



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2024-055

December 11, 2024

Royal Newfoundland Constabulary

Summary:

The Complainant made an access to information request to the Royal Newfoundland Constabulary for an investigation record. The RNC refused to disclose the record on the ground that it was excluded from the **Access to Information and Protection of Privacy Act, 2015** by section 5(1)(m). The Complainant filed a complaint with this Office. The RNC refused to provide the record to our Office, since section 5(1)(m) is also a provision under which there is no statutory authority to require that a public body provide records to the Commissioner for review. The Commissioner nevertheless concluded, on the evidence provided by the Complainant and the RNC, that the RNC had not met the statutory burden of proving that section 5(1)(m) applies, and therefore recommended that the RNC disclose the record to the Complainant, subject to any applicable exceptions.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 2(u), 2(t), 3, 5(1)(m), 40, 43, 49, 50. 97(1), 97(3).

[Interpretation Act](#), RSNL 1990, c I-19, section 16.

Authorities Relied On: [Newfoundland and Labrador \(Attorney General\) v. Newfoundland and Labrador \(Information and Privacy Commissioner\)](#), 2010 NLTD 19;

[Report of the 2014 Statutory Review: Access to Information and Protection of Privacy Act, Newfoundland and Labrador](#). Volume II Full Report.

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Royal Newfoundland Constabulary (“RNC”) for the contents of a specific investigation file created by the RNC. The investigation file in question was the result of a complaint made to the RNC by the Complainant, requesting that the RNC investigate whether someone had, on a number of occasions, accessed the Complainant’s personal computer without having a right to do so, and whether such actions might be a criminal offence.
- [2] In its response to the access request, the RNC concluded the responsive records consisted of its investigation file, which the RNC withheld in its entirety on the basis that the Act does not apply to the record pursuant to section 5(1)(m). Section 5(1)(m) states that the Act does not apply to a record relating to an investigation by the Royal Newfoundland Constabulary in which suspicion of guilt of an identified person is expressed. Upon not receiving any responsive records from the RNC, the Complainant filed a complaint with our Office.
- [3] The RNC relied on section 97(1)(a) of the Act, which restricts the authority of the Commissioner to require a record to be produced for review, and did not provide a copy of the responsive record to our Office and as such this Office must rely only on the evidence provided by the RNC to justify the non-disclosure of the record to the Complainant.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [5] During our investigation, the RNC provided a formal written response to our Office concerning the application of section 5(1)(m) to the records. In its submissions, the RNC restated its reasons that, in this case, it was the Complainant themselves who had expressed the suspicion that someone at an organization for which the Complainant had previously worked had accessed their personal computer. The RNC’s position is that the “suspicion of

guilt” required to engage section 5(1)(m) of the Act may come from the Complainant and need not necessarily come from an investigating officer of the RNC.

COMPLAINANT’S POSITION

- [6] The Complainant advised the RNC, and advised this Office in their submissions, that they had reviewed a copy of their own complaint to the RNC and copies of their subsequent correspondence related to it, which the Complainant provided to our Office. The Complainant states that at no time have they ever expressed a suspicion of guilt of an identified person.

ISSUES

- [7] The issues to be addressed in this Report are as follows:
1. Is the “suspicion of guilt” referred to in section 5(1)(m) intended to include suspicions expressed by any person mentioned in the record, or is it intended that it must be expressed by an investigating officer?
 2. Is there sufficient evidence in the present case to support a confident conclusion, even in the absence of the record, that section 5(1)(m) does apply to the record?
 3. If there is not sufficient evidence, would it be appropriate for the Commissioner to recommend that the record be disclosed to the Complainant, subject to any other exceptions that may apply?

DECISION

Issue 1 – Who Must Express the “Suspicion of Guilt”?

- [8] There is a general principle that statutory interpretation cannot be founded on the wording of the legislation alone. The words of an act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of the legislature. Section 16 of the **Interpretation Act** provides that every act shall be considered remedial and shall receive the liberal construction and interpretation that best ensures the attainment of the objects of the act according to its meaning. In the present case, the provision to be interpreted is section 5(1)(m), which reads as follows:

5.(1) This Act applies to all records in the custody of or under the control of a public body but does not apply to

...

(m) a record relating to an investigation by the Royal Newfoundland Constabulary in which suspicion of guilt of an identified person is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.

[9] Section 5(1)(m) was a new provision introduced in the new Act, recommended and drafted by the 2014 Statutory Review Committee, and passed by the House of Assembly without amendment. We can get a good idea of the intended reasons for adding section 5(1)(m) to the Act by looking at what the Review Committee said about it in their [March 2015 Report](#), at page 134:

There is, however, one category of police investigation record that ought to be on the list and is not there. During a normal police investigation of crime, investigators may express suspicion that an individual, or several individuals, may be responsible for the crime. Frequently, reports are prepared expressing those suspicions. As the investigation continues, the police narrow the list of suspects, and ultimately charges are laid and the guilt or innocence of the charged person is decided by court processes. Those records that expressed suspicion of guilt of persons whom the investigation determined to be innocent, to the extent that they are retained in police or prosecution files, can never be disclosed, even after prosecution and conviction of the person ultimately charged. Such documents may express suspicion of totally innocent persons, usually with detailed reasons for that suspicion. No principle of access could ever justify making such records accessible to any person who might make a request under the ATIPPA. It would seem appropriate, therefore, to add another category:

A record relating to an investigation by the Royal Newfoundland Constabulary in which suspicion of guilt of an identified person is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.

[10] It is clear from the explanation provided by the Statutory Review Committee that the information that the Committee intended to be withheld under section 5(1)(m) consists of suspicions expressed by police investigators in the course of their work, not by complainants or witnesses. This makes sense for several reasons. First, suspicions expressed by trained investigating officers, especially where they are accompanied by the evidence or reasons for such suspicions, will naturally carry significant authority. Such suspicions, if disclosed, may

be given credence even after those same investigators may have concluded that their initial suspicions were unfounded. Section 5(1)(m) was intended to protect from disclosure investigative reports where suspicions of guilt were held and pursued by police investigators.

[11] Second, a large proportion of police investigations are commenced by complaints from individual members of the community who may allege that a specific, identified individual has committed an offence. Such allegations made by a complainant or by witnesses interviewed in the course of an investigation carries much less credibility, particularly if the police investigation has concluded they were unfounded. If entire records containing such information were excluded from the coverage of the Act, for that reason alone, it would mean most police investigations would be completely shielded from public view, and shielded from review by this Office. Given the purpose of the Act to ensure citizens have access to information and to increase transparency then access to police investigative records should not be so limited. The intention of section 5(1)(m) was to shield from disclosure police investigators' suspicions of guilt where no charge was ever laid. The interpretation of section 5(1)(m) advocated by the RNC where any persons' suspicion of guilt would trigger non-disclosure of investigative records is entirely too broad to support the purpose of the Act.

[12] That does not mean that information about suspicions that have been expressed by other identified individuals in such reports must always necessarily be disclosed. Access to such personal information, either about complainants or about suspected individuals, may need to be limited but it would be more in accord with the purposes of the Act to accomplish this through appropriate redaction under one or more exceptions to access, such as section 40, rather than excluding the entire record from disclosure.

[13] We therefore conclude that the phrase "suspicion of guilt of an identified person" in section 5(1)(m) is intended to apply only to suspicions that are expressed by investigating officers of the RNC. To interpret the phrase as the RNC has done would mean that virtually every police investigation would be captured by 5(1)(m), expanding application of the provision far beyond what a plain reading allows, and far beyond the purpose of the provision, as outlined above.

Issue 2 – Is there Evidence to Support the Application of Section 5(1)(m)?

[14] Section 97(3) of the Act provides that:

- (3) The commissioner may require any record in the custody or under the control of a public body that the commissioner considers relevant to an investigation to be produced to the commissioner and may examine information in a record, including personal information.

[15] However, section 97(1) restricts the Commissioner’s authority, by providing that it only applies to certain categories or records:

97. (1) This section and section 98 apply to a record notwithstanding
 - (a) paragraph 5 (1)(c), (d), (e), (f), (g), (h) or (i);

[16] It is clear from the wording of section 97 and from judicial pronouncements (see [Newfoundland and Labrador \(Attorney General\) v. Newfoundland and Labrador \(Information and Privacy Commissioner\)](#)) that our Office does not have the jurisdiction to require production of records for which section 5(1)(m) has been claimed to apply. In this case, it means that we are unable to review the records and must entirely rely on the description and context of the records as set out by the RNC to determine if the application of section 5(1)(m) is a valid one.

[17] In the present case, although the RNC did not provide our Office with the records to review, it has described the contents of the records. The RNC contends that the “suspicion of guilt” was expressed by the Complainant, in fact advising the Complainant that “. . . suspicion of guilt was expressed by you” in response to follow-up questions about the application of section 5(1)(m). The RNC did not suggest to our Office that it, or its investigating officers, had at any time expressed a suspicion of guilt or that the withheld records document any suspicion of guilt as expressed by investigating officers. The RNC asserts that the Complainant had expressed a suspicion of guilt and that alone is sufficient to engage section 5(1)(m). During the course of our investigation, we challenged the RNC on this proposition regarding who must hold the suspicion of guilt, but the RNC maintained its position. After consideration of the RNC’s argument and upon careful review we have concluded that this proposition is an incorrect interpretation of section 5(1)(m).

[18] Section 43 (burden of proof) of the Act provides that:

43.(1) On an investigation of a complaint from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.

[19] The burden of proof applies regardless of whether the public body has claimed that an exception to access applies to a record, or that a record is excluded from the application of the Act, as in the present case. The RNC has failed to persuade us that its reasons for claiming section 5(1)(m) are correct, therefore it has not met the burden of proof required by section 43. We therefore conclude that section 5(1)(m) does not apply to the responsive records.

Issue 3 – Would it be Appropriate to Recommend Disclosure of the Record?

[20] In the present case, we have conducted an investigation and, on the evidence and argument submitted to us by the public body, we have concluded that the public body has not met the burden of proving that section 5(1)(m) applies. There is only one appropriate recommendation, and that is to disclose the record to the Complainant.

[21] That recommendation will leave the RNC with two options. It can accept the recommendation, pursuant to section 49 of the Act, and provide the record to the Complainant subject to any further redactions pursuant to the Act or, if the RNC disagrees with the recommendation, then it may commence an application to the court under section 50 of the Act for a declaration that it is not required to comply. This will give the parties an opportunity to have the statutory interpretation issues, and the records, reviewed by the court.

[22] It is of course possible that there is information in the responsive record to which one or more exceptions to access may apply, including mandatory exceptions. Although the section 5(1)(m) exclusion does not apply, it may not be appropriate that all information within the investigative report be disclosed to the Complainant. Therefore, our recommendation must provide that if the public body chooses to disclose the records, it must first conduct the normal line-by-line review for applicable exceptions, and it must redact information to which any exceptions apply prior to any disclosure.

[23] Since any disclosure of a redacted record would be the first time either the Complainant or our Office would have an opportunity to review it, the Complainant would of course have the right to file a new complaint about the redactions if they were not satisfied with the disclosure. Our Office would then be able to review those redactions in its normal investigative process.

RECOMMENDATIONS

[24] Under the authority of section 47 of **the Access to Information and Protection of Privacy Act, 2015** (the “Act”), I recommend that the Royal Newfoundland Constabulary disclose the responsive record to the Complainant, subject to any applicable exceptions to access set out in Division 2 of the Act.

[25] As set out in section 49(1)(b) of the Act, 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.

[26] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 11th day of December 2024.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador