



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-033

July 12, 2023

Town of Musgrave Harbour

Summary:

The Town of Musgrave Harbour failed to respond to two access requests from the Complainant and in addition failed to respond to the notification of complaints or to repeated requests from this Office. The Commissioner found that the Town had failed to meet its responsibilities to an applicant and to this Office under various provisions of the Act. The Commissioner recommended that the Town immediately process the outstanding access requests, provide any responsive records to the Complainant, review its records management policies and procedures, create access to information policies and procedures, seek additional support as available, maintain communication with applicants and with this Office, 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, 15-18, 20, 22, 40, 43, 44, and 97; [Public Inquiries Act](#), section 9.

Authorities Relied On:

NL OIPC Reports [A-2023-001](#); [A-2023-018](#); [A-2023-024](#).

BACKGROUND

- [1] In recent months this Office has dealt with a number of matters with the Town of Musgrave Harbour (the “Town”) all involving the same Complainant. In October 2022, in response to an access request made under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or “the Act”) and a subsequent complaint to our Office, the Town claimed not to have a copy of a requested workplace investigation report, although it was in fact in the possession of its legal counsel. Report A-2023-001 in January 2023 discussed this and recommended disclosure of the record.
- [2] In January 2023 another complaint file was resolved informally, but only after our Office independently investigated the matter and confirmed for the Complainant that the records he had requested likely did not exist. There was no cooperation from the Town with the mandatory statutory access to information process.
- [3] In February 2023 the Town finally disclosed the workplace investigation report (the subject of Report A-2023-001) to the Complainant, but with redactions, which resulted in another complaint to our Office. The Town did not respond to our February 2023 notification of the complaint, to our repeated inquiries, or even to a Summons under the provisions of the *Public Inquiries Act*, served on the Town on March 17, 2023.
- [4] Eventually we received a clear copy of the record from legal counsel retained by the Town. When it was compared to the redacted copy provided to us by the Complainant, our Office concluded that all of the redactions were improper and in Report A-2023-024 in May 2023 recommended full disclosure. Neither the Town nor its legal counsel have responded to the Report, complied with the recommendations, or applied to the court for a declaration that it is not required to comply with the recommendations in Report A-2023-024.
- [5] Meanwhile, in March 2023 the Complainant had made two separate access requests to the Town for certain records. The Town did not respond to the requests. Therefore, the Complainant filed two complaints with our Office, which are the subject of the present Report.

[6] The Town has not responded adequately to our notification of complaint, dated April 13, 2023, or to repeated inquiries, even though our email system has confirmed that these emails have been received and read. The Town's legal counsel has apparently not been retained to represent the Town on these complaints.

[7] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*. Although our Office notified the Town of the referral to formal investigation and requested submissions on the issues, the Town has made no response.

ISSUES

[8] The issues to be dealt with in this Report involve whether the Town has failed to meet its responsibilities under *ATIPPA, 2015*, including:

- (a) its duty to assist the applicant under section 13;
- (b) its duty to respond to the applicant under sections 15-18 and 20;
- (c) its duty to respond to a notification of a complaint by the Commissioner under section 44;
- (d) its duty to comply with a request from the Commissioner made under section 97.

DECISION

[9] The sole communications from the Town in the two months following the notification of these complaints were as follows:

- (1) a three-word email dated May 12, 2023 to our Office from the Town Clerk, stating "(name of Complainant) has this" apparently referring to one of the requested records, and
- (2) an email dated May 12, 2023 to the Complainant, copied to our Office, stating "This is literally on Facebook for the public and a waste of office time." Attached to the latter are screenshots of Facebook posts, appearing to date

from January 2022, which are only partially readable and lacking context. It is not clear whether the records posted on the Facebook page are in fact the records to which any of the Complainant's access requests relates.

[10] Neither of these communications is a satisfactory or statute-compliant response, either to the access request or to the notification of complaint. The *Access to Information and Protection of Privacy Act, 2015* sets out a complete process for the handling of access to information requests and complaints, with clear steps that are easy to understand and easy to follow. If applicants and public bodies take care to understand and follow the steps set out in the *Act*, the results can be excellent. If a party needs assistance in navigating the process or applying the exceptions to access, assistance and training are readily available, from this Office and especially from the Government of Newfoundland and Labrador's ATIPP Office. These supports cannot be engaged if a party ignores or refuses to comply with the statutory requirements.

[11] In the present case, it may be possible that the requested records were already posted on social media at the time of the access request, and therefore might have been publicly available. The public body might then have been justified at that time in refusing the access request under section 22 of the *Act*. However, this has not been established by the Town, as is their responsibility under the *Act*. The Town has made an allegation that the requester "already has" one of the requested records, but has made no effort to demonstrate that this is the case.

[12] In addition, any social media post can be taken down at any time, and therefore no longer publicly available, so a reference to a posting made more than a year previously is not an adequate basis for refusing an access request.

[13] The Town has not to date responded to the Complainant's access request in any way. The Complainant waited for the statutory period of 20 business days and filed these complaints after receiving no response, as he was entitled to do. The Town has not offered an explanation for its failure to respond to the access requests, and therefore we conclude that it has failed

to meet its responsibilities under *ATIPPA, 2015*, including its duty to assist the applicant under section 13, and its duty to respond to the applicant under sections 15-18 and 20.

[14] The Town has also failed to respond to our notification of the complaint, or to our subsequent repeated requests. The Town has provided no evidence of any mitigating circumstances. The Town also appears not to have sought assistance from the ATIPP Office. We therefore have to conclude that the Town has failed to comply with its statutory responsibilities as set out in sections 44 and 97 of the *Act*.

RECOMMENDATIONS

[15] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015* I recommend that the Town of Musgrave Harbour:

1. Immediately, and in any event within 20 business days of receiving this Report, process the Complainant's two access requests dated March 5, 2023 and March 7, 2023, respond to the requests in the manner required by the *Act*, and provide copies of any responsive records to the Complainant, subject only to any applicable exceptions to access;
2. Comply in future with the statutory duties imposed upon it by sections 13, 15-18 and 20 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 the applicant informed, maintaining open communication throughout the process, and providing the applicant with the necessary information so they can exercise their rights under the *Act*, including the right to file a complaint;
3. Comply in future with the statutory duties imposed upon it by the complaint process under section 44 of the *Act*, and in particular with the duty to respond to requests made by the Commissioner under section 97 of the *Act*;

4. Within 30 days of receipt of this Report, make arrangements for *ATIPPA, 2015* training with the Municipal Liaison of the ATIPP Office, for the Head of the Public Body, the ATIPP Coordinator, Mayor, members of Town Council and any assisting staff, regarding statutory requirements and procedures for responding to access requests and complaints;
5. Obtain additional support to help process access requests, for example by seeking approval for time extensions from this Office or support from the Municipal Liaison of the ATIPP Office, where necessary; and
6. 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 Musgrave Harbour 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 12th day of July 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador