



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-009

February 17, 2023

Town of Pouch Cove

Summary:

The Complainant made eight access to information requests to the Town of Pouch Cove under the *Access to Information and Protection of Privacy Act, 2015*. The Town did not respond to the requests in any way and the Complainant filed a complaint with the Commissioner. The Commissioner investigated and found no justification for the Town's failure to respond. The Commissioner recommended that the Town respond to the requests within ten business days.

Statutes Cited:

[*Access to Information and Protection of Privacy Act, 2015*](#), SNL 2015, c. A-1.2, sections 16 and 19.

BACKGROUND

[1] Throughout the month of July, 2022, the Complainant made a series of access to information requests to the Town of Pouch Cove (the “Town”) pursuant to the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”). These access requests, eight in total, sought the following:

1. *For fiscal year 2020 and 2021 a definition of the difference between Line 1.2.1.2 water and sewer tax and line 1.2.1.5 other residential water and sewer tax and explanation for the difference [submitted July 25, 2022];*
2. *For the fiscal years 2020 and 2021 a detailed breakdown of funds spent on (2.2) recreation and cultural services [submitted July 20, 2022];*
3. *For the fiscal years 2020 and 2021 a detailed breakdown of money spent on (1) animal and pest control and (2) public relations and (3) purchased services [submitted July 1, 2022];*
4. *For the fiscal years 2020 and 2021 a detailed breakdown of money received for sales of goods and services (2.0) and other revenue from own sources (3.0) [submitted July 12, 2022];*
5. *In the Town estimates under section 6.2.1 recreation and community services please supply a breakdown of funds spent. Also if the Town has any usage figures for the facilities that would be helpful [submitted July 10, 2022];*
6. *Copy of any laws or regulations regarding households not connected to water services as opposed to households connected to water services [submitted July 28, 2022];*
7. *Copy of correspondence between the Town and the federal government regarding funding for remediation of the property previously known as St. Agnes Elementary [submitted July 25, 2022], and*
8. *Copy of correspondence between the Town and the Newfoundland and Labrador Eastern School District regarding the property previously used as the Roman Catholic school adjacent to St. Agnes Church [submitted July 20, 2022].*

[2] Pursuant to section 16 of *ATIPPA, 2015*, the Town’s final responses to these requests, which should have consisted of a final decision letter and any responsive records, were due 20 business days later, between July 29, 2022 and August 26, 2022.

[3] By November 18, 2022, the Complainant had not received a response to his requests and filed a complaint with this Office.

- [4] As the Town has yet to provide the requested records to the Complainant, informal resolution of these complaints was unsuccessful and the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [5] In response to the within complaint, the Town advises that it is short staffed and therefore lacks the ability to process the Complainant's requests. During informal resolution efforts, the Town advised that it intended to respond to the requests in late-December 2022, but that date passed without the Town providing anything to the Complainant. In mid-January 2023, the Town advised that it "required more time" in order to respond.

COMPLAINANT'S POSITION

- [6] The Complainant continues to seek access to the information requested approximately seven months ago.

DECISION

- [7] The two issues to be addressed in this Report are whether the Town fulfilled its duty to assist the Complainant during the request process and whether the Department has complied with the timelines set out at section 16 of *ATIPPA, 2015*.
- [8] Pursuant to section 13 of *ATIPPA, 2015*, a public body has a duty to assist an applicant who makes an access to information request:

Duty to assist applicant

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.

[9] Pursuant to section 16, a public body has 20 business days to provide an access to information applicant with a final response to their request:

Time limit for final response

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.

[10] Where a public body requires more time than the 20 business days provided by section 16 – on account of a challenging request, handling multiple requests at the same time, or other circumstances – a public body may apply to this Office under section 23 for an extension of time in which to respond to an access request. This provision can be particularly helpful in allowing a smaller public body to manage several requests received at the same time. The Town is familiar with section 23, having applied for extensions of time for five other access request in the first week of July, around the same time the Complainant was making the first of his access requests. Those time extension applications were approved by this Office. The Town later applied for additional extensions of time on two of those requests, in August. Despite this, no effort was made by the Town to either respond to the Complainant’s eight requests within the 20 business days provided by section 16 or to seek an extension of time to allow the Town to manage the workload associated with processing the requests. Rather, the Town chose to ignore the eight access to information requests the Complainant had submitted to the Town.

[11] The information requested by the Complainant is not unusual and concerns standard municipal government matters: how a public body has spent public funds; how it has developed and applied policy and regulations; and its relations with other public bodies. It is the kind of information for which *ATIPPA, 2015* exists to make available to the public and to promote public body transparency. In any case, the Town has not provided any reason for why it would find it difficult to respond to these requests or to furnish the requested information. I

therefore find that there is no justification for the Town's inordinate delay in responding to these eight access to information requests.

RECOMMENDATIONS

- [12] Under the authority of section 47 of *ATIPPA, 2015*, I recommend the following:
- a. The Town provide the Complainant with the records responsive to his eight (8) requests within ten (10) business days of receipt of this Report, and
 - b. The Town's ATIPP Coordinator and the Town's Chief Administrative Officer arrange for, and complete, ATIPP training in collaboration with the ATIPP Office at the Department of Justice and Public Safety.
- [13] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Pouch 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.
- [14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 17 day of February 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador