OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2011-011

July 12, 2011

Public Service Commission

Summary: The Applicant made an application under the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") to the Public Service Commission (the "PSC") for access to records relating to a harassment investigation report. The PSC claimed a time extension under section 16(1)(b) of the *ATIPPA* but did not respond to the Applicant's request within the extended time period. The PSC did not provide any of the responsive records to the Applicant until more than six months after the request was made. The Assistant Commissioner found that there was a deemed refusal to provide access to the records pursuant to section 11(2) and that the PSC had shown a clear disregard for the statutory timelines and the access to information process. The Assistant Commissioner also found that the delay of the PSC in responding to the Applicant's access request constituted a failure to fulfill its duty to assist the Applicant under section 9 of the *ATIPPA*. The Assistant Commissioner made recommendations to the PSC to improve its process for handling access to information requests.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A–1.1, as amended, ss. 3, 9, 11, 16, 43(1) and 67.

Authorities Cited: Newfoundland and Labrador OIPC Reports A-2007-012, A-2008-001, and A-2010-013; Nova Scotia Review Report FI-07-55; Saskatchewan OIPC Report F-2006-003; *X.* v. *Canada (Minister of National Defence*) (1990), 41 F.T.R. 16, *Statham* v. *Canada Broadcasting Corporation*, 2010 FCA 315 (CanLII), *Canada (Information Commissioner)* v. *Canada (Minister of National Defence)*, 1999 CanLII 7857 (FCA), *Canada (Information Commissioner)* v. *Canada (Minister of External Affairs)*, [1990] 3 F.C. 514 (Fed T.D).

Other Resources: Access to Information and Protection of Privacy Office, *Access to Information Policy and Procedures Manual* (St. John's: Department of Justice, 2008), online: http://www.justice.gov.nl.ca/just/inf; Information Commissioner of Canada's Annual Report to Parliament – 1995-1996 and Information Commissioner of Canada's Annual Report to Parliament – 1996-1997.

File #: 0005-094-11-001

I BACKGROUND

[1] In accordance with the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*" or "*Act*") the Applicant submitted an information request on December 15, 2010 to the Public Service Commission (the "PSC"), in which he requested disclosure of records, as follows:

> *A copy of an investigational report submitted to the Public Service Commission by Investigator* [a named investigator] *regarding allegations made by me against (3) department of Natural Resources employees.*

[2] In a letter dated January 6, 2011, the PSC acknowledged receipt of the Applicant's access request. It is important to note that the Applicant's request was the second of three requests to the PSC from three separate individuals for disclosure of information from the same investigation report requested in this case. Two other Applicants submitted separate information requests for disclosure of the investigation report within a ten day time frame of the Applicant's request. The first Applicant submitted an access request on December 10, 2010 and a third Applicant submitted an access request on December 20, 2010. These other two requests are the subject of Report A-2011-010 and Report A-2011-012 respectively. Although each of these requests are not identical, there are significant commonalities. All three relate to the same investigation report, and in each case, the PSC failed to provide access within the statutory time limits. As such, many of the facts and much of the discussion in each of my Reports will be the same.

[3] On January 10, 2011, the PSC sent the Applicant a letter providing notification that the PSC intended to extend the time limit based on section 16(1)(b) of the *ATIPPA*, which allows for an extension where a large number of records is requested or must be searched, and to do so would interfere unreasonably with the operations of the public body. The PSC further indicated that "we expect to respond to your request by February 14, 2011."

[4] On February 17, 2011, the PSC emailed the Applicant as follows:

> *This email is a follow up to our recent conversations regarding the ATIPP Request that you have made to the PSC.*

> *As I explained in our conversation the amount of material associated with your request that must be reviewed and redacted is such as to not permit me to release the requested material by February 14, 2011.*
>
> *I expect to have the review, redaction and release process completed by mid-March.*
>
> *Thank you so much for agreeing to this revised time frame. It is most appreciated.*
>
> *In addition, with regard to the question of combining ATIPP requests, I have been advised that to do so would require that the first request be withdrawn and a second request requesting the combination ore [sic] requests be submitted. The second request would result in new time lines for a response.*
>
> . . .

[5] Later that day, the Applicant emailed the Coordinator as follows:

> *With respect to our conversation regarding my ATIPP request, I do not agree with the extension and time frame, however after consultation with a NAPE representative and lawyer, I learned that this is not uncommon, so unfortunately my options are limited.*
>
> *The question that I asked was not to combined [sic] requests, but would the process of vetting be expedited, if myself and the other two individuals seeking information with respect to the investigation/findings of* [the named investigator] *into our complaints of harassment, had a sworn affidavit prepared and signed whereby the three of us agreed to remove any liabilities from your office, the Office of the Information and Privacy Commissioner, and the Government of Newfoundland and Labrador with respect the release of personal information and the vetting procedure? Basically I do not have an issue with [Applicant 1] or [Applicant 3] seeing anything in the report/findings as it pertains to me personally, and they agree to do the same. If this was done, this would drastically reduce the amount of time you are spending vetting the same document x 3.*
>
> *I sincerely hope that this 15th of March date will be the final delay in regards to our request and I expect to have the documents in hand on or before that date.*
>
> *I thank you for your time and efforts into completing this request.*

[6] On February 24, 2011, the Applicant filed a Request for Review with this Office in which he requested this Office to review a decision, act or failure to act by the head of the PSC and to bring to the attention of the head of the PSC a failure to fulfill the duty to assist applicants. The Applicant also asked this Office to investigate the extension of time for responding to his request.

[7] An Analyst from this Office notified the PSC of the Applicant's Request for Review by letter dated February 28, 2011. In this letter, the Investigator also asked the PSC to explain in writing why this particular request resulted in the specified extension of time and to provide an explanation for the PSC's failure to provide the records in response to the Applicant's access request by the extended deadline.

[8] In a letter to the Analyst, dated March 11, 2011, the PSC provided an explanation for its delay in responding to the Applicant's request for records as follows:

> *The Public Service Commission acknowledges that it was unable to complete the Applicant's request within the sixty (60) days provided for in the Access to Information and Protection of Privacy Act. The Public Service Commission advises that the responsive records will be released to the Applicant once the redaction process is completed.*
>
> *The Applicant has requested records related to an investigation of allegations of harassment made by the Applicant and undertaken at the request of the Department of Justice. The findings report held at the Public Service Commission for the Applicant's allegations of harassment contains information, analysis, recommendations and findings relative to allegations other than allegations made by the Applicant. The redaction of information (both personal of individuals other than the applicant and non-responsive) is a process which requires strict attention to detail.*
>
> *The findings report is approximately 2,300 pages in length distributed among 146 sections across seven volumes. It took approximately 4 days to scan the report and a further day to allocate the scans to a working directory. In addition to the findings report, there is a summary report of approximately 140 pages to be redacted.*
>
> *In redacting these records it was determined that a consistent approach would be required. Hence, I am the only individual engaged in the redacting of records. I have allocated as many hours as possible during the work day given the organizational demands placed on my position and also during non-work hours as personal commitments will permit. To date I have limited my daily work to matters of any important and or urgent nature as I devote a portion of each work week to completing this access request. I will continue to allocate as much time as it is reasonably possible to the redaction process.*
>
> *As the findings report was produced for the Department of Justice and simultaneously provided to the Department of Natural Resources I have been and will continue to consult with the Access and Privacy Coordinators of those departments concerning the release of the responsive records.*
>
> *I am able to report that all materials related to the Applicant's request have been located and made ready for redaction. This the second request for the same findings report and while economies of scale have been achieved in the area of preparing records for redaction the redaction process requires that the entire set of records be reviewed for this Applicant. As the records contain a*

significant amount of information (personal and otherwise) unrelated to the investigation of the Applicant's allegations of harassment, the amount of redaction is significantly higher than expected. At present, I am averaging 2 minutes per page to redact. Due to the intensive nature of the redaction process it is not physically possible to redact documents for 7 hours each day.

It takes approximately 25 seconds per page to print the redacted copy and the audit copy. It takes approximately 6 seconds to photocopy one page. We estimate that we will spend five days printing, page numbering, and then photocopying the responsive records. We estimate we will require a further two days to prepare the redaction table.

Previously in conversation with the Applicant I indicated it was my hope to have the responsive records provided by mid-March 2011. A review of the work accomplished to date and the time taken for same and the work remaining to be done has led me to conclude that the responsive documents will not be available in that time frame. The Applicant has been so advised under separate cover.

In response to the Applicant's request for review that "I am requesting that the Commissioner bring to the attention of the head of the above noted body a failure to fulfill the duty to assist applicants" the Chair and CEO of the Commission has been provided a copy of this correspondence and your correspondence of February 28, 2011.

I believe this allegation may be in reference to the denial of the Applicant's request to combine the responsive records for himself and two other applicants into one response. As my email of February 17, 2011 to the Applicant indicates the request, I interpreted it, could not be granted. As you can read, the Applicant later indicated his disagreement with my interpretation and response.

In closing, please be advised the Public Service Commission fully intends to provide the Applicant with the responsive records for his request.

[9] The PSC also sent a letter dated March 11, 2011 to the Applicant which stated as follows:

…

Please be advised that despite our earlier indication to you of providing the responsive records by Mid-March 2011, we will not be able to provide you with the records in the time frame provided. We are unable to meet this time frame due to the volume for responsive records, the need for consistent redaction of records, and the organizational demands placed on the Privacy and Access Coordinator.

The findings report is approximately 2,300 pages in length distributed among 146 sections across seven volumes. In addition to the findings report there is a summary report of approximately 140 pages to be redacted. I am able to report that all materials related to your request have been located and made ready for redaction. As the records contain a significant amount of information (personal and otherwise) unrelated to the investigation of your allegations of harassment, the amount of redaction is significantly higher than expected.

…

[10] Efforts were made through this Office to resolve this Request for Review informally. After various discussions between the Analyst and the PSC, on April 19, 2011 the Analyst sent an e-mail to the Coordinator advising that it did not appear that this matter would be able to be resolved informally and the next stage in the review process was a formal investigation. After being advised that this matter was proceeding to formal investigation, the Coordinator responded in an email to the Analyst on April 20, 2011 that she was now able to advise that the PSC expected to release the responsive records to the Applicant by June 24, 2011. The PSC issued a letter to the Applicant dated April 28, 2011 advising him of this date.

[11] Given the delay by the PSC, however, the Applicant advised the Analyst that he would not accept an informal resolution of his Request for Review and requested a formal investigation of the PSC's handling of his access request.

[12] Both the Applicant and the PSC were advised by letter dated April 29, 2011 that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the *ATIPPA*. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47 of the *Act*.

[13] By letter dated May 5, 2011, to the head of the PSC, the Information and Privacy Commissioner, Ed Ring, delegated authority for this matter to me, as Assistant Commissioner, pursuant to section 57 of the *ATIPPA*. The decision to delegate this matter was made because the Commissioner was the former Director of Appeals and Investigation for the PSC at the time of the harassment investigation which is the subject to the responsive records and he had had some very preliminary involvement with the investigation.

[14] In an email, dated June 20, 2011, the Coordinator advised the Applicant that the PSC was in the final stages of preparing the responsive records and would be able to release them on or before June 24, 2011. In an email to the Analyst on July 5, 2011, the Coordinator advised that the records were forwarded to the Applicant on June 22, 2011.

II PSC'S SUBMISSION

[15] The PSC provided a formal submission to this Office dated May 12, 2011. In its formal submission, the PSC referenced the explanation provided in its correspondence to this Office dated March 11, 2011 in support of the actions the PSC had taken and would be taking to respond to the Applicants' request for access.

[16] The PSC went on to state in its formal submission as follows:

> . . .
>
> *On March 31, 2011,* [the Analyst] *met with* [the Access and Privacy Coordinator] *to further discuss the actions the Public Service Commission had taken and would take to provide the responsive records to* [the Applicant]. *At that meeting* [the Analyst was] *advised that while the Commission was not able to provide the responsive records within the statutory time frame, the responsive records would be provided to* [the Applicant] *once the redaction process was completed. On April 28, 2011,* [the Applicant] *was advised in writing that the PSC continued to work on his request and the PSC expected the responsive records would be mailed to him on or before June 24, 2011. …*
>
> *In addition to the information provided to* [this Office] *on March 11 and March 31, 2011, we have assigned additional staff as is practical and have permitted overtime to prepare our response to* [the Applicant's] *request. As stated earlier, the redaction of the records continues during work hours as organizational demands permit and during non-work hours as personal obligations permit.*
>
> *The responsive records for this applicant are contained within a 2,100 page (approximate) document that also contains records responsive to another 2 applicants and four other individuals. In addition, this document also contains records that are unrelated to the investigation of the applicants' allegations of harassment.*
>
> *Simply put, the Public Service Commission, through its staff are attempting to respond to this request in a timely fashion, in light of the volume of records to be reviewed, the workloads of our staff and the organizational demands of the Commission.*
>
> . . .

In brief, the PSC's explanation indicates that the volume and complexity of the records, the work demands of the Coordinator and the time taken to consult other public bodies were factors in the delay in providing the Applicant with a final decision regarding his access request.

[17] In addition to laying out its position regarding the length of time involved in responding to this request, the PSC further stated in its formal submission as follows:

> *While the documentation provided by the Office of the Information and Privacy Commission [sic] states this formal investigation is relevant to the Commission's failure to provide the responsive records within the statutory time limit, the matter of a third party consent has been put forth and discussed at length. We are providing the following comments in relation to the suggestion of the third party consent for informational purposes only. However, it is our view that the formal investigation and the Report of the Office of the Information and Privacy Commission must be limited to the failure to provide responsive records within the statutory time limits.*
>
> *As you are aware, three applicants applied individually within a ten day time frame for access to personal information from the same set of documents. In mid-February, two months after the submission of their initial requests for access, two of the applicants each suggested that they would provide their consent to release their personal information to the two other applicants if the third party consent would enable a quicker response to the applicant. A third applicant has not made such a suggestion.* [The Analyst] *followed up on this suggestion with* [the Coordinator]. *However, the suggestion has not been adopted by the PSC. While the suggestion appears to have merit on its face, the application of a third party consent to the redaction process would still require that each record be examined in light of who the applicant is as we are dealing with an investigation of allegations made against four respondents and allegations that are not common to each applicant.*
>
> *The first applicant made allegations against three respondents. A second applicant made allegations against three respondents who are in common with the first applicant. A third applicant's allegations were made against a fourth respondent. The two applicants' allegations against the three common respondents are not all in common, i.e. not the same situations.*
>
> *At the time of the request (mid-February) work was in progress on all three requests, i.e. common documents and a significant portion of the documentation had been already vetted on the basis of the original requests and would, if a new process was started, result in the work that had taken place to date being voided and of no value. It was and remains that assessment of the PSC that the response time would not be drastically, or even significantly, reduced so that the purpose of altering of the requests to reduce the response time would not have been achieved. The suggestion that the third party consents be applied on a go-forward basis was also judged to be problematic as there is no process or duty under the Act to amend an access request with the result that portions of the responsive records would be vetted using different criteria i.e some with third party consent given to other persons, and some records vetted without the third party consent given to other persons.*
>
> . . .
>
> *It is the opinion of the Public Service Commission that the suggestion that the PSC accept the third party consent two months after the initial request for access is considered to be an amendment of the initial request or to constitute [a] second request. In our view this suggestion goes beyond the clarification of an existing request. We know of no authority or precedent whereby an access to information request can be significantly altered after submission. While the duty to assist may support accepting clarification of a request or a withdrawal of some part of a request, we suggest*

the inability to enlarge a request is consistent with the purpose of the Act. To permit or to require the enlarging of a request could significantly alter the determination of responsive records and the scope or nature of the vetting process, resulting in significant unnecessary work or incomplete work on the part of public bodies. It is our view that if, following a submission of a request, an applicant wishes to request additional records or submit a consent so as to change the nature of a request, a new request is the appropriate process under the Act.

III APPLICANT'S SUBMISSION

[18] The Applicant provided no formal submission.

IV DISCUSSION

[19] The purposes of the *ATIPPA* are set out in section 3, as follows:

> *3. (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*
>
> *(a) giving the public a right of access to records;*
> *(b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;*
> *(c) specifying limited exceptions to the right of access;*
> *(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and*
> *(e) providing for an independent review of decisions made by public bodies under this Act.*

[20] In order to make public bodies more accountable, the *ATIPPA* places a number of statutory duties on public bodies such as the PSC. Section 11 of the *ATIPPA* sets out a time limit in which a public body is required to respond to an access to information request as follows:

> *11. (1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it, unless*
>
> *(a) the time limit for responding is extended under section 16;*
> *(b) notice is given to a third party under section 28; or*
> *(c) the request has been transferred under section 17 to another public body.*

[21] The 30 day time limit set out in Section 11 can be extended in accordance with Section 16 of the *ATIPPA* which provides:

> *16 (1) The head of a public body may extend the time for responding to a request for up to an additional 30 days where*
>
> *(a) the applicant does not give sufficient details to enable the public body to identify the requested record;*
> *(b) a large number of records is requested or must be searched, and responding within the time period in section 11 would interfere unreasonably with the operations of the public body; or*
> *(c) notice is given to a third party under section 28.*
>
> *(2) Where the time limit for responding is extended under subsection (1), the head of the public body shall notify the applicant in writing*
>
> *(a) of the reason for the extension;*
> *(b) when a response can be expected; and*
> *(c) that the applicant may make a complaint under section 44 to the commissioner about the extension.*

[22] Where the responsive records are not provided to an Applicant within 30 days, or within 60 days when the time limit has been extended under section 16, the public body is in a deemed refusal situation. Section 11(2) of the *ATIPPA* provides:

> *(2) Where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record.*

[23] In addition, section 9 of the *ATIPPA* is relevant to this review. It states:

> *9. 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.*

[24] In this case, the PSC received the Applicant's request for records on December 15, 2010. On January 10, 2011, the PSC issued a letter to the Applicant referencing its decision to extend the time limit for a response by 30 days, referring specifically to section 16(1)(b) which allows a public body

to extend the time limit for 30 days where a large number of records is requested. In my opinion, given the volume of records involved, this was a valid reason to claim a 30 day extension, with a new due date for providing records of February 14, 2011. However, access to the records was not provided by the PSC within the extended time period. In fact, the PSC did not forward the records to the Applicant until June 22, 2011, which is more than six months after the Applicant's initial request. In other words, by the time the PSC provided the records to the Applicant, it had been in a deemed refusal situation for as of the date of this Report, the PSC has been in a deemed refusal situation for 128 days. Accounting for the first 30 days, the 30 day extension, and the 128 days of deemed refusal, it took the PSC a total of 188 days to respond to this access request (more than six months).

[25] Based on the information presented to this Office it is clear that the PSC completely failed to comply with the statutory duty imposed on it by the *ATIPPA* to respond to the Applicant within the 60 day extended time frame, a fact which was acknowledged by the PSC. The excessive delay beyond the statutory time period is unreasonable and demonstrates a disregard for the statutory timelines. After reviewing the facts as put before me I have identified several areas of concern which warrant consideration and comment.

[26] As this Report is the first one issued by this Office which deals exclusively and directly on the subject of deemed refusal, I will first examine the importance of the statutory timelines and the significance of a deemed refusal in the access to information process.

[27] It is clear from the *ATIPPA* and access legislation in other jurisdictions throughout Canada that the timeliness of a response to an access request is imperative and that unreasonable delay is synonymous with an explicit denial of access. The importance of responding to an access request within the statutory timelines was discussed by the Saskatchewan Information and Privacy Commission in Report F-2006-003 at paragraph 50 as follows:

> *…The duty on a government institution to respond to an access request within a prescribed time period is perhaps one of the most important features of the Act. The 30 day deadline imposes an essential degree of discipline on government institutions to respond in a timely way. The extension of time permitted by the Act should be construed narrowly, insofar as it is an exception to the 30 day limit. I take that to be the intention of the Legislative Assembly since the extension provision in*

> *section 12 is qualified in a number of ways. Three specific circumstances are exhaustive of the circumstances in which the 30 days can be extended…*

[28] Both the Federal Court of Canada Trial Division and the Federal Court of Appeal have recognized the significance of a deemed refusal under the federal access legislation. In the case, *X* v. *Canada (Minister of National Defence)* (1990), 41 F.T.R. 16, the Federal Court provided instructive discussion on the significance of a deemed refusal at paragraph 8 as follows:

> *The purpose of the Access to Information Act, as stipulated under section 2, is to provide the right of access to information in records under the control of a government institution in accordance with the principle that government information should be available to the public. In keeping with that general intent, subsection 10 (3) provides that where the head of a government institution fails to give access to a record requested within the time limits set out in the Act, he shall be deemed to have refused to give access. Thus the intention of the Act, as framed, is clearly to ensure that the requestors' access to information is not frustrated by bureaucratic procrastination: foot-dragging equates refusal.*

[29] In a recent case, *Statham* v. *Canada Broadcasting Corporation*, 2010 FCA 315 (CanLII), the Federal Court of Appeal confirmed that it was "settled law that no distinction exists between a 'true refusal' and a deemed refusal of access." Quoting from paragraph 34 of the Federal Court's decision of this matter, the Federal Court of Appeal wrote:

> *34. When an institution runs afoul of the timelines prescribed by the Act, subsection 10(3) deems the institution to have refused access to the requested documents with the result that the government institution, the complainant and the [Commissioner] are placed in the same position as if there had been an explicit refusal within the meaning of section 7 of the Act. By incorporating subsection 10 (3) into the access regime, Parliament ensured that government institutions could not avoid access obligations by way of delay or non-response and provided a mechanism through which requesting parties are able to file a complaint and eventually seek review from the Court.*

[30] I also refer to the case of *Canada (Information Commissioner)* v. *Canada (Minister of National Defence)*, 1999 CanLII 7857 (FCA) in which the Federal Court of Appeal commented on the result of a deemed refusal situation as follows:

> *19. Under the terms of subsection 10(3) of the Act, where a government institution fails to give access to a record within the time limits set out in the Act, there is a deemed refusal to give access, with the result that the government institution, the complainant and the Commissioner are placed in*

> *the same position as if there had been a refusal within the meaning of section 7 and subsection 10(1) of the Act.*
>
> . . .
>
> *21. In the instant case, as soon as the institution failed to comply with the time limit, the Commissioner could have initiated his investigation as if there had been a true refusal. . . .*

[31] In this case, when the PSC failed to respond to the Applicant's access request within the extended period of time set out in the *ATIPPA*, the PSC was in a deemed refusal situation under section 11(2). Therefore, this Office had jurisdiction to proceed in the same manner and same extent as if there had been an actual refusal of access. Accordingly, I have authority to review the deemed refusal in accordance with section 43(1) which states:

> *43. (1) A person who makes a request under this Act for access to a record or for correction of personal information may ask the commissioner to review a decision, act or failure to act of the head of the public body that relates to the request.*

[32] During the investigation, the PSC provided this Office with an explanation for its failure to provide the records within the extended timelines. These reasons included the volume and complexity of the records, the need for consistency and strict attention to detail when redacting information, consultations with other departments, and the organizational demands placed on the Coordinator. While I appreciate that this access request, in combination with the other two requests which the PSC received within a 10 days period, presented significant challenges, I do not accept the reasons put forth as providing an adequate explanation for the failure of a public body to meet its obligations under the *ATIPPA*.

[33] With respect to the PSC's explanation that the organizational demands related to the Coordinator's position were a factor contributing to the delay in responding to the request, I note that in Report 2007-012, former Commissioner Wall considered a similar explanation put forth by a public body as a justification for not performing the statutory duties imposed by the *ATIPPA*. In that Report, the former Commissioner commented at paragraph 57 as follows:

> *…I do not accept the Coordinator's statements that she had other responsibilities as a justification for not performing the statutory duties imposed by the ATIPPA. I appreciate that the Coordinator is not a full-time Access and Privacy Coordinator and has other duties to perform in her position with the Town. However, the statutory obligations imposed by sections 9, 11 and 12 of the ATIPPA must be met. Again, these three* ***statutory duties*** *are imposed on the head of the public body and it is the responsibility of the head of the Town to ensure that there are adequate staff to fulfill these statutory obligations. The duties imposed on public bodies by the ATIPPA are not duties to be performed when and if there are staff to perform them. They are statutory duties that must be carried out.*
>
> [emphasis in original]

[34] I am aware that the Coordinator holds a senior level position with the PSC which no doubt carries numerous responsibilities and places many demands on her work day. However, the head of a public body has a statutory obligation under section 67 of the *ATIPPA* to designate a person on the staff to act as an Access and Privacy Coordinator and to ensure that the Coordinator is properly trained and qualified to perform the duties associated with the access to information process. The *Access to Information Policy and Procedures Manual* produced by the Access to Information and Protection of Privacy Coordinating Office of the Department of Justice sets out the general list of duties of a Coordinator at pages 2-4 to 2-5 as follows:

> *Access Request Management Duties:*
>
> - *Assist applicants and potential applicants in various ways, including explaining the Act, helping them to narrow their requests, directing them to other sources of information, bearing in mind at all times the statutory duty to assist an applicant (section 9).*
> - *Assign requests to program areas*
> - *Monitor and track the processing of requests*
> - *Ensure time limits and notification requirements are met*
>
> ….
>
> *Training Administration*
>
> - *Indentify training needs of the staff of the public body*
> - *Liaise with the ATIPP Office, Department of Justice*
>
> [emphasis added]

[35] As set out in these general duties above, it is incumbent on the Coordinator to ensure that time limits are met. In addition, the head of the PSC is under a statutory obligation to ensure that there is an adequate complement of staff to fulfill the duties related to responding to access requests within the time limits. Therefore, when the PSC received this and the two other requests, which involved a large volume of records, the PSC should have assessed the time and resources it would need to respond within the statutory timelines. Upon completing such an assessment, the difficulty of meeting the time limits, would likely have been apparent, particularly give the demands of the Coordinator's position. The PSC then could have taken appropriate steps to handle the workload involved in these requests and planned in advance for the designation and training of additional staff to assist the Coordinator. Although the PSC indicated in its formal submission dated May 12, 2011 that they had "assigned additional staff as is practical," I note that in her letter dated March 11, 2011, the Coordinator indicated that as of that date she was the only individual involved in the review of records in relation to this request however she had not yet commenced the severing process. Dedicating and training additional human resources at an earlier point in time perhaps would have given the PSC an opportunity to comply with the *ATIPPA*, or at least mitigate the effect of the deemed refusal by responding more quickly that it did.

[36] In relation to the PSC's statement that consultations were necessary with two other departments regarding the release of the responsive records, I note that the PSC did not provide this Office with any details to substantiate this claim, other than simply identifying the departments. This Office needs to understand why the PSC was unable to conclude its consultations within the response deadlines in order to consider this claim. To meet the burden of proof set out in section 64 of the *ATIPPA*, the PSC must provide sufficient evidence as the nature, complexity and/or number of the consultations undertaken. The evidence before me is insufficient to accept this as a satisfactory justification, or even a contributing factor, for the unreasonable delay.

[37] The PSC has also stated that this access request involved a large volume of records and that the redaction of information is a process that requires strict attention to detail. I accept this as true, however, these assertions do nothing to relieve a public body from its obligation to respond to an access request within the statutory timelines. A public body is limited to the reasons set out in section 16 when it comes to extending its response time beyond 30 days, and the absolute maximum

is a 30 day extension, for a total of 60 days. If a public body does not provide the records within the statutory deadline, it will be in default of its statutory responsibility. While the volume of records involved and the strict attention to detail inherent in reviewing information may present challenges, it is not an acceptable justification for a public body to exceed the statutory response deadlines. In Report A-2008-001, the Commissioner stated:

> *There is no doubt that the ATIPPA can represent, at times, an inconvenience, or even a challenge for public bodies who find themselves struggling to meet statutory deadlines. It is apparent to me, however, that the 30 day time frame in section 11, in addition to the 30 day extension provided for in section 16, were meant to give public bodies the necessary time to respond to access requests. These time frames are designed to account for holidays, weekends, and other interruptions which may interfere with the search and retrieval of requested records, while still giving the public body enough time to meet its statutory obligations…*

[38] In the Federal Court of Canada case *Canada (Information Commissioner) v. Canada (Minster of External Affairs)*, [1990] 3 F.C. 514 (Fed. T.D.), Justice Muldoon stated in the following paragraph that processing access requests in a less than expeditious manner was, in fact, breaking the law:

> *20. . . . Confession that such requests ought to be processed as expeditiously as possible may be good for an individual's soul, but it has no didactic energy in gaining the attention of government departments. It has no effect in actually providing legally that less than expeditious processing of requests for information is breaking the law, as it surely is. The purpose of the review is not just to make the particular respondent acknowledge unreasonable tardiness. It is, also, to let all other potential respondents know where they stand in these matters. The Court is quite conscious that responding to such requests is truly "extra work" which is extraneous to the line responsibilities and very raison d'être of government departments and other information-holding organizations of government. But when, as in the Access to Information Act, Parliament lays down these pertinent additional responsibilities, then one must comply.*

[39] Similarly, the PSC must comply with the statutory timelines set out in the *ATIPPA*. There is nothing in the *ATIPPA* to excuse the PSC from its statutory duties because its Coordinator did not have time to carry out those duties. The PSC has to accept the fact that its obligations under the *ATIPPA* must be complied with despite the challenges presented by an access request.

[40] In addition to its serious failure to meet the statutory timelines, the delay in responding to this application for access is exacerbated by the PSC's seemingly relaxed attitude regarding the fact that they were in a deemed refusal situation. The approach taken by the PSC bears some resemblance to

the one described by the Information Commissioner of Canada in relation to federal government departments in the 1995-1996 Annual Report. At page 13 of this Report, the then Commissioner stated:

> *…The law of course says requests must be answered within 30 days (unless an extension is justifiable). Many public officials appear to have decided, in days of dwindling resources, to amend the law to a "do-your-best" deadline. A passage from a letter written to the commissioner by a Deputy Minister who had failed to meet response deadlines illustrates this point:*
>
> > *"I regret that the Department was not able to meet the September 15 deadline for releasing the requested information to (the requester). As you know this date was negotiated in good faith and was overtaken by events . . . . This has meant that a greater number of the Branch's resources from an already shrinking base have had to be deployed in those areas.*
> >
> > *" . . . The present climate is, as you know, such that doing more with less means that we will all be pulled in competing directions and frequently faced with difficult choices and compromises.'*
>
> *There it is in a nutshell: the view that public officials can somehow exempt themselves from the obligation Parliament imposed to give timely responses. This notion that other departmental priorities, especially the need to service the Minister, take precedence over the edicts of the law is not uncommon.*

[41] It appears that the PSC adopted such a "do-your-best" deadline in responding to the Applicant's access request. While this Office must acknowledge there may be times that an applicant will file a request which is so large or complex that it will be impossible for a public body to comply within the statutory time frame, there is no evidence that this was the case in the current matter. According to the PSC, the records requested by the Applicant consisted of approximately 2440 pages (the findings report which was 2300 pages and a summary report which was 140 pages). The PSC indicated that it was taking the Coordinator on average 2 minutes per page to redact (or sever) the responsive records. When calculated, at 2 minutes per page, it should have taken the Coordinator approximately 4880 minutes to process the records, or approximately 81 hours. If the Coordinator allocated 4 hours per day to this task, it should have taken approximately 20.25 working days to review and sever these records. When you add the 4 days to scan the report, 1 day to allocate the scans to a working directory, 5 days printing, page numbering and photocopying and 2 days to prepare the redaction table, in total it should have taken a little more than 32 working days to process and complete this request. This would have been within the statutory time limit of 60 calendar days. Instead, it took the PSC 188 calendar days to respond to this request. This time frame is calculated

assuming that only one person is working on the request. Additional personnel would of course allow this time frame to be shortened considerably.

[42] A public body finding itself in a deemed refusal scenario must take whatever actions are available to it to mitigate the imposition on the applicant's right of access with each passing day, and such measures should begin as soon as it is apparent that the extended time frame cannot be met. I will now discuss certain measures that the PSC could have taken to respond to this access request in a more timely and efficient manner.

[43] To begin with, as previously discussed, the PSC could have assigned additional staff at an earlier point in time to help process this request (along with the other two requests) in a timely manner. In her letter to this Office, dated March 11, 2011, the Coordinator indicated that she was the only individual involved in the redaction of records. Given that the PSC's response to the Applicant was due on February 14, 2011, after which the PSC was in a deemed refusal situation, this seems to be a missed opportunity to get the work done faster by bringing additional resources to the task. What is more troubling is that the Coordinator indicated that as of the date of her March 11, 2011 letter, the records had been located and were ready for redaction. Therefore, at this point of time, the redaction process had not yet been started for this request.

[44] It is also important to note that, unlike many government departments and agencies, the PSC does not have a designated backup coordinator on the list of ATIPP Coordinators posted on the Department of Justice website. For a public body of this size, the PSC should have had a designated backup coordinator who was trained and ready to assist in situations such as this one. As previously stated, dedicating and training additional human resources to work on this request at an earlier point in time perhaps would have given the PSC an opportunity to comply with the *ATIPPA*.

[45] Had a backup coordinator been in place to work hand in hand with the Coordinator from the beginning, it is likely that all three requests could have been responded to within the statutory time frames, or at least without the excessive delay which was seen in this case. Given the length of time the Coordinator stated that it was taking to sever the records, if the PSC had exceeded the time limit, it would not have been my much, and it is possible that this matter would not have resulted in a Request for Review. Even if there had been a Request for Review, the odds would have favoured an

informal resolution. I say this because it appears that the Applicant was actually willing to accept some delay as evidenced by the fact that he did not file this Request for Review until approximately 10 days after the end of the statutory deadline.

[46] Another possibility the PSC should have considered to help process this request in a more expeditious manner was working with the Applicant to narrow his request. There is no evidence that at any time during the processing of this access request that the PSC attempted to discuss the possibility of narrowing the request or prioritizing records with the Applicant. When the Coordinator realized that the volume of records involved in this request would make it difficult to process it within the statutory timelines, the possibility of narrowing the request should have been discussed with the Applicant.

[47] Another factor that the PSC should have considered to help mitigate the excessive delay was to provide interim releases to the Applicant as the records were processed. The release of records in installments, particularly when a request involves a large volume of records, is a suggested practice by the Information Commissioner of Canada. In the 1996-1997 Annual Report, the Commissioner included this practice on page 22 in his "helpful hints" to Coordinators as follows:

> *For access requests covering a large volume of records, releasing records as they are processed will assist the department if a case for a time extension is presented to the requester.*

[48] I note that the provision of interim releases to an Applicant was endorsed by the Federal Court of Canada in the above noted case, *Canada (Information Commissioner)* v. *Canada (Minister of External Affairs)*. In that case, the respondent department made numerous concessions regarding its delay in responding to an access request, one of which was "…that it would have been better had it released records to the requestors as they became ready for release, rather than waiting until all the records were ready." Most interesting is that Justice Muldoon, writing for the Federal Court, held that that the respondent department breached the requirements of section 9 of the Federal *Access to Information Act* (which is similar to section 16 of the *ATIPPA*) "by withholding records ready for release until all records had been processed rather than releasing the records as they became available".

[49] In this case, the PSC did not provide any interim releases to the Applicant and withheld all the records until they had all been redacted and ready for release. As noted in Report A-2011-010, in its

formal submission dated May 12, 2011 with respect to that matter, the PSC indicated that it "declines to provide partial releases to ATIPPA applicants as we wish to ensure consistency across the entire responsive record." Although this position may be acceptable when a public body is operating within the statutory timelines, it is unreasonable to take this strict approach regarding the release of records when it is in a deemed refusal situation. In a deemed refusal, the public body is compounding its infringement of the applicants' right of access with each passing day, and it is incumbent upon the public body to take those actions which are available to it in order to minimize such an infringement. The "wishes" of the public body are secondary at that stage.

[50] In the preceding paragraphs, I have outlined my finding that the PSC clearly failed to fulfill its statutory duty to respond to the Applicant's request within the statutory deadlines. I also find that the PSC failed to meet its duty to assist as required by section 9 of the *ATIPPA* which clearly includes within its scope the obligation to respond to an access request "without delay." In Report A-2010-013, the Commissioner commented that having already stated my finding regarding the public body's failure to fulfill its duty under section 11(1), it was a straightforward matter also to find that the public body failed to fulfill its duty to assist the Applicant without delay when it provided a final decision to the Applicant's access request after the due date. The same conclusion applies here.

[51] In Report A-2010-13, the Commissioner also indicated that pages 3 and 4 the ATIPP Manual provide a useful synopsis of the duty to assist an applicant, as follows:

> *The* Act *requires that public bodies try to respond quickly, accurately and fully to applicants and to help them to as reasonable an extent as possible.*
>
> *9. 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.*
>
> ***The duty to assist the applicant is an important, underlying provision of the Act.*** *It is a statutory duty throughout the request process, but it is critical during the applicant's initial contact with the public body. The public body, through its Access and Privacy Coordinator, should attempt to develop a working relationship with the applicant in order to better understand the applicant's wishes or needs, and to ensure that he or she understands the process.*
>
> *Both the applicant and the public body will benefit from a cooperative, respectful relationship.*
>
> [emphasis in original]

[52] Although the PSC periodically advised the Applicant of the status of his request, it does not appear that the PSC developed a cooperative working relationship with the Applicant. As I previously stated, there were many ways the PSC could have worked with the Applicant in processing his request, such as discussing the possibility of narrowing the request, prioritizing records or providing interim releases to the Applicant. In my view, waiting until all the records were processed before releasing any, despite being over 4 months in a deemed refusal situation, was a failure of the duty to assist, which requires a public body to respond "without delay."

[53] The lack of clear communication between the Coordinator and the Applicant is clear from their email exchange on February 17, 2011 in relation to a suggestion made by the Applicant in an effort to expedite the redaction process. In her email to the Applicant on February 17, 2011, the Coordinator referenced the Applicant's question of "combining requests" and advised him that to do so would require him to withdraw his current request and submit a new application requesting the combination of his and the other two requests. In response to this, the Applicant emailed the Coordinator and clearly explained that he did not ask her to combine requests but had suggested that he and the other two applicants sign an affidavit allowing the PSC to release the personal information of all three applicants to the other as a means of reducing the amount of time required to redact the same investigation report three times. Essentially, the Applicant was suggesting that he would consent to the release of his personal information to the other two applicants and the other two applicants would provide similar consents for him.

[54] It is clear from this email exchange that the Coordinator had misinterpreted the Applicant's suggestion. However, that there is no evidence that the Coordinator responded to the Applicant's email or that there was any further discussion between the Coordinator and the Applicant with respect to clarifying this issue. In fact, in the Coordinator's letter to this Office dated March 11, 2011 she indicated that she believed that the Applicant's allegation that the PSC failed to fulfill the duty to assist was in reference to "the denial of the Applicant's request to combine the responsive records for himself and the two other applicants into one response." Therefore, it is clear that the Coordinator still did not understand the Applicant's request. In fulfilling the duty to assist the Applicant, it is incumbent on a public body to develop a working relationship with the Applicant and to understand the Applicant's wishes or needs.

[55] I would also like to address the issue of a third party consent as it is referenced by the PSC in its formal submission dated May 12, 2011. The PSC indicated that their comments regarding the third party consent were for informational purposes only and stated their view that this Report "must be limited to the failure to provide the responsive records within the statutory time limits." However, the issue of a third party consent could be relevant to the PSC's failure to provide the responsive records within the statutory timelines and the failure of the duty to assist in this case, and I therefore consider it to be relevant to this review.

[56] One of the reasons put forth by the PSC for the delay in this matter was that the amount of severing (redaction) was significantly higher than expected. The suggestion of a third party consent was presented to the PSC by this Applicant and one of the other Applicants when they were advised by the Coordinator in February 2011 that the responsive records would not be provided within the statutory timelines due to the amount of severing involved. This request was rejected by the PSC. The remaining Applicant later indicated to this Office that he was willing to provide a consent as well, although the idea had been rejected by the PSC by that time.

[57] Section 30 of the *ATIPPA* is a mandatory exception which prohibits a public body from releasing an individual's personal information to a third party unless the information falls within one of the exceptions contained within subsection 30(2). Pursuant to subsection 30(2)(b), the mandatory exception does not apply where the third party to whom the information relates has consented, in writing, to the disclosure. When severing records, a public body must review the information to determine which, if any, of the exceptions to disclosure contained in the *ATIPPA* apply. If the information meets the definition of personal information, then section 30 applies and the information must be severed subject to the provisions of subsection 30(2). When a consent has been provided by the individual to whom the information relates, section 30 does not apply and the information can be disclosed. So, in this case, the other two Applicants would provide written consent such that if any of their personal information were located within the responsive records requested by this Applicant, it would not have to be severed by the PSC, thus (in theory) saving on the time it takes to redact the record.

[58] I acknowledge that third party consents would ideally be provided when a request is initially made and that accepting a consent at a later time in the process may be problematic and at a late stage may or may not be helpful in speeding up the process if much of the work has already been done. However, the suggestion of providing third party consents does have some merit and can be a useful tool in processing similar requests in a more expeditious manner. In this case, the Applicant and the other two Applicants requested information from the same investigation report which, according to the PSC, contained personal information relating to all three Applicants and other individuals. If each Applicant provided a written consent for the release of their personal information to the other two Applicants, this would eliminate the requirement for the PSC to sever the personal information of each Applicant from the report provided to the other Applicants, thereby reducing the amount of redaction involved in processing these requests. This could be especially useful in cases where the personal information of the consenting individuals is intertwined in some way, and it is difficult to separate through the severing process.

[59] Let me be clear. What was being proposed by the Applicants was not an expansion of their requests as indicated by the PSC in its submission. Furthermore, it was not as complex a suggestion as it appeared to the PSC to be. Consider all of the records responsive to the Applicant's request in this particular review – some 2440 pages. Now let us assume that another individual provided written consent for the PSC to disclose to the Applicant any of the individual's personal information that might have been contained in those 2440 pages. You simply comply with that request and you do not sever any of that individual's personal information. There has been no amendment to the Applicant's request – the responsive record is still the same 2440 pages, but with one less category of information to sever.

[60] I am not going to go into detail by addressing all of the PSC's points on this issue, none of which I agree with. The bottom line is that this process may have assisted the Applicants in getting their information sooner than they otherwise would have. We will never know the answer for sure because the PSC did not understand the concept and therefore were not in a position to fully consider it. What the PSC must bear in mind here is that they were in a deemed refusal situation when they refused to entertain this request from the Applicants. A public body finding itself in this scenario should be much more open to engaging with Applicants who are attempting to make

suggestions aimed at achieving an earlier release of records. The objective of the public body in such a case should be to do whatever works, not to reject out of hand.

[61] I find the approach taken by the PSC to this access request to be very disappointing. Although the PSC acknowledged that it did not meet the 60 day extended deadline provided for under the *ATIPPA* in its letter dated March 11, 2011, the PSC has provided no indication that it has accepted responsibility for its failure to act in accordance with the legislation or that it has introduced any measures to avoid delays in future requests of this volume.

The federal Information Commissioner's Annual Report to Parliament – 1996-1997 at pages 20 to 24 provides guidance to Coordinators for administering the federal access law in an efficient and effective manner. I will outline some of these suggestions which may be relevant to the PSC:

> *Process*
>
> - *Develop a tracking system for access requests that is also a management information system. Know the status and location of requests. Be able to determine when an activity is due for completion in order to follow up before the activity becomes overdue.*
>
> . . .
>
> - *When requests are not answered within the statutory time frames, consider the following to reduce future delays: Routinely consult each requester making the request to discuss its content so that only clarified requests are sent to program areas. Confirm the timeframe and scope of the access request with the requester.*
> - *Develop a processing schedule for access requests that list the activities (such as search, review, approval, preparation) and maximum time allocated to each activity. Communicate the schedule to program areas. With each request, provide the program area with the date that an activity is due for completion, e.g., complete the search for records by (date). Follow-up with the program area before an activity becomes overdue.*
> - *Prepare a similar processing schedule for consultations with other departments and with third parties. Monitor carefully the progress of such consultations and, if answers are not received within a reasonable time, proceed to answer the request without further delay.*
> - *If a large number of access requests are received within a short time, develop a proposal and action plan to address the problem before a chronic backlog occurs. The plan is critical if temporary services are needed. As an alternative to temporary services, personnel from the program area dealing with the access request may be able to assist in the processing.*
> - *With training, the program area itself may be able to provide the "first cut" at what information might be subject to an exemption from disclosure.*

- *When voluminous records have been requested, make releases on the installment plan as the request is processed. This may entail a little extra time for the department, but feedback from the requester on the information disclosed may avoid processing records of no interest to the requester.*

. . .

Customer Service

. . .

- *Keep in close touch with requesters who may be prepared to help out by narrowing the scope of their requests, by prioritizing records or by agreeing to extend the time allowed for a response to the access request.*
- *For access requests covering a large number of records, releasing records as they are processed will assist the department if a case for a time extension is presented to the requester.*

. . .

Leadership by Senior Management

- *Reinforce the department's respect for the access law by insisting that it be taken as seriously as any other lawful obligation.*
- *Minimize the required layers of approval and ensure that those in the approval chain know of and are held to the turnaround time necessary for a timely response. . .*
- *Ensure that the access office has sufficient resources to enable it to handle the ordinary workload in a timely manner. As a rule of thumb, an ATIP office's annual workload should not exceed approximately 100 completed requests per analyst. Of course, this fluctuates depending on the complexity of the requests and the volume of records involved.*
- *In consultation with Treasury Board, ensure that the department has a plan for responding to unanticipated surges in requests.*
- *Ensure that the department's record management practices assist the department in meeting its obligations under the access law.*
- *Deputy Ministers should make it clear to their senior officials that answering access requests is to be considered part of the core function of all operational units.*
- *Deputy Ministers should set a quality of service standard for meeting timeframes; managers should be evaluated on meeting that standard.*

. . .

[62] When the Applicant filed his Request for Review, his primary concern was the non-receipt of the records. As the PSC had now provided the records to the Applicant, the most obvious and immediate problem has been remedied. My options are extremely limited in terms of recommendations to further remedy the situation at hand as there are no penalties in the *ATIPPA* for this kind of violation of the access law. I note that the Information Commissioner of Canada has, however, urged federal government departments to waive or refund fees in cases when

response times have not been met. On page 14 of the Information Commissioner's Annual Report to Parliament – 1995-1996, the Information Commissioner reported that most departments had accepted this recommendation. I further note that this approach was adopted by the Nova Scotia Review Officer in Report FI-07-55, wherein she recommended the Nova Scotia Department of Environment and Labour return the mandatory $25 application fee required to file an access request to the Applicant, due to the inordinate delay.

[63] The application fee required to file this access request is $5. Although this may seem to be a nominal amount, I recommend that the PSC return this application fee to the Applicant to acknowledge the excessive delay in processing his request.

V CONCLUSION

[64] I would like to emphasize that the subject of this review is the failure of the PSC to act in accordance with the time limits set out in the legislation and its failure to fulfill its duty to assist the Applicant. The content and severing of the records are not currently before me. I would point out however that the Applicant is free to request that this Office conduct a further review if he is dissatisfied with what he receives in terms of records being severed or other related issues.

[65] Based on the information before me it is evident that the PSC has failed to meet many of its obligations in this situation. They have clearly failed to respond within the time frames as evidenced by the documentation and acknowledged by the PSC; they failed to respond to the Applicant without delay; and they failed to assist the Applicant in an open, accurate and complete manner. While this Office acknowledges that, in exceptional circumstances, a delay may be difficult to avoid, the extent of the delay in this situation is completely unacceptable. What is more troubling is that the PSC has not created an impression of being in a particular hurry to provide the records within the response deadlines contained in the *ATIPPA* and have not developed any measures or procedures which may help to avoid delays in any future requests of this volume.

[66] Finally, I would like to acknowledge the fact that public bodies in this province generally have an excellent track record when it comes to responding to access requests within the statutory time frames. Deemed refusals are relatively rare, but they do occur. My Report is primarily meant to provide recommendations to the PSC but I also wish to use this forum to encourage other public bodies to keep up the good work, to remain vigilant, and hopefully to consider this Report and recommendations as they continue to perform their duties under the *ATIPPA*.

VI RECOMMENDATIONS

[67] Under the authority of section 49(1) of the *ATIPPA*, I hereby recommend that the PSC, in responding to future access requests:

1. Implement modifications to its practices to help ensure that it meets statutory time limits in the future, even for large volume requests;
2. Perform its duties under the *ATIPPA* in a manner that is consistent with the duty to assist an Applicant;
3. Consider interim releases of records in future access requests which involve a large volume of records;
4. Ensure that its *ATIPPA* training for employees emphasizes the importance of the 30 day time period for responding to an access request;
5. Appoint an Alternate/Backup Access and Privacy Coordinator who will receive training from the ATIPP Coordinating Office of the Department of Justice who can assist the Access and Privacy Coordinator in processing access requests;
6. Return the mandatory $5 application fee to the Applicant, due to the inordinate delay.

[68] Under authority of section 50 of the *ATIPPA* I direct the head of the Department to write to this Office and to the Applicant within 15 days after receiving this Report to indicate its final decision with respect to this Report.

[69] Please note that within 30 days of receiving a decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60 of the *ATIPPA*.

[70] Dated at St. John's, in the Province of Newfoundland and Labrador, this 12th day of July, 2011.

Sean Murray
Assistant Commissioner (A)
Newfoundland and Labrador