



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-026

June 5<sup>th</sup>, 2024

### Royal Newfoundland Constabulary

**Summary:**

The Complainant submitted two access requests to the Royal Newfoundland Constabulary for records related to various RNC policies and procedures. The RNC relied on section 17(2) of the Access to Information and Protection of Privacy Act, 2015 to neither confirm nor deny whether responsive records exist. This Office found that the RNC failed to meet the two-part test and therefore section 17(2)(a) was not applicable. It was recommended that the RNC identify any records responsive to the requests that may exist and redact them accordingly under section 31 (if applicable) and provide new responses to the Complainant within 20 business days of receipt of this Report.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 17(2)(a), section 31(1)(a), (c), (f) and (n).

**Authorities Relied On:** NL OIPC Reports [A-2024-024](#), [A-2019-025](#), [A-2017-011](#), and [A-2013-010](#).

## BACKGROUND

[1] The Complainant made two access to information requests under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Royal Newfoundland Constabulary (RNC), seeking:

. . . to obtain a list of names/titles of different types of warrants required to surveil. For ex. Covert surveillance technologies and techniques (judicial warrant?), Physical surveillance of criminal suspects; covert and overt entry services, and advanced digital forensics, etc. Above are examples, I'm not certain of the correct terminology. Therefore, I'm requesting ATIPP to locate/provide the info.

And

. . . information pertaining to RNCs policies and procedures. I'm seeking the proper titles of the policies and procedures to properly fill out the request form. I'm wonder which policy and procedure the following questions would be associated with,

1. Duty to Document (written, audio (phone calls), emails, etc.
2. Duty to Provide an Investigation at the Request of the public/Civilian.
3. Duty to Document a Response when on scene of an Incident.
4. RNC's Rights to Damage Property during search without a warrant.
5. RNCs right to intervene in Landlord Tenants incidents.
6. Mental Health Situations and Duty to respond and how the RNC is permitted to respond.
7. Policies and procedures to contact income support or other agencies of the name nature.
8. Purging the system policies (not retention records) and how long information can be held after requested.
9. Return if Property etc. (such as a request)

What policies are available to the public? Where can I located this information

[2] The RNC initially responded to the first request to inform it had no records responsive to the request and provided the Complainant with a link to the **Criminal Code of Canada** (CCC). On review of this complaint, the RNC clarified its position to bring it in line with its response to the Complainant's second request. For both it is now relying on section 17(2)(a) to neither confirm nor deny the existence of records containing information described in section 31.

- [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] For the Complainant's first request, the RNC initially found no records responsive to the request, and noted in its final response letter that, "there is a significant amount of information in the CCC with respect to warrants," providing the Complainant a link to the legislation.
- [5] In its submission to this Office, the RNC submitted that on review it had determined it should also have responded to the Complainant by applying section 17(2)(a) to neither confirm nor deny the existence of records containing information described in section 31, the same response it had provided the Complainant to the second request:

Please be advised that the RNC has reviewed your request and based on the details of your request, we are not able to confirm or deny the existence of records using Section 17(2)(a) of the ATIPP Act:

Notwithstanding paragraph (1)(c), the head of a public body may in a final response refuse to confirm or deny the existence of:

(a) a record containing information described in section 31.

- [6] The RNC is of the view that any statement about the existence or non-existence of RNC policy documents responsive to either of the Complainant's requests would trigger multiple subsections of section 31, including: section 31(1)(a), (c), (f) and (n).

### **COMPLAINANT'S POSITION**

- [7] The Complainant generally sought review of the processing of both requests by the RNC, including its final response.
- [8] More specifically the Complainant noted in their submission for the first request that they are seeking more information than is provided in the CCC, including proper terminology,

reasons for certain types of warrants, whether they are federal or provincial, as well as the time limits. For the second request, the Complainant specifically noted they are not seeking confidential investigative techniques, but rather “the procedures and policies that are public and policies and procedures that the RNC are sworn to oblige by.”

## ISSUES

[9] The issue to consider is whether the RNC properly applied section 17(2) of ATIPPA, 2015.

## DECISION

[10] The relevant sections of ATIPPA, 2015 are as follows:

17. (2) Notwithstanding paragraph (1)(c), the head of a public body may in a final response refuse to confirm or deny the existence of

(a) a record containing information described in section 31;

...

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(a) interfere with or harm a law enforcement matter;

...

(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;

...

(f) endanger the life or physical safety of a law enforcement officer or another person;

...

(n) adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;

[11] This Office has previously discussed the scope of section 17(2) in Reports [A-2024-024](#), [A-2019-025](#), and [A-2013-010](#), which confirmed our Office's adoption of a two-part test that deals with these types of provisions. In this case, the test requires the RNC to prove the following:

- Disclosure of the records (if they exist) would constitute harm to a law enforcement matter (section 31); and
- Disclosure of the fact that records exist (or do not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute harm to a law enforcement matter.

[12] Regarding the application of section 17(2), the RNC stated it had considerable concern in relation to the information sought by the Complainant as, if it exists, it would include records related to investigative techniques and procedures used throughout investigations completed by RNC officers and for which retaining confidentiality is paramount. Additionally the RNC provided arguments under section 31 as to why disclosure of records responsive to the Complainant's requests, if they exist, would have the potential to interfere with current or future investigations, risk having techniques and procedures utilized by officers compromised, risk offering insight to those taking part in criminal acts that could allow them to avoid being detected, interfere with obtaining or executing a warrant, jeopardize officer and public safety, and affect or impede the actions of law enforcement officers as they try to complete their duties related to obtaining warrants or judicial authorizations, and maintaining public safety and order.

[13] Regarding the second part of the test, the RNC failed to make specific arguments as to why disclosure of the fact that records exist (or do not exist) would in and of itself convey information to the Complainant, the nature of which would be such that disclosure of that fact would constitute harm to a law enforcement matter.

[14] While the RNC noted, "RNC policies and procedures are confidential documents and are not open to the public for viewing given most, if not all, reference investigative techniques and procedures," this Office has previously determined in Report [A-2017-011](#) that section 31 was

not applicable to several RNC policies and procedures and recommended their release with the RNC accepting those recommendations and disclosing the records.

[15] It may well be that section 31 applies to RNC policies and procedures, if they exist and are responsive to the Complainant's requests, and their contents be redacted or withheld from disclosure in full or in part. However, based on the wording of the requests, it is difficult to see how simply confirming or denying their mere existence would trigger this section or cause harm to a law enforcement matter. The Complainant specifically notes they are not seeking confidential investigative techniques, but rather, "the procedures and policies that are public and policies and procedures that the RNC are sworn to oblige by."

[16] Based on the foregoing, we conclude that the RNC failed to meet the two-part test and was therefore incorrect in its application of subsection 17(2)(a). This section does not apply to RNC policy and procedure documents (if they exist) that are responsive to the Complainant's request.

## RECOMMENDATIONS

[17] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend the Royal Newfoundland Constabulary identify any records responsive to the requests that may exist and redact them accordingly under section 31 (if applicable) and provide new responses to the Complainant within 20 business days of receipt of this Report.

[18] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the Royal Newfoundland Constabulary 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.

[19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 5<sup>th</sup> day of June 2024.



Jacqueline Lake Kavanagh  
Information and Privacy Commissioner (Acting)  
Newfoundland and Labrador