



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-018

April 10, 2023

Town of Port au Port East

Summary:

The Complainant made five access requests to the Town of Port au Port East under the *Access to Information and Protection of Privacy Act, 2015*. The Town did not respond to the requests within the timeframe set by section 16 of the Act. Section 16 says that a failure to respond by the deadline is considered to be a refusal of access by a public body, and the Complainant asked the Office of the Information and Privacy Commissioner to investigate the Town's refusal. As a result of this investigation it was found that the Town had not complied with its obligations under the Act, in particular sections 13 (duty to assist) and 16 (time limit for final response). It was therefore recommended the Town provide a final response and records to the Complainant within 20 business days, undertake training, review its records management policies and procedures, create access to information policies and procedures, seek additional support as available, maintain communication with applicants, and comply with its statutory duties in the future.

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-2023-002](#) and [A-2023-023](#).

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

BACKGROUND

[1] On November 28, 2022, the Complainant made five access to information requests under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”) to the Town of Port au Port East (the “*Town*”) seeking the following information:

1. *Copy of [named company’s] invoice, with signed purchase slips attached for all invoices for the period of 2019, 2020, 2021 and 2022;*
2. *Copies of the following cheques, as referenced in the “Cheque List” published on 10/18/2022: [50 cheques listed];*
3. *Copy of [named company’s] invoice, which was paid for by cheque number 7100 on Oct 4, 2021 in the amount of \$129.38;*
4. *Details of payroll batch number 1800, dated 7/28/2020 for all employees; and*
5. *Details of payroll batch number 1931 and 1932, dated 06/01/2022 and for all employees*

[2] The Complainant did not receive any response to his requests from the Town. They waited the legislated 20 business day time period to receive a final response to the requests but received neither the requested records, any acknowledgment of the requests, or notice of an extension to the time period for the Town’s response from the Town. The Complainant then made a complaint to this Office.

[3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*. The Information and Privacy Commissioner, Michael Harvey, delegated his authority to issue this Report to me, as Director of Research and Quality Assurance, pursuant to section 103 of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

[4] This Office sent notice of the five complaints to the Town, outlining the requirement that the Town provide a response. This Office also discussed the details of the complaints with the Town’s ATIPP Coordinator in two telephone calls. To date, this Office has not received a

response from the Town to these five complaints and the Town has made no submissions nor explained its failure to respond to these access to information requests.

COMPLAINANT'S POSITION

- [5] The Complainant requested that this Office act as a mediator between themselves and the Town, to help obtain the information requested from the Town.

DECISION

- [6] A public body must respond to access to information requests within the legislative timeframe set out at section 16 of *ATIPPA, 2015*, which states:

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.

- [7] Clearly, the Town failed “to respond within the period of 20 business days or an extended period” with respect to the Complainant’s request. The deadline for the Town’s final response to the Complainant for all five requests was December 27, 2022. Because the Town did not respond to the requests 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 requests.

- [8] The 20 business days provided by section 16 for a public body to respond to an access request may be extended on application to this Office under section 23 (Extension of time limit). However, no application was made by the Town.

[9] This Office takes particular issue with the Town's failure to respond to these requests as that failure has continued throughout the complaint process, with the Town failing to respond to this Office's requests for response to these complaints as well. Additionally, this is not the first instance of deemed refusals by the Town in relation to access requests in recent memory.

[10] In fall 2022, this Office received 18 complaints, all of which were also deemed refusals by the Town, with the Town failing to respond to applicants in any way. The Town had initially sought to disregard all 18 requests but this Office denied its applications as the grounds for approving a disregard under section 21 were not present. However, instead of then responding to the requests as required by *ATIPPA, 2015*, the Town ignored them. Eventually those requests became complaints to this Office. These were the first instances of access complaints involving the Town, and this Office conveyed the seriousness of the matter along with the Town's legal obligations. This Office worked closely with the ATIPP Office and its municipal liaison to help the Town understand how to handle access requests and provide proper responses, as well as highlighting the option of seeking approval for extensions of time for responding to access requests where warranted. This Office recommended additional ATIPP training for not only the Town's ATIPP Coordinator but also its Mayor and Town Council as well, along with proper records management policies and practices. These efforts led to the informal resolution of the 18 deemed refusals.

[11] It is particularly disheartening, then, that following these efforts, and the efforts of the municipal liaison at the ATIPP Office, the Town reverted to its past practices in these subsequent access requests: that is, ignoring its legislative obligations and providing no response not only to the Applicant, but also to this Office as well.

[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:

Duty to assist

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] The ATIPP Office has released an [Access to Information Policy and Procedures Manual](#), to assist public bodies in their application of *ATIPPA, 2015*. 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.*

[14] As noted in Reports A-2022-013, A-2022-023, and A-2023-002, the ATIPP Office Manual accurately reflects the views of this Office on this subject. The Town failed to meet its duty to assist the Complainant under *ATIPPA, 2015*. It should have communicated with the Complainant and made every effort to respond to these requests for information within the legislated timeframe set out in the Act. Additionally, it should have responded to these five complaints to this Office and made every effort to respond to them within the legislated timeframe set out in sections 44(2) and 96 of the Act.

RECOMMENDATIONS

[15] As the Town of Port au Port East has failed to meet its duties under sections 13 and 16, under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Town:

1. Within 20 business days of receipt of this Report, provide a final response and copies of the records requested, less any redactions authorized under the Act, in the five access requests to the Complainant;
2. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of the Act, 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 communication throughout the process, and providing an applicant with the necessary information so they can exercise their rights under the Act, including the right to file a complaint regarding a deemed refusal;
3. Within 90 days of receipt of this Report, arrange for *ATIPPA, 2015* training with the Municipal liaison of the ATIPP Office for the Head of the Public Body, the ATIPP Coordinator, Mayor, Town Council and any assisting staff, regarding statutory requirements and appropriate procedures for responding to access requests;
4. Obtain additional support, for example by seeking approval for extensions from this Office or support from the ATIPP Office's municipal liaison, where necessary, to help process access requests, and
5. Review and update records management policies and procedures and create access to information policies and procedures in accordance with *ATIPPA, 2015*.

[16] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Port au Port East 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.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 10th day of April 2023.



Sean Murray
Director of Research and Quality Assurance