonable Search](#).

## BACKGROUND

[1] 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 Bauline (the “Town”) seeking information related to the alleged use by a Town councillor of an electrical outlet to charge a personal electric vehicle. The request was presented to the Town as follows:

*Therefore request following information in all means of communication including Meetings, emails, texts, telephone conversations, chat, zoom, and any other forms of communications*

1. *Was town employees and council members aware this was happening*
2. *Did this councillor do it on there own illegally without anybody else’s knowledge*
3. *Why would a councillor be allowed to prevail of this unaccepted service*
4. *What costs have been incurred by residents since this councillor obtained this electrical cost free of charge*
5. *Since this broke open 2 weeks ago all councllors were aware of this and strong evidence including photos were given to all members, why have not any members or mayor replied back to sent emails requesting why this happen and what action was taken,*
6. *This been a serious violation of abuse of duties by an elected council member why has town kept silent and not release a public statement regarding this*
7. *Did council really considered after seeing pictures of this ,that this was a major safety hazard of possibility of fire occurring as this was only a 1/10 outlet with possibility of electrical fire, destroying part or all of community Centre as this occurrence was happening in overnight hours most time and left unattended and this outlet was not an approved electrical charging station for electric vehicles*
8. *What correspondence was requested from outside services including municipalities dept. nfld gov. and what correspondence was received back, please quote all means of communications in all formats*
9. *what action has taken place since this occurrence, is there going to be a public announcement*

[2] The Town responded by providing the Complainant with written answers to the questions posed. The Town also provided responsive records, consisting of a chain of emails. The Complainant was not satisfied and filed a complaint with this Office.

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

## PUBLIC BODY'S POSITION

- [4] The Town argued that it had provided the Complainant with all responsive records in its custody or control. It indicated that most discussions on the issue of a councillor's use of Town property were conducted orally and aside from the records already provided, no other records were created.
- [5] The Town stated that the Town Manager, who is also the ATIPP Coordinator, carried out the search for records. This individual was involved in the decision-making related to the issue and, as such, was very familiar with what records existed and where they were located.
- [6] Over the course of this investigation, the Town conducted additional searches at the request of this Office. None of those searches located any additional records.

## COMPLAINANT'S POSITION

- [7] The Complainant believes that further records should exist. They also take issue with the contents of the answers provided by the Town. The Complainant has expressed that they do not agree with how the decision was made or how the process was handled by the Town.

## ISSUES

- [8] The sole issue to be addressed is the question of whether the Town conducted a reasonable search for records.

## 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*. This Office has elaborated on the content of this provision in a number of previous Reports, including for example 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.

[10] 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 reasonably be located. The standard for assessing a public body's efforts is reasonableness, not perfection.

[11] The Town indicated that all decisions relating to the matter were made verbally and no records were created. The councillor approached the Town Manager – who, as noted above, is also the ATIPP Coordinator – with the request to charge their vehicle on Town property. Further discussions between the Town Manager and other councillors followed. Once the access request was received, the ATIPP Coordinator searched those locations where responsive records would reasonably be located. Given their senior position in the Town's administration, as well as familiarity with the councillor's request to charge the vehicle, the ATIPP Coordinator would be a person knowledgeable of the subject matter of the request and any responsive records.

[12] If there were any concerns that the ATIPP Coordinator, having been involved in the subject matter of the request, may have been in a conflict of interest in processing the Complainant's access request, these concerns were allayed during the course of the investigation as additional searches for records were conducted by a different employee of the Town. These searches also did not locate any further records. We are also satisfied that those additional searches were conducted by a person knowledgeable about the records and of those locations where responsive records should exist.

[13] The Complainant expressed that they believed there should be records relating to the decision making process. However, *ATIPPA, 2015* does not include a duty of document. As such, there is no legal duty requiring the Town to create records documenting its decision-making process. While it may be advisable for public bodies to create such records, there is no requirement to do so and this Office has no oversight over their creation. *ATIPPA, 2015*

only applies to records as they exist and is silent on whether a public body should create records.

[14] In its response to the request, the Town went beyond the duty to assist in the Act. It was not legally necessary for the Town to seek out answers to the Complainant's questions, however it is commendable that they did so. The access provisions of *ATIPPA, 2015*, create a right of access to records that are in the custody or control of a public body. Despite the name of the law, the right of access is not related to the provision of information unless it exists in the form of a record at the time a request is made, as defined by section 2(y) of *ATIPPA, 2015*. In Report A-2017-023 this Office commented on the practice of public bodies providing written answers to questions in response to access requests. The Commissioner noted that while providing answers to questions can be helpful, it does not relieve the public body of its duty to provide all responsive records. In this case the Town provided the Complainant with both answers to questions and the responsive records that existed. The answers provided were an attempt to fill in the gaps in the records.

[15] We are satisfied that the Town has provided all responsive records in its custody or control. The Complainant's other concerns about how the Town made the decisions it did and its comments on the issue are unrelated to the Town's obligation to provide responsive records and not subject to our review.

## RECOMMENDATIONS

[16] Under the authority of section 47 of *ATIPPA, 2015*, I find that the Town of Bauline 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 Bauline maintain its position regarding these matters.

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

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13<sup>th</sup> day of October 2022.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador