



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-017

April 23, 2024

City of Mount Pearl

Summary:

The Complainant made an access to information request to the City of Mount Pearl for records related to an investigation of allegations of inappropriate behavior on the City's property. The City responded by providing 45 pages of responsive records. The Complainant asserted that the City's search was incomplete and that it had not disclosed all responsive records. This Office found that the City met its duty to assist the Complainant pursuant to section 13 of *ATIPPA, 2015* but recommended that the City contact a former employee who may have records related to the request.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, section 13.

Authorities Relied On:

OIPC Reports [A-2016-009](#); [A-2016-021](#); and [A-2023-026](#)

BACKGROUND

- [1] The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the City of Mount Pearl for the following:

All reports, documents, and communications relating to allegations and the investigation into the inappropriate comments and touching directed towards female staff.

- [2] The search conducted by the City produced approximately 45 pages of records that it disclosed to the Complainant. After reviewing these records, the Complainant asserts that additional documents exist and were not disclosed and therefore the City did not meet its duty to assist the Complainant pursuant to section 13(1) of ATIPPA, 2015.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

PUBLIC BODY'S POSITION

- [4] It is the position of the City that it conducted a reasonable search for responsive records and that all of those records were disclosed to the Complainant with few redactions. The Complainant has not challenged the City's application of ATIPPA, 2015 to withhold certain information.

COMPLAINANT'S POSITION

- [5] The Complainant states that the responsive records released to him make reference to other documents that were not disclosed. In particular, the records note that a meeting between the senior management of the City took place regarding the Complainant and that no notes from certain employees were produced. The Complainant also notes that there is reference to referring the matter to the Royal Newfoundland Constabulary (RNC) but nothing from the RNC was disclosed.

DECISION

- [6] The duty to assist and conduct a reasonable search for records is contained in section 13 of ATIPPA, 2015, which states:

13.(1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate, and complete manner.

- [7] A key component of the duty to assist is that the Public Body conduct a reasonable search in response to the Complainant's access request. The standard for a reasonable search is set forth in [Report A-2016-009](#), which states at paragraph 8:

While the ATIPPA, 2015 does not speak directly to the issue of reasonable search, it has been determined that a reasonable search does not require the public body to prove with absolute certainty that further records do not exist. The public body must simply provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records. A reasonable search is one which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.

- [8] From this Office's review of the City's search for responsive records, it appears that the City did make a reasonable effort. A search of the City's email accounts and servers was conducted. The system installed to manage the City's email accounts does not allow for any emails to be deleted. A search of the City's email and file database was performed using the Complainant's name and terms relating to their access request. The ATIPP coordinator engaged directly with the employees involved with the Complainant's issue, and these employees conducted a search of all their notes and documents relating to the information request. These searches produced responsive records that were provided to the Complainant. The entire search effort was managed and reviewed by the City's ATIPP coordinator.

- [9] Further, the Complainant alleged, though without evidence to substantiate it, that personal email accounts were used in handling the subject of the access request. As noted in [A-2016-021](#), any records created in the course of a public body's business, even correspondence created on a personal email account, are subject to ATIPPA, 2015. Therefore, this Office requested that the City conduct a search of the personal email addresses of the

Mount Pearl City Council. The City requested that councillors search their personal emails using the Complainant's name and other relevant terms. This search produced no responsive records.

The Complainant's Assertion that Additional Records Exist and Were not Disclosed

[10] The standard that a Complainant must meet to sustain an assertion that additional responsive records exist is set forth in many reports from this Office. Report [A-2023-026](#) describes the standard as follows:

[The] Complainant must establish the existence of a reasonable suspicion that a public body is withholding a record. Sometimes, this takes the form of having possession of or having previously seen a document that was not included with other responsive records or media reports regarding the documents.

[11] The Complainant's position that records were not disclosed is based on several factors. First, the Complainant states that responsive records were limited to the complaint documents. The Complainant requested these specific documents and the City provided them. These documents include statements from City employees regarding the Complainant; reports drafted by the City's Municipal Enforcement Officers regarding their investigation and meetings with the Complainant; documents on when the City made its decision regarding the Complainant; and correspondence with the Complainant regarding the City's decision. In our assessment, the records that were disclosed appear to be the entirety of the investigation. There is no evidence provided to this Office by either the Complainant or the City that suggests the City created or gathered records in the course of its investigation beyond what has been disclosed.

[12] The Complainant also asserts that the ATIPP coordinator for the City was new to the role and therefore their inexperience likely led to mistakes and that a second search should be conducted. There is no evidence to suggest that mistakes were made in the search. What matters is how the search was conducted and in this case, this Office has no reason to doubt the completeness of the search.

[13] The third reason cited by the Complainant in support of their position that further responsive records exist and have not been disclosed is that some of the documents that the City provided to the Complainant reference meetings or further actions for which no information was disclosed. In particular, the Complainant states that the records reference a meeting between the City employees involved in the matter and senior management, as well as a statement about referring the matter to the RNC. With respect to the meeting with senior management, the City requested that employees involved in this matter search their records. In the case of staff no longer with the City, the ATIPP Coordinator conducted a search of their offices and records. They could locate no further notes or files on the matter. However, the City did advise that departed employees may still be in possession of their notes from their time of employment and that the City cannot confirm whether these notes contain information regarding City employees and the Complainant. As for the document that mentions the RNC, if a complaint was filed and if there was any subsequent investigation, that information would be in the possession of the RNC and not the City. To access these documents the Complainant needs to contact the RNC.

[14] The Complainant has not established that there is a reasonable suspicion that the City is withholding a record.

RECOMMENDATIONS

[15] Under the authority of section 47 of ATIPPA 2015, I recommend that the City of Mount Pearl do the following:

1. Maintain its position with respect to records already located within its offices, servers, and databases;
2. That the City, within 10 business days, contact the former employee who may have possession of their notes from their time at the City and confirm whether there are any notes or other information related to the Complainant's access request. If this search produces any information regarding the Complainant's access request, that this information be provided to the Complainant within 10 business days of it being in the custody of the City.

[16] As set out in in section 49(1)(b) of ATIPPA, 2015, the head of the City of Mount Pearl must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 23rd day of April 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador