



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

Report A-2023-010

March 3, 2023

Department of Health and Community Services

Summary:

The Complainant made six 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 period 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 refusals of access. The Commissioner recommended that the Department release the records responsive to the Complainant's four 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 Reports [A-2022-023](#) and [A-2023-004](#).

BACKGROUND

- [1] The Department of Health and Community Services (the “Department”) received six access to information requests from the Complainant on February 21, 2022. The Department provided responses for two of these requests, but the following four access requests remain outstanding:

HCS/77/2022: All correspondence sent and received by [Associate Deputy Minister of the Department of Health and Community Services and interim Chief Executive Officer for the Newfoundland and Labrador Centre for Health Information] regarding NLCHI / the Centre for Health Information since June 2021.

HCS/79/2022: Detailed breakdown of the costs of the consultants' report on the integration of NLCHI (Newfoundland and Labrador Centre for Health Information) into the Dept of Health and Community Services. - Include any extra costs incurred by the Dept outside of the RFQ itself - Any overtime incurred or authorized by Dept employees related to work with Ernest and Young/the consultant - How much staff time was allotted to this project - List of additional expenses billed by EY, the consultant, and what for.

HCS/80/2022: All records related to a) the potential merger of the four RHAs and b) the streamlining or integration of "corporate services" of the RHA (payroll, finance, HR, etc.) announced by [Minister of Health and Community Services. Timeframe 2020 to present.

HCS/82/2022: All correspondence to and from Public Health, including [Chief Medical Officer of Health]'s Office by Hospitality NL and other tourism and hospitality businesses or special interest groups. Timeframe: March 2020 to present.

- [2] The Department did not apply for extensions of time under section 23 of the *Access to Information and Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) and, therefore, responses to these requests were due 20 business days later, on March 21, 2022.
- [3] During the course of informal resolution efforts, the Department was not able to provide a response to these outstanding access requests. 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 since 2021, it has experienced a heightened volume of access to information requests, receiving 424 requests in 2021 and a further 287 in 2022. These are significant increases over the 216 requests fielded by the Department in 2020. As noted in previous reports by this Office, this rise in the number of access requests coincided with a resurgence of COVID-19 in Newfoundland and Labrador, as well as a significant cyber attack against the province's public health system. These two events placed major demands on the Department's resources, preventing the Department from assigning the resources necessary to manage this increased number of access to information requests.
- [6] The Department also notes that at the time the requests were made, staff turnover had compounded the challenge of managing and responding to a large volume of access requests. However, it advises that since the fall of 2022 it now has four staff assigned to access to information and protection of privacy duties.
- [7] The Department also submits that the four requests at issue are particularly large and complex, seeking, among other things, correspondence from a senior official over a nine-month period; records over a two-year period regarding a major reorganization of the regional health authorities and the Department; and considerable details about a consultant's report.
- [8] Finally, the Department advises that while there are 20 access requests received in 2021 (7) and 2022 (13) still outstanding (including the four addressed in this report), this is a significant reduction from the spring of 2022. Further, alongside reducing its backlog of outstanding requests, the Department submits that it is meeting timelines with respect to new access requests.

COMPLAINANT'S POSITION

[9] As noted above, the Complainant originally made these access requests on February 20, 2022 and remains interested in receiving the requested information. While the Complainant was in communication with the Department up to May of 2022 to discuss specifics of some of the requests, the Complainant notes that he heard nothing further from the Department until he was contacted by the Department in October of 2022, to inquire whether he still wanted to receive a response to his requests.

DECISION

[10] As with previous reports addressing the Department not responding to access to information requests, the two issues are whether the Department fulfilled its duty to assist the Complainant during the request process and whether the Department complied with the timelines at section 16.

[11] Section 13 places on public bodies 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.

[12] Per section 16, *ATIPPA, 2015* requires a public body to respond to an access to information request within 20 business days:

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.

[13] Section 23 allows a public body to apply to this Office for approval of an extension of the 20 business days for responding to a request. However, no applications for extensions of time were made to this Office.

[14] The Department corresponded with the Complainant with respect to one of the requests (HCS/77/2022) in May 2022, in order to clarify what information the Complainant was requesting. However, the Complainant heard nothing regarding the other three until the Department's inquiry, in October, whether he still wanted a response at all. At that time, the Department was unable to give the Complainant an estimate of when it may be able to respond to his access requests. On the balance, I find that the Department has not met its duty to assist the Complainant.

[15] I have previously addressed the Department's difficulty responding to access to information requests in A-2022-023 and A-2023-004 and outlined the challenges it has been facing. As noted above, in response to this complaint, the Department advises that it has reduced its backlog of requests from 2021 and 2022. We are encouraged by the progress that the Department has made, recommend that it maintain its focus on resolving its backlog of outstanding requests.

RECOMMENDATIONS

[16] 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 focus on fulfilling the other remaining requests in its backlog from 2021 and 2022.

[17] 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.

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of March 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador