



March 13, 2023

Your letter was the first time Finance staff were introduced to the idea of using contracted resources for processing ATIPP requests. This is not a common practice within the GN; external contracted

services are most commonly used in developing Privacy Impact Assessments (PIA) for departmental projects, but not for processing ATIPP requests.

Finance staff reached out to the Territorial ATIPP office and other departments to inquire about their experience with contracting ATIPP processing services - only one department confirmed they had used an external contractor to complete a request.

As the public body responsible for the *ATIPP* Act, the Department of Executive and Intergovernmental Affairs (EIA) has established a Standing Offer Agreement (SOA #2022-52) with qualified proponents to provide contracted services to GN departments requiring ATIPP-related services.

We have confirmed that this SOA could be used for processing ATIPP requests, and are now reaching out to the pre-approved contractors on this list to inquire about their services.

While we welcome the Commissioner's recommendation to pursue external contracted services, we would like to note that Finance did not purposely fail to use this approach as a potential solution to completing the ATIPP request – we were simply unaware that it was an option, as it is not a common practice within the GN. (Indeed, as far as we have been able to discern, no other ATIPP office has used this facility before to hire outside ATIPP processing help.)

Other comments

While Finance agrees with the Applicant and Commissioner that the delays in completing the request are unacceptable, we feel your review report does not fairly represent our efforts to assist the Applicant, both inside and outside the access to information protocol. We feel our letter to you dated January 26 clearly demonstrate the applicability of Section 11(1)(b) and the concerted and sustained efforts that Finance staff have made to fulfill their duty to assist the Applicant. The review report does not address or respond to these considerations.

For instance, one of the topics we covered was a series of serious failings of our IT resources which significantly impacted Finance's ability to complete required stages of the ATIPP process. These issues include: delays in retrieving relevant files, inadequate processing power of GN-issued computers, software crashes, and system limitations that resulted in a manual search and processing of thousands of files. The issues we raised are mentioned only in passing in paragraph 41 of your report as "slightly creaky hardware and software". We believe this is a mischaracterization of the challenges that Finance ATIPP staff have encountered in fulfilling this request.

Our letter to you detailed some broader challenges faced not only by Finance but also by ATIPP coordinators generally. We have been candid and forthright in these challenges in previous communications with your office, which I believe speaks to my staff's credibility and genuine desire to fulfill our ATIPP duties to the best of our ability.

I believe there is benefit in sharing this information publicly, not only to provide context to this specific

review report, but to provide the public with a better understanding of the operational challenges of ATIPP administration in the GN as a whole.

As you state in your cover letter, a copy of my response letter to your review report will be posted on your NUIPC website. I kindly ask that the attached copy of our January 26 letter also be included with this response letter to your review report.

Thank you for your consideration of this matter. I look forward to continuing our constructive relationship with your office in providing open, fair and transparent access to information for Nunavummiut.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lorne Kusugak".

Hon. Lorne Kusugak
Minister Responsible for the Nunavut Liquor and Cannabis Commission

Cc: Jeff Chown, Deputy Minister, Department of Finance
Robyn Gibbard, ATIPP Coordinator, Finance/NULC

After some deliberation, the applicant provided a single updated request on February 15, 2022. Based on our discussions, they agreed to tweak their request to limit the search to a few mailboxes, with the understanding that we could then broaden the search later if they did not find what they were looking for in the initial release.

Based on the February 15 request wording, we did a preliminary search of records in order to build a fee estimate. We found 15,723 potentially responsive records during this initial search. With the help of the territorial ATIPP office, and based on the standard guidelines for fee calculations, we provided a fee estimate of \$30,893.40 to the applicant on March 7, 2022.

The applicant did not want to proceed with the request in light of the fee estimate, and so we helped them scope the request down further. They provided a revised request on March 23, 2022.

Based on this new request, we provided the applicant with a new fee estimate of \$4,879.13 on April 1, 2022. [REDACTED] we received an initial fee deposit of \$2,439.56 on May 12, 2022. On May 16, 2022, we sent the acknowledgement letter. The initial deadline was June 17, 2022, but we cautioned the applicant to expect extensions.

Since then, we have issued six extensions under s.11(1)(b) of the *ATIPP Act*, each for 25 days. The latest deadline is February 7, 2023.

In light of the number of extensions, on November 21, 2022 we offered to refund the applicant's fee deposit until they received delivery of their documents. The applicant did not reply to this offer.

We have now finished work on an initial release binder with 1,031 pages of records which we plan to send to the applicant as soon as possible.

Current status of work

To date, we have retrieved all the potentially relevant correspondence and finished reviewing most of it for relevance. We have converted to PDF format a total of 5,260 pages of responsive records. The briefing materials are still outstanding but are much smaller in volume.

The release binder we will be providing contains all the responsive records from the email account of Deputy Minister Jeff Chown, totaling 1,031 pages.

We have also finished preparing another binder with all responsive records from the email account of former Director of the NULC, Dan Young. This binder currently numbers 4,229 pages. We are currently performing redactions and removing duplicate records which were already provided in the first release binder, so the total page count of this will fall by the time we release it to the applicant.

We have finished collecting 678 potentially responsive emails from the account of former Assistant Deputy Minister Dan Carlson. These still need to be reviewed for relevance, duplicates, and redactions, and converted to PDF format.

Commentary

The applicant's frustration with the length of time to respond to their request is understandable. On our end, too, we are frustrated with the amount of time this file has taken. This request is extremely large and was always going to require a very long processing time, but there are four things we can identify as exacerbating factors: limited capacity, experience, technical issues, and communication. These are explained in more detail below:

Limited capacity

As with every workplace in Nunavut, we face a critical staffing shortage. The team that processes access to information requests for both NULC and the Department of Finance has seen its staffing levels fluctuate between 40% and 60% of capacity during the past year. With a recent hiring, we now have three staff with delegated authority to work on ATIPP – two policy analysts and the manager of policy. ATIPP is only one of their many job responsibilities. There is no doubt that our limited capacity impacts our ability to provide the access to information service.

Limited capacity is not directly a reason for extensions under the *ATIPP Act*, but s.11(1)(b) provides that the head of a public body may extend the time for responding to an access to information request if the request is for a large volume of records, and meeting the time limit would “unreasonably interfere with the operations of the public body.”

When staff resources are extremely constrained, as they have often been for us, it is often not possible to meet all operational deadlines. There are extended periods of time when diverting resources to any but the most critical of tasks would interfere with the operations of the public body. Clearly, the *ATIPP Act* was not written with this kind of chronic lack of capacity in mind.

Similarly, it is important to balance our responsibilities to respond to all access to information requests, both large and small. Focusing solely on a single request of this size can divert our already limited capacity and delay other access to information requests we receive. The “operations of the public body” referred to in s.11(1)(b) includes our duty to respond to all access to information requests.

Another example of an ATIPP-related operational priority was the GN-wide Y-drive audit. This audit consumed a significant amount of our ATIPP coordinators' limited resources in 2022. We agree with your decision to impose a fixed deadline on the Y-drive audit, as unaddressed privacy breaches are a serious operational risk. However, in order to meet the audit deadline, work on other tasks (including processing this request) slowed significantly between mid-August and mid-November.

The solution to capacity issues is to better staff our team, and we continue to make efforts to do so. We were able to hire a new policy analyst in mid-2022 with the intention that they would focus on ATIPP coordinator duties. However, this brings us to the second challenge we have faced.

Experience

None of our ATIPP coordinators have worked on an access to information request of this magnitude before; the previous largest access to information request processed by our current coordinators was a release of 81 pages. As I mentioned earlier, so far this request has produced 5,260 pages of records, and that number continues to grow.

There is no substitute for experience in navigating complex files like this. Inexperienced staff take longer to accomplish tasks than more experienced staff, and require more direct one-on-one help in completing all elements of the work – from using redaction software, identifying responsive records, organizing and managing files, producing a release binder, and most challengingly, interpreting and applying exemptions to the information. Small delays are magnified when repeated across thousands of records. While hiring new staff will resolve our issues in the long term, new staff also need a significant amount of training and hands-on guidance from other more experienced ATIPP coordinators in the short term in order to properly complete access to information requests. This further diverts limited staff resources from processing requests.

Technical issues

We have run into an array of technical issues working on this request.

One of the GN employees named in the request, Dan Carlson, was unable to batch export from his Outlook account, possibly due to the after-effects of ransomware. This

required us to request archived copies of his emails from the GN IT team, which we received in July. Unfortunately, we discovered the initial dump of emails we received from GN IT did not contain all the results we expected, requiring us to go back and request the user's entire email history from GN IT, and then search this account manually ourselves.

As one of our ATIPP coordinators was simultaneously working on this and another very large outstanding request, their GN user account became corrupted and was suspended for security purposes. The employee was unable to log into their computer or perform work of any nature while GN IT reactivated their user account.

The volume of documents we have collected and created while processing this request is so large they did not fit on our team's shared file system. We have had to find workarounds for storing and sharing work on this project.

Likewise, the size of the raw files we are working with on this request has strained our computer hardware and software. We have had a number of issues with the Adobe Acrobat software that allows us to put together the release binders and perform redactions. The software is unstable when working with large files. When working on redactions in the release binders, the software freezes for upwards of ten minutes each time our analysts save the document. We have lost progress to crashes and have had to redo work. At one point, the ATIPP coordinator performing redactions on this request lost access to the software license altogether. We understand other ATIPP teams in the GN have experienced this problem as well.

Because it would have been prohibitively time consuming to manually convert all the responsive records into PDF format suitable for redaction and release, we acquired software to aid in this conversion. However, this software has had a series of licensing issues which have prevented staff from using the software for long stretches of time. These licensing issues have only just been resolved in late January 2023.

We have had discussions with the territorial ATIPP office about the potential of acquiring integrated case management software for processing access to information requests. More suitable software could help relieve some of the problems and bottlenecks we have faced on this request and others.

On the hardware front, some of the issues we have encountered suggest the need for more powerful computer hardware than we have available. GN IT has determined that the problems experienced above require computers with more processing speed and memory (RAM) than what we currently have. Although we have begun upgrading our ATIPP coordinators' computers to the most modern offered by GN IT, this has so far been inadequate to avoid these issues from reoccurring.

Communication

Our acknowledgement letter warned the applicant that “given the very large number of records involved, I would caution you to expect extensions as we work on processing your request.” While it is difficult to generate an accurate forecast of processing time for such a large request, in hindsight, providing a range of time – like 6 to 12 months – may have helped set expectations for the applicant.

We did provide the applicant with detailed updates on processing status on October 13, 2022, November 21, 2022, and we will provide another one when we provide the applicant with their initial release binder. We will continue to make it a practice to provide status updates every time we issue an extension.

Fees

This is not a reason for a delay, but we would like to make a comment about access to information fees.

The ATIPP fee rules greatly restrict what we can charge applicants on large requests like this. While the fee deposit charged to this applicant is quite large, it comes nowhere close to cost recovery for this request. The cost of the staff time spent on this project to date is likely running into the tens of thousands of dollars, which is not reflected in the fee tracker. Additionally, we will be limited to charging no more than the initial fee estimated of \$4,879.13. Based on current trends, even the billable portion of our time will likely far exceed this fee estimate.

As a rule, fees don't aim to recover costs, as the access to information function is a service the government provides to the public. However, we are not certain this rule was meant to apply to a situation where significant public resources are being consumed to respond to a private business.

We have already completed two related access to information requests for [REDACTED] [REDACTED] and given that they already possesses many of the responsive records retrieved in this request, it would have perhaps been prudent to contact you about the applicability of s.53.

Conclusion

As we said at the outset, this is a very large and complex file. The applicant's frustration is understandable. As ATIPP coordinators, we have a duty to assist which we take

seriously, and so for us too it is frustrating to invest long periods of time in a project without being able to show the results of our work.

In that respect, we hope the release of the initial release binder to the applicant on will mark a turning point. Some of the files still remaining for disclosure will be duplicates of what we have already provided to the applicant, and the experience gained from getting one tranche of documents out the door will speed processing on the remainder of the files.

Some of the problems we have faced are systemic, and it will still take time and further extensions to finish work on this file. But we are working to address other problems as we go, particularly on the IT and communications front. We remain committed to providing the applicant with their documents, even if it takes more time than any party would like.

Your decision on this review will likely centre around the definition of “unreasonably interfere” in s.11(1)(b) of the *ATIPP Act*. Much of the above information may not be relevant to your determination on this question. Nonetheless, we hope it provides some context as to why this request has taken as long as it has, and some insight on broader capacity issues with respect to fulfilling ATIPP requests.

I appreciate your consideration of these points. Please feel welcome to contact us should you have any additional questions.

Sincerely,

ROBYN GIBBARD

Robyn Gibbard
Manager, Corporate Policy, Department of Finance

Cc: Jeff Chown, Deputy Minister, Department of Finance
Susan Nichols, Acting Deputy Minister, Department of Finance
Hillary Casey, Director, Corporate Policy, Department of Finance
Yuri Podmoroff, Territorial ATIPP Manager, Department of Executive and Intergovernmental Affairs