



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-026

June 6, 2023

Town of Holyrood

Summary:

The Complainant made an access to information request to the Town of Holyrood. After receiving limited records in response, the Complainant filed a complaint with OIPC alleging that the Town of Holyrood had not responded adequately. Upon being notified by this Office of the complaint, the Town, on its own initiative, conducted a new and more thorough search and discovered additional responsive records. The Town's initial search did not meet the duty to assist as required by *ATIPPA, 2015*; however, its subsequent search did. The Commissioner recommended that the Town develop directions to provide for more organized and complete searches, to review its policies for communicating with Complainants, and to attend and participate in access to information and privacy training.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 13(1).

Authorities Relied On:

[OIPC Report A-2022-030](#); [OIPC Practice Bulletin: Reasonable Search](#).

BACKGROUND

- [1] The Complainant made an access to information request to the Town of Holyrood (the Town) for the following records:

All internal and external communications including but not limited to letters, emails, SMS, text messages, Messenger, WhatsApp, etc. of elected officials and town staff in relation to or regarding private citizen [Complainant] where the intended recipient was not the private citizen aforementioned from the time period Jan. 1, 2021 to Feb. 9, 2023.

The Town subsequently consented to change the time frame of the request to February 22, 2023.

- [2] The Town's search produced 41 pages of responsive records. Many of these records are emails to the Town's ATIPP Coordinator from elected officials and staff noting that they had no responsive records.
- [3] Unhappy with the Town's response, the Complainant filed a complaint with this Office. Following established procedure, this Office notified the Town of the complaint and requested copies of the responsive records; communications between the Town and the Complainant; and details of its search for responsive records. In the Town's response, it stated that once notified by this Office of the complaint, the Town performed a new search for responsive records. As a result, the Town discovered additional responsive records.
- [4] These new responsive records were found on equipment in the possession of the Mayor and Deputy Mayor. The Town provided copies of these newly discovered records to this Office on April 4, 2023 but not to the Complainant. The Town advised that it would be providing copies to the Complainant immediately. After some delay, and after this Office advising the Town to do so, the additional records were provided by the Town to the Complainant on April 17, 2023.
- [5] Despite the Town providing these new records, the Complainant remained dissatisfied with the Town's response. As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [6] It is the position of the Town that, during the course of the investigation by this Office, it has performed a reasonable search and has met its duty to assist pursuant to section 13(1) of *ATIPPA, 2015*.

COMPLAINANT'S POSITION

- [7] It is the position of the Complainant that the Town did not meet its section 13(1) duty to assist as shown by its discovery of new documents so soon after the Complaint was filed with this Office and by the Town's belatedness in providing these new documents to the Complainant.

ISSUES

- [8] Did the Town of Holyrood meet its duty to assist the Complainant by conducting a reasonable search for responsive records pursuant to section 13(1) of *ATIPPA, 2015*?

DECISION

- [9] This decision addresses the following section of *ATIPPA, 2015*:

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.

- [10] This Office has established, in numerous reports, that the standard that a Public Body must meet in conducting a search for records is "reasonableness, not perfection." A reasonable search is organized, conducted using appropriate search terms, carried-out by individuals who would be in the best position to know if records exist, and supervised by the ATIPP Coordinator.

- [11] In Report A-2022-30, this Office also established that an effective approach to proving that a reasonable search has been conducted is for the public body to properly document its search efforts so that these can be provided to the Complainant or this Office if challenged.
- [12] The Information and Privacy Commissioner has an ombuds role in *ATIPPA, 2015*. The Commissioner reviews decisions made by public bodies on matters related to the Act and makes recommendations to resolve complaints. As such, a public body does not conduct a reasonable search or adhere to timelines to benefit the Commissioner; rather, the public body carries out those actions because it is legislatively required to do so for the benefit of the applicant.
- [13] With respect to the complaint at issue, the Town appears to have confused its responsibility to the Complainant and the role of the Commissioner. When first contacted by this Office, the Town did not explain or defend its original search but rather performed a new one. When this new search uncovered new responsive records, these were sent to this Office and not the Complainant.
- [14] From the actions of the Town, it is clear that it paid greater attention to the Complainant's request once this Office became involved and conducted a more thorough search that produced additional responsive records. The additional records were found in the possession of the Mayor and Deputy Mayor. Given the circumstances of the complaint, files in the possession of these two individuals should have been thoroughly searched during the Town's initial search.
- [15] The Town did understand that its original search was not satisfactory and sought to rectify that deficiency before this Office made such a recommendation. That is a positive approach to the issue, but it does not negate the Town's failure to properly assist the Complainant in the first instance.
- [16] Under most investigations of this kind, this Office would now recommend that the Public Body perform a new search of the Complainant's application to meet its section 13(1) duty to assist. However, in this case the Town did provide a clear and detailed account of its

subsequent search for responsive records related to the Complainant's request. According to the Town, this search involved 15 staff and members of council, and included all emails, text messages, WhatsApp messages, and the deleted folders of each. The search was also conducted on the Town's servers and on individual computers not connected to the server. Overall, the second search was thorough.

[17] It is the position of the Complainant that a new search should be conducted because they believe that not all documents have been produced. With respect to the Complainant's position, this Office's "Practice Bulletin" on Reasonable search states:

Complainants must establish the existence of a reasonable suspicion that a public body is withholding a record, or has not undertaken an adequate search for a record. Sometimes, this takes the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the documents.

[18] The Complainant's unwillingness to accept the results of the new search conducted by the Town is somewhat understandable. When the Town did not originally meet its duty to assist, it eroded the trust between the Town and the Complainant. With that said, the Complainant has not submitted anything beyond a strong belief that there are still records that have not been disclosed. Such a belief is not sufficient to discount the subsequent and comprehensive search conducted by the Town and to recommend that a new search be conducted.

RECOMMENDATIONS

[19] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend the following:

- a. that the Town of Holyrood develop a clear set of directions on when, where, and what should be searched during an ATIPP request, and that these directions be included in email to Council and staff when advised that an ATIPP request has been submitted;
- b. that the Town of Holyrood review its communication policies for ATIPP requests so that responsive records discovered after the initial search period are provided to the Applicant on a timely basis; and

c. that, if Council and Staff have not already done so in 2023, that it attend and participate in ATIPP training as soon as possible.

[20] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Town of Holyrood 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 6th day of June 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador