



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2025-012

March 3, 2025

Town of Gander

### Summary:

The Complainant made an access to information request to the Town of Gander seeking records that contained their name and email address. The search performed by the Town produced several thousand individual records, though the Town determined that only approximately 400 records were responsive. At issue was the Town's unilateral determination of what a key term in the access request meant. The Commissioner found that the Town did not adequately communicate with the Complainant regarding the scope of the access request and as a result the Town did not meet its section 13(1) duty to assist. The Commissioner also reviewed the exceptions to access that the Town applied to the responsive records and recommended that the information withheld pursuant to sections 28(1) (local public body confidences) and 29(1) (policy advice or recommendations) be released to the Complainant.

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13(1), 28(1) and 29(1).

Authorities Relied On: NL OIPC Reports [A-2023-025](#).

## BACKGROUND

- [1] The Complainant made an access request pursuant to the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) for the following:

Please provide information pertaining to the correspondence from myself [Named Individual], for the period of Jan. 2024 to Oct. 10<sup>th</sup>, 2024. Correspondence to include all txts, emails, notes and letters with [Named Individual] in them. Further to this information, please provide information on the decision to block [email address] email from being delivered to the Town of Gander’s email addresses.

- [2] The Town conducted a search for records, which produced approximately 3,000 individual records. The Town determined that 400 of these 3,000 records were responsive and provided them to the Complainant. The Town did redact some information, much of which was withheld pursuant to sections 30(1) and 40(1).

- [3] The Complainant states the Town did not meet its section 13(1) duty to assist. According to the Complainant, there are far more than 400 responsive records. The Complainant also requested that this Office review the exceptions to access claimed by the Town to ensure they were properly applied.

- [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] The Town asserts that it properly determined the scope of the Complainant’s access request, that it conducted a reasonable search, and it was correct in determining that there were only 400 responsive records. The Town also claimed that all exceptions were properly applied.

## COMPLAINANT'S POSITION

- [6] The Complainant claims that the Town did not disclose hundreds of records and questions the reasonableness of the Town's search. In support of their position, the Complainant has forwarded to this Office several records that the Complainant states are responsive but were not disclosed to them by the Town.

## DECISION

### Duty to Assist

- [7] 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.

- [8] As has been held in numerous decisions released by this Office, the duty to assist is a fundamental component of the access to information process. A key component of the duty to assist, but not the only component, is ensuring that the public body conducts a reasonable search for responsive records based on the applicant's request. A public body's search for responsive records does not have to be perfect, but a reasonable effort must be made using appropriate search terms and resources.

- [9] The Complainant's access request was, in some ways, straight forward: they sought records that contained their name and email address within a particular time frame. According to the Town, it conducted three separate database searches using different key words, including the Complainant's name and email address. The search produced approximately three thousand unique records once duplicates were accounted for.

- [10] The primary issue in this matter is how the Town interpreted the Complainant's request. The Town's initial search appears to be reasonable; however, the manner in which the Town determined what was a responsive record creates concern. In their access request, the Complainant requests all information "pertaining to" correspondence from the Complainant to the Town. The Town interpreted "pertaining" as meaning only those records that were

created because of a communication between the Complainant and the Town. If a communication between the Complainant and the Town did not warrant any follow-up communication by the Town, the record was not viewed as responsive.

[11] “Pertain” or “pertaining” is not an easy term to define. It is vague. The Cambridge dictionary defines “pertain” as “relate to,” “connected with,” and “be relevant to.” A term like “pertain” requires some context as it must be connected to something else.

[12] In reviewing the submissions of the parties and the records that the Town did release, it is difficult to understand how the Town was applying “pertain” when deciding what was responsive to the Complainant’s request and what was not. Rather than determining unilaterally what that term meant within the access request, the Town should have contacted the Complainant and asked for clarification. At the end of the day, the access request belongs to the Complainant and the public body should not interpret key words in a manner that may be contrary to the Complainant’s intention.

[13] As this Office noted in [Report 2023-025](#), the duty to assist is not confined to conducting a reasonable search for records. As that report states:

Knowing how to frame a request, where it should be directed, and establishing its scope is a challenge and support guides to assist cannot account for every situation. As such, the access to information process depends on regular communication between the ATIPP Coordinator and the Applicant to minimize confusion and ensure that the request can be properly addressed.

[14] In the submissions from the Complainant, it is clear they had a different understanding of their access request, and the Complainant did not understand why there were so few responsive records. When this Office asked for evidence of responsive records being withheld, the Complainant provided several, which they stated was a small sample of what they believed the Town had not provided. The records provided by the Complainant all contained either their name, email address, or both. The records were also created by the Complainant and submitted by them at various times to the Town.

[15] The Town argues that it should not be expected to simply give back to the Complainant all the records that the Complainant sent to it. The Town states that expending resources on such a search does nothing to forward the purposes of the Act. While this is a reasonable argument, it does not eliminate the Town's responsibility to contact the Complainant and explain to them how it is interpreting the request. This must be done as part of the duty to assist the Complainant. It may not produce agreement from the Complainant, but at the very least the Complainant could understand the response from the Town.

[16] Given that such communication between the Town and the Complainant did not take place and given that it is the responsibility of the Town to initiate this communication, the Town did not meet its section 13 duty to assist the Complainant.

### **Exceptions to Access**

[17] Within the more than 400 pages of records provided to the Complainant, the Town did withhold some information under several exceptions to access. The vast majority of the withheld information was withheld pursuant to section 40(1). The Town further withheld most of the information on five pages on the grounds it consisted of legal opinions.

[18] This Office has reviewed these redactions and, apart from two instances, agrees with how the Town applied the redactions to the records. The use of section 40(1) is correct, as are redactions made pursuant to sections 33 (information from a workplace investigation), 35 (disclosure harmful to the financial or economic interests of a public body), and 39 (disclosure harmful to business interests of a third party). This Office was not provided with the information withheld under section 30(1) by the Town, though the other records provided clearly disclose that the communication is with a law firm.

[19] The redactions this Office does not agree with is the application of section 28(1)(c) (local public body confidences) and 29(1)(a) (policy advice and recommendations) to information withheld on page 349 of the responsive records. The information withheld does not reveal the substance of a deliberation of a privileged meeting, as required by 28(1)(c). Neither does the information contain a recommendation, analyses, proposal, or policy option developed by the Town, as required by section 29(1). This information should be disclosed to the Complainant.

## RECOMMENDATIONS

[20] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act**, I recommend that the Town of Gander

1. Contact the Complainant within 10 business days of the release of this Report to determine the precise scope of the Complainant's access request;
2. Conduct a search for responsive records based on precise scope of the access request and to provide a final response to the Complainant within a further 15 business days from the time set forth in the first recommendation, and
3. Disclose to the Complainant the information currently withheld pursuant to sections 28(1)(c) and 29(1)(a) on page 349 of the responsive records.

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

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3<sup>rd</sup> day of March 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador