



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2023-047

November 20, 2023

Department of Justice and Public Safety

Summary:

The Complainant made two requests under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Justice and Public Safety. The Department did not respond to either request in the timeframe required by section 16 of the *Act* and was deemed to have refused access. The Complainant made complaints to this Office. The Commissioner found that the Department had not complied with its obligations under the *Act*, in particular sections 13 (duty to assist) and 16 (time limit for final response). The Commissioner recommended that the Department comply with its statutory duties in the future, assign additional staff as early as possible, and provide final responses to the Complainant within 15 business days of the issuance of this Report.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 16 and 23.

Authorities Relied On:

NL OIPC Reports [A-2022-013](#) and [A-2022-023](#).

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

BACKGROUND

- [1] On July 7, 2023, the Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the Department of Justice and Public Safety (“JPS” or the “Department”) for the following:

The Department of Justice and Public Safety has stated publicly that work is ongoing to determine what a new police oversight model would look like, on May 3, 2023 to CBC news. I am looking for all communications within your department that mentions ongoing work or discussion related to a civilian led police oversight model, that was proposed by First Voice to the GNL. Previous ATIPP requests have already been completed related to this issue, <https://atippsearch.gov.nl.ca/public/atipp/requestdownload?id=16229>. The date range I am inquiring about is between July 11, 2021 to July 7, 2023. Quote: "No decision has been made on establishing the police oversight model being proposed by First Voice. Significant work will be needed and is ongoing to determine what a new police oversight model would look like" - Department of Justice and Public Safety in a May 3, 2023, statement to CBC News (http://www.youtube.com/watch?v=WNTEp1dgOPA&ab_channel=CBCNLNewfoundlandandlabrador @ 4:45)

- [2] On August 9, 2023 the Complainant made a second access to information request to the Department for the following:

I am asking for all records, including emails, briefing materials, meeting agendas, etc., with regard to a meeting held between Minister Dempsey and First Light dated September 23, 2023. Please include any internal communications executive staff had leading up to this meeting, and after.

- [3] Pursuant to section 16 of *ATIPPA, 2015*, the Department’s final responses to the Complainant’s access requests, consisting of its decision letter and accompanying responsive records, were due within 20 business days of receipt of each request being August 7, 2023 and September 8, 2023 respectively. JPS did not apply to the Commissioner for approval to extend the time for responding to either request.
- [4] Upon expiration of the statutory deadlines without a final response from the Department to either request, the Complainant filed complaints with this Office.

[5] As the Department has yet to provide its final response to the Complainant, informal resolution was unsuccessful. The complaints therefore proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

[6] In its submissions to this Office, JPS acknowledged its responses to the requests were late. It pointed to a number of factors that contributed to its failure to meet the statutory deadline, in particular its workload, which included at that time:

- Receiving between 24 and 36 new requests since receipt of the 1st and 2nd request respectively;
- Approximately 10 requests from other public bodies to consult on other access requests;
- Assisting another division of JPS with its handling of a privacy breach; and
- Responding to other investigations by this Office.

[7] When asked to provide an estimated timeline to provide a final response to either request, the Department declined to do so, citing the general strain on resources and the potential for new access requests or access complaints.

[8] The Department has noted that it located 289 emails with respect to the first request and 327 emails with respect to the second and, at the time of its submissions, further searches were pending. No review of the records has been completed and it is unknown if redactions or consultations with other Departments will be necessary.

ISSUES

[9] The following are the issues to be decided:

1. Did the Department comply with the deadlines set out in section 16?
2. Did the Department comply with the duty to assist set out in section 13?

DECISION

[10] A public body must respond to an access to information request within the time frame set by section 16 of *ATIPPA, 2015*, which states:

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.

[11] Clearly, the Department failed “to respond within the period of 20 business days or an extended period” with respect to these requests. As the Department 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 request.

[12] It is now more than 70 business days since the Department received the Complainant’s first request and 55 business days since the receipt of the second. While 289 and 327 emails respectively are a relatively large volume of records, they are not unusually or inordinately large, particularly for a core government department.

[13] The Department is going through a period of change with respect to its ATIPP process. Over the course of 2023, the Access to Information and Protection of Privacy Office (“ATIPP Office”) was relocated from within the Department of Justice and Public Safety to Executive Council. Therefore the Department had to make changes regarding responding to access requests. A new coordinator has now been appointed. The new coordinator had previously provided support to JPS in processing ATIPP requests; however, they are still adjusting to the new role as primary coordinator for the Department and the expanded duties and responsibilities that come with the change. The former coordinator remained as an interim back-up coordinator until a new back-up was assigned on September 5, 2023. The former coordinator has also kept carriage of files they started prior to the transition.

[14] While transition can be difficult and can have a negative effect on the productivity of an office, the Department was aware of the transition from at least April 2023 when the Minister spoke publically about the transition, if not earlier when the funding to support the change was announced in the 2023 Provincial budget in March of 2023.

[15] It is also possible that had the Department followed the time extension procedures set out in section 23 of *ATIPPA, 2015* this Office may have granted the Department time extensions for these requests. However, as no time extension applications were made, it is impossible to make that assessment at this point in the process.

[16] Pursuant to section 13 of *ATIPPA, 2015*, a public body has 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.

[17] The ATIPP Office (formerly a division within the Department of Justice and Public Safety) has produced an [Access to Information Policy and Procedures Manual](#) (the “Manual”). 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.*

[18] As noted in Report [A-2022-013](#), the Manual accurately reflects the views of this Office on this subject. The Department failed to meet its duty to assist the Complainant under *ATIPPA, 2015*.

[19] JPS should have informed the Complainant that its response to the requests would be late as soon as it became clear that it would not meet the statutory deadline. Preferably, such notice would occur in advance of the deadline and include an explanation for the lateness, an estimate for when a response would be received, and a notice that the Complainant has the right to make a complaint to the Office of the Information and Privacy Commissioner in the event that deadline expired. Even if the estimated new response date is difficult to establish, it is helpful for applicants to have at least a rough idea when to expect a response. Knowing that a response is coming in six days is much different than six weeks or six months. This would be in keeping with the duty to assist.

[20] With respect to the first request, the Complainant contacted the Department the day after the deadline had expired. The Department responded and advised the Complainant it was still working on the request and that a final response would be provided when completed. No further details were provided, such as what steps had been completed to date or an estimated response time. The Complainant waited another 11 business days before reaching out to the Department again, this time requesting that the Department provide them with information about how to file a complaint with this Office.

[21] Regarding the second request, the Department contacted the Complainant 14 business days after receiving the access request to ask for clarification. The Complainant responded immediately to the Department's inquiry. Three business days after the deadline had expired the Department contacted the Complainant to acknowledge that the response was overdue and provided the information necessary to make a complaint to this Office. However, the

Department did not provide details on what steps remained or an estimated time for a final response.

[22] As such, the Department has not met its duty to assist as required under section 13 of *ATIPPA, 2015*.

RECOMMENDATIONS

[23] As the Department of Justice and Public Safety failed to meet its duties under sections 13 and 16, under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department:

1. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of the Act;
2. Assign additional staff as early as possible, where necessary, to help process access requests;
3. Review its access to information policies and procedures to determine if they should be amended to include guidance on prioritizing the processing of requests when department resources are strained; and
4. Provide the Complainant with its final response within 15 business days of receipt of this Report.

[24] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Justice and Public Safety 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.

[25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of November 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador