



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2014-012

October 24, 2014

### Eastern Health

#### Summary:

The Applicant requested from Eastern Health the financial statements of a Third Party for the years 2000-2011. Eastern Health was not prepared to release the records requested based on s.27 (harm to the business interests of a third party), however, once the Applicant filed a Request for Review with this Office, Eastern Health reconsidered the claim of s.27 exception and was prepared to release the records unless the Third Party filed a Request for Review with this Office. The Third Party did not file a Request for Review with this Office and Eastern Health released the records for the years 2007 and 2008 to the Applicant. Eastern Health advised that prior to October 2006 the Department of Health and Community Services was responsible for providing funding to the Third Party but acknowledged that it had in its possession responsive records for 2005, however, it was their opinion that those records were not in the custody or under the control of Eastern Health for the purposes of the *ATIPPA*. The Applicant made a second access request to Eastern Health for the financial statements of the Third Party for the fiscal year ending March 31, 2013. Eastern Health responded that it did not have responsive records for the fiscal year 2013 for the same reasons that it did not have responsive records for 2006 and 2009-2011. The Applicant questioned the complete lack of records for the years 2006 and 2009-2011 as well as the completeness of records received for the years 2007 and 2008. The Commissioner found that the 2005 records were within Eastern Health's custody and recommended releasing the records to the Applicant once it had reviewed the records, less any information subject to an exception claimed under the *ATIPPA*. The Commissioner found that Eastern Health had conducted a reasonable search and further determined that although Eastern Health did not have any responsive records for the years 2006, 2009-2011 and fiscal year 2013 in its possession, it had control of those records. The Commissioner recommended that Eastern Health obtain the records and release the records to the Applicant once it had reviewed the records, less any information subject to an exception claimed under the *ATIPPA*.

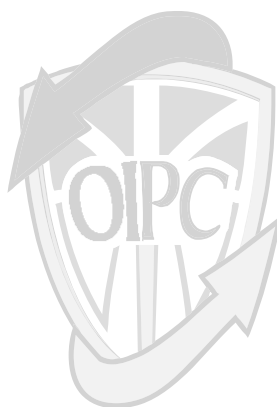
#### Statutes Cited:

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, as amended, ss. 3, 5 and 27.

**Authorities Cited:** Newfoundland and Labrador OIPC Report A-2011-013 and A-2006-003; Alberta OIPC Order F2012-09; British Columbia OIPC Order F13-23; Ontario OIPC Orders MO-2051, MO-2750, MO-2142, MO-2613; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII); *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 172 (CanLII).

**Other Resources Cited:**

Department of Health and Community Services – Provincial Transition Houses Operational Standards June 2006; Department of Health and Community Services – Provincial Transition Houses Operational Standards June 2010.



## I BACKGROUND

- [1] Pursuant to the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) the Applicant submitted an access to information request on June 15, 2012 to Eastern Health. The Applicant sought disclosure of records as follows:

*The financial statements that [named Third Party] has submitted as yearly records of their expenditures and revenue from 2000-2011.*

- [2] For the sake of the clarity of this Report it is necessary for me to point out that the Third Party in the access to information request and the Requests for Review the Applicant filed with this Office is a transition house.

- [3] Eastern Health acknowledged the Applicant’s access request by letter dated June 21, 2012 and on July 3, 2012 informed the Applicant that the records requested may contain information that, if released, might affect the business interests of a third party as set out in section 27 of the *ATIPPA*. On the same day, and in accordance with section 28 of the *ATIPPA*, Eastern Health notified the Third Party that it had received an access request for records which may contain information that, if disclosed, may affect the Third Party’s business interests as described in section 27 of the *ATIPPA*. Eastern Health advised that the Third Party could consent to the release of the requested information or it could provide written representations as to why the information should not be released. The Third Party had a period of 20 days from the date of receipt of notice in which to respond to Eastern Health with their position on the release of the requested information. Eastern Health then had to make a decision with respect to the release of information.

- [4] I will note here that the version of section 27 of *ATIPPA* that was applicable during this Request for Review is the provision as it existed prior to the Bill 29 amendments, which came in force on June 27, 2012.

- [5] The Third Party advised Eastern Health on July 19, 2012 that it objected to the release of the requested information. The Third Party’s position was that the requested records were not in the custody or under the control of Eastern Health. Even if the requested records were in the custody or under the control of Eastern Health, the Third Party stated that the records should not be

released since, in its opinion, the records met the test for exemption under section 27 of the *ATIPPA*.

[6] On July 31, 2012, Eastern Health informed the Applicant and the Third Party that the access to information request was refused based on section 27 of the *ATIPPA*. On September 28, 2012 this Office received a Request for Review from the Applicant requesting that this Office review the refusal by Eastern Health and the applicability of section 27 in this case.

[7] Attached to the Request for Review, the Applicant provided a detailed letter explaining the rationale of the access request to Eastern Health. The Applicant questioned the applicability of Section 27 of the *ATIPPA* in this case since the Applicant did not understand what harm could come to the business interests of the Third Party since the Applicant explained that the Third Party is a non-profit community agency. Furthermore, the Applicant questioned what financial harm could be done to the Third Party since it is largely government funded and a registered charity with the Canada Revenue Agency, therefore the Applicant felt that much of the Third Party's financial information was already in the public domain.

[8] In keeping with our practice, an Analyst from this Office forwarded a copy of the Request for Review to Eastern Health and requested a copy of the responsive records. The records were received on October 24, 2012 and reviewed by the Analyst. Discussions with Eastern Health during the informal resolution stage of the Review resulted in Eastern Health re-examining their refusal to provide access to records based on section 27 of the *ATIPPA*.

[9] By correspondence dated February 20, 2013, Eastern Health informed the Applicant that during consultation with our Office, they realized that the records requested for the time period of 2000-2006 were not in their "custody". Eastern Health advised that effective October 1, 2006, the Department of Health and Community Services transferred funding responsibility for the Third Party to Eastern Health. Eastern Health acknowledged that they had possession of a copy of the financial statements of the Third Party for 2005, however, it was their opinion that they did not have custody or control of those records for the purposes of the *ATIPPA*. Eastern Health further advised that they had a Statement of Revenue and Expenditure and a Statement of Financial Position for the Third Party for the years ending 2007 and 2008.

[10] On February 20, 2013 and February 21, 2013 Eastern Health notified the Third Party and the Applicant respectively that they had reconsidered their previous decision under section 27 of the *ATIPPA* and were now prepared to provide access to the records they had for the years ending 2007 and 2008 unless the Third Party filed a Request for Review with our Office under section 43 of the *ATIPPA*. The Third Party had 20 days from notification to request this Office review Eastern Health's decision to release the records.

[11] No Request for Review was filed by the Third Party with this Office, and therefore by letter dated March 21, 2013 Eastern Health released to the Applicant the Statement of Revenue and Expenditure and the Statement of Financial Position for the years ending 2007 and 2008.

[12] The informal resolution process was partially successful as the section 27 exception originally claimed by Eastern Health was concluded, however, not all issues were resolved. The remaining issues included the custody or control of the 2005 records, the lack of records for 2006 and 2009-2011 and the Applicant's concern that the 2007 and 2008 records received were not complete. Therefore, by letters dated June 21, 2013, the Applicant, Eastern Health and the Third Party were advised that the Request for Review had been referred for formal investigation pursuant to subsection 46(2) of the *ATIPPA*. As part of the formal investigation process, all parties were given the opportunity to provide written submissions to this Office in accordance with section 47 of the *ATIPPA*.

[13] While the formal investigation process was still ongoing, the Applicant made a second access request to Eastern Health on October 23, 2013 requesting records as follows:

*The detailed financial records and notification of their annual general meeting that [named Third Party] submitted to Eastern Health for the fiscal year ending March 31, 2013.*

[14] Eastern Health acknowledged the Applicant's second access request on November 1, 2013 and on November 18, 2013 informed the Applicant that there were no records responsive to the second access request.

[15] On January 10, 2014 this Office received a second Request for Review from the Applicant requesting that this Office review Eastern Health's response to the second access request. An

Analyst from this Office forwarded a copy of the second Request for Review to Eastern Health. The Analyst had discussions with Eastern Health and the Applicant and it was determined that since the second access request was essentially an extension of the first access request (the Applicant was requesting the same records but for a different time period), that the second Request for Review would be incorporated into the formal investigation process of the first Request for Review. On March 3, 2014 Eastern Health specifically advised as follows:

*We do not have the financial statement of [named Third Party] for the fiscal year 2013 for the same reasons that we did not have the financial statement for 2006 and 2008-2011 in File # 0015-060-12-009. We provided those reasons to you in a letter on July 29, 2013.*

[16] By letters dated March 21, 2014, the Applicant and Eastern Health were formally advised that the second Request for Review had been referred for formal investigation pursuant to subsection 46(2) of the *ATIPPA* and would be incorporated into the formal investigation process of the first Request for Review. As part of the formal investigation process, all parties were given the opportunity to provide written submissions to this Office in accordance with section 47 of the *ATIPPA*. Both Eastern Health and the Applicant advised that the submissions provided for the first Request for Review would be their submissions for the second Request for Review as well.

## II PUBLIC BODY'S SUBMISSION

[17] Eastern Health provided this Office with a formal written submission on July 29, 2013. Eastern Health was asked to specifically address three issues, namely, the custody or control of the 2005 records, the completeness of the 2007 and 2008 records and the lack of responsive records for 2006 and 2009-2011.

[18] Eastern Health was asked if the 2005 records were in their custody or control. Eastern Health's response was as follows:

*Although we are in possession of the 2005 Financial Statement, we do not believe that we have custody or control of this document in accordance with the Access to Information and Protection of Privacy Act. The definition of "custody" deals with the security and preservation of something and requires more than that the records being located on particular premises. The public body must have immediate charge and control of the record, including some legal responsibility for its safekeeping, care, protection or preservation. Eastern Health's funding relationship with [named Third Party] did not begin until October 2006.*

To assess "control" of the record, we used the test developed by the Ontario's Commissioner Linden in 1989:

1. Was the record created by an officer or employee of the institution?
2. What use did the creator intend to make of the record?
3. Does the institution have possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
4. If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
5. Does the institution have a right to possession of the record?
6. Does the content of the record relate to the institution's mandate and functions?
7. Does the institution have the authority to regulate the record's use?
8. To what extent has the record been relied upon by the institution?
9. How closely is the record integrated with other records held by the institution?
10. Does the institution have the authority to dispose of the record?

*Eastern Health did not create the record, did not have a mandate or function in relation to funding for [named Third Party] in 2005, did not require the record, and has not relied on the document for any purpose. We have not made any decisions respecting this document and therefore, believe that we do not have any legal responsibility for its safekeeping. Therefore, we believe, the 2005 financial statement of [named Third Party] is not within the custody or control of Eastern Health.*

[19] Eastern Health was asked if there were further records for 2007 and 2008. Eastern Health's response was as follows:

*Eastern Health does not have any further financial statements for [named Third Party] for the years 2007 and 2008. We acknowledge that we have a funding relationship with [named Third Party] and the Provincial Transition Houses Operational Standards, (2010, Department of Health and Community Services, NL) state that the audited financial statements of the transition house are to be submitted annually to the Regional Health Authority. Prior to this document, the Provincial Transition Houses Operational Standards, (2006, Department of Health and Community Services, NL) provided direction that audited financial statements are to be submitted annually to the Department (i.e. Department of Health and Community Services). We further acknowledge, that funding relationship was the responsibility of Eastern Health as of October 2006 and have requested [named Third Party] to submit financial statements annually since then. Although we have requested the statements through the annual budget letter, communications with the [named Third Party] Director, and our recent request as a result of our ongoing ATIPP request, we have not taken the step to delay budgetary payments.*

[20] Eastern Health was asked why there were no responsive records for 2006 and 2009-2011. It was necessary to consider that while Eastern Health might not have any records for years 2006 and 2009-2011, the issue of custody or control might still apply. Eastern Health's response was as follows:

*Eastern Health is not in possession of any financial statements other than the partial statements that were attached to [named Third Party's] 2007 and 2008 Annual Report. As mentioned under Question #2 above, although we have a funding relationship and request annual financial statements, we have not taken the step to delay subsequent payments. Eastern Health is a public body and is publicly funded and has a duty to account for the expenditure of public funds. Eastern Health supports transparency and accountability within the funding relationship and requests annually that [named Third Party] submit audited financial statements.*

[21] Eastern Health was also asked to provide any further information they had regarding the relationship between Eastern Health and the Third Party. Eastern Health provided the following information:

*Budgetary Relationship:*

*As outlined in Provincial Transition Houses Operational Standards, (2010, Department of Health and Community Services, NL) [named Third Party] receives its core funding from the Department of Health and Community Services (DHCS) with the funds allocated through Eastern Health. Specifically, [named Third Party] submits a budget request to the Regional Director of Community and Children's Services, Mental Health and Addictions Program annually. Eastern Health's Finance Department sends [named Third Party] an annual budget letter and then releases the budgetary funds on a quarterly basis. The annual budget letter states the approved funding and requests a copy of the annual audited financial statement for the particular year.*

*Currently, Eastern Health is developing a Service Agreement with [named Third Party] that will outline the funding and reporting relationship between Eastern Health and [named Third Party]. The document is in the early stages of development with a finalization date undetermined.*

*Service Relationship:*

*The Provincial Transition Houses Operational Standards, Standard 2.1.4 states "although funded through the RHAs, the Transition Houses shall be responsible for their own operational management under the standards set out in this document".*

*Eastern Health does not have a licensing responsibility for [named Third Party] and the monitoring for compliance of standards as stated under Section 1 of the Provincial Transition Houses Operational Standards, has always been interpreted and operationalized as a budgetary relationship. The monitoring for this budgetary relationship has been operationalized by requesting an annual audited financial statement formally through the annual budget letter. As well, the Regional Director of Community and Children's Services is invited to [named Third Party's] closed Annual General Meeting.*

*Eastern Health has two Outreach Managers who are available to [named Third Party] for ongoing support and service provision, as required. These managers are a point of contact for [named Third Party] staff that may have questions or concerns relating to [named Third Party] clients, operational issues, or staff training needs. Although these supports are in place, [named Third Party] has not availed of them.*



### III APPLICANT'S SUBMISSION

[22] The Applicant provided this Office with a detailed formal written submission on July 8, 2013.

[23] The Applicant explained the reasons for making the access request as follows:

*It was information that I found on the Canada Revenue website that prompted my original request for access to information under the Access to Information and Protection of Privacy Act. I wanted to see details of how government funds have been spent at [named Third Party] because I could see, from the financial information posted, year by year, on the Canada Revenue website, that the [named Third Party] Board of Directors have had a dramatically increased budget to work with over the past eleven years. If I am reading the information on the Canada Revenue website correctly, in 2011, by combining the expenditures for [named Third Party] and [a named affiliate of named Third Party], more money was spent on management and administration than the amount that was spent on the charitable program in 2001.*

[24] The Applicant further explained:

*It was my hope that there would be clear documentation, in the financial statements that [named Third Party] had submitted, to Eastern Health, as their yearly records for the years from 2000 to 2011, that would explain the increase of expenditures for management and administration. I was assuming that those financial statements would give a breakdown of exactly what has been included in management and administration expenditures and what has been included in the expenditures for the charitable programs. The four 2007 and 2008 pages that I have received do not give me any of the details that I am seeking.*

[25] In relation to the records received, the Applicant points out that the two pages of records received for the year ending March 31, 2007 are numbered #2 and #5 and the two pages of records received for the year ending March 31, 2008 are numbered #2 and #4. The Applicant concluded that these pages must have been taken from a larger document.

[26] The Applicant points out that there were only four pages of records that Eastern Health had from 2006-2011 in relation to the financial records of [named Third Party]. According to the Applicant on the Canada Revenue Agency website, the government of Newfoundland and Labrador gave over \$3,800,000.00 of taxpayers' money to the board of [named Third Party]. The Applicant specifically questioned whether money was distributed to the Third Party with no accounting for the money previously received in prior years.

[27] Overall the Applicant felt that public accountability was needed. The Applicant stated that:

*... I believe that every interested taxpayer and any prospective donor deserves to have a detailed and comprehensive itemization of how money, previously allocated and donated to [named Third Party], has been spent. That is why I requested, through access to information under the Access to Information and Protection of Privacy Act, to see a detailed accounting of expenditures for management and administration and for the charitable program for the years between 2000 and 2011...*

#### IV THIRD PARTY'S SUBMISSION

[28] The Third Party provided this Office with a formal written submission on July 25, 2013, however, the Third Party requested that no part of their submission be referenced or quoted in this Report.

#### V DISCUSSION

##### Custody or Control

[29] The issue of custody and control has been examined in other jurisdictions and has been discussed briefly in Report A-2011-013. Section 5(1) of the *ATIPPA* outlines the application of the *ATIPPA* and reads, in part, as follows:

*5(1) This Act applies to all records in the custody of or under the control of a public body ...*

[30] Section 5(1) sets out an important threshold question. In order for the *ATIPPA* to apply to records, the records must either be in the custody of or under the control of a public body. A record will only be subject to the *ATIPPA* if it is in the custody **OR** under the control of a public body; it need not be both.

[31] Determining that a record is in the custody of or under the control of a public body does not necessarily mean that an applicant will be given access to it. A record within a public body's custody or control may be withheld from an applicant under a mandatory or discretionary exception.

[32] The terms “custody” and “control” are not defined in the *ATIPPA*. Commissioners and courts in other jurisdictions have given these terms a broad and liberal interpretation in keeping with the intent of access to information legislation. The purposes of the *ATIPPA*, as set out in section 3, are to make public bodies more accountable to the public and to protect personal privacy. Section 3 of the *ATIPPA* reads as follows:

*3. (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*

*(a) giving the public a right of access to records;*

*(b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;*

*(c) specifying limited exceptions to the right of access;*

*(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and*

*(e) providing for an independent review of decisions made by public bodies under this Act.*

*(2) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.*

[33] On the issue of custody and control, the Office of the Information and Privacy Commissioner of Alberta in Order F2012-09 stated as follows at paragraphs 11-13:

*[para 11] In Order P2010-007, the Adjudicator considered how the terms custody and control have been defined in previous orders of this office. He said:*

*In prior FOIP orders, the term “custody” was defined as the physical possession of a record, whereas the term “control” was defined as the authority of a public body to manage, even partially, what is done with a record. Furthermore, prior orders have held that in order for the FOIP Act to apply to the records it is sufficient for a public body to have custody or control of them; the public body does not have to have both custody and control (Order F2002-014). A recent Order of this Office also held that “bare” possession of information does not amount to custody, as the word “custody” implies that there is some right or obligation to hold the information in one’s possession (Order F2009-023).*

*[para 12] In Order F2010-023, I said:*

*In section 6 of the FOIP Act, the word “custody” implies that a public body has some right or obligation to hold the information in its possession. “Control,” in the absence of custody, implies that a public body has a right to obtain or demand a record that is not in its immediate possession.*

*I find that the question “Does the Public Body have a right to obtain the records?” must be answered when determining whether a public body has control over records it does not possess. If a public body has rights it may exert over a record it may be able to obtain the record; if it does not have any rights in relation to the record, it may not be able to obtain it. As the Commissioner noted in Order F2002-014, the right to demand production of records speaks strongly in favor of a finding of control.*

*[para 13] The phrase “custody or control” refers to an enforceable right of an entity to possess a record or to obtain or demand it, if the record is not in its immediate possession. “Custody or control” also imparts the notion that a public body has duties and rights in relation to a record, such as the duty to preserve or maintain records, or the right to destroy them.*

- [34] The Office of the Information and Privacy Commissioner of British Columbia also commented on the meaning of custody at paragraph 14 of Order F13-23 as follows:

*I have reviewed what previous cases have to say about the meaning of the word “custody” and conclude that it means more than simple physical possession of a record. A public body must have some legal right or obligation to the information in its possession before it can be said to have “custody”.*

- [35] The Information and Privacy Commissioner for the province of Ontario has many decisions on the issue of custody and control and their office has reviewed the issue of whether possession of a record constitutes “custody or control” of the record for the purposes of their *Municipal Freedom of Information and Protection of Privacy Act*. Order MO-2051 stated as follows:

*Regarding the issue of whether possession of a record was determinative of the issue of custody or control, former Commissioner Linden stated as follows in that order:*

*In my view, although mere possession of a record by an institution may not constitute custody or control in all circumstances, physical possession of a record is the best evidence of custody, and only in rare cases could it successfully be argued that an institution did not have custody of a record in its actual possession.*

- [36] While physical possession of a record is the best evidence of custody, there must be something more than mere possession. Order MO-2051 went on to state that:

Furthermore, in Order P-239, former Commissioner Wright stated:

*... mere possession does not amount to custody for the purposes of the Act. In my view, there must be some right to deal with the records and some responsibility for their care and protection.*

[37] A non-exhaustive list of factors has been developed and used in other jurisdictions in assessing custody and control. Some of the factors may not apply in a specific case, while other unlisted factors may apply. Order MO-2750 from the Information and Privacy Commissioner of Ontario sets out the factors at paragraph 21, as follows:

- *Was the record created by an officer or employee of the institution?*
- *What use did the creator intend to make of the record?*
- *Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?*
- *Is the activity in question a “core”, “central” or “basic” function of the institution?*
- *Does the content of the record relate to the institution’s mandate and functions?*
- *Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?*
- *If the institution does have possession of the record, is it more than “bare possession”?*
- *If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?*
- *Does the institution have a right to possession of the record?*
- *Does the institution have the authority to regulate the record’s content, use and disposal?*
- *Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?*
- *To what extent has the institution relied upon the record?*
- *How closely is the record integrated with other records held by the institution?*
- *What is the customary practice of the institution and institutions similar to the institution in relation to possession or control of records of this nature, in similar circumstances?*

[38] Order F2012-09 from the Alberta Commissioner outlined a similar list of factors to consider and also stated at paragraph 15 that “Not every factor is determinative, or relevant, to the issues of custody or control in a given case.”

[39] In addition to the above factors the Supreme Court of Canada has commented on the issue of control of documents in *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (“*Minister of National Defence*”). The Court stated at paragraph 48 as follows:

*As “control” is not a defined term in the Act, it should be given its ordinary and popular meaning. Further, in order to create a meaningful right of access to government information, it should be given a broad and liberal interpretation. Had Parliament intended to restrict the notion of control to the power to dispose or to get rid of the documents in question, it could have done so. It has not. In reaching a finding of whether records are “under the control of a government institution”, courts have considered “ultimate” control as well as “immediate” control, “partial” as well as “full” control, “transient” as well as “lasting” control, and “de jure” as well as “de facto” control. While “control” is to be given its broadest possible meaning, it cannot be stretched beyond reason. Courts can determine the meaning of a word such as “control” with the aid of dictionaries. The Canadian Oxford Dictionary defines “control” as “the power of directing, command (under the control of)” (2001, at p. 307) ... The contents of the records and the circumstances in which they came into being are relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Act (paras. 91-95).*

[40] The Court went on at paragraph 50 to support a two-part test for whether a document was under the control of an institution. This test is as follows:

*... in the context of these cases where the record requested is not in the physical possession of a government institution, the record will nonetheless be under its control if two questions are answered in the affirmative: (1) Do the contents of the document relate to a departmental matter? (2) Could the government institution reasonably expect to obtain a copy of the document upon request?*

[41] At paragraph 55 of *Minister of National Defence* the Court explained that step one of the test acts as a useful screening device. Step one asks whether the record relates to a departmental matter and if the answer to that question is no then the inquiry is ended. The Court continued at paragraph 56 by commenting on the second question as follows:

*...all relevant factors must be considered in order to determine whether the government institution could reasonably expect to obtain a copy upon request. These factors include the substantive content of the record, the circumstances in which it was created, and the legal relationship between the government institution and the record holder... The reasonable expectation test is objective. If a senior official of the government institution, based on all relevant factors, reasonably should be able to obtain a copy of the record, the test is made out and the record must be disclosed, unless it is subject to any specific statutory exemption. In applying the test, the word “could” is to be understood accordingly.*

[42] Similar to the Commissioners' sentiments in other jurisdictions, discussed above, regarding the fact that while physical possession of a record is the best evidence of custody, there must be something more than mere possession in determining custody of a record, so too has the Court in *Minister of National Defence* reinforced the fact that there must be something more than physical control over a document to determine the issue of control. The Court stated at paragraph 54 that "while physical control over a document will obviously play a leading role in any case, it is not determinative of the issue of control." Hence the two-part test as outlined above allows for a determination of control of a record even if the institution does not have physical possession of the record.

### **Records for 2005**

[43] Eastern Health's submission referenced the Provincial Transition Houses Operational Standards (June 2006) from the Department of Health and Community Services ("Operational Standards 2006") as well as the Provincial Transition Houses Operational Standards (June 2010) from the Department of Health and Community Services ("Operational Standards 2010"). As the Third Party in these Requests for Review is a transition house these operational standards manuals play a key role in assessing custody and control of the records in question. As such I have reviewed these two manuals in detail.

[44] The Operational Standards 2006 provided direction that the audited financial statements of the transition house were to be submitted annually to the Department of Health and Community Services (the "Department") and the Operational Standards 2010 indicates that the audited financial statements of the transition house are to be submitted annually to the Regional Health Authority ("RHA"), of which Eastern Health is one. Eastern Health has acknowledged that the funding relationship between itself and the Third Party was Eastern Health's responsibility as of October 2006. In fact, in the introduction to the Operational Standards 2006, there is an indication that program and funding responsibility would be devolved from the Department to the RHA's by April 2008. Since the Operational Standards 2006 is dated June 2006 and Eastern Health's funding relationship with the Third Party did not begin until October 2006, I must conclude that the Operational Standards 2006 would apply to Eastern Health and that they would take the role of the Department at least in relation to funding and financial responsibilities of the transition houses for

their area. Eastern Health has agreed that the Operational Standards 2006 applied to their organization prior to the Operational Standards 2010.

[45] As outlined in Eastern Health's submission, it is their opinion that they do not have custody or control of the 2005 records mainly because their funding relationship with the Third Party did not begin until October 2006. I have summarized their reasons in point form for ease of reference below:

- Eastern Health did not create the record
- Eastern Health did not have a mandate or function in relation to funding for [named Third Party] in 2005
- Eastern Health did not require the record
- Eastern Health has not relied on the document for any purpose
- Eastern Health has not made any decisions respecting the record
- Eastern Health does not believe that it has any legal responsibility for the record's safekeeping

[46] Eastern Health has also pointed out in their submission that custody requires more than the records being located on a particular premise. Eastern Health feels that the public body must have immediate charge and control of the record, including some legal responsibility for its safekeeping, care, protection or preservation.

[47] As discussed above by other Commissioners, I agree with Eastern Health that there must be more than mere possession in determining custody of a record. In reviewing the applicability of the factors in paragraph 37, I find that the factors weighing in favor of a finding of Eastern Health having custody of the records outweigh those that weigh against such a finding.

[48] There is no dispute that the 2005 responsive records are in the physical possession of Eastern Health. Eastern Health advised that in August 2006 the Department notified Eastern Health that a number of organizations, including the Third Party were being devolved to the RHA's effective October 1, 2006. As part of that notification, Eastern Health was provided a package of background information, including past financial statements. This package included the prior year audited financial statements for the Third Party, the 2005 records. These records were voluntarily provided



to Eastern Health in preparation for the transition of funding responsibilities from the Department to Eastern Health effective October 2006.

[49] In relation to the 2005 records Eastern Health stated in their submission that “we have not made any decisions respecting this document and therefore, believe that we do not have any legal responsibility for its safekeeping.” I must disagree with Eastern Health on this issue. Eastern Health is responsible for the care and protection of its copy of the records. Eastern Health has the authority to regulate, at the very least, the disposal of the records pursuant to any records retention schedule that it has. While Eastern Health may not have made any decisions respecting these records, these records are integrated on their system as evidenced by the fact they were located in response to an access request. Furthermore, these records have been in the possession of Eastern Health for almost six years at the time the access request was made.

[50] Eastern Health stated in their submission that it did not have a mandate or function in relation to funding for the Third Party in 2005. Eastern Health’s mandate currently outlined on their website is as follows:

*Eastern Health is responsible for the delivery and administration of health services and community services in its health region and provincially as designated by the Minister of Health and Community Services. The organization will deliver its programs and services within fiscal capabilities and in accordance with the Regional Health Authorities Act and other relevant regulations.*

Assuming Eastern Health’s mandate was very similar in 2005/2006, in my opinion, the funding responsibility for the Third Party would clearly fall under the delivery and administration of community services. Furthermore, Eastern Health’s program and funding responsibility of the Third Party were clearly directed by the Department as outlined in the Operational Standards 2006. While I accept that Eastern Health did not have a funding relationship with the Third Party until October 2006, I find it difficult to conclude that financial statements ending March 31, 2005 have no bearing on Eastern Health’s funding responsibilities as of October 2006. In my opinion, the 2005 records do relate to Eastern Health’s mandate and function. Eastern Health may or may not have needed to rely on these records, but, if nothing more, these records provided Eastern Health with the Third Party’s past financial position, something that is important to know when taking on a funding relationship with a new organization. As Eastern Health was transitioning into a new role in October 2006 in

relation to the funding responsibilities of the Third Party, it would have been prudent to possess the necessary background information required to move forward in that role. The Department obviously thought it was important that Eastern Health have these records as they provided Eastern Health with the past financial statements as part of the package of background information in August 2006.

[51] Neither Eastern Health nor the Third Party is the creator of the records in question. The creator was an accountant. In this situation it is important to examine the Third Party's use of these records. The Third Party would have needed these records to submit its annual accounting to the Canada Revenue Agency however, according to the Operational Standards 2006 (Appendix C), the Third Party was also responsible for submitting these records to the Department. The Third Party provided these records via fax to someone at the end of August 2006. I am unable to confirm with certainty that it was the Department, however, the fax number indicates that the records were provided to a government entity. If this is the case then the Third Party's use of the records indicates that the Department, and by extension Eastern Health as the organization which took over funding for the Third Party, had a right to possess the records.

[52] Eastern Health responded to the access request and participated in the informal resolution process with the Office, thus implying it had the right to deal with the records. Any limitations placed on Eastern Health by the fact there was no funding relationship prior to October 2006 limits Eastern Health's control of the records, rather than its custody. Overall I find that Eastern Health has more than bare possession of the 2005 records.

[53] I find support in my analysis from Order MO-2142 and Order MO-2613 from the Information and Privacy Commissioner for Ontario as well as *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)*. These cases all deal with the situation where an institution under Ontario's access and privacy legislation had records in their physical possession but claimed they were not in their custody or under their control. While the records in Orders MO-2142 and MO-2613 were found within the custody of the organization they were withheld based on other exceptions, however, the analysis in determining custody proved informative. In *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commissioner)* the Ontario Superior Court of Justice, Divisional Court, on judicial review upheld the finding of custody from Order PO-2739

where records in the possession of the Ministry of the Attorney General were at issue. The Court, however, overturned the finding of control from Order PO-2739 but since it is only custody or control required, it was found that Order PO-2739 had correctly determined that the records should be disclosed.

[54] For the reasons explained above I conclude that Eastern Health has custody of the 2005 records for the purposes of the *ATIPPA*. As I have made this conclusion I find it unnecessary to determine whether Eastern Health has control of the 2005 records.

### **Records for 2007 and 2008**

[55] Eastern Health provided the Applicant with the Statement of Revenue and Expenditure and the Statement of Financial Position of the Third Party for the years ending 2007 and 2008. These records are not the yearly financial statements of the Third Party as requested in the Applicant's access request.

[56] In part of the Applicant's submission, the Applicant questioned why no further records were located for the years 2007 and 2008. The Applicant correctly pointed out that records received for the year ending March 31, 2007 are numbered #2 and #5 and the two pages of records received for the year ending March 31, 2008 are numbered #2 and #4. The Applicant concluded that these pages must have been taken from a larger document. In addition, while the records provided to the Applicant, may be a portion of the yearly financial statements of the Third Party, they are not the complete yearly financial statements of the Third Party as requested by the Applicant.

[57] Eastern Health has stated that it does not have any further financial records of the Third Party for 2007 or 2008. Since the Applicant has questioned why no further financial statements of the Third Party exist for those years, the public body must demonstrate that it has conducted a reasonable search for records. Reasonable search has been examined by this Office in other reports, namely Report 2006-003, and it has been established that "records searches must be conducted by knowledgeable staff in locations where the records in question might be located." As well, a public body must provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records.

[58] In this situation I am satisfied that Eastern Health has conducted a reasonable search. One factor which helps to strengthen Eastern Health's position is the fact that Eastern Health located a financial statement for the year 2005 in addition to the records for 2007 and 2008. This helps demonstrate that the search criteria used as well as the areas searched should have located other financial statements of the Third Party should they have existed.

### **Records for 2006, 2009-2011 and fiscal year 2013**

[59] Eastern Health has stated that it does not have any responsive records for the years 2006, 2009-2011 and fiscal year 2013. The reasonable search criteria discussed above applies equally to these records and I am satisfied that Eastern Health has conducted a reasonable search for these records.

[60] However, while the records for the years 2006, 2009-2011, fiscal year 2013 as well as any further records that may exist for the years 2007 and 2008, are not in the physical possession of Eastern Health, we must consider if these records are in the control of Eastern Health. I feel that it is appropriate to review some of the requirements outlined in the Operational Standards 2006 and Operational Standards 2010 before proceeding to the control analysis.

[61] The Operational Standards 2006 is quite detailed regarding funding and financial management. Section 2.1 (Funding) outlines the fact that "Transition Houses shall receive core funding from the DHCS with funds allocated through the four RHA's." The reference to DHCS is the Department of Health and Community Services. Section 11.1 (Financial Statements) states "Transition Houses shall maintain accurate financial statements and reporting using generally accepted accounting practices in accordance with the Department of Health and Community Service's document entitled "Province of Newfoundland and Labrador Financial Requirements Guide for Residential Services (see appendix C for a copy of these guidelines)." Section 11.2 (Budget Monitoring) states that "Transition Houses must seek approval from the RHA's prior to spending monies in excess of the annual approved budget."

[62] Appendix C attached to the Operation Standards 2006 outlines the financial responsibilities of organizations being funded and specifically with respect to financial reporting states as follows:

- *An annual budget proposal related to the services being provided must be submitted on the prescribed forms for the Government fiscal year by due dates established by Treasury Board*

*guidelines (usually October or November or the year prior ). Organizations should be aware that funding might not be approved in the amount requested in their submission. Programs should not be adjusted to higher rates of expenditure prior to notification of the amount of funding authorized.*

- *Full reporting (balance sheet and budget position statement) on a quarterly basis to be submitted to the department by the 30<sup>th</sup> day of the month following the end of the quarter using the prescribed forms. The assurance that regular payments will be made is dependent upon the receipt of timely and accurate financial information. The organization must ensure that such information is received as per departmental deadlines. Failure to comply with reporting deadlines will result in a delay of subsequent payments.*
- *It is expected that full reporting on a monthly basis would be completed by the organization and will be available to the department upon request.*
- *All special funding requests will only be considered if the most recent financial statements are available.*
- *Audited financial statements to be submitted annually to the department no later than ninety (90) days following the close of the fiscal year. For those agencies with multiple facilities the audits should include detailed financial statements for each facility and a consolidated financial statement for the agency. This submission should include the management letter that was issued by the auditors for that period. Auditors are to be appointed annually by the Board of Directors. The assurance that regular payments will be made is dependent upon the receipt of timely and accurate financial information. The organization must ensure that such information is received as per departmental deadlines. Failure to comply with reporting deadlines will result in a delay of subsequent payments.*
- *All budget position statements and audit financial statements are to be prepared using the accrual method of accounting.*

[63] It was necessary to reproduce the financial reporting section of Appendix C in its entirety to demonstrate the detailed financial reporting requirements of transition houses. As well, under the section heading Retention of Records of Appendix C there is a requirement that all financial records and books of account be retained for a period of seven (7) years and that financial records may not be destroyed without prior approval of the department.

[64] It is clear that there is a strong financial reporting structure of transition houses to the Department so much so that should the transition houses not comply, subsequent payments may be delayed. Again, while the Operational Standards 2006 was drafted for the Department, since Eastern Health took over the funding relationship with the Third Party in October 2006, I believe it is reasonable to conclude that this document would provide Eastern Health with the same authority as

the Department for the years 2006 to 2010, when the Operational Standards 2010 came into effect. Since there are no new Operational Standards I must conclude that the Operational Standards 2010 would continue to apply until such time as new Operational Standards are adopted.

[65] There are many financial reporting requirements in the Operational Standards 2010 which are similar to the Operational Standards 2006 requirements. Section 2.1.4 (Funding/Relationship with RHA) states as follows:

*Transition Houses shall receive core funding from the DHCS with the funds allocated through the four RHAs. Funding responsibilities will be outlined in a Service Agreement between the House and the Regional Health Authority;*

*While all Transition Houses receive core funding from the RHAs, additional non-budgeted expenses may arise during the year. Core funding, including any requests for increased funding, is approved based on a budget submission by the House to the RHA which is included in the RHA's budget submission to the DHCS. Transition Houses may apply to the RHA for additional funding from a limited contingency fund to cover non-budgeted expenses; (see Section 3, Standard 10 Financial Management and Budgeting)*

*Additional funding for other activities and projects may be sought by the individual homes through various grant applications and donations;*

*Although funded through the RHAs the Transition Houses shall be responsible for their own operational management under the standards set out this document. The DHCS will lead a regular review of the operation standards manual every three years.*

*The RHA shall have representation on the transition house board as a non voting member. This will ensure flow of information between organizations, foster good working relationships and provide support to the operation of the house.*

*Transition Houses should seek assistance and support from the RHA when necessary.*

[66] Standard 10 (Financial Management and Budgeting) outlines the financial requirements for Transition Houses. Standard 10 is very similar to the Appendix C in the Operational Standard 2006, however, there are a few differences. Standard 10 is as follows:

- *An annual budget proposal (including any increases in the budget) related to the services being provided must be submitted to the RH for inclusion in the RHA's budget submission to the DHCS. RHAs will identify the time lines related to annual budget submissions from houses. Houses should be aware that funding might not be approved in the amount requested in their submission. Programs should not be adjusted to higher rates of expenditure prior to notification of the amount of funding authorized;*

- *Transition Houses shall prepare an annual budget and closely monitor expenditures on a monthly basis to achieve a balanced financial position at the end of each year. While there are some limited resources within the RHA's to fund emergency situations, there is no feasibility to cover annual operating deficits.*
- *Transition Houses shall maintain accurate financial statements and reporting using generally accepted accounting practices;*
- *Transition Houses shall submit a report (balance sheet and budget position statement) on a quarterly basis to be submitted to the RHA by the 30<sup>th</sup> day of the month following the end of the quarter unless otherwise directed by the RHA. The assurance that regular payments will be made is dependent upon the receipt of timely and accurate financial information. Failure to comply with reporting deadlines will result in a delay of subsequent payments;*
- *It is expected that reporting on a monthly basis would be completed by the House and will be available to the RHA upon request;*
- *All special funding requests will only be considered if the most recent financial statements are available;*
- *Audited financial statements to be submitted annually to the RHA no later than ninety (90) days following the close of the fiscal year. For those agencies with multiple facilities the audits should include detailed financial statements for each facility and a consolidated financial statement for the agency. This submission should include the management letter that was issued by the auditors for that period. Auditors are to be appointed annually by the Board of Directors;*
- *Transition Houses must seek approval from the RHAs prior to spending monies in excess of the annual approved budget.*

[67] Again, I felt it was necessary to reproduce this section in its entirety to outline the specific financial reporting requirements the transition houses have to the RHA's.

[68] Eastern Health's submission outlined the fact that "We further acknowledge, that funding relationship was the responsibility of Eastern Health as of October 2006 and have requested [named Third Party] to submit financial statements annually since then. Although we have requested the statements through the annual budget letter ... we have not taken steps to delay budgetary payment." Eastern Health went on to describe the budgetary relationship as follows:

*... Specifically, [named Third Party] submits a budget request to the Regional Director of Community and Children's Services, Mental Health and Addictions Program annually. Eastern Health's Finance Department send [named Third Party] an annual budget letter and then*

*releases the budgetary funds on a quarterly basis. The annual budget letter states the approved funding and requests a copy of the annual audited financial statement of the particular year.*

[69] Both sets of Operational Standards state that the audited financial statements are to be submitted annually. Eastern Health requested the annual financial statements of the Third Party yet Eastern Health was not able to locate these records for the years 2006-2011 and fiscal year 2013 when asked for these records through an access request. This leads to the conclusion that these records were not provided by the Third Party to Eastern Health.

[70] The purposes of the Operational Standards 2006 and the Operational Standards 2010 are as follows:

- *Ensure quality standardized services for women and children in all transition houses and to standardize governance and administration functions;*
- *Clearly define the authority, responsibility and accountability within and between the Transition Houses, the RHAs, the DHCS and THANL;*
- *Provide a comprehensive set of operational standards in one manual to guide the delivery of services and manage day to day operations within the Transition Houses in keeping with best practices.*

[71] The Operational Standards set out program and funding responsibilities and requirements for transition houses and it is clear that they are intended to establish clear expectations of the relationship between the parties. Both manuals state that it is expected that the Transition Houses of Newfoundland and Labrador will adhere to the operational standards.

[72] Order MO-2750 from the Information and Privacy Commissioner of Ontario dealt with a situation where records were requested under the *Municipal Freedom of Information and Protection of Privacy Act* relating to various expenses of two City of Vaughan councilors. The City of Vaughan claimed that it did not have custody or control of the requested records since the records were not in its possession.

[73] MO-2750 concluded at paragraph 35 that "...while the city does not appear to have custody of the detailed invoices showing the councilors 407 ETR usage for business and personal purposes, it



has control of these records based on the clear directive wording of section 4.1.13 of the policy and the application of the two-part test for institutional control articulated by the Supreme Court of Canada in *Minister of National Defence*.”

[74] It was determined that both parts of the test outlined in *Minister of National Defence* were met, however, I wish to quote from MO-2750’s analysis of part two of the test as I feel it is particularly applicable in this context. MO-2750 at paragraph 38 stated as follows:

*... The city is a public institution and publicly funded. Accordingly, it has a duty to account for the expenditure of public funds. Section 4.1.13 of the policy exists to ensure that the city is able to account for the disbursement of public funds to members of council, as reimbursement for expenses they incur during the course of conducting business in their roles as councilor, and in the event it is asked to respond to an audit request. In my view, in order for the city to properly discharge its duty to account for expenditure of public funds it would need to be able to distinguish between expenses incurred by a member in council for business rather than personal purposes. This can only be achieved by providing the city with the ability to obtain access to the detailed invoices, where it is necessary for it to do so.*

[75] The Operational Standards are in place to ensure there is proper financial reporting between the transition houses and the body responsible for providing funding. Eastern Health is a public body under the *ATIPPA* and as stated in their submission “...is publicly funded and has a duty to account for the expenditures of public funds.”

[76] While the transition houses are not public bodies under the *ATIPPA*, the Operational Standards are clear that these organizations receive public funds and have detailed financial reporting requirements. Since Eastern Health oversees the funding of the Third Party then it should either have, or be able to obtain, the necessary records to discharge its duty to account for public funds.

[77] Applying the two-part test in *Minister of National Defence*, in this situation, I find that part one of this test is met. Eastern Health has acknowledged that there was a funding relationship in place between itself and the Third Party as of October 2006 and while there are no documents to review, I find that the financial statements of the Third Party would directly relate to a departmental matter since these records would relate to Eastern Health funding responsibilities of the Third Party and the Third Party’s financial reporting requirements to Eastern Health.

[78] As outlined in paragraph 41 above, the second part of the test involves:

*...all relevant factors must be considered in order to determine whether the government institution could reasonably expect to obtain a copy upon request. These factors include the substantive content of the record, the circumstances in which it was created, and the legal relationship between the government institution and the record holder... The reasonable expectation test is objective. If a senior official of the government institution, based on all relevant factors, reasonably should be able to obtain a copy of the record, the test is made out and the record must be disclosed, unless it is subject to any specific statutory exemption. In applying the test, the word "could" is to be understood accordingly.*

[79] From the review of the Operational Standards 2006, Operational Standards 2010 and Eastern Health submission regarding their funding relationship with the Third Party I must conclude that the second part of the test is met. Based on all the factors discussed above, Eastern Health should reasonably be able to obtain a copy of the records upon request. In fact both Operational Standards state that audited financial statements are to be submitted annually.

## VI CONCLUSION

[80] This Request for Review began as a review of the section 27 exception claimed. Through the informal resolution process with this Office Eastern Health reconsidered its position and with no appeal from the Third Party the section 27 issue was concluded. Even with the section 27 issue concluded, the Applicant questioned why there were no responsive records for the majority of years requested and Eastern Health acknowledged possessing records that it did not believe were in its custody or control for the purposes of the *ATIPPA*. This Report attempted to address the Applicant's questions and examine Eastern Health's position on the custody and control issue.

[81] Given the forgoing analysis with respect to custody and control, it is my finding that the 2005 records are in the custody of Eastern Health. This finding is based on the weighing of the factors outlined in the discussion above and my conclusion that the factors weighing in favor of a finding of Eastern Health having custody of the records outweigh those that weigh against such a finding.

[82] I have determined that while Eastern Health disclosed the Statement of Revenue and Expenditure and the Statement of Financial Position of the Third Party for the years ending 2007 and 2008 to the Applicant, these records were not the complete financial statements of the Third

Party for those years. I have further determined that Eastern Health did complete a reasonable search for responsive records for all years from 2006-2011 and fiscal year 2013.

[83] Regarding the lack of responsive records for 2006, 2009-2011 and fiscal year 2013 as well as a lack of complete financial statements for 2007 and 2008, it is my conclusion that these records are within Eastern Health's control. I find that Eastern Health has met the two-part test outlined by the Supreme Court of Canada in *Minister of National Defence* thereby bringing the responsive records from 2006-2011, any further records for 2007 and 2008, as well as records for fiscal year 2013 within its control.

[84] The Operational Standards are very detailed and set out program and funding responsibilities and requirements for transition houses. Apart from the funding responsibilities which have been the focus of this report, the Operational Standards cover a vast amount of other obligations, including, but not limited to, confidentiality and privacy, resident safety, obligations for health and safety, documentation and records keeping to name a few. It is clear that the Operational Standards are intended to establish expectations and accountability between the parties.

[85] The purposes and intent of the *ATIPPA* must be continuously remembered throughout the custody or control analysis. The *ATIPPA* helps make public bodies accountable to the public by giving individuals a right of access to records in the custody or under the control of a public body.

[86] In conclusion I must emphasize that a custody or control analysis will be determined by the particular facts of the situation and not every factor is determinative or relevant to the issue. Custody or control is a threshold question when determining whether the *ATIPPA* will apply to records and it must be remembered that even if a record is in the custody or under the control of a public body that does not automatically mean that an applicant will be given access to it, as the exceptions in the *ATIPPA* must also be considered.

## VII RECOMMENDATIONS

[87] Under the authority of section 49(1) of the *ATIPPA*, I recommend as follows:

1. That Eastern Health review the 2005 records in accordance with the *ATIPPA* to determine if any exceptions apply. Once this review is completed, and subject to any exceptions that may apply, I recommend that Eastern Health disclose the 2005 records to the Applicant.
2. That Eastern Health obtain a copy of the annual financial statements of the Third Party for the years 2006-2011 and fiscal year 2013. Once Eastern Health has obtained these records it must review them in accordance with the *ATIPPA* and determine if any exceptions apply. Once this review has been completed, and subject to any exceptions that may apply, I recommend that Eastern Health disclose the records to the Applicant.

[88] Under the authority of section 50 of the *ATIPPA*, I direct the head of Eastern Health to write to this Office and the Applicant within 15 days after receiving this Report to indicate its final decision with respect to this Report.

[89] Please note that within 30 days of receiving the decision of the Eastern Health under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60 of the *ATIPPA*.

[90] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24<sup>th</sup> day of October, 2014.

E. P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador