



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-008

February 27, 2025

Department of Justice and Public Safety

Summary:

The Department of Justice and Public Safety obtained approval from the OIPC to disregard an access to information request filed by the Complainant. Subsequently, the Complainant filed an access to information request with the Department seeking records relating to the Department's disregard application. The Department released some records but withheld 76 pages pursuant to section 41(c), which requires that records relating to the investigatory functions of a statutory office not be disclosed. The Complainant asserted that this section did not apply to the records that were withheld. Upon review of the records, the Commissioner agreed with the Department's position and recommended that the records continue to be withheld.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 21, 41, and 95.

Authorities Relied On: NL OIPC Reports [A-2018-008](#).

BACKGROUND

- [1] The Complainant filed an access to information request with the Department of Justice and Public Safety for the following:

All records pertaining to the initiation, preparation, internal and external approval of JPS's application for disregard of ATIPP File (File Number). Period covered October 9, 2024 to present.

- [2] The Department's search produced over 80 pages of responsive records. The Department withheld 76 pages of records, asserting that they could not be disclosed pursuant to section 41(c) of the **Access to Information and Protection of Privacy Act, 2015** (the "Act").
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY'S POSITION

- [4] The Department states that in an application to disregard an access request, the information exchanged between the Department and this Office form part of the investigation undertaken by this Office to determine whether to accept or reject the application. Therefore, pursuant to section 41(c) of the Act, such records relate to the investigatory functions of the Office of the Information and Privacy Commissioner, a statutory office, and any records used in this investigation cannot be disclosed.

COMPLAINANT'S POSITION

- [5] The Complainant raises two issues for this report to address: whether the Department met the duty to assist at section 13, and whether responsive records were properly withheld pursuant to section 41(c).

DECISION

Section 13

[6] Section 13 imposes on public bodies a duty to assist access to information applicants:

13. (1) The head of a public body shall 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.

[7] As this Office has stated in numerous reports, the duty to assist is a fundamental component of the access to information process. A key component of the duty to assist is ensuring that the public body conducts a reasonable search for responsive records based on the applicant's request. A public bodies search does not have to be perfect, but a reasonable effort must be made to locate possible records.

[8] The Complainant's request was specific and clear, with no ambiguity. The records requested by the Complainant relate primarily to the work of the Department's ATIPP coordinator, who had firsthand knowledge of the records related to the disregard application. Upon review, this Office confirms that the records are responsive to the request.

[9] The Complainant's assertion that the Department did not meet its duty to assist is based primarily on the fact that the Department did not disclose a Form 1A or Form 8, which are used by public bodies in processing access requests. In its submissions to this Office, the Department stated that such forms are not used when there is a successful application to disregard the access request, as there was in this instance. The Department further states that its correspondence with the Complainant in October contained all the information that would be included in Form 1A or Form 8. The Complainant's assertion regarding forms 1A and 8 are insufficient to support a claim that the Department did not meet its duty to assist, and we see no reason to further question the reasonableness of the Department's search.

Section 41(c)

[10] Section 41(c) is a mandatory exception to access which states:

41. The speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information

(c) in the case of a statutory office as defined in the *House of Assembly Accountability, Integrity and Administration Act*, records connected with the investigatory functions of the statutory office.

[11] When a public body makes an application to disregard an access request pursuant to section 21 of the Act, this Office commences an investigation into the request. An application to disregard may only be granted for reasons set forth in the Act and the public body must provide sufficient evidence in support of its position. This Office then uses this information as the basis of its investigation and determines whether to accept or reject the disregard application.

[12] With respect to the purpose of section 41(c), [Report A-2018-08](#) noted “the purpose of this provision is to protect the integrity and confidentiality of the OIPC’s investigatory activities. Therefore, it is quite broad, and it applies to entire records, not just information contained in records.”

[13] ReportA-2018-008 goes on to state:

[42] . . . The investigatory functions of this Office encompass all the activities that the Commissioner is authorized or obligated to carry out under ATIPPA, 2015, that can affect the rights or responsibilities of individuals or public bodies. This is clearly stated in section 95, particularly subsections (1) and (3). Furthermore, section 97(2) provides that the Commissioner has the powers, privileges and immunities that are or may be conferred on a commissioner under the Public Inquiries Act, 2006.

[43] An application by a public body under section 21 to disregard an access request is an exceptional remedy, as it essentially eliminates an applicant’s rights of access to information absent a Court overturning the decision to disregard. Our Office must therefore carefully assess the circumstances and reasons for the request in every case. It is clear that such an assessment constitutes an investigation within the meaning of section 95 of the Act, and in

the present case, the withheld records are connected with the investigatory functions of this Office.

[14] After review, it is evident that the records withheld by the Department, except for one, directly address the investigative functions of this Office. The withheld records contain arguments put forward by the Department, supporting documents, and emails between the Department and this Office. Section 41(c) applies to these records, and they should continue to be withheld.

[15] The one record that should be released to the Complainant is the email from this Office to the Department approving the disregard application. This record contains the decision of this Office and is issued only when the investigative function of this Office is complete.

RECOMMENDATIONS

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

1. Disclose to the Complainant the email from the Office of the Information and Privacy Commissioner to the Department dated October 23, 2024, that approved the Department's application to disregard the access request.
2. Continue to maintain its position with the remainder of the responsive records withheld pursuant to section 41(c).

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

[18] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of February 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador