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The Honourable David B. Orsborn  
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Dear Mr. Orsborn:

**RE: Access to Information and Protection of Privacy Act Statutory Review 2020**

Thank you for your correspondence of September 29, 2020 regarding your review of the **Access to Information and Protection of Privacy Act, 2015 (ATIPPA)**. The Department of Environment, Climate Change and Municipalities (the Department) recognizes the need for strong access and privacy legislation that creates a culture of openness and accountability in the public sector while also protecting the personal information of citizens.

I appreciate the opportunity for the Department, respective public bodies and departmental ATIPPA coordinators to contribute to this process as you develop your findings and recommendations. In consultation with our Department's ATIPPA coordinator, I offer the following areas where the Department suggests amendments could be made to ATIPPA for the benefit of both applicants and public bodies. The Departmental ATIPPA Coordinator raised similar matters with you at the October 5, 2020 in-person meeting of ATIPPA Coordinators.

1. Authority to Self-Extend Time Limits

Section 16(1) of ATIPPA states that a public body shall respond to an Access Request without delay and in any event not more than 20 business days after receiving the request, unless the time limit for responding is extended by the Office of the Information and Privacy Commissioner (OIPC) under section 23 of the Act. Section 23 allows a public body to apply to the OIPC for an extension of time to respond to an Access Request not later than 15 business days after receiving the request. This requirement was recommended during the 2014 Statutory Review however the Department believes that the requirement has placed a significant administrative burden on ATIPPA coordinators. It is proposed that the requirement for the OIPC to approve time extensions be reconsidered and this role be instead assigned to the head of the public body.

A similar scenario as proposed is currently in place at the federal level. Section 9(1) of the **Access to Information Act**, allows the head of a government institution to extend the time limit set out in section 7 or subsection 8(1) for a reasonable period of time, having regard to whether the request is:

- i) for a large number of requests or necessitates a search through a large number of recordings and meeting the original time limit would unreasonably interfere with the operations of the government institution;

- ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
- iii) notice of the request needs to be given to third parties.

Due to the technical nature of ECCM's mandate, requests frequently fall within one of the aforementioned three categories and can require the ATIPP coordinator to seek approval from the OIPC for a time extension. The Department takes the existing legislated timelines seriously and makes all efforts to complete requests on time, however it is felt that the increased administrative burden of seeking extensions without guarantee of approval can impact the overall workload of the Coordinator. The reduction of forms and requests to be completed by the ATIPP coordinator would provide the coordinator with more time to work on the primary tasks of collecting records and preparing records for release to applicants. The Department proposes that a limited self-extension of deadlines, based on a set of criteria, would provide greater flexibility to coordinators to balance the often heavy workload of ATIPPA requests. Recognizing the need to keep Departments accountable, any additional extensions beyond those identified by the Department as well as any complaints regarding time extensions could be referred to the OIPC.

## 2. Deadlines for Disregard

The Act permits public bodies to seek approval from the Commissioner to disregard access to information requests. Applications must be submitted within five business days of receipt of a request. Section 21(1) of the Act states that a disregard can be approved for the following reasons:

- a) the request would unreasonably interfere with the operations of the public body
- b) the request is for information already provided to the applicant; or
- c) the request would amount to an abuse of the right to make a request because it is i) trivial, frivolous or vexatious, unduly repetitive or systematic, excessively broad or incomprehensible or otherwise made in bad faith.

It is the view of the Department that five days provides insufficient time for ATIPP coordinators and other relevant staff to determine if an ATIPP request falls within any of these criteria. Such determination, particularly for 12(1)(a) and (c)(iii), requires extensive searching of records to demonstrate the size of the request and develop an argument to submit to OIPC. The departmental ATIPP coordinator advises there are rare circumstances where the deadline to request a disregard can be met due to the length of time required to retrieve and review records.

During the five day period, significant work must be completed by the ATIPP coordinator and staff, some of which can be delayed due to issues outside the control of the Coordinator. To illustrate, generally it takes a minimum of five to seven days to identify all responsive paper based and electronic records due to the various locations where records could be stored. In the event that the records are located in e-mail accounts, access to e-mail accounts can take upwards of four days to receive. Similarly, in situations where responsive records are located offsite it can take up to a week to retrieve these records.

It is requested that consideration be given to recommending a longer period of time for Departments to make the case for a disregard to the OIPC. While the Department has rarely sought to disregard a request, an excessively large request that is not disregarded can impact the coordinator's ability to complete other requests on time and can impede overall operations.

### 3. Deadline to Transfer a Request to Another Public Body

Section 14(1) of the Act states that a public body may transfer an ATIPP request to another public body within five business days of receiving the request if the records were produced by or for the other public body; or the records or personal information requested are in the custody of or under the control of the other public body.

In the event the Department is unable to meet the deadline for transfer, the Department is required to process the request and advise the applicant there are no responsive records in the Department's custody. The reasons for why the deadline cannot be met often exist due to matters outside the control of the departmental ATIPP coordinator, including difficulty reaching an applicant to seek further details on a request. In an effort to allow the Department to fulfill its duty to assist beyond the five day deadline and prior to the issuing of a non-responsive letter, it is suggested that the timeline for this requirement be removed and replaced with a general responsibility for the Department to transfer a request once it is determined that the records do not reside with the Department.

### 4. Review of Section 3.3 of ATIPPA

The Department is responsible for regulating the clean-up of impacted sites. As part of the process, the Impacted Sites Management Section conducts searches of Department files for property owners and purchasers and their environmental consultants, lawyers and realtors at a fee. Recently, the Department received a request to provide property search information through ATIPPA which in the Department's view would circumvent this paid process. It is the view of the Department that section 3(3) of the Act articulates that the Act does not replace other procedures for access to information including those where a fee is attached to the process.

The Department has been challenged on this view by applicants and by the OIPC. It has been noted to the Department that section 5(2) of the Act notes that the Act is in addition to existing procedures for access to records or information normally available to the public, including a requirement to pay fees. The Department respects the varying views on this matter however suggests that greater clarity be provided in the Act regarding the apparent conflict between section 3(3) and section 5(2) on the matter of whether the Act can replace processes where information is provided for a fee.

Conclusion

I wish you success in your review and look forward to hearing your findings. If you wish to discuss the items outlined in this letter further, please do not hesitate to contact Ms. Desiree Newman, ATIPP Coordinator for the Department at [desireenewman@gov.nl.ca](mailto:desireenewman@gov.nl.ca).

Sincerely,



**SEAN DUTTON**  
Deputy Minister