



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-018

April 24, 2024

Department of Justice and Public Safety

Summary:

The Complainant made an access to information request to the Department of Justice and Public Safety. In its final response, the Department indicated no responsive records were found. Dissatisfied with the response, the Complainant filed a complaint with this Office and during the investigative process, the Department took further steps to search for records. After reviewing submissions from both parties, the Commissioner found the Department met the reasonable search requirement as required by section 13.

Statutes Cited:

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

Authorities Relied On:

NL OIPC Reports [A-2009-011](#), [A-2023-027](#), [A-2024-004](#), [A-2024-007](#).

BACKGROUND

[1] On October 20, 2023 the Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Department of Justice and Public Safety for the following:

1. *All records, including emails and handwritten notes, pertaining to the proceeding Supreme Court [docket number and name of parties included in request], the hearing of this matter on September 25-27, 2023 inclusive. Period covered: August 30, 2023 to date.*
2. *All records, including emails, pertaining to the commentary titled 'Transparency? You'll have to wait' published in The Telegram on June 23, 2023. Period covered: June 22, 2023 to date.*

[2] The Department did not seek an extension to extend the time for responding to the request and responded on January 16, 2024, well beyond the 20 business days as required by section 16 of ATIPPA, 2015. In Report [A-2024-007](#), this Office found the Department failed to meet its duties under sections 13 and 16 in relation to the request.

[3] In its response, the Department stated it found no records responsive to the request. On January 23, 2024, the Complainant filed a complaint with this Office alleging the Department failed to conduct a reasonable search for the requested records as required by section 13.

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

ISSUES

[5] The sole issue to be addressed in this Report is if the Department conducted a reasonable search for the responsive records as required by section 13 of ATIPPA, 2015.

DECISION

[6] The duty to assist applicants during the processing of access requests is found 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] In Report [A-2009-011](#), the Commissioner stated:

The duty to assist, then, may be understood as having three separate components:

- *First, the public body must assist an applicant in the early stages of making a request.*
- *Second, it must conduct a reasonable search for the requested records.*
- *Third, it must respond to the applicant in an open, accurate and complete manner.*

[8] On November 20, 2024, the Complainant filed a complaint with this Office with respect to the Department's failure to respond to their request. This resulted in Report [A-2024-007](#) in which we found the Department failed to meet the duty to assist during the processing of the request as it did not make the applicant aware the response would be late. The present complaint relates to the final response itself and whether the Department conducted a reasonable search in accordance with section 13 and the duty to assist.

[9] As noted in Report [A-2023-027](#) and more recently in Report [A-2024-004](#), the standard applied to a search is "reasonableness, not perfection." As it is difficult to prove a negative, ATIPPA, 2015 does not require a public body to prove with absolute certainty that records do not exist. In this Office's [Practice Bulletin on Reasonable Search](#), we state "complainants must establish the existence of a reasonable suspicion that a public body is withholding a record, or has not undertaken an adequate search for a record."

[10] In order for us to assess whether it has met the reasonableness standard, it is important for a public body to provide information on what steps it took in conducting its search. In this case, the Department states it completed the following steps in its search for the responsive records:

- *The JPS coordinator contacted the applicant requesting the wording of the commentary or the link to the news article referenced in their request.*
- *The applicant provided the requested information, and after reviewing, the JPS coordinator contacted the applicant for clarification if this was a*

personal access request relating to the commentary on MUN or to the commentary relating to postponing a statutory review.

- *The applicant responded with “All records, including emails, pertaining to this commentary whether they are related to MUN or the postponement. Please advise if this clarifies the matter.”*
- *The JPS coordinator confirmed that this did clarify matters and asked the applicant if they were agreeable to narrow the search to include the JPS Minister, Deputy Minister and ADM responsible; to which they agreed.*
- *The applicant later requested to add the Policy and Strategic Planning Division, and the Media Relations Manager to the search.*

[11] The Department also provided information on the individuals whose mailbox it searched:

Based on the timeframe of the request, June 22, 2023 to October 20, 2023, the JPS coordinator completed a search of the following accounts:

- *Minister Hogan;*
- *Deputy Minister’s Denis Mahoney; and*
- *Two ADM’s responsible – Denise Woodrow, Mike Noseworthy*
- *Minster’s executive Assistant – Glenda Hearn-Ellis*
- *Policy and Planning Director – Kellee Martin*
- *Policy and Planning Manager – Nicole Porter*
- *Director of Communications – Jeremy Reynolds*
- *Manager of Communications – Eric Humber*
- *To ensure a thorough search was completed, the coordinator determined that the accounts of the executive support staff also should be searched. This included:*
 - ◆ *Minister’s Secretary – Jill March;*
 - ◆ *ADM’s secretary – Tracy Coady*

[12] The Department stated further that it was not involved in and did not provide representations for court file 2021 01G 4960. The Department also confirmed a search of both mailboxes and HPRM using the following search terms:

- *“ATIPPA”*
- *“Access to Information and Protection of Privacy”*
- *“ATIPP”*
- *“Transparency”*

- “Review”
- “[Complainant’s Name]”
- “Amendments”

[13] In their submissions, the Complainant provided emails which appear responsive to the request but were not provided by the Department in its final response. The Complainant proposed that these emails show the Department did not conduct a reasonable search. The provided emails also show the Department had at least some level of involvement with court file 2021 01G 4960, which appears to contradict the information provided to this Office. The emails provided include an August 30, 2023 email referencing the Complainant and sent by a solicitor within the Department to the Minister; a September 1, 2023 email from the Complainant to the Minister containing the court docket number and the Telegram article referenced in the request; and a September 12, 2023 email from a Department staff member to a lawyer in the Department which was copied to the Complainant.

[14] The Department’s explanation is that in some cases the individuals involved in the above correspondence had been excluded from the scope of the request and the Department’s search. However, the Complainant specifically denies the claim that they had agreed to limit the search. The email exchange the Department relies on occurred on December 7, 2023 where the Department asked the Complainant:

. . . given the broadness of the request are you agreeable to narrow the e-mail search to the JPS Minister, Deputy Minister and ADM responsible?

To which the Complainant responded:

Please add Policy and Strategic Planning Division and Media Relations Manager to this list. They monitor publications on the Department-related matters on a regular basis. Thank you

[15] In our view, when the Department asked the Complainant to narrow the scope of the request, the Complainant did not address the question directly but added other individuals. We accept that the Department reasonably interpreted this response as acceptance of the proposal with the noted additions. Therefore, the scope of the search cannot be said to have included the records of several of the Department staff members who had records responsive to the request.

- [16] During the informal resolution period, this Office provided these emails to the Department and recommended a new search be conducted on the basis that the emails show some individuals at the Department had responsive records which were not found. Moreover, we also noted the terms “[docket number]”, “Memorial” (as Memorial University was one of the parties to the litigation), and variations of the Complainant’s name were missing from the initial search recommended a new search including these terms.
- [17] On March 7, 2024, the Department indicated it would complete an additional search using the above terms but did not agree to a search of mailboxes beyond those initially searched. It is worth noting that during the request processing, the Department states it did search the records of one of the parties to the emails provided by the Complainant, but no responsive records were found.
- [18] On March 27, 2024, the Department provided the Complainant with a further 106 pages of records which were found following an additional search conducted in consultation with this Office. The new search was completed using additional search terms which were not used in the original processing of the request. The Department did not search the accounts of staff members whom it considered to be outside the scope of the request.
- [19] We reject the Complainant’s assertion that as the Department has commented on other Telegram articles relating to ATIPPA, 2015 in the past then it must follow that it has records relating to the article in the request but they were withheld or not searched for. However, the Complainant has presented sufficient evidence, in the form of emails, that establish a reasonable suspicion that the Department failed to conduct an adequate search when it initially processed the request.
- [20] Overall, the initial search conducted was insufficient as keywords in the request which would have clearly produced responsive emails were not used. However, this was corrected when, in consultation with this Office, the Department conducted a new search using proper search terms, which did result in additional records.

RECOMMENDATIONS

- [21] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Justice and Public Safety maintain its position with respect to this matter, but arrange for a training session with the ATIPP office regarding reasonable search and the duty to assist within 10 days of this Report.
- [22] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department 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.
- [23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24th day of April 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador