



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-035

July 23, 2024

Newfoundland and Labrador Health Services

Summary:

The Complainant made an access to information request to Newfoundland and Labrador Health Services (NLHS) seeking information on specific costs incurred by NLHS as part of its contract with a company providing services to the public body. Among other things, the Complainant sought information on the cost of company employees who work with NLHS. NLHS provided the Complainant with a new record it created that included an overview of some of the costs paid to the company for work conducted under the contract. The Complainant asserted that this information was incomplete. The Commissioner determined that while NLHS appeared to have responded in good faith, it should have provided copies of its original records that detailed the costs paid for those aspects of the contract of interest to the Complainant rather than create a new record.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 3(1), 3(2), 8(1), and 13(1).

Authorities Relied On: NL OIPC Report [A-2017-023](#).

BACKGROUND

- [1] The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to Newfoundland and Labrador Health Services (NLHS), seeking the following:

[Named company], at present, have approx.. 72 employees in NLHS. How much is it costing the province for salaries and expenses for these [named company] employees per month per month. Itemized separately salaries and expenses. Also the percentage increases received each year of the contract. I think the contract was signed in 2019.

- [2] NLHS did contact the Complainant to clarify the request, but the Complainant's response to NLHS was confusing. It is clear from the initial request and the subsequent attempted clarification that the Complainant was seeking information about the costs incurred by NLHS for using the employees of the contracted company as well as other related expenses.

- [3] In response to the Complainant's request, NLHS created a new record which contained a table that broke down the costs paid to the company over the last two years for office supplies, travel, computers, and telephones. The new record also detailed the percentage increase in the cost of certain goods and services charged by the company to NLHS.

- [4] The Complainant was not satisfied with this response, noting that it did not provide adequate details in response to their request.

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

PUBLIC BODY'S POSITION

- [6] It is the position of NLHS that the new document addresses the questions posed by the Complainant in their access request. From NLHS's perspective, the Complainant did not request specific records, such as invoices, and NLHS was not obligated to provide what was not requested.

COMPLAINANT'S POSITION

[7] The Complainant asserts that the information provided by NLHS is inadequate. The Complainant particularly notes the lack of information on the cost that the province incurs for the employees of the company that work with NLHS.

ISSUES

[8] There are two issues to be addressed in this Report.

[9] The first is whether NLHS responded adequately to this request by creating a new record, and second whether NLHS met its duty to assist the Complainant pursuant to section 13(1) of ATIPPA, 2015.

DECISION

[10] The sections of **ATIPPA, 2015** relevant to this matter are as follows:

3.(1) The purpose of this Act is to facilitate democracy through

- (a) ensuring that citizens have the information required to participate meaningfully in the democratic process;
- (b) increasing transparency in government and public bodies so that elected officials, officers, and employees of public bodies remain accountable;

....

3.(2) The purpose is to be achieved by

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

.....

8.(1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

.....

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

ATIPPA 2015's Focus on Records

[11] A primary purpose of **ATIPPA, 2015** is to increase the transparency of public bodies. This is achieved by giving an applicant access to copies of the actual records used by public bodies in their operations and decision making, subject to reasonable and enumerated limitations. The original records are the best evidence to preserve transparency.

[12] The importance of providing copies of records in response to an access to information request was addressed in Report [A-2017-023](#), which stated:

This file is somewhat unusual in that in its first response to the access request Memorial did not provide the Complainant with any responsive records. Rather, it prepared a letter in which it stated that his request has been “granted in full” and attached a two-page document which contained answers to the questions contained in the request. Memorial’s explanation for this way of responding was that the request was for information – for answers to questions – but not for the records...What Memorial did, essentially, was create a record containing the answers to the Complainant’s questions.

Technically this may have appeared to be a proper response to the request. However, as it is commonly understood that an access request is a request for “records in the custody or under the control of a public body” (see ATIPPA, section 8) it is perhaps not surprising that the Complainant, thinking that records responsive to the request must exist, filed a complaint.

[13] The circumstances in [Report A-2017-023](#) are very similar to those in this case. In this instance, the NLHS created a document summarizing information that it believed was the focus of the access request. This appears to have been done in good faith. However, NLHS did not provide copies of the responsive records that must exist in its custody or control. Rather, NLHS collected information from, presumably, several records to compile the data it provided to the Complainant.

Public Body's Duty to Assist the Complainant

[14] The duty to assist a complainant encompasses all aspects of the access to information process, from the initial application, to the search for responsive records, to the

communicating of results to the Applicant. The duty to assist creates a consistent standard that the Public Body must meet throughout the ATIPP process. In most respects, NLHS did a very good job fulfilling its duty to assist the Complainant and provided responses within legislative timelines. NLHS had questions regarding the particulars of the Complainant's request and reached out to seek clarification. Unfortunately, the Complainant's response to this attempt at clarification provided more confusion.

[15] However, NLHS failed to meet its duty to assist the Complainant in how it interpreted what the Complainant was seeking. NLHS interpreted the request as being solely a request for information – that the figures it provided to the Complainant satisfied the request. NLHS stated that the Complainant did not ask for receipts, invoices, or any other particular record and therefore NLHS should not assume that this is what the Complainant wanted. Further, NLHS did not ask the Complainant what type of records they were seeking. Such a question could have resolved some of the confusion around what the Complainant was seeking while at the same time letting the Complainant know about the option to receive copies of the original records.

[16] It is not reasonable to require that an access to information applicant identify the specific types of records they are seeking. The public should not have to understand the workings of a public body to seek the records it requires. If an access request is seeking information on the cost to the province for a contract with a private company, it can be safely assumed that such a request is seeking financial records that set forth that information. To require specific requests for receipts or invoices undermines the purpose of ATIPPA, 2015. Further, as [Report A-2017-023](#) makes clear, the presumption should always be that an access request is for a record that the Complainant believes is presently under the custody or control of the public body.

[17] In this case, NLHS created a new document that summarized the information it thought the Complainant was seeking. To be clear, the table created likely has value for the Complainant and is evidence of the good faith efforts by NLHS to respond to this request and provide the information it believed the Complainant was seeking. However, NLHS must also

have records that detail how these and other costs were incurred by NLHS. It is these records that should form the response to this access request.

RECOMMENDATIONS

[18] Under the authority of section 47 of ATIPPA 2015, I recommend that Newfoundland and Labrador Health Services:

- i) Conduct a search for responsive records that contain the data originally contained in the table provided to the Complainant and which contain any other information responsive to the Complainant's request; and
- ii) Provide a new final response to the Complainant within 30 business days of receipt of this Report.

[19] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Newfoundland and Labrador Health Services 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.

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



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