

COR/2020/04703-001

The Honourable David B. Orsborn
3rd Floor, Beothuck Building, 20 Crosbie Place
St. John's, NL
A1 B 3Y8

Re: Access to Information and Protection of Privacy Act, 2015 Statutory Review 2020

Dear Mr. Orsborn:

Thank you for your correspondence regarding the five-year review of the **Access to Information and Protection of Privacy Act, 2015**. The Department of Transportation and Infrastructure has carefully reviewed the issues raised by the Terms of Reference and provides the following for your consideration. Mandate areas pertinent to the Department of Transportation and Infrastructure are reflected upon below.

Public and public body experience in using and administering the ATIPPA, 2015 to access information in the custody or control of public bodies in Newfoundland and Labrador and opportunities for improvement.

Generally speaking the experience using and administering the **ATIPPA, 2015** from a public body perspective is considered positive, transparent and efficient. Some areas for improvement are articulated in the specific mandate areas that follow.

Whether there are any categories or types of information (personal information or otherwise) that require greater protection than the ATIPPA, 2015 currently provides.

The Department of Transportation and Infrastructure has not identified any categories or types of information that require greater protection. That said, the Department does business with some companies that have raised concerns about information that is released. In this context, companies have said that they are reluctant to do business with Government as their business information is subject to release, including information provided to them by sub-contractors with which they have commercial relationships, as well as those engaged in P3 projects.

Regarding public body response times for access requests and whether the current ATIPPA, 2015 requirements for response and administrative times are effective.

While 20 business days is sufficient for most Access to Information requests, on occasion, there may be a need to extend the 20 business day timeline. Section 9 of Canada's **Access to Information Act (R.S.C., 1985, c. A-1)** contains provisions that permit an extension of this type of timeline at the discretion of the ATIPP coordinator for a reasonable period of time. For example: an internal (departmental) extension might be permitted subject to specific conditions being met, such as: (i) the request is for a large number of records; or (ii) when consultations are necessary; and (iii) notice to the applicant regarding the application of an extension is given before day 20.

Currently, there are no timeline provisions associated with when an ATIPP coordinator is seeking clarification from an applicant and is waiting for a response. This has proven challenging when looking for clarification on the request or for scope changes (i.e. timeframes, or limiting the "any and all" requests to specific search criteria). It has been found that it is not uncommon for days to pass before a response is received and in some cases no response at all. This results in the ATIPP coordinator being challenged to respond on time and in a meaningful way. Consideration could be given to allowing the clock to stop on the day written communication is sent to the applicant and re-start subsequent to the response being received. The department would recommend the applicant be required to be informed that the clock has stopped.

Additionally, should an applicant be non-responsive to emails or other forms of documented communications from the ATIPP coordinator after 20 business days (with the timeline paused), consideration might also be given to considering the request disregarded and notice be sent to the applicant that the request is to be considered abandoned.

Whether there are any additional uses or disclosures of personal information that should be permitted under the Act.

In its experience administering the Act, the Department of Transportation and Infrastructure has not identified any additional uses or disclosures of personal information that should be permitted.

An examination of the complaints process to the Office of the Information and Privacy Commissioner.

In general the Department views the complaints process as transparent and reasonable. Sufficient time is given to prepare a response, and most complaints are resolved before the formal stage.

Regarding the request for extensions/disregards process to the Office of the Information and Privacy Commissioner.

The department has identified no concerns regarding the request for extension process to the OIPC. The OIPC has been found to be responsive and fair in its review of such requests. The form provided by the OIPC has hastened the process and made it easier to articulate the department's reasons for the request.

Regarding requests for disregards, five business days is often insufficient time to determine if a request will meet the threshold for a disregard as required in the **Act**. For example, if during the first five days of efforts to narrow the scope with the applicant have failed, a request may require hundreds of hours to process and result in thousands of pages of responsive records. If the clock can be paused during these discussions with the applicant as suggested above, the department would have sufficient time to make that determination. An alternative suggestion would be to consider allowing ten days to submit a request.

Whether the current Cost Schedule set in accordance with subsection 25(6) of ATIPPA, 2015 is effective.

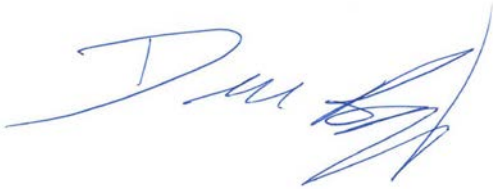
The department has identified no concern with the fees structure associated with Personal Information requests.

Whether there are any entities which would not appear to meet the definition of “public body” but which should be subject to the ATIPPA, 2015.

There are no public bodies reporting to myself as Minister responsible that do not appear to meet the definition of ‘public body’.

Thank you for contacting me on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "D Bragg".

DERRICK BRAGG, MHA
Minister of Transportation and Infrastructure
District of Fogo Island-Cape Freels

“At work at play, let safety lead the way.”

cc. Angela McIntyre, ATIPP Coordinator