



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

Report A-2025-001

January 17, 2025

### Royal Newfoundland Constabulary

**Summary:**

The Complainant made an access request to the Royal Newfoundland Constabulary for specific records that the Complainant had themselves created and provided to the RNC. The RNC refused to disclose the information, on the ground that it was excluded from the **Access to Information and Protection of Privacy Act, 2015** by the operation of section 5(1)(m) (expressing a suspicion of guilt of an identified person) and also on the ground that it was personal information contained in a law enforcement record, under section 40(4). The Commissioner concluded that the RNC failed to prove that section 5(1)(m) applied to the records, and that section 40(4) did not apply to information created and provided by the Complainant herself. The Commissioner therefore recommended that the records be disclosed.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 5(1)(m), 40(4), 40(5)(c), and 43.

**Authorities Relied On:** NL OIPC Reports [A-2024-055](#) and [Report 2014-006](#).

## 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”) relating to a harassment claim that the Claimant had filed themselves with the RNC. The Complainant asked specifically for the contents of that RNC investigation file, but subsequently narrowed the scope of the access request and requested access only to the statement that they had themselves provided to the RNC as they wanted to use it for another proceeding.
- [2] The RNC refused access, claiming that because the Complainant “expressed suspicion of guilt” of the alleged harassing party in their own statement, that section 5(1)(m) of the Act applied to exclude the record from the application of the Act.
- [3] During our investigation of the access complaint, the RNC maintained its position on the application of section 5(1)(m). In addition, however, the RNC also claimed that if the responsive record was not excluded from the application of the Act under section 5, then section 40(4)(b) would prohibit the disclosure, as an identifiable part of a law enforcement record.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

## ISSUES

- [5] The following issues will be dealt with in this Report:
1. whether s.5(1)(m) applies to exclude the record from the application of the Act;
  2. whether some exceptions to access may apply to some information;
  3. whether to recommend disclosure of the record.

## DECISION

### Section 5(1)(m)

[6] The Complainant has asked for specific records from an investigative file that was initiated by their own complaint to the RNC against another individual. The RNC refused access, based on section 5(1)(m), which reads:

(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;

[7] This Office recently addressed section 5(1)(m) in another complaint involving the RNC, and we have disagreed with the RNC on the interpretation and application of this provision. Our Office set out its views and conclusions in that matter in [Report A-2024-055](#). The RNC has rejected our recommendations in that Report and has filed an application under section 50 of the Act for a declaration that it is not required to comply with the Commissioner's recommendations. The disagreement remains to be resolved by the court. In the meantime, however, until such time as the court may direct otherwise, we must continue to interpret and apply the Act as we consider to be reasonable and correct.

[8] The RNC has not provided any of the responsive records to our Office for review. However, under section 43(1) of the Act the burden remains on the RNC to prove that the Complainant does not have a right to the record or part of the record:

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.

[9] While we do not have a copy of the record, both the RNC and the Complainant have provided our Office with similar descriptions. The record is composed of several pages of information, written in the Complainant's own hand, on paper forms provided to the

Complainant by the RNC that the Complainant filled out, but did not make copies of, before they handed them over in the course of making their harassment complaint.

[10] The RNC has agreed that the information contained in the responsive records is the Complainant's own information, but also includes some information about the individual against whom the harassment complaint was made. There is no evidence that the record contains any content created by the RNC.

[11] During the course of our investigation our Office requested the position of the RNC on the issue of whether any "suspicion of guilt" contained in the record was expressed by the RNC. The RNC affirmed that it was the Complainant who expressed such suspicions, but provided no evidence that any member of the RNC did so.

[12] Our Office has taken the position that section 5(1)(m) does not apply where the suspicion of guilt is expressed, not by an investigating officer, but only by another person such as the Complainant. In the present case there is no evidence that a suspicion of guilt of an identified person is expressed in the requested records, or anywhere in the investigative file, by anyone other than the Complainant.

[13] 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, and therefore it has not met the burden of proof required by section 43. We therefore must conclude that section 5(1)(m) does not apply to the responsive records and they are therefore subject to the Act.

#### **Section 40**

[14] The RNC has raised the additional argument that if section 5 does not apply to the record, then the exception at section 40(4)(b) would apply:

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

...

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

[15] Clearly the requested records are part of a law enforcement record, and would likely be identifiable as such, partly because they are written on RNC forms.

[16] However, our Office and other adjudicators across Canada have consistently taken the position that exceptions in the Act, such as section 40, are exceptions to disclosure of information. That term “disclosure” is understood to mean “providing information that was not previously known to the applicant”. Therefore, it is not a “disclosure” where it is objectively and clearly evident that the information is not only already known to the applicant but has in fact been created and provided by the applicant, as in the present case.

[17] Further, the Act entitles an applicant to request and receive their own personal information. While the RNC has not provided the records for our review, it is apparent that the Complainant’s submissions to the RNC also contain their own personal information.

[18] Related to that is the “absurd result” principle of statutory interpretation, which states that an interpretation must be avoided if it leads to an absurd result, or one which contradicts the purpose of the statute.

[19] For a fuller discussion of these principles, see our earlier [Report 2014-006](#) and the other jurisprudence referred to therein, which are directly applicable to the present case. Refusing to give back copies of self-created records to a Complainant is not a “disclosure” and is also an absurd result.

[20] In addition, section 40(4) is not a prohibition against disclosure. Rather, it only creates a presumption of an unreasonable invasion of privacy which must then be tested, and which can be rebutted under section 40(5) by examining the relevant circumstances. One relevant circumstance in the present case is, of course, that the Complainant created the requested

record themselves, and therefore all of the personal information in it, including information about other people, is already known to them.

[21] Another relevant circumstance is that the Complainant has stated that they need the record in order to provide the details to the court in another proceeding. That means the information is relevant to a fair determination of their rights within the meaning of section 40(5)(c) of the Act.

[22] In addition, providing the record to the Complainant would not unfairly damage the reputation of the third party against whom the harassment allegations were made, within the meaning of section 40(5)(h) of the Act, as any recorded information about the third party is already known to the Complainant.

[23] On consideration of all of the relevant circumstances we conclude that disclosure of the responsive records is not an unreasonable invasion of any person's privacy and therefore is not precluded by section 40(4) of the Act.

## RECOMMENDATIONS

[24] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that the Royal Newfoundland Constabulary disclose to the Complainant, without redaction, the pages of the responsive record that were provided to the Royal Newfoundland Constabulary by the Complainant.

[25] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, 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 17<sup>th</sup> day of January, 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador