



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-037

July 29, 2024

Department of Justice and Public Safety

Summary:

The Complainant made an access to information request to the Department of Justice and Public Safety. After receiving the Department's response, the Complainant asserted that additional records should exist and that the Department was either improperly withholding them or did not conduct an adequate search. In reviewing the matter, this Office determined that the Department had conducted a reasonable search for records and that the Complainant provided insufficient evidence to support a claim that additional documents existed and were not provided. The Commissioner therefore determined that the Department had met its duty to assist the Complainant pursuant to section 13(1) of the **Access to Information and Protection of Privacy Act, 2015**.

Statutes Cited:

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

Authorities Relied On: NL OIPC Reports [A-2016-009](#); [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 Department of Justice and Public Safety seeking the following:

Records pertaining to the establishment of the Policing Transformation Working Group whose creation was announced by the Minister of Justice and the Public Safety and Attorney General on 20 November 2023. Responsive records include but are not limited to the information related to (i) decisions and consultations leading to the Group's establishment, (ii) the selection and appointment of four individuals to the Group, (iii) the decision to include the Group into the Deputy Minister of Justice and Public Safety's purview, (iv) the budget allocated to the Group, and (v) the analysis of the public reaction to the announcement and relevant publications in the media.

- [2] In its final response to the request, the Department disclosed to the Complainant some 270 pages of records. The Complainant filed a complaint with this Office, asserting that more information must exist.
- [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 Department that it conducted a reasonable search and met its duty to assist the Complainant.

COMPLAINANT'S POSITION

- [5] The Complainant asserts that, given the manner in which the above-noted Working Group was established, that additional records should exist.

ISSUES

- [6] The sole issue to be addressed in this Report is whether the Department met its duty to assist the Complainant pursuant to section 13(1) of ATIPPA, 2015.

DECISION

- [7] The section of **ATIPPA, 2015** relevant to this matter is as follows:

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.

The Duty to Assist

- [8] As has been stated in numerous reports released by this Office, the duty to assist applies to all aspects of an access to information request. One aspect of critical importance is that the public body conduct a reasonable search for responsive records.

- [9] The standard for a reasonable search is set forth in Report [A-2016-009](#):

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.

- [10] In its submission on this matter, the Department noted that it searched for records dated prior to and after the dates submitted by the Complainant in an effort to ensure that nothing was missed. The ATIPP coordinator also reached out to the Department's financial division for information on funding for the working group.

- [11] The coordinator identified eight individuals who were content experts or who had knowledge of the subject of the request. These staff included managers, directors, and members of the executive of the Department. Emails and records belonging to each of these

individuals were searched using four different but relevant search terms. This search produced responsive records, which were reviewed and supplied to the Complainant. Having reviewed the Department's submissions and its details of how it searched for records responsive to this access to information request, our Office is satisfied that the search conducted by the Department was reasonable.

[12] The Complainant asserts that on the balance of probabilities additional records must exist and were not disclosed. The standard that must be met to maintain an assertion that records exist despite the Public Body's claim to the contrary is set forth in Report [A-2023-026](#):

Complainants must establish the existence of a reasonable suspicion that a public body is withholding a record, or has undertaken an inadequate search for a record. Sometimes this takes the form of having possession or having previously seen a document that was not included with other responsive records or media reports regarding the document.

[13] In this case, the Complainant argues that "on the balance of probabilities" additional documents exist. This balance of probabilities is based entirely upon the Complainant's perspective of what records should exist; the Complainant provides no proof to support their position. On the other side of the scale that measures the balance of probabilities is the reasonable search conducted by the Department, which this Office finds no reason to doubt. The balance of probabilities in this case weighs heavily in favour of the Department.

[14] Considering the reasonable search of the Department and the lack of evidence to support the Complainant's claim that additional documents exist and were not disclosed, this Office believes that the Department met its duty to assist the Complainant.

RECOMMENDATIONS

[15] 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 on this matter.

[16] As set out in section 49(1)(b) of the Access to Information and Protection of Privacy Act, 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.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29th day of July 2024.



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