



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-013

March 22, 2023

Department of Environment and Climate Change

Summary:

The Complainant made an access request for all records submitted to the Department of Environment and Climate Change by the Town of Millertown between 2019 and 2022. The Department provided the Complainant with one document in response. The Complainant asserted that further responsive records must exist and that the search conducted by the Department did not comply with the requirements of section 13 of *ATIPPA, 2015*. The Commissioner found that the Department did conduct a reasonable search per section 13 but did not fully meet its duty to assist per sections 13 and 16 in that the response did not meet the timelines. The Commissioner further found that the Complainant was seeking records outside of the scope of the request and that the Department should maintain its position on the access request.

Statutes Cited:

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

Authorities Relied On:

NL OIPC Reports [A-2021-028](#), [A-2022-030](#), [A-2022-032](#),
[A-2022-013](#).

BACKGROUND

- [1] The Complainant made an access to information request to the Department of Environment and Climate Change (“ECC”) seeking: “all Records submitted to this Department from the Town of Millertown for the years of 2019, 2020, 2021, and up to including today’s date of the year 2022.”
- [2] A search conducted by ECC produced one responsive record: a proposal from the Town of Millertown regarding a chlorination and soda ash system.
- [3] The Complainant submits that he has received documents in response to other access requests that he believes prove ECC did not provide all records responsive to his request.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [5] ECC submits that it has met its section 13 duty to assist the complainant and that it has conducted a comprehensive and thorough search of its records, and that it has even sought assistance to locate records that may exist in other departments. ECC further asserts that the access request submitted by the complainant was quite specific and that it had worked with the Complainant to arrive at the language upon which the request was based.

COMPLAINANT’S POSITION

- [6] The Complainant asserts that the ECC should have searched beyond what was stated in the request. It is the position of the Complainant that by restricting searches specifically to the language submitted in the search request, the access to information process is not serving its purpose to help make public bodies more transparent for the average resident of the province. Strict adherence to language makes the process too cumbersome and is suitable only to those with training in law and experience with legislation.

ISSUES

- [7] There are 2 issues to be addressed:
- i) Did ECC meet its section 13 duty to assist?
 - ii) Should the public body be required to search beyond the scope of the complaint?

DECISION

- [8] Section 13 of *ATIPPA, 2015* states:

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] In Report A-2022-032, this Office re-stated that the standard applied to a search for documents by a public body is reasonableness, not perfection. As stated in A-2022-30, in proving it has met this standard, it is important that the public body provide information to this Office on what steps it took in conducting its search so that this Office can make a proper determination regarding compliance with section 13.

- [10] ECC provided a detailed breakdown of its efforts to search for responsive records based on the Complainant's request. With respect to communication between ECC and the Complainant, the following was noted:

- September 15, 2022: request submitted to ECC.
- September 15, 2022: request acknowledged by ECC.
- October 6, 2022: advisory letter sent by ECC to the Complainant.
- October 14, 2022: update email sent by ECC to the Complainant.
- December 15, 2022: responsive records provided to the Complainant.

There was a noticeable gap between the October 14, 2022 communication and the final provision of responsive records on December 15, 2022. ECC did not seek a time extension from this Office and it did not meet the deadline for a final response at section 16. In fact,

ECC's response on December 15, 2022 was 43 days late. ECC advises that this is the result of a lengthy document being discovered late in the process that required proper review and approval prior to release. However, there were not any discussions between ECC and the Complainant about the delay. Report A-2022-013 similarly dealt with a failure by ECC to meet the statutory deadlines in *ATIPPA, 2015* and to maintain communications with applicants.

[11] As for the search for responsive records, ECC submitted the following search information:

- September 20, 2022: request for records sent out to all Directors and Executive staff;
- September 20, 2022: Communications and Labour Relations respond with no responsive records;
- September 21, 2022: ADM of Environment responds with no responsive records;
- September 23, 2022: Policy and Planning Division responds with no responsive records;
- September 28, 2022: Water Resources responds with no responsive records;
- October 7, 2022: Environmental Assessment Division responds with one record.

[12] As this was the third request by the Complainant to ECC in 2022 regarding very similar issues, the ATIPP Coordinator also checked responses to other access requests from other departments involving the Town of Millertown as they wondered if the Complainant already had received information referencing ECC from another request. A review of the access requests involving Millertown responded to by other departments did not produce any further responsive records involving ECC.

[13] The search conducted by ECC was thorough. The request was very specific and the discovery of just one record does not appear to be unusual when it involves a municipality of less than 300 people. The ATIPP coordinator reviewed the documents and properly managed the search. The Coordinator's willingness to look into previous requests made to other departments involving Millertown, speaks to their willingness to ensure that nothing was missed. ECC did meet its duty to assist the Complainant pursuant to section 13 of *ATIPPA, 2015*.

[14] With respect to the Complainant's assertion that ECC should conduct a search that goes beyond the parameters set forth in the search request, that is a complex question. One of the purposes of *ATIPPA, 2015* is to make information held by public bodies more accessible to the people of the Province. In general, there is a presumption that information will be released unless a decision to withhold it can be justified by the *Act*. A major focus of this Office is to ensure that various public bodies properly follow *ATIPPA, 2015* and to render an opinion and potentially recommendations about whether this has been done when complaints are forwarded to us. In my time as Commissioner, we have handled complaints from people from all walks of life, from those of varying educational backgrounds, professions, life circumstances, and capacity. Very few of our complainants are lawyers acting on behalf of a client. The vast majority of the people who submit complaints are acting on their own, using their own time and effort. It is more common to deal with lawyers when dealing with a public body.

[15] While I firmly believe that the current ATIPP process is open and accessible, there are practical considerations under which our legislation functions. *ATIPPA, 2015* has very specific timelines that must be followed. Since every access request is subject to these time constraints, it is important that the information request be as clear as possible. Some public bodies have few resources, some have more; some have organized and digitized document management systems, while some still rely to some extent on paper. Regardless of the system, a search for responsive records takes time, and once a record is discovered it must be thoroughly assessed so that its release does not infringe upon the privacy rights of others or the ability of the public body to function. If requests could be changed after they are submitted and a final response has been provided, a public body may find it challenging to determine when a search was complete. While I often write about fairness from the standpoint of access requesters, it's also important to be fair to public body coordinators and staff who must search for records, review them, and respond within a relatively short time period.

[16] It is unfortunate when a Complainant realizes that their request is not going to produce the result they intended. This Office has dealt with this circumstance before. In A-2021-028, a Complainant insisted that the Town of Paradise produce information that was clearly outside

the scope of the original request. In that instance, I stated that the Complainant should instead submit a new access request. One of the benefits of having strict timelines in *ATIPPA, 2015*, is that a Complainant will know relatively quickly whether their access request gets them the information they seek. In this case, I would urge the Complainant to submit another request with wording that more accurately reflects the information they are looking for.

RECOMMENDATIONS

- [17] Under the authority of section 47 of *ATIPPA, 2015*, I find that the Department of Environment and Climate Change has conducted a reasonable search for records and responded to the Complainant appropriately under section 13 of the *ATIPPA, 2015*. Therefore, I recommend that the Department maintain its position regarding these matters.
- [18] Further, under the authority of section 47 of *ATIPPA, 2015*, I find that the Department of Environment and Climate Change did not meet its duties under section 16 or under section 13 with respect to responding to an access request on time and maintaining communications with an applicant. I recommend that the Department comply in the future to duties imposed on it by sections 13 and 16, to respond to an applicant in an open, accurate and complete manner, without delay, and in any event within the statutory deadlines, including keeping an applicant informed, maintaining open communications throughout the process. The Department should continue to review its access to information policies and procedures to ensure that these duties are met.
- [19] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Environment and Climate Change 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.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 22nd day of March 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador