



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2023-051

December 1, 2023

### The House of Assembly

#### Summary:

The Complainant made an access to information request to the House of Assembly for records relating to the planning for the release of the Office of the Auditor General report on Memorial University. The House of Assembly advised the Complainant the day after the request was submitted, that it had no access to the records of the Office of the Auditor General as it was its own independent statutory office. The Complainant asserted that the House of Assembly likely has access to the material requested and was obligated to perform a thorough search related to their request and the quick response from the House of Assembly suggested it had not met its duty to assist pursuant to section 13(1) of *ATIPPA, 2015*. This Office confirmed that the House of Assembly did meet its duty to assist and that the length of time for a response is not determinative as to whether the statutory duty is met. The quick response was appropriate and a benefit to the Complainant.

#### Statutes Cited:

[\*Access to Information and Protection of Privacy Act, 2015\*](#), SNL 2015, c. A-1.2, section 13(1), 14(1).

[\*House of Assembly Accountability, Integrity and Administration Act\*](#), RSNL 1990, c. H-10, section 2(r)(6).

[\*Auditor General Act, 2021\*](#), SNL c. A-22.01, section 30(1).

## BACKGROUND

- [1] The Complainant made the following request to the House of Assembly (House):

*All records pertaining to the scheduling of the preparation and release of the OAG [Office of the Auditor General] Report on Special Assignment into the Executive & Management Compensation. Operating Expenses and Oversight at Memorial University, which includes, but not limited to, records containing the planned release period. Period covered: 1 April 2022 to date.*

- [2] The House replied to the Complainant's request the next day, stating that it had no responsive records as it is not involved in the work conducted by the Office of the Auditor General on the matter of interest to the Complainant.

- [3] Due to the House's prompt response to their access request, the Complainant filed a complaint with this Office alleging that the House had not conducted a reasonable search for responsive records and had not met its duty to assist the Complainant pursuant to section 13(1) of *ATIPPA, 2015*.

- [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] It is the position of the House that it did meet its duty to assist the Complainant. Prior to the submission of the access request the Complainant contacted the House seeking the contact information for the ATIPP coordinator for the Office of the Auditor General. The House informed the Complainant that the Office of the Auditor General was not subject to *ATIPPA, 2015* as it was not considered a public body. The House provided the Complainant with the relevant legislative provisions that established this fact. When the Complainant challenged this position, the House provided the Complainant with the name of an individual at the Office of the Auditor General to contact for more information.

- [6] A few days later, the Complainant submitted their access request intended for the Office of the Auditor General to the House. The House knew immediately that it possessed no

information related to the access request as that would offend the independence of the Office of the Auditor General and be contrary to the Office of the Auditor General's enabling legislation. For those reasons, it promptly informed the Complainant that it had no responsive records. According to the House, it communicated quickly and comprehensively to the Complainant, as it is expected to do pursuant to *ATIPPA, 2015*.

## COMPLAINANT'S POSITION

- [7] The Complainant states the House did not meet its duty to assist as it did not perform a thorough search related to their request. The Complainant insists that since the Office of the Auditor General report regarding Memorial University was initiated by two provincial government ministers, who are also members of the House, that the House would be privy to the information about the Office of the Auditor General's work on the report. The Complainant also asserts that the House did not meet its duty to assist as it did not transfer their access request to the appropriate public body in accordance with section 14(1) of *ATIPPA, 2015*

## DECISION

- [8] The sections of *ATIPPA, 2015* relevant to this matter is as follows:

*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.*

...

*14. (1) The head of a public body may, upon notifying the applicant in writing, transfer to another public body not later than 5 business days after receiving it, where it appears that*

*(a) the record was produced by or for the other public body;*

*(b) the record or personal information is in the custody of or under the control of the other public body.*

The section of the *House of Assembly Accountability, Integrity and Administration Act* relevant to this matter is as follows:

2. In this Act

...

(r) “statutory office” means the office and administrative staff serving the

...

(vi) other offices of the House of Assembly, with the exception of the office of the Auditor General, that may be established under an Act;

The section of the *Auditor General Act, 2021* relevant to this matter is as follows:

30. (1) *Audit working papers of the auditor general’s office shall not be laid before the House of Assembly or a committee of the House of Assembly.*

[9] In most cases, when this Office examines the duty to assist, it is in relation to the reasonableness of a search. However, the duty to assist goes beyond the search for responsive records and includes the interactions between a public body and applicant and the degree to which the public body tries to help the applicant resolve their issue.

[10] The duty to assist requires that a public body make a reasonable effort and respond without delay to an access request. A reasonable effort does not require a thorough search for records if the public body officials responding to the request know that what is being requested does not involve the public body. In this instance, the Complainant’s original intention was to file their access request with the Office of the Auditor General. That is clear from the Complainant’s communication with the House regarding who was the ATIPP Coordinator for the Office of the Auditor General. That the House quickly realized the error that the Complainant had made in submitting their request to the House is commendable. Legislatively, the House could have waited 20 business days before informing the Complainant that it did not have any responsive records. The House did not do this, saving the Complainant several weeks of waiting for a response.

[11] The House also does not function in the manner that the Complainant believes. The House does not serve as a repository for all communications between Members of the House of Assembly, nor does it provide members of the House access to the internal business of the various statutory offices. The *Auditor General Act, 2021* specifically prohibits records of the

Office of the Auditor General, other than a final report, from being disclosed to the House. As the House noted in its submission, if the House were monitoring and privy to all material generated by a statutory office, it would call into question the independence of those offices.

[12] Section 30(1) of the *Auditor General Act, 2021* also explicitly removes the House from any involvement in the preparation of Auditor General reports, with the House only becoming involved once the report is tabled. The Complainant is seeking information on the internal workings of when the Office of the Auditor General planned to release its report on Memorial University and why that timeline was selected. It would be contrary to legislation for the House to be privy to the progress, or any other aspect, of an Office of the Auditor General report given the statutory barrier that exists between both bodies.

[13] The House understands its mandate. It should not have to expend resources searching for records on a matter in which it knows it has no role. If the Complainant is alleging that the House has possession of the records they are seeking, in contravention of the above-quoted legislation, the Complainant has not provided any evidence to support such allegations. As noted previously by this Office, a complainant alleging that a public body has not conducted a reasonable search must establish the existence of a reasonable suspicion that a public body is withholding a record. Similarly, the Complainant would have to show there are circumstances that reasonably suggest the House has contravened the *Auditor General Act, 2021*. No evidence of this has been provided by the Complainant. As well, the speed with which a public body responds to a request is not determinative of whether the duty to assist has or has not been met. This is an instance where the request was made to the wrong public body. To be fair to the Complainant, however, given that the Office of the Auditor General is not a public body subject to *ATIPPA, 2015*, there is no alternative public body to which to make a request for the records the Complainant is seeking.

[14] The Complainant also asserts that the House did not abide by section 14 of *ATIPPA, 2015* since it did not transfer their access request to the relevant public body upon realizing that it was not involved in the issue for which the access request was made. In this circumstance, the access request was seeking records from the Office of the Auditor General, which is not a public body for the purposes of *ATIPPA, 2015*. Since section 14 only applies to public bodies,

the House could not transfer a request to the Office of the Auditor General and therefore the House's actions were not contrary to *ATIPPA, 2015*. Instead, the House did the only thing it could do – promptly notify the Complainant that it had no records.

## RECOMMENDATIONS

- [15] Under the authority of section 47 of *ATIPPA, 2015*, I find that the House of Assembly met its duty to accommodate pursuant to section 13(1) of *ATIPPA, 2015* and should maintain its position with respect to this access request.
- [16] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the House of Assembly 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 1<sup>st</sup> day of December 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador