



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

A-2023-002

January 27, 2023

Department of Justice and Public Safety

**Summary:**

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Justice and Public Safety. The Department did not respond to the request in the timeframe required by section 16 of the *Act* and was deemed to have refused access. The Complainant made a complaint to this Office. The Commissioner found that the Department had not complied with its obligations under the *Act*, in particular sections 13 (duty to assist) and 16 (time limit for final response). The Commissioner recommended that the Department comply with its statutory duties in the future, assign additional staff as early as possible, and provide a final response to the Complainant within 15 business days of the issuance of this Report.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 16 and 23.

**Authorities Relied On:**

NL OIPC Reports [A-2022-013](#) and [A-2022-023](#).

ATIPP Office Manual: [Access to Information Policy and Procedures Manual, Dec 2021](#).

## BACKGROUND

- [1] On August 9, 2022, 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 Department of Justice and Public Safety (“*JPS*” or the “*Department*”) for all correspondence since January 2020 between several named Ministers and Deputy Ministers and a former senior public official.
- [2] Pursuant to section 16 of *ATIPPA, 2015*, the Department’s final response to the Complainant, consisting of its decision letter and accompanying responsive records, was due within 20 business days, on September 7, 2022. On August 30, 2022, *JPS* applied to this Office for a 33 day extension. This extension was granted on September 1, 2022 making the new final deadline to respond October 25, 2022. *JPS* did not apply for any further extensions of time.
- [3] On October 31, 2022, four business days after the expiration of the new, extended, deadline, the Complainant filed a complaint with this Office.
- [4] As the Department has yet to provide the requested records to the Complainant, informal resolution was unsuccessful. The complaint therefore proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY’S POSITION

- [5] In its initial submissions to this Office, *JPS* acknowledged its response to the request was late. It pointed to a number of factors that contributed to its failure to meet the statutory deadline, in particular its workload, which included:
- 39 new requests which it received after the Complainant’s access request;
  - 48 access requests which pre-dated the Complainant’s access request;
  - 19 requests from other public bodies to consult on other access requests;
  - three informal requests for records;
  - assisting another division of *JPS* with its handling of a privacy breach, and
  - responding to other investigations by this Office.

[6] When questioned as to the factors specific to this request that affected its ability to respond to this request, JPS noted what it considered to be a large volume of responsive records (approximately 800 pages) and the number of potential exceptions. However, it maintained that the primary reason for missing the deadline was the general strain on its resources.

## ISSUES

[7] The following are the issues to be decided:

1. Did the Department comply with the deadline set out in section 16?
2. Did the Department comply with the duty to assist set out in section 13?

## DECISION

[8] A public body must respond to an access to information request within the time frame set by section 16 of *ATIPPA, 2015*, which states:

*16.(1) The head of a public body shall respond to a request in accordance with section 17 or 18, without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended under section 23.*

*(2) Where the head of a public body fails to respond within the period of 20 business days or an extended period, the head is considered to have refused access to the record or refused the request for correction of personal information.*

[9] Clearly, the Department failed “to respond within the period of 20 business days or an extended period” with respect to this request. The extended time limit for responding after the approved extension was October 25, 2022. Because the Department did not respond to the request within the deadline set out in section 16, it is, per section 16(2), “considered to have refused access to the record” in relation to the access to information request.

[10] It is now more than 100 business days since the Department received the Complainant’s request, and more than 60 business days since the expiration of the extended deadline which the Department specifically requested in its application to this Office. While 800 pages of

records is a relatively large volume of records, it is not unusually or inordinately large. Beyond searching for and assembling the responsive records, the Department may need to apply various exceptions to access. However, the Department, and its ATIPP Office, should have the personnel and expertise to process these records within the legislated timeframe, or to at least request approval from the Commissioner for an additional extension of time.

[11] Moreover, since the time that this access request was made, the Department has not demonstrated an overwhelming strain on resources. For the calendar year 2022, JPS applied for extensions from this Office a total of 21 times, (18 fully approved and three partially approved). This equates to an average of 1.75 extension applications per month. It should also be noted that the Department applied for an extension for only a small fraction of the access requests it received – JPS received at least 151 ATIPP requests in 2022. Including the present file, this Office received three deemed refusal complaints about the Department in 2022; but overall we estimate that it processed upwards of 85 percent of all access requests within the original 20 business day timeline. In the time since August 9, 2022, when the Department received this particular request, the Department has sought extensions seven times, (five fully approved and two partially approved). This equates to an average of 1.4 extensions per month. Given the decrease in extension applications from the first part of the year to the second, a logical conclusion would be that any strain on the Department's resources has in fact decreased, and not increased. The Department has offered nothing to explain why this particular request was significantly delayed, nor why even now records have not been provided.

[12] When questioned as to why the Department did not apply for a second extension, the Department advised that it did not believe a second extension would be granted by this Office and instead decided to focus on fulfilling active requests and responding to other complaints with this Office. The Department has sought second extensions from this office on 3 occasions in 2022, two were fully approved and one was partially approved (40 of the 45 requested additional days were granted). Given this Office's history of approving the Department's extension applications, including second applications, it is hard to conceive that if the Department had legitimate reasons as to why this request was delayed, it would not have at least attempted to obtain a further extension. If there were insufficient reasons for the

Department to apply for a second extension, then surely there are insufficient reasons for the request to remain unfulfilled more than 60 days later.

[13] Pursuant to section 13 of *ATIPPA, 2015*, a public body has a duty to assist an applicant who makes an access to information request:

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.*

(2) *The applicant and the head of the public body shall communicate with one another under this Part through the coordinator.*

[14] The ATIPP Office (which is a division within the Department of Justice and Public Safety) has produced an [Access to Information Policy and Procedures Manual](#) (the “Manual”). The Manual sets out some of the obligations included in the duty to assist:

*The duty to assist the applicant is an important, underlying provision of the Act. It is a statutory duty that must be upheld throughout the entire request process. The duty to assist is generally summarized as “a duty to make every reasonable effort to identify and locate records responsive to a request, and to provide the applicant with information regarding the processing of the request in a timely manner.”[Footnote: The Duty to Assist: A Comparative Study, Office of the Information Commissioner of Canada]*

*The duty to assist also entails clear communication between the ATIPP Coordinator and an applicant occur at all stages of the request to keep the applicant informed throughout the process. Subsection 13(2) of the Act requires that all communications between an applicant and the head of a public body occur through the ATIPP Coordinator. The Coordinator is also the point of communication for third parties (subsection 19(9)).*

*The ATIPP Coordinator should develop a working relationship with the applicant in order to better understand the applicant’s request and what information they are looking for, and to ensure that he or she understands the process.*

*In meeting the duty to assist an applicant, some general obligations may include, but are not limited to:*

- *providing the necessary information to an applicant so that they may exercise their rights under the Act;*
- *clarifying the request with an applicant, where necessary;*

- *performing full and adequate searches for records responsive to an access request; and*
- *responding to an applicant openly and without delay.*

[15] As noted in Report A-2022-013, the Manual accurately reflects the views of this Office on this subject. The Department failed to meet its duty to assist the Complainant under *ATIPPA, 2015*. JPS did send the Complainant an email on October 27, 2022 (two business days after the expiration of the time limit) acknowledging that its response was overdue and indicating that it would send the final response as soon as it was completed.

[16] However, JPS should have informed the Complainant that the request would be late as soon as it became clear that it would not meet the statutory deadline. Preferably, this notification would occur in advance of the expiration of the deadline and include an explanation for the lateness, an estimate for when a response would be received and a notice that the Complainant has the right to make a complaint to the Office of the Information and Privacy Commissioner in the event that deadline expired.

## RECOMMENDATIONS

[17] As the Department of Justice and Public Safety failed to meet its duties under sections 13 and 16, under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department:

1. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of the Act;
2. Assign additional staff as early as possible, where necessary, to help process access requests;
3. Review its access to information policies and procedures to determine if they should be amended to include guidance on prioritizing the processing of requests when department resources are strained.
4. Provide the Complainant with its final response within 15 business days of receipt of this Report

[18] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Justice and Public Safety 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.

[19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of January 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador