



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2025-014

March 12, 2025

### Department of Justice and Public Safety

**Summary:**

The Complainant made an access to information request to the Department of Justice and Public Safety for user manuals for the Department's records management system, for policies on transitory records, and for records generated in the process of responding to a previous access request. The Department withheld some information, citing the exceptions to access at sections 30 (legal advice), 31(1)(l) (revealing arrangements for the security of a system), and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant claimed that the Department had failed to conduct a reasonable search for records and had misapplied the exceptions to access. This Office found the Department had conducted a reasonable search and had appropriately applied the claimed exceptions, and recommended the Department continue to withhold the redacted information.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 17, 30, and 31.

## BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (“the Act”) to the Department of Justice and Public Safety for user and training manuals for the Department’s records management system, for the Department’s policies on transitory records, and for all records generated in the process of responding to a previous access request by the Complainant.
- [2] The Department provided records to the Complainant, but withheld some information, citing the exceptions to access in sections 30 (legal advice) 31(1)(l) (revealing arrangements for the security of a system), and 40 (disclosure harmful to personal privacy).
- [3] The Complainant filed a complaint with our Office, asserting the Department had failed to conduct a reasonable search for records, and that the exceptions in sections 30 and 31(1)(l) were not properly applied by the Department.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act. Information and Privacy Commissioner Kerry Hatfield 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

- [5] It is the Department’s position that it properly applied all sections of the Act to the responsive records. The Department also asserts that it performed a reasonable search and met its duty to assist.

## COMPLAINANT’S POSITION

- [6] The Complainant provided submissions arguing that certain specific facts showed that the Department had not located particular records, which indicated that the search for records was inadequate.

[7] The Complainant also argued that the redactions made by the Department under sections 30 and 31 were not appropriate.

## ISSUES

[8] The two issues to be discussed in this Report are whether the Department conducted a reasonable search for records and whether the exceptions in sections 30 and 31 were properly applied.

## DECISION

### Reasonable Search

[9] We have received from the Department a detailed description of the search it conducted, and we conclude that it was reasonable. However several specific issues raised by the Complainant will be addressed.

[10] The Complainant noted that the Department had failed to locate copies of “Form 1A” and “Form 8” among the records generated in responding to the previous request, and suggested this indicated an inadequate search for records. Form 1A is a form created by the ATIPP Office, used by public body ATIPP coordinators to send details of each new access request to that Office, in return for which they are sent an access request file number. Form 8 is a form used by coordinators to send details of each completed access request to the ATIPP Office for statistical purposes.

[11] The Department has confirmed that while those forms are used by other public bodies to correspond with the ATIPP Office, they are not actually used by the Department, as the Department uses online processes instead. As the Department does not use those forms, such records were not created by the Department in the process of responding to the previous access request. They were not located simply because they do not exist.

[12] The Complainant also noted that among the records created in response to the previous request was an email sent by the coordinator to one individual in the Department, enclosing

the initial access request, and asking them to search for, and provide responsive records. That email was copied to two other individuals in the Department, but no response was received from them. The Complainant argues that there must have been responses from those individuals, and the failure to locate them indicates an inadequate search.

[13] The Department informs us, however, that it has an internal protocol under which the coordinator copies de-identified general access requests to those other two individuals because of their positions, but for information purposes only. One of the individuals is the coordinator's director, and the other is an executive assistant. Both are routinely copied for "situational awareness" but they are not expected to respond to such messages, and in this case did not.

[14] The Department has provided reasonable explanations for the concerns raised by the Complainant, and our conclusion remains that the Department has met its duty under section 13 of the Act to conduct a reasonable search for records.

### **Section 30**

[15] Section 30(1) provides that a public body may withhold information that is subject to solicitor and client privilege – that is, confidential communications involving the seeking or providing of legal advice. In accordance with current jurisprudence, the Department chose not to provide our Office with the records for which solicitor client privilege was claimed. However, the Department provided our Office with a description of those records, including the relationship of the writer, and recipient, and the basic nature of the contents. That description, along with the context in the responsive records themselves, was sufficient to enable us to conclude that the exception has been properly applied.

[16] The Complainant objected that they had not been provided with that description. However, neither the Act nor the jurisprudence on this issue requires that a public body provide such a description to the Complainant in the course of responding to an access request.

### Section 31(1)(l)

- [17] Section 31(1)(l) allows a public body to withhold information that could reasonably be expected to “reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system”. This exception does not contain a harms test – that is, it does not require a public body to provide evidence to show that a specific kind of harm is likely to result from a disclosure. Rather, it is enough to show that a disclosure could reasonably be expected to reveal the arrangements for the security of a computer system.
- [18] In the present case, the Department has applied section 31(1)(l) to redact some whole pages, and numerous shorter passages, from the Department’s user or training manuals for its records management system. The Complainant noted that generic manuals for the system are publicly available. However, the manuals for the system used by the Department have been modified and adapted for the Department’s specific requirements.
- [19] The information redacted from the manuals constitutes internal rules and processes for the use of the system, such as decisions about the kinds of records to which certain actions apply, and the associated responsibilities of different employees for certain types of information management actions.
- [20] The issue is whether these redacted passages are considered to be a part of the “security arrangements” for the system. The Department sought the advice of the Office of the Chief Information Officer (“OCIO”) on this issue. OCIO provided advice to the Department in some specific detail, after review of the actual responsive records, and consultation with legal counsel. The Department accepted that advice, and redacted information in accordance with the recommendations received.
- [21] The Complainant argued that OCIO has no role in assessing exceptions to be applied by the public body. However, in developing responses to access requests, it is often necessary for a coordinator to consult with subject matter experts in the department, with legal counsel, with other public bodies, or with third parties, depending on the nature of the access request.

For technical issues, including matters of security, a provincial government department is often expected to consult with OCIO. That is part of OCIO's mandate.

[22] OCIO stated in its response to the Department that redactions under section 31 are recommended when the information is internal information about departmental records management processes, as in the present case. Generic information, or pages that are simply screenshots, were not redacted by the Department.

[23] We have reviewed the redactions, and we do not find fault with them. In cases such as the present, we cannot be more explicit in our analysis, as we would not wish to inadvertently disclose redacted information.

#### Section 40

[24] Although the Complainant did not specifically request that we review the few passages in the records that were withheld under section 40, we did review them and confirmed that they contain personal information of someone other than the Complainant, and were therefore appropriately withheld.

[25] In summary, we conclude that the Department has conducted a reasonable search for records and has appropriately applied the claimed exceptions to access.

#### RECOMMENDATIONS

[26] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Justice and Public Safety continue to withhold the information redacted from the records responsive to the access request provided to the Complainant.

[27] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, 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.

[28] Dated at St. John's, in the Province of Newfoundland and Labrador, this 12<sup>th</sup> day of March, 2025.

A handwritten signature in blue ink that reads "Sean Murray". The signature is fluid and cursive, with a long horizontal stroke at the end.

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