

Transcript of the Public Hearings of the Statutory Review Committee  
on Access to Information and Protection of Privacy

Date: Wednesday, June 25, 2014

Presenter: Emir Andrews

**ATIPPA Review Committee Members:**

Clyde K. Wells, Chair

Doug Letto, Member

Jennifer Stoddart, Member

Chairman Wells: Welcome Ms. Andrews. I'd like to draw something to your attention before you start, the...some of the information that you have might be considered personal information. I just want to make sure you have no objection to it being posted on our website because we intend to post all of the...

Ms. Andrews: No, I think this...

Chairman Wells: Is there anything that you think should be redacted?

Ms. Andrews: That refers to me, I don't think there's anything here that I...

Chairman Wells: Nothing there that bothers you?

Ms. Andrews: I put it in this so...

Chairman Wells: There may be another name that or something that we may for...to comply with the Statute may have to redact...

Ms. Andrews: In the...

Chairman Wells: That doesn't bother you I assume.

Ms. Andrews: No, in the accompanying documents there are obviously our specific names.

Chairman Wells: Yes.

Ms. Andrews: But I try to avoid them as much as I could.

Chairman Wells: Okay.

Ms. Andrews: In the submission.

Chairman Wells: We appreciate that. I just wanted to let you know that we may redact some of the information before publishing.

Ms. Andrews: As you feel.

Chairman Wells: Okay, thank you. Now, please make your presentation.

Ms. Andrews: Okay. I'm not sure exactly what you would like and obviously I've given you the details of the event that I'm talking about.

Chairman Wells: Is there anything that you would like to emphasize?  
You've pretty well outlined the position...

Ms. Andrews: I've outlined what happened. Essentially I wanted to make the request because we had heard this amount had been paid and it was one that I knew from experience with previous councils had been denied twice before. And so I wanted to confirm if it had in fact been paid. Now, I could have just gone over to the town office, it was public information as far as I knew, it was an accounts payable, but it was late November. I'm not all that mobile, and it just was a lot easier to put in the ATIPP Request and I really considered it was not anything contentious.

So I was very surprised when I got the reply I did; that they could neither confirm nor deny that the amount had been...that this new claim had been paid. When I went to the Commissioner's Office and asked, they agreed with me. They didn't see any reason why it shouldn't have been given to me, and in fact said that as far as they knew this was not a section of the Act that had ever been used

before, at least not here. So I...I think they did contact the Town, the Town still refused, so I put in the attached request to the Commissioner.

They investigated and did a report, sent it to the Town and they then did provide me with the information. My main concern that really prompted me to sort of come here was my feeling that either the people responsible for dealing with ATIPP requests didn't understand the Act or didn't understand how to interpret it, or were being advised by someone else in the council office that they shouldn't provide it. Either way, my feeling was that they need better instruction or information, because as far as I'm concerned, several months of time and effort and money were wasted dealing with a request that should not have been contentious.

Chairman Wells: You make that very clear in your summary, you said...

Ms. Andrews: Which really, yeah...

Chairman Wells: “My concerns are that this was a lot of unnecessary time, effort and money because someone in the Town Office does not apparently understand the Privacy Act.”

Ms. Andrews: Yes. Now whether that was the person that dealt with the requests or...in one of the e-mails I received, I was told that the head had said the requests should not be granted. That must have been in an e-mail that I did not scan and include here. I don't know who the head would be defined to be, I know in the previous Council it would have been the Town Manager. I don't know who it was in that Council.

Chairman Wells: I'm going to just step up for a minute and bend that microphone.

Ms. Andrews: I'm sorry I...

Chairman Wells: And move closer toward you because...

Ms. Andrews: You're not hearing? I'm sorry.

Chairman Wells: I'm not hearing you as clearly as I would like to hear you and maybe it's my ears.

Ms. Andrews: Well, no, it's probably...I'm told I have a soft voice and I taught for nearly 40 years at the university, but by the time I was in a large classroom, I was using a microphone. So my voice was not that big a concern, I'm sorry. My husband said to me...he said you know, "They may have trouble hearing you."

Commisioner Letto: That's much better now.

Ms. Andrews: Sorry.



Mr. Letto; No, that's okay...

Chairman Wells: Putting the microphone closer is a little better.

Ms. Andrews: Thank you.

Chairman Wells: Thank you too.

Ms. Andrews: Anything you need me to repeat sort of?

Chairman Wells: No, the thing you mentioned is the lack of knowledge and training and the time and the expense involved.

Ms. Andrews: Yes. It seemed...

Chairman Wells: So I took that to be the primary points...

Ms. Andrews: It is.

Chairman Wells: ...that you wanted to make, and so I want to ask you about the time sequence. You made your request for relatively simple...

Ms. Andrews: It was...

Chairman Wells: ...piece of information and then what was ultimately was provided didn't satisfy you...

Ms. Andrews: Oh, yes.

Chairman Wells: ...was a simple statement that the amount paid to the person about whom you...

Ms. Andrews: Had asked...

Chairman Wells: ...requested the information was \$4,000.

Ms. Andrews: Was paid. Done.

Chairman Wells: So, the whole page of information including all the descriptions and everything of the Town doesn't appear to have more than sort of about 25 or 30 words on it.

Ms. Andrews: No.

Chairman Wells: How do you account for all this time it started out in November 2012 and...

Ms. Andrews: And took to June of 2013.

Chairman Wells: ...you got your information sometime in the following June I think.

Ms. Andrews: Yes. I can't, other than either the person in the Town Office dealing with it misunderstood the Act or was advised not to provide the information, I don't know. But I do know it required my going to the Commissioner and having an investigation done with in fact the report that they sent to the Town including the...I suppose for lack of a better word, "The threat" that I could take this to the Supreme Court if they still refuse to provide the information. Now...

Chairman Wells: Do you remember how long before you just...your letter, your submission just says November 2012...

Ms. Andrews: It was...

Chairman Wells: ...you made the ATIPP Request. And the response from the Town of Portugal Cove-St. Philip's must have been within 30 days because their letter is dated November 30th...

Ms. Andrews: That acknowledged they had received it, and then the one at December...

Chairman Wells: They appear to have received it one day and replied the next.

Ms. Andrews: Yeah.

Chairman Wells: That's a pretty swift response.

Ms. Andrews: It is. And then the one at the one the 18th of December reiterates...or refers to a section of the Act they were using to not provide the information. Yes, here they asked me to clarify the wording, but they replied fairly quickly but did not provide the information I had asked for. Like I said, January 21st...

Chairman Wells: And in January 21st you asked the...

Ms. Andrews: The Commissioner...

Chairman Wells: ...the Commissioner...

Ms. Andrews: ...to look into it. Yeah, so I had received a reply by then. So they had replied within the timeframe. That was not a concern.

Chairman Wells: Is there...was there anything occurred between January 21st and February 25th, when you said, "I started checking the status of my request to the Privacy Commissioner."

Ms. Andrews: I think I started...probably I waited that long then started calling to see if anything had been done, just probably because I was getting impatient.

Chairman Wells: Well it had been...you'd been at it for some months then...

Ms. Andrews: Well, yes.

Chairman Wells: And you had written to the Privacy Commissioner on January 21st...

Ms. Andrews: And they did explain to me that they had...and I think that they had a number of things they were looking for...

Chairman Wells: Yeah, you said that in...

Ms. Andrews: In January...

Chairman Wells: ...in a memo that...

Ms. Andrews: Yeah, that would probably be...at some point they said it would take a while. Yes, in May when I had checked in May 10th, May 14th they told me it might take a while, now it was June 10th in fact when I got a call they have the report.



Chairman Wells: Well, May 14th is now 4 months.

Ms. Andrews: Yes. It had then been...and it had been February, March...yes, been a good four months since I have...now I can only summarize that they had a lot of requests they were having to look into and...

Chairman Wells: I concluded from the totality what you said that getting the information seven months after you asked for it in this particular circumstance, nothing turned on that delay and nobody was hurt by it...

Ms. Andrews: No, I...

Chairman Wells: ...except that it took seven months.

Ms. Andrews: Yes. And I wanted the information for clarity's sake, just to know what the Town had done since I knew some of the history of the situation. And that's another story I'm sure you don't need me regaling you with. But, so I wanted to know if in fact we had been...

Chairman Wells: You had a right to know.

Ms. Andrews: Yeah, we had been told this amount has been paid. I had every reason to think it shouldn't have been. Now I did not...at that point it was a bit late to try and do anything about it so it was not something I intended to do.

Chairman Wells: So even when you had applied for it you were seeking confirmation of what your situations were and you didn't really expect to be able to do anything about that?

Ms. Andrews: No, and also by then I had not been well as well so I just did not feel up to going back to the town to tackle them on why they had or hadn't.

Commissioner Stoddart: Miss Andrews, did I hear you correctly when at the beginning of your presentation you said you wanted to follow up on I guess a possible claim or claims as had been done in the past? You made a reference to previous actions and I'm just wondering if you got this kind of information in the past in a simpler way than the incident you're describing to us.

Ms. Andrews: Yes, because the Council I was dealing with was elected in 2009, the previous Council, my husband had been a member of. And so I knew that this claim had come before that council, and I believe the Council before and had been refused both times. So which was why when we were told by someone that it had been paid, I wanted to know, had it been paid or not?

Chairman Wells: And after seven months you got it?

Ms. Andrews: Yes, which confirmed what we had been told. Now, as I say, I possibly could have taken that further, at the time I did not feel I was in a position. And I wasn't really sure of what I could accomplish at that point.

Chairman Wells: So in this particular incident nothing really turned on the delay?

Ms. Andrews: No, not my...

Chairman Wells: Okay, I just want to confirm that.

Ms. Andrews: Yeah, and as I said in the end here, my concern was that, what should have taken a couple of days for them to dig out the...what they eventually sent me, as you say, all of a few words and

send it to me. Instead it took seven months and I don't know what it cost the Privacy Commissioner's Office.

Commisioner Stoddart: I guess I'm just trying to understand because of other testimonies we've heard today if previous...your previous dealing with the Council and with this municipality, there was a practice of being perhaps more open on giving out information more readily or posting details of accounts?

Ms. Andrews: I honestly don't know.

Ms. Stoddart Okay.

Ms. Andrews: I had not had occasion to look for anything.

Commisioner Stoddart: I see.

Ms. Andrews: So I knew it was an accounts payable, I knew it should have been public information that I could get, as I say simply by getting over to the town office and asking. It just was easier for me in my circumstances to put in the ATIPP Request and get it that way, which I did not think would be any big deal. But it turned out to be a bigger deal than I thought.

Commissioner Letto: Miss Andrews, the Access and Privacy Act covers more than 400 public bodies, close to 300 of them I think municipalities, what is your experience in this case suggest in terms of how the...that law is being applied at the local level? From your experience what's your sense?

Ms. Andrews: Beyond this experience I have not heard that much. I know from talking to the editor of our local newspaper who in fact I believe you've just heard from, that she had run into some problems but I don't know of details or the circumstances. I know that last 2013...last summer, she at one point contemplated doing an article about it because I in fact sent her a lot of the same information I've

given you. Then as it turned out I guess she had other items to cover in her paper so she never did do the article, I don't think, but at that point she was seriously considering doing an item on the problems she was having with getting ATIPP Requests but that's just...

Commissioner Letto: I'm thinking in terms of how they solved the request at the local community level, at first they couldn't tell you whether...they couldn't confirm or deny anything. And then at the end the Privacy Commissioner says this is not personal information and it should be released. I'm thinking the gap between saying, "I can't tell you if this happened or not" and then the independent body and the oversight body says, "Well, of course it can be released." Like what does that gap in interpretation or whatever one might call it? What does it...does it suggest anything to you about people's knowledge of how to apply the law?

Ms. Andrews: Well, that essentially was what it did suggest to me, that they perhaps did not know as much as they should about interpreting the law. Now, where that breakdown is, if there is one, I am not in a position to know, I just know what I encountered. I don't know if other people are running into similar things, if they are all I

can say is heaven help the Privacy Commissioner. He must be getting a lot of requests for him to look into what should have been fairly obvious requests.

Commissioner Letto: As a citizen, what information do you feel you should have access to; information that passes before a public body such as a Municipal Council?

Ms. Andrews: Anything that is public information: accounts payable, amounts that are paid, as a citizen who pays taxes, as far as I know I am entitled to know that if I choose to. I have not actually thought a lot...I mean, we are obviously entitled to see anything that is approved by council in the way of minutes and so on and that we can access either through the town office or the website. I had not thought a lot...further from that about.

Commissioner Letto: In terms of the minutes that they post, do they make interesting reading or do you feel...



Ms. Andrews: Sometimes.

Commissioner Letto: ...that they are vague?

Ms. Andrews: No, sometimes they're quite interesting.

Commissioner Letto: Do they satisfy your need for information or do you...?

Ms. Andrews: For the most part, yes. I don't think I could fault that.

Commissioner Letto: Okay.

Chairman Wells: Miss Andrews, thank you very much for making the effort to prepare your submission and thank you especially for doing

us the great courtesy of coming here to emphasize it and allow us an opportunity to ask you questions. We do appreciate the effort you made.

Ms. Andrews: Well it's...it was not a big effort on my part. I figured you were putting in the time to investigate this then people who have information that they think is relevant, the least we can do is provide it.

Chairman Wells: Thank you again so very much.

Ms. Andrews: You are very welcome. Good luck.

Chairman Wells: Thank you. I'm going to ask the Chief Administrative Officer if we have any other duties here this afternoon or do we adjourn at this point? We adjourn at this point. With our permission this hearing is adjourned until tomorrow morning at 09:30. Thank you again Ms. Andrews.

Ms. Andrews: Oh, you're very welcome.