



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2023-04

February 2, 2023

Department of Health and Community Services

Summary:

The Complainant made several access to information requests to the Department of Health and Community Services under the *Access to Information and Protection of Privacy Act, 2015*. The Department did not respond to the requests within the time frame set out at section 16 of the *Act* and was therefore deemed to have refused access to the requested information. The Complainant asked the Commissioner to investigate these deemed refusals. The Commissioner recommended that the Department release the records responsive to the Complainant's five requests within ten business days.

Statutes Cited:

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

Authorities Relied On:

NL OIPC Report [A-2022-023](#).

BACKGROUND

- [1] The Complainant made multiple access to information requests to the Department of Health and Community Services (the “Department”) throughout 2021 and 2022. While the Complainant received responses to the bulk of the requests, the Department failed to respond to seven requests within the time frame set out at section 16 the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”).
- [2] During the course of informal resolution efforts, the Department responded to three of the Complainant’s seven requests, and those matters were resolved. However, the Complainant’s four other access to information requests are still outstanding.
- [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 Department acknowledges that it failed to respond to the Complainant’s requests per the timelines in *ATIPPA, 2015*.
- [5] The Department states that in 2021, it received a record 424 access to information requests, with more than a third coming in the final quarter of the year. This rise in access requests coincided with a resurgence of COVID-19 in Newfoundland and Labrador, as well as the largest cyberattack in the country to date against the Provincial public health system. These two events affected the Department’s resources, preventing the Department from engaging in internal and external consultations which it believed was necessary to complete many of its access requests.
- [6] The Department also notes that during this period, into early 2022, staff turnover also hindered the efficient processing of requests. While the Department was able to add some additional staff, it was still unable to keep up with the number of requests due to an increase

in requests and more complex requests (many requests involved large volumes of records, wider search criteria, or consultation with other public bodies).

[7] The Department states it has stabilized staffing issues within its ATIPP division by adding an additional coordinator in September 2022, although by the time these staffing issues were resolved it was too late for the Department to make applications to the OIPC for extensions of time or seek approval to disregard requests.

[8] The Department advises that it continues to work diligently toward finalizing its backlog from 2021 and 2022, while the Department continues to receive and respond to a record number of requests. The Department states that it committed to responding to all backlog ATIPP requests; however, it also confirms that it must follow its regular process:

These requests still have to go through a search for records, review for responsive records, initial redactions, consults, SME, ADM, and DM review. Lack of access to extensions or disregards combined with applicants who are not amenable to clarifying/narrowing their requests, has created a difficult and unique situation for processing some of the backlog requests due to high volume of records and/or very broad wording. Additionally, completing the backlog can put a strain on external consultants. These other public bodies and Cabinet Secretariat are receiving consults on current files and backlog files.

COMPLAINANT'S POSITION

[9] It is the Complainant's position that the delay in response to these requests is unacceptable and constitutes a breach of the statutory deadline in section 16 of *ATIPPA, 2015* as well as the duty to assist at section 13.

[10] The Complainant states that the Department had not provided any update until October 2022, shortly before he submitted the present complaints. At this point, some of the requests were over a year old and the update only consisted of the Department asking if the Complainant still wanted a response to the seven then-outstanding access requests. The Complainant states that the time between requests and lack of communication from the Department is concerning.

DECISION

[11] The two issues in this Report are whether the Department fulfilled its duty to assist the Complainant during the request process and whether the Department adhered to the timelines set out at section 16.

[12] 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.

[13] Per section 16 of *ATIPPA, 2015*, the Department had 20 business days to provide the Complainant with a response to his request:

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.

[14] Pursuant to section 23, a public body may apply to this Office for an extension of time in which to respond to an access to information request. This provision can help a public body manage particularly large or complex requests, and in making a decision to grant or deny approval, the Commissioner may consider factors such as a temporary spike in a public body's access request workload or a temporary unplanned absence of staff resources. The Department sought extensions – including multiple extensions – for some of the outstanding requests, but not all.

[15] The Complainant's four access requests which remain outstanding are as follows:

HCS/374/2022:

A copy of all briefing materials, including drafts, provided to the Minister, Deputy Minister and Assistant Deputy Ministers. Timeline: November 2021.

This request was received December 1, 2021. The Department sought and received a time extension for a 25 day extension, which made the Department's final response due February 2, 2022. A second time extension application was not approved by this Office.

HCS/004/2022:

A copy of all briefing material, including drafts, for Minister, Deputy Minister, Assistant Deputy Ministers for December 2021.

This request was received January 3, 2022. The Department sought and received a 15 day extension and its final response was due February 22, 2022.

HCS/040/2022:

A copy of all briefing material, including drafts, prepared for the Minister, Deputy Minister, Assistant Deputy Ministers and Communications Director for January 2022.

This request was received February 1, 2022. The Department did not apply for an extension of time and its final response was due March 1, 2022.

HCS/065/2022:

Any (i) demand, notice, or request by Statistics Canada that the province return, remove, or destroy Canadian Community Health Survey data and (ii) communications relating to such a demand, notice, or request. Date Range: February 1, 2020 to present.

This request was received February 11, 2022. The Department did not apply for an extension of time and its final response was due March 11, 2022.

[16] By the Department's own admission, it did not fulfill this obligation to the Complainant, by failing to provide the Complaint with a response within 20 business days. The Complainant's most recent of the four unanswered requests is nearly a year old, or 245 business days. Others have been outstanding exactly a year.

[17] In a previous report from this Office, A-2022-023, I outlined a series of issues faced by the Department when it comes to fulfilling and resolving outstanding access requests. It is not necessary to repeat the problems discussed in that Report. However, it is obvious that the backlog of requests is still an impediment to the Department's optimal functioning. Shortly before this Report was released, the Department advised that it still had 23 access to information requests (including the four requests addressed in this Report) to respond to.

[18] The Department stated in its submissions that it has decreased its backlog by 70 percent since April 2022. This represents approximately six outstanding requests a month, in addition to the new requests it has received. While this is a fair attempt to reduce its backlog, the fact remains that a further 18 requests are yet to be processed from 2021 and 2022. We encourage the Department to seek additional assistance to further reduce its backlog of outstanding access requests.

RECOMMENDATIONS

[19] Under the authority of Section 47 of *ATIPPA, 2015*, I recommend the following:

1. The Department provide the Complainant with the records responsive to the four requests within ten business days of providing a response to this Report; and
2. The Department put a focus on fulfilling the other remaining 18 requests which are in its backlog.

[20] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Health and Community Services 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.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 2nd day of February 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador