



# Town of Happy Valley-Goose Bay

P.O. Box 40 Station B • Happy Valley-Goose Bay, NL • A0P 1E0 • 709-896-3321 (t) • 709-896-9454 (f)

May 18, 2021

## Via Electronic Mail

Michael Harvey  
Information and Privacy Commissioner  
Office of the Information and Privacy Commissioner

Mr. Commissioner,

## Re: OIPC Report P-2021-002 and Recommendations

We write today in response to the Office of the Information and Privacy Commissioner's report P-2021-002 regarding the Town of Happy Valley-Goose Bay's body-worn camera ("BWC") program for its municipal enforcement and animal control officers. This letter addresses the Town's response to and concerns with the OIPC's recommendations, as well as the tone and reach of the investigation and report.

After months of dealing with the OIPC on this and other investigations, The Town feels the need, in addition to meeting its statutory obligation to reply to recommendations, to voice its concerns with the OIPC's tone and approach to this investigation. OIPC's unreasonably adversarial and disrespectful approach to fulfilling its investigative and advisory mandate are unprofessional. The Town, just like any public body, will occasionally have matters before courts and statutory tribunals. Yet, it seems to only be OPIC that treats public bodies with disdain and contempt. Courts show litigants, even those accused and found guilty of horrific crimes, courtesy and respect. Perhaps OPIC could follow their example and end the practice of adding unnecessarily adversarial hyperbole to reports and recommendations.

Frankly, the Town also finds OPIC's criticism of the Town's delay in responding to the OIPC or in production of records as somewhat hypocritical, given OIPC's report took over 2 months to publish after receiving the Town's final submissions, despite already confirming to the Town that a draft was prepared since early February.

## The Town's Decision on OIPC Recommendations

First, the Town provides notice of its decision, as per section 78(1) of ATIPPA, 2015, on whether or not to comply with the OIPC's recommendations under section 76(1). Despite being framed as one, the recommendation under 76(1) actually consists of two recommendations.

Recommendation #1 – The first recommendation is that the Town cease collecting, using or disclosing information via the BWC program. This recommendation does fall within OIPC's powers. However, as

the OIPC is well-aware, the Town's BWC program and cameras have not been in operation since October 2020. They were only used for a period of less than 4 months, from July to October 2020.

Town's Response: The Town has already been compliant with this first component of the OIPC's recommendation under section 76(1) since before the OIPC's investigation was initiated. Accordingly, the Town accepts this recommendation, but notes that the recommendation is moot.

Recommendation #2: The second component of the OIPC's recommendation under section 76(1) is to abstain from collecting, using or disclosing information from BWCs until the Town can "*demonstrate full compliance with ATIPPA, 2015*".

With all due respect, the OIPC has no authority to blankly demand the Town demonstrate anything about its programs or policies to the OIPC. Additionally, the OIPC has no power to issue mandatory recommendations about future, theoretical actions yet to be taken by a public body. Such a requirement would be akin to an injunction, or an exceptionally vague order of mandamus. The OIPC's power to make mandatory recommendations under 76(1) is limited to recommendations to stop using, collecting or disclosing information, or to destroy personal information already collected. This is a blatant overstepping of the legislative mandate and jurisdiction of the OIPC. Perhaps with further consideration OIPC would consider consenting to the removal of this recommendation.

Town's Response: As the OIPC lacks the authority under section 76(1) of *ATIPPA, 2015* to make such a mandatory recommendation, this recommendation is outside the jurisdiction of the OIPC. Accordingly, the Town does not agree to comply with this component of the OIPC's order. Further, this order is too overbroad and vague to be complied with.

Remaining Recommendations: The Town has reviewed the OIPC's multiple advisory recommendations under section 76(2) of *ATIPPA, 2015*. As with the OIPC's extensive commentary on program and policy development, the Town has no obligation to follow with these recommendations, nor does the OIPC have any power to enforce them.

Town's Response: The Town takes the OIPC's suggestions under section 76(2) under advisement.

### **OIPC's Report a Critique of a Defunct Program**

As explained in its submissions to the OIPC, the Town of Happy Valley-Goose Bay's BWC program has been inactive since October 2020. Most of the OIPC's report P-2021-002 is a critique of that program (which lasted for approximately 4 months) and the Town's responses during the OIPC's investigation. Given the BWC program is inactive, and there is no intention of re-implementing it in its previous form, the report is of little use to the Town. However, comments provided by the OIPC on potential improvements or best practices for a BWC program are appreciated, and the Town takes them under advisement.

### **OIPC's Report and Recommendations Overstep its Mandate and Powers**

The OIPC's investigation, commentary and recommendations about the Town's BWC program go beyond the scope of the OIPC's mandate. There is nothing within *ATIPPA, 2015* or any other legislation that designates the OIPC a commentator on methods of municipal policy development. Just because the OIPC has opinions about how towns should generally go about program development does not mean

they belong in a privacy investigation report. The Town questions whether there is a best use of provincial government resources, particularly in light of the significant structural deficit.

As noted above, the OIPC's recommendations pursuant to s. 76(1), which, in the absence of a court challenge, become mandatory 10 business days after the report is published, go beyond its statutory powers. The OIPC has very limited powers to make mandatory recommendations through privacy investigations:

- 76. (1) On completing an investigation of a privacy complaint, the commissioner may recommend that the head of a public body:*
- (a) stop collecting, using or disclosing personal information in contravention of this Act; or*
  - (b) destroy personal information collected in contravention of this Act.*

This power clearly allows the OIPC to take action after suspecting or discovering that a public body is not complying with *ATIPPA, 2015*. However, the OIPC does not have the ability to proactively demand that a town prove that its actions or programs are *ATIPPA*-compliant before they can implement them.

In this case, the OIPC has recommended:

*[103] Under the authority of section 76(1), I recommend that the Town stop collecting, using or disclosing personal information using BWCs until such a time that it can demonstrate full compliance with ATIPPA, 2015.*

The underlined part of this recommendation requires not only that the Town take action today, but that the Town, at some point in the future, prove that every component of one of its programs complies with *ATIPPA, 2015*. If the Town accepts this recommendation, then it would never be able to reintroduce a BWC program without first proving to the OIPC, by some unidentified means, that its program fully complies with *ATIPPA, 2015*.

Empowering the OIPC to mandate privacy pre-approval of programs for municipalities would add another huge burden to an already-challenging access and privacy regime and divert its limited resources from other programs and services.

For example, the Town of Happy Valley-Goose Bay chooses to introduce a summer recreation program for children. As part of this program, the Town requires children and parents to sign both a registration form and a waiver of liability. In collecting these documents, the Town has collected personal information about the children and the parents of the children participating in that program. Should Happy Valley-Goose Bay have to get the OIPC's approval before they proceed with the program? How long does the Town have to wait for approval? What if the Town disagrees with the OIPC? Does it have to go to court?

As another example, the Town of Happy Valley-Goose Bay decides to implement a tax reduction program for low-income residents. As part of this program, the Town has to collect income information in combination with identifying information about residents. While this information may be highly sensitive, the Town has experience handling sensitive personal information of residents and has accounted for the privacy implications as part of this program. Should the Town have to prove to the OIPC that this program is *ATIPPA*-compliant before proceeding?

The Town believes that there are many reasons that the legislature did not impose such obligations for municipalities or grant such powers to the OIPC. That decision, and the limits of the *ATIPPA, 2015* regime should and must be respected by the OIPC.

### **The OIPC's Disrespectful and Threatening Tone**

Finally, we feel obligated to address the tone of the OIPC's communications, investigation report and accompanying news release. The Town takes issue with the OIPC's disrespectful and threatening tone used during its investigation and in the resulting report.

Much of OIPC's report is a critique of the Town's defunct BWC policy, and subsequent drafts that were never implemented. The Town appreciates this retrospective critique on the first 4 months of the use of BWCs and thanks the OIPC for this feedback. The Town will take this criticism under advisement.

As the OIPC is aware, and noted briefly in its report, the Town lost several key people in its upper management toward the end of 2020. This included the Town's Director of Human Resources (and ATIPP coordinator), Supervisor of Assessment and Taxation, and the Town Manager. As you can imagine, while *ATIPPA, 2015* timelines are very important, priorities for the Town rightly shifted toward delivery of essential programs and services at this point (particularly as the BWC had stopped operating). At the same time, there was a highly publicized workplace investigation ongoing, and several access and privacy complaints, without a trained ATIPP coordinator to handle them. It's somewhat ironic that the BWC footage was absolutely critical to that workplace investigation.

On January 26, 2021, the OIPC sent the Town a letter with the subject "*Concerns Regarding the Town's Non-Responsiveness to Access and Privacy Complaint Investigations*". In that letter, the OIPC threatened:

*In the absence of the Town's voluntary compliance with its obligations under ATIPPA, 2015, my Office may find it necessary to issue a summons in accordance with section 9 of the Public Inquiries Act compelling the Town's cooperation. Resorting to such measures will mean not only additional delay for our investigations but also unwanted publicity for the Town.*"

To remind a public body of statutory deadlines is reasonable. However to clearly threaten a Mayor or Town Manager with unwanted publicity is unprofessional and unacceptable.

Similarly, the OIPC issued a press release to accompany its report which highlighted eight negative aspects of the report, and took the liberty to note:

*We have significant doubts whether the Town, even fully staffed, has the capacity to properly design and implement [a BWC program...]*

*[...] We are of the view that the Town should consider entirely abandoning the initiative and re-examine from scratch its approach to the policy problem of community trust of Town enforcement officials.*

The Town disagrees with the OIPC. While such a program must be carefully considered, and well-planned, there is nothing to prevent the Town from successfully implementing an ATIPPA-compliant BWC program.

Based on its experience, the Town suspects that the OIPC had its mind made up before it ever decided to pursue its self-initiated investigation into the Town's BWC program.

### **Conclusion**

The Town appreciates the OIPC's feedback on the former BWC policy and program and looks forward to considering this feedback and recommendations in preparing for the reintroduction of a BWC program.

The Town hopes that it will be able to work with the OIPC as necessary on privacy and access matters going forward. The Town hopes that OPIC will respectfully and thoughtfully consider the feedback provided in this correspondence and choose to engage with public bodies in a more respectful and courteous manner.

We trust this is in order.

Sincerely,



Nadine MacAulay, BBA, PCP  
Director of Financial Operations/Town Clerk  
Acting co-Town Manager  
Acting Director of Human Resources and Employee Relations