



CONTACT INFORMATION

Office of the Information
and Privacy Commissioner
2nd Floor, 34 Pippy Place
P.O. Box 13004, Station A
St. John's, NL A1B 3V8
Tel: (709) 729-6309
Fax: (709) 729-6500
Toll Free in
Newfoundland
and Labrador:
1-877-729-6309
E-mail:

commissioner@oipc.nl.ca
www.oipc.nl.ca

“... the overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”

Justice Laforest,
Supreme Court of
Canada, *Dagg v. Canada*

ABOVE BOARD

A QUARTERLY NEWSLETTER PUBLISHED BY THE
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

VOLUME 3, ISSUE 1

MAY 8, 2013

This edition highlights a recent access issue our Office has been having: that of increasing numbers of “deemed refusals” in the course of access requests from applicants to public bodies. It offers summaries of two recent OIPC Reports where this issue was the centerpiece, as well as a general discussion on the OIPC’s stance on the topic and how we hope to address this issue. Also in this edition, there are updates on the Right to Know Week 2012 Essay Competition, Data Privacy Day 2013 and Records & Information Management month. (As well, there are our regular features, and an updated Resource List).



Deemed Refusal

By late 2012/early 2013, the OIPC had begun to notice an alarming trend in access files from the preceding 6 months: a notable number were complaints arising from “deemed refusals.” A deemed refusal occurs under the *ATIPPA* when a public body fails to carry out its duty under the legislation within the time constraints imposed. Where a formal request is made by an applicant to a public body, that public body has a responsibility under the Act to provide a formal response to the applicant within 30 days unless the time for a response has been formally extended in compliance with section 16. Failure to do so, is deemed a refusal to provide responsive records to the applicant.

By January 2013, the OIPC had twelve active files under review (there have been several more since then), involving complaints from individuals that a public body had failed to respond within the time limits prescribed by law in the *ATIPPA*. These statistics were not only a worrying trend, but additionally represented an all-time high in terms of volume of such files for our office.

Commissioner Ring noted: “From time to time, my Office has received complaints about a failure on the part of a government department or agency to meet these time limits, but for

some reason there seems to be a lot more of this happening now than ever before, and I’m concerned about it. Applicants are being left hanging for months after filing a request that should usually only take thirty days to process, and in some cases no one from the public body is even bothering to pick up the phone and let the applicant know what’s going on with their request. There is a saying in the access to information world that ‘access delayed is access denied’ – sometimes applicants need information within a certain period of time or it is simply no good to them any more. “

The OIPC calls on all public bodies, reminding them they have a legislative responsibility to comply with under the *ATIPPA*. Any public body not carrying out its work within the prescribed time frames set in the Act is undermining the very purposes of the law. Given the gravity then, the OIPC has endeavored to monitor this trend closely and is pleased to say there has been some evidence to suggest the message has reached public bodies and numbers of new files due to deemed refusals show signs of decreasing in frequency. Public bodies now appear to be utilizing the time extension provisions of the *ATIPPA* where necessary, or properly responding within the time frame set out. We hope this continues.

Recent Reports on the Issue of Deemed Refusal

Report: A-2012-012: The Applicant requested records from the Department of Health and Community Services comprising what is commonly referred to as the Minister's "briefing book." The Applicant's request was dated March 21, 2012. With the exception of a letter acknowledging receipt of her request and an e-mail stating that the record consisted of approximately 270 pages, the Applicant heard nothing from the Department until she e-mailed the coordinator to check on the status of her request two months later. She was informed that the delay was due to the large number of records and the time necessary to redact the information in accordance with the *ATIPPA*. The records were finally received by the Applicant in July 2012, more than three months after the request was submitted. In his report dated December 31, 2012, the Commissioner found that the delay was a breach of section 11(1) of the *ATIPPA* (time limit for response to a request for information) and also a breach of section 9 of the *ATIPPA* (duty to assist). Commissioner Ring noted at paragraph 16 of his Report: "In many cases information requested by applicants is needed for a specific purpose which is often time sensitive. The timelines for responding to an access request as set out in the *ATIPPA* are there for this very reason - to ensure timely access to records. Thus, applicants have a right to expect public bodies to abide by these timelines and receive requested records while the information is still relevant and useful to them." The Commissioner recommended that the Department be mindful of the statutory duty imposed on it by sections 9 and 11 of the *ATIPPA*. He further recommended that the Department review its policies and procedures for handling access to information requests for the purpose of ensuring that it complies with its duty to assist in section 9 and meets the time limit for responding to access requests under section 11(1) of the *ATIPPA*.

Report A-2013-003: In another recent case, an Applicant submitted two access to information requests to the Department of Justice dated June 15, 2012. The requests were for information regarding psychiatric services at Newfoundland and Labrador correction facilities, penitentiaries, jails or prisons and for payments made to external consultants for review of a psychiatrist at Her Majesty's Penitentiary. The Applicant received no response to his request for information regarding psychiatric services until November 9, 2012 (when the Department responded to both this Office and the Applicant as a result of his Request for Review submitted to this Office in October). This four and half month delay occurred despite the fact that the majority of information was in the custody or control of the Department and required little redaction. The request with respect to payment information was responded to on August 24, 2012, when the Department notified the Applicant that no records existed. There was no communication with the Applicant to explain the reasons for the delay in either case. The Commissioner found that in both cases there was a breach of both sections 9 and 11 of the *ATIPPA*. Commissioner Ring stated at paragraph 13 of his Report: "Section 9, the duty to assist an applicant, includes the obligation to "respond without delay". Most of the responsive record could have been sent out, in my opinion, within the 30 days, or at the very least a phone call could have been made to the Applicant explaining the situation, however neither of these options were chosen. The Department remained silent until it responded to both this Office (in connection with the Request for Review) and the Applicant on November 9, 2012." As the Department had already committed to reviewing its policies and procedures for timely release of information, the Commissioner recommended that the Department make an effort to communicate with applicants when delays in responding are expected and unavoidable.



Recent OIPC Events and Activities

On January 28, Canada, along with many countries around the world, celebrated **Data Privacy Day (DPD)**. Recognized by privacy professionals, corporations, Government officials, academics and students around the world, DPD highlights the impact that technology is having on our privacy rights and underlies the importance of valuing and protecting personal information. The OIPC celebrated in 2013 with a number of events and activities, including presentations to schools, a public information fair, and a public awareness campaign featuring a poster mail out to Government agencies and departments.



The **Right to Know (RTK) Week 2012 Essay Competition** winner was selected in early February by a judging panel comprised of the three competition sponsors, the OIPC, Memorial University, and the College of the North Atlantic. Dmitry Kosarev was awarded \$400.00 for his winning essay, which can be viewed at our website.

For more information on all of the above, please visit:

<http://oipc.nl.ca/events.htm>



Records and Information Management Month (April 2013)

Celebrated annually, April was Records and Information Management month — a good time to review your office policies and procedures involving records and information handling, storage and retention. It is not only important to develop adequate records management policies and procedures, but also to maintain these as new concerns, processes and technology arise. Good records management is key to an effective access to information process. If you can quickly search for and identify requested records, you will respond more accurately and efficiently to access requests and help avoid having the matter come to the OIPC for review. Efficient records management can certainly help avoid a deemed refusal situation!



Make this the time you review your records and information management policies and procedures each year.

For more information about records management, please contact ARMA:

<http://www.armacanada.org/>



Resource List

<http://www.atipp.gov.nl.ca/info/schedule.html> (ATIPPA, Regulations and Fee Schedule)

<http://www.atipp.gov.nl.ca/> (ATIPP Office)

<http://www.atipp.gov.nl.ca/info/Protection-of-Privacy-Policy-and-Procedures-Manual.pdf> (Privacy Policy and Procedures Manual)

http://www.justice.gov.nl.ca/just/atipp_training/index.html (Access and Privacy Course)

<http://www.oipc.nl.ca/accessreports.htm> (OIPC Commissioner's Reports on Access to Information)

<http://www.oipc.nl.ca/privacyreports.htm> (OIPC Commissioner's Reports on Privacy)

<http://twitter.com/#!/OIPCNL> (OIPC Twitter)

Access & Privacy News

Privacy Awareness Week

(PAW) 2013 is an initiative of the Asia Pacific privacy authorities that was held from April 29th to May 3rd, 2013. PAW is held each year to promote greater privacy awareness and the importance of protecting personal information. Check out the link below for more information about PAW, as well as privacy resources, like a printable privacy awareness infographic, ID theft tool, video and youth resources:

<http://www.privacyawarenessweek.org/>

Privacy awareness infographic:

http://www.privacyawarenessweek.org/images/Technology%20is%20Changing_v12_EN.pdf

Privacy in Court

In Ontario, a registered nurse has been criminally charged under the province's *Personal Health Information Protection Act (PHIPA)*, their equivalent to NL's *Personal Health Information Act (PHIA)*. The nurse has been charged with nine counts of wrongly collecting private patient data arising out of her alleged file snooping which breached 5,800 patient's personal health information over a six-year period without their consent or legal authority. The charges mark the first prosecutions under Ontario's *PHIPA*.

For more information, see:

<http://www.nugget.ca/2013/03/01/hearings-set-for-privacy-charges>

E-mail Issues

It has come to our attention recently that a few e-mails intended to be received by this Office were caught in the security filter of our IT provider, the Office of the Chief Information Officer, and therefore we did not receive them. We wish to advise municipalities that if they send an e-mail inquiry to our Office but do not receive a response within a reasonable period of time, please feel free to give us a call to follow up. Public bodies can also pass this suggestion on to any individuals or third parties who have indicated their intention to contact the Information and Privacy Commissioner's Office. This issue with e-mail appears to be very rare and has not had a significant impact on our operations, and we therefore continue to accept inquiries by e-mail. We also welcome inquiries by mail, fax or telephone.