



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-036

July 24, 2024

Department of Justice and Public Safety

Summary:

The Department of Justice and Public Safety received a request for video recordings depicting an incident involving the Complainant. By the time the Department initiated a search for the records they had been overwritten and therefore permanently lost. The Commissioner found that the Department had failed to meet its statutory responsibilities under sections 13 (duty to assist applicant), 14 (transferring a request), 16 (time limit for final response) and 65 (retention of personal information subject to an access request).

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 14, 16, 23 and 65(2).

BACKGROUND

- [1] On March 4, 2024, the Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) to the Royal Newfoundland Constabulary (RNC) for a video recording of an incident described as having occurred “outside the lockup” on February 15, 2024 involving themselves. On March 5, 2024, the RNC transferred the request to the Department of Justice and Public Safety (JPS).
- [2] More than one month later, on April 12, 2024, the Department requested that the Superintendent of Prisons at Her Majesty’s Penitentiary (HMP) conduct a search for the video for February 15, 2024. The Superintendent advised that video recordings are kept for a period of 30 days and that, therefore, the requested record was no longer available.
- [3] The Department responded to the Complainant on April 24, 2024 advising that it had no responsive records. The Complainant then filed a complaint with this Office.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [5] The Department states that given the current increase in active access requests, it was not until April 12, 2024, that JPS staff had an opportunity to reach out for the responsive record, unaware that the video storage at HMP had a life span of 30 days.

DECISION

- [6] Section 13 of the Act (duty to assist applicant) requires a public body to 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. This is a core underlying statutory duty that must be upheld throughout the entire request process. In this case, the Complainant filed their access request with the RNC on March 4, 2024, and the RNC transferred it to JPS

immediately, on March 5, 2024, well within the 5 business days required by section 14 of the Act (transferring a request). The RNC wrote to the Complainant on the same day, advising them of the transfer of their request to JPS. The RNC completed these actions on a timely basis.

[7] Under section 14 of ATIPPA, 2015, the public body to which a request is transferred is bound by all of the provisions of the Act, including time limits, as if the applicant had made the request directly to it on the date of the transfer. After receiving the transferred request on March 5, 2024, JPS immediately and appropriately wrote to the Complainant, on the same date confirming that it had received the request. Additionally, under section 16 of the Act, JPS was bound to respond to the transferred request within 20 business days, meaning no later than April 3, 2024, unless the time for response had been extended by this Office pursuant to section 23. JPS did not apply to this Office for such an extension.

[8] The Department again wrote to the Complainant on March 19, 2024 advising that the access request was being processed and that a final response would be provided by April 3, 2024. On April 12, 2024, the Complainant wrote to the Department inquiring about the delay in providing the video recording. The Department replied that the request was being processed and asked them for information about the time of day on February 15, 2024 the incident occurred.

[9] The Department acknowledges that it was not until April 12, 2024 that it actually contacted the Superintendent of Prisons to request a search of video recordings for February 15, 2024. Staff at HMP did conduct the search after April 12, 2024 but advised the video was no longer available due to the memory capacity of the digital video recording equipment. The server retains video recordings for 30 days, at which time they are overwritten unless they have been archived. As HMP staff were not aware of this request before day 30 (which would have been March 15, 2024), the video had not been archived and no longer existed.

[10] Section 16 of ATIPPA, 2015 (time limit for final response) required the Department to provide its final response to the Complainant by April 3, 2024. This did not occur until April 24, 2024, which was 15 days late. However, the critical delay related to this complaint was

the failure by the Department to request a search by Corrections when it received the request. If this had occurred on March 5, 2024, there would still have been 10 days remaining before the video for February 15, 2024 was overwritten. The recording could have been archived and preserved.

[11] It is common practice for security video recordings to be overwritten within a relatively short period of time. Whether the time period in any particular case might be 15 days, 30 days, or 90 days may not be known, but an access request for a video recording should immediately trigger some action. A brief and prompt phone call or email telling those with custody of video recordings that there is a request for a recording for a particular date, and that it must be preserved would be an appropriate initial action to preserve the information. In this case, the lack of such action resulted in the permanent loss of the record in question.

[12] In fact, section 65(2) of ATIPPA, 2015 (retention of personal information) provides a mandatory requirement for such situations:

65 (2) A public body that has custody or control of personal information that is the subject of a request for access to a record or correction of personal information under Part II shall retain that information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request.

Once an access request has been received, it is incumbent on the public body to take all reasonable steps to ensure that any responsive records are appropriately preserved.

RECOMMENDATIONS

[13] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend that the Department of Justice and Public Safety:

1. Comply in future with the statutory duties imposed upon it by sections 13 and 16 of ATIPPA, 2015, in particular: communicate with applicants openly and at the earliest opportunity to clarify their requests; provide regular updates to applicants, including details of work remaining and estimates for when a final

response will be provided; and respond to access requests within 20 business days;

2. Identify and familiarize itself with timelines and schedules for automatic deletion or overwriting of audio or video records in its custody or control; and
3. Apply for to this Office for extensions of time when necessary.

[14] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the Department of Justice and Public Safety 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.

[15] Dated at St. John's, in the Province of Newfoundland and Labrador, this 24th day of July, 2024.



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