



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-051

November 1, 2024

Labour Relations Board

Summary:

The Complainant made an access to information request to the Labour Relations Board. After receiving responsive records, the Complainant filed a complaint with this Office taking issue with some information withheld by the Board and also alleging records from some officials of the Board were missing. During the investigation the Board removed some of the redactions and located one additional responsive record that did not exist at the time of the initial request. The Board also provided an explanation as to why one official of the Board was found to be in possession of only one record responsive to the request, when the Complainant thought there should be more records. This Office found that after the disclosure of additional information to the Complainant during the investigation process, that the Labour Relations Board has disclosed all of the information to which the Complainant is entitled, and furthermore that the Board conducted a reasonable search and thus met its duty to assist the Complainant.

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-2023-026](#); [A-2022-030](#); and [A-2024-021](#).

[OIPC Practice Bulletin: Reasonable Search](#).

BACKGROUND

- [1] The Complainant filed an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) with the Labour Relations Board requesting the following:
1. Copies of remuneration reports submitted by [named group] that mention [named files];
 2. Records pertaining to the handling of the Rule 5 applications made on 21 June 2024 in [named files] including any decision made in respect of those applications; and
 3. Emails containing the requester's personal information in the custody or control of [named individuals] including records pertaining to the scheduling and preparation of the Panels' meetings. Period covered: 9 February 2024.
- [2] A search by the Board produced 1,350 pages of responsive records. The Board redacted some information pursuant to various sections of ATIPPA, 2015 and provided the remaining information to the Complainant.
- [3] The Complainant filed a complaint with this Office taking issue with some of the information withheld and also asserting there were records missing in the custody or control of specified Board officials.
- [4] During the investigation, the timeframe for which records were sought was clarified with the Complainant. The Board amended its search parameters accordingly and located one additional record. Further, the Board agreed to remove some redactions as recommended by this Office and one additional record was located that had not existed at the time of the initial access request. With the issue of the redactions resolved, the investigation continued with the issue of reasonable search.
- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015. Acting Information and Privacy Commissioner, Jacqueline Lake Kavanagh, delegated authority for this matter to me, as Director of Research and Quality Assurance, pursuant to section 103 of ATIPPA, 2015.

PUBLIC BODY'S POSITION

- [6] In response to the complaint, the Board outlined the steps taken to conduct a search for the responsive records. The Board identified individuals that would have knowledge or records in relation to the request, which included the individuals named by the Complainant in the complaint. The ATIPP Coordinator provided instructions to employees and Board members to search their records, including details of the request and keywords to be used. Responsive records were then provided to the ATIPP Coordinator. The records of employees away from the office were searched directly by the ATIPP Coordinator.
- [7] The Board maintains there are no additional records responsive to the access request in the possession of the individual named by the Complainant and that a reasonable search was conducted. Additionally, the Board provided an explanation for why the individual named by the Complainant had only one responsive record in their possession when the Complainant had assumed there would be more.

COMPLAINANT'S POSITION

- [8] The Complainant submits that in this case, additional proof is required that the named individual expended a reasonable effort to locate records, as well as proof that this individual is experienced in the subject matter of a reasonable search.

ISSUES

- [9] At issue in this Report is whether the Labour Relations Board satisfied its duty to assist by conducting a reasonable search for responsive records.

DECISION

- [10] This decision addresses the following section of ATIPPA, 2015:

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

[11] The duty to assist includes conducting a reasonable search for requested records. As set out in Report [A-2023-026](#), and numerous other reports, the standard that a public body must meet in conducting a search for records is “reasonableness, not perfection.” In that Report this Office stated at paragraph 10:

. . . A reasonable search is organized, conducted using appropriate search terms, carried-out by individuals who would be in the best position to know if records exist, and supervised by the ATIPP Coordinator.

[12] The Act does not require the public body to prove with absolute certainty that records do not exist. The public body must provide evidence to show that it has made a reasonable effort to locate records responsive to the request.

[13] Report [A-2022-030](#) involved a public body that did not provide sufficient information to determine whether a reasonable search was conducted by the public body. In that Report this Office referenced our guidance document, stating at paragraph 14:

Our Office has frequently commented in published reports on what constitutes a reasonable search under ATIPPA, 2015. Our guidance document on reasonable search outlines the questions this Office seeks answers to when conducting a review during an investigation. These questions include, but are not limited, to:

- Steps that were taken to identify and locate records;
- Where (paper files, databases, emails, off-site storage locations) you searched;
- types of searches conducted (i.e. keyword search of email or database, manual search of paper files, etc.);
- when the search took place;
- who conducted the searches; and
- why the public body believes no records exist.

[14] In this particular case the only issue raised by the Complainant is the allegation that further records must exist in the possession of one specified individual.

[15]. The Board identified the named individual as someone with knowledge of the records and provided the details of the request, including relevant keywords, with instructions to conduct

a search of their records. One record was located and an explanation provided by the Board for the absence of additional records. Nonetheless, the named individual conducted an additional search once the search parameters were clarified during the course of our investigation. While the search was conducted by members of the Board, it was overseen by the ATIPP Coordinator. Given the actions taken by the Board to conduct a search for the responsive records in the custody or control of the Board generally, and in the possession of the named individual specifically, we are satisfied the Board met the standard of reasonableness against which the duty to assist is assessed.

[16] In Reports [A-2024-021](#), [A-2023-026](#), and [A-2022-030](#), as well as our Practice Bulletin on Reasonable Search, this Office determined that a complainant must establish the existence of a reasonable suspicion that a public body is withholding a record.

[17] The Complainant maintains that proof is required to substantiate the Board's explanation for the lack of responsive records in the possession of one specified person, without which they assert that the matter remains unresolved.

[18] The Complainant's assertion that further proof is required cannot be considered in a vacuum and must be considered in the context of the efforts made by the Board in conducting a search for the records in question. In this case the search was thorough and appropriate. Our analysis of the search that was conducted by the Board indicates that it meets the standard of a reasonable search.

RECOMMENDATIONS

[19] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend that the Labour Relations Board maintain its position on this matter.

[20] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the Labour Relations Board 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.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of November 2024.



Sean Murray
Director of Research and Quality Assurance
Office of the Information and Privacy Commissioner
Newfoundland and Labrador