



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-022

May 6, 2025

Serious Incident Response Team

Summary:

The Complainant made an access request to the Serious Incident Response Team for a copy of an investigative report. The Public Body refused to disclose the record, citing section 5(1)(n) (Application of Act), which provides that the Act does not apply to certain records. The Commissioner concluded that the Serious Incident Response Team had failed to meet the burden of proving that section 5(1)(n) applied to the record, and recommended that it be disclosed, subject to any applicable exceptions to access set out in Division 2 of the Act.

Statutes Cited:

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

[Serious Incident Response Team Act](#), SNL 2017 c. S-13.003, sections 12-17.

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.

[House of Assembly Proceedings \(Hansard\)](#) Vol. XLVIII, No. 35 (PDF Version).

NL OIPC Reports [A-2024-050](#) , [A-2024-055](#), and [A-2025-001](#).

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2025** (the “Act”) to the Serious Incident Response Team (“SIRT-NL”) for a copy of an investigation report and associated records. The Complainant was the “affected person” who had filed a sexual assault complaint against a police officer in Nova Scotia. SIRT-NL had investigated that complaint and had concluded that the evidence gathered did not establish reasonable grounds to believe that the subject officer committed a criminal offence. SIRT-NL therefore did not lay a charge.
- [2] SIRT-NL had provided the Complainant with a copy of the SIRT-NL Director’s summary report, but it refused to provide the Complainant with the full investigation Report, citing section 5(1)(n) of the Act, which provides that the Act does not apply to certain records, and therefore, could not be disclosed to the applicant. The Complainant filed a complaint with our Office.
- [3] SIRT-NL also declined to provide a copy of the investigative report to our Office claiming that as section 5(1)(n) applied, the records fall outside the scope of the Act. However, SIRT-NL did provide our Office with a copy of the Director’s summary report and some other relevant records such as correspondence with the Complainant. SIRT-NL also provided a response to the complaint setting out its reasons for concluding that section 5(1)(n) applied to the record.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

DECISION

- [5] The issue to be determined in this Report is whether SIRT-NL has met the burden of proof, under section 43 of the Act, that section 5(1)(n) applies to the record. Section 43 reads as follows:

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.

[6] Section 5(1) of the Act provides that the Act does not apply to certain classes of records, including the following provisions that are relevant to the present case:

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

...

(k) a record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed;

(k.1) a record relating to an investigation by the Serious Incident Response Team as defined under the Serious Incident Response Team Act if all matters in respect of the investigation have not been completed

...

(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; or

(n) a record relating to an investigation by the Serious Incident Response Team as defined under the Serious Incident Response Team Act in which suspicion of guilt of a police officer is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.

[7] This Office has previously dealt with the effect of various provisions of section 5. One such matter was the subject of a decision by Justice Fowler of the Supreme Court in [Newfoundland and Labrador \(Attorney General\) v. Newfoundland and Labrador \(Information and Privacy Commissioner\)](#), 2010 NLTD 19. In that decision, the Court concluded the Commissioner does not have the authority to require a public body to provide our Office with records for which certain provisions of section 5 are claimed to apply to determine whether section 5 properly applies. While that decision was made under a previous version of the legislation, the relevant

provisions have not changed under the Act and the jurisdictional issue therefore remains. Until such time as a court decides otherwise, or the Act is amended, our Office accepts that we cannot require a public body to provide us with records for which certain provisions of section 5 are claimed, including sections 5(1)(k), (k.1), (m) and (n).

[8] That does not end the matter, however, as section 43(1) of the Act places the burden on the public body to prove that it is entitled to withhold the record from an applicant. That burden remains regardless of whether the justification claimed for withholding the record is section 5 or one of the exceptions to access in Division 2 of the Act. Although this Office is unable to review the records, we must still determine whether the public body has met its burden of proof to withhold the records from the applicant. We must rely on the description and context of the records and any other evidence provided to us by the public body in its submissions, to determine whether the application of section 5 is valid.

[9] Our Office has recently issued several Reports which are directly relevant to the present case. The first is [Report A-2024-050](#) which involved a claim that section 5(1)(m) applied to certain Royal Newfoundland Constabulary (“RNC”) records. In that case, we were not wholly convinced that section 5 applied, but, in the absence of sufficient evidence to determine the issue, recommended that the RNC maintain its position and continue to withhold the records.

[10] The second relevant Report is [A-2024-055](#) in which, after an examination of the evidence provided to our Office, we concluded that the RNC had not met the burden of proving that section 5 applied, and recommended disclosure of the records. In that case, under section 50 of the Act, the RNC filed an application in the Supreme Court of Newfoundland and Labrador for a declaration that it is not required to comply with the recommendation. That matter has not yet been heard.

[11] The third relevant Report is [A-2025-001](#), which also found that the RNC had not met the burden of proof under section 43, with the added rationale that the information requested had been entirely created and provided by the applicant. The Commissioner also recommended disclosure. The RNC has also in that case filed an application for a declaration that it is not required to comply. That matter also has not yet been heard.

[12] Section 5(1)(m), which was at issue in the above reports, has two conditions, both of which must be met for the provision to apply. One is that a “suspicion of guilt of an identifiable person is expressed” in the record. The other is that “no charges were ever laid”. To date, the separate issue of “prosecutorial consideration” has never been raised.

[13] The main issue that we have had to address in the interpretation of section 5(1)(m) is whether “suspicion of guilt of an identified person” must be expressed not just by a complainant or witness, but by an investigating officer. We have concluded that it must be expressed by an investigating officer. In our view that conclusion is supported by the explanation provided by the authors of the [Report of the 2014 Statutory Review: Access to Information and Protection of Privacy Act, Newfoundland and Labrador](#), which was the body that drafted the current Access to Information and Protection of Privacy Act, 2015, containing this statutory language.

[14] Our Office discussed this issue in our [Report A-2024-055](#), and it is convenient to reproduce our main analysis of the issue here:

[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 nondisclosure of investigative records is entirely too broad to support the purpose of the Act.

Although these issues are currently before the Court, we must interpret and apply the Act as we consider to be reasonable and correct, and we will continue to do so until such time as the court may direct otherwise. In the present case, that means we interpret the language of section 5(1)(m) to mean that suspicion of guilt must be expressed by an investigating officer.

[15] It was in 2017, several years after the coming into force of the present Act, that two amendments were added to the Act that reference SIRT-NL: section 5(1)(k.1) (where the

investigation has not been completed) and section 5(1)(n) (where suspicion of guilt of a police officer is expressed but no charges were ever laid). It must be noted the language of these provisions is identical in all material respects to the existing sections 5(1)(k) and 5(1)(m) which involve the RNC. Our interpretation of section 5(1)(n), which is at issue in this report, should therefore be consistent with our interpretation of section 5(1)(m).

[16] The reasoning behind the 2017 amendments is explained in the comments of Minister Parsons in the House of Assembly in introducing the amendments:

The last change – and this talks about transitional amendments that are going to be made to another piece of legislation. This is to ensure some consistency with how the RNC is already treated. To avoid any concerns with being required to prematurely disclose information, section 21 of the bill contains an amendment to the ATIPPA Act to exclude (a) active SIRT investigations and (b) investigations in which there's a suspicion of guilt expressed but no charges ever laid by SIRT. I think that's pretty obvious here.

We talk about access to information and we often just use those words: access to information and the public's right to information. I agree with that. I subscribe to that, but the end of that office is the protection of privacy. We all have reasonable rights of privacy. Why would we possibly expose an investigation to having its integrity compromised because we're putting out that information prematurely? That's how the RNC is already treated. We need to make sure this force gets the same treatment.

At the end of the day, the public's right to information has to be balanced against a good investigation that's not compromised and against the privacy rights of individuals who may not have been found guilty. We had to deal with that. Again, this is pretty standard stuff.

...

The SIRT, or Serious Incident Response Team, will be subject to the ATIPPA, Access to Information and Protection of Privacy Act, but it will not apply to ongoing investigations, nor would it apply to a case where there is only suspicion of guilt but no charges laid.

(Hansard, November 16, 2017, pp. 1933-4, 1938)

[17] The Minister stated, above, that it was the intention of the amendments to treat SIRT-NL the same way as the RNC. The reasons expressed by the Minister were: to avoid premature disclosure of information in records, which is the effect of section 5(1)(k.1); to protect records

in which a suspicion of guilt of an officer is expressed, but no charges were laid; and to protect the privacy rights of an individual who was not found guilty.

[18] It is our view, consistent with the position we have expressed in previous Reports, that both of the required elements of section 5(1)(n) must be met for the provision to apply. That is, the “suspicion of guilt” must be expressed by an investigating officer, not solely by a complainant or witness; and no charges have been laid.

[19] SIRT-NL, however, asserts that its investigators will never express a suspicion of guilt of an officer under investigation, either in materials collected during an investigation or when writing an investigative report. SIRT-NL argues that requiring the existence of a suspicion of guilt by an investigator would render section 5 of no force and effect. But that would mean that section 5 would never apply to such investigative records.

[20] It is not clear how SIRT-NL would provide evidence to support this assertion, particularly where the record itself has not been produced for review. If the argument is that SIRT-NL investigations are, in this respect, fundamentally different from RNC investigations, that assertion has not been explained. If it were the case that SIRT-NL investigations are different, why would the statute contain the same language as the provision involving the RNC and why would the Minister state that the intention was to treat them the same?

[21] The problem with SIRT-NL’s interpretation is that it treats the “suspicion of guilt” phrase as if it did not exist. That would mean that 5(1)(n) simply excludes every investigation where charges were not laid.

[22] However, the “suspicion of guilt” phrase must mean something. The general principles of statutory interpretation require that every part of a provision must have some meaning; that it must not be assumed that some words are merely surplus; and that the same words and expressions used in different parts of a statute must be given the same meaning.

[23] The Statutory Review Committee has told us why the language of section 5(1)(m) was drafted in the way that it was. Minister Parsons, in the legislative debates, has explained why

that identical language was chosen for the SIRT-NL amendments. For consistency, therefore, the language of section 5(1)(n) must be interpreted in the same way as the language of section 5(1)(m).

[24] That means that for SIRT-NL to meet the burden of proof for the application of section 5(1)(n), it must provide some evidence sufficient to show that a suspicion of guilt of a police officer was expressed in the record by an investigator, and that there was no charge ever laid. SIRT-NL has provided evidence to support the conclusion that no charge was ever laid, which we accept. However, SIRT-NL has failed to provide evidence that any suspicion of guilt was expressed in the record by anyone other than the “affected person.”

[25] SIRT-NL observes that section 5(1)(m) could have expressly stated that “suspicion must be expressed by an investigating officer” if that was the legislative intent. But every such investigation, whether by SIRT-NL or the RNC, will have suspicions or allegations of guilt expressed by someone, whether it be a complainant or a witness. As we have stated in previous reports, interpreting the phrase broadly enough to include complainants and witnesses would make all such investigation reports subject to section 5. If that was the legislative intent, then the phrase could have simply been omitted.

[26] SIRT-NL also argues that simply by virtue of SIRT-NL conducting an investigation, an officer would be suspected of committing a criminal offence. This may to some extent be true. But section 5(1)(n) says that it applies to a record “in which suspicion of guilt of a police officer is expressed.” The suspicion of guilt must be expressed in the record, not just inferred from the fact that an investigation has been commenced. The alternative interpretation would make every SIRT investigation subject to section 5(1)(n).

Other Issues

[27] SIRT-NL confirms that the affected person has received a copy of the Director’s subsequent summary report and took part in a meeting to discuss the case. Clearly, the Complainant has been provided with a great deal of information. However, even though SIRT-NL did engage with the Complainant and provided the Director’s report in good faith, that cannot affect whether they are required to provide the record that was requested. Nothing in

the Act makes it sufficient for a public body to simply substitute a different record for the record that is responsive to the request, unless that is a resolution agreed to by the applicant.

[28] SIRT-NL also argues that an investigative file may be re-opened, and it is therefore necessary to “protect the integrity of investigative files in the event that new evidence becomes available, and a case reopens.”

[29] There is nothing in section 5(1)(n) that is pertinent to that issue. We note that section 5(1)(k.1) applies to a record of an investigation “when all matters have not been completed”. Sections 12 to 17 of the [Serious Incident Response Team Act](#) make it clear when a file is considered completed: that is, when the Director writes a report stating an investigation has been completed and that charges will or will not be laid. In the present case, as the investigation has clearly been completed, it follows that section 5(1)(k.1) does not apply.

[30] Even where an investigation has been completed, it is possible that any file might conceivably be reopened. Accepting the SIRT-NL “reopening” argument would logically mean that every SIRT file would be protected from disclosure by section 5(1). The language of both elements of section 5(1)(n), “suspicions expressed” and “no charges laid” would therefore be rendered superfluous. This is not a reasonable interpretation of the Act.

[31] It should be noted that there are other exceptions, such as section 31, that might apply in those cases where reopening is truly likely. Otherwise, this is an interpretation that would prevent disclosure of every SIRT-NL (or RNC) investigation record.

[32] It is important to reiterate that if section 5 does not apply to exclude a responsive record from the application of the Act, that is not the end of the matter. If the Act is found to apply to a record, then all the other provisions of the Act, including the exceptions to access in Division 2 of the Act (sections 27 to 41) would potentially apply and allow information to be withheld to protect the privacy of individuals, to protect other interests, or to protect the integrity of the investigation. In that case, SIRT-NL would simply be required to conduct a normal line-by-line review of the responsive record, identifying any information to which an exception may apply, and then provide the record, appropriately redacted, to the applicant.

[33] Since any disclosure of the 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.

[34] If SIRT-NL investigations are not to be subject to the Act, then the legislation will have to be amended to be explicit on that point. We cannot agree with the interpretation proposed by SIRT-NL based on the language of the Act as it presently reads.

[35] As the burden of proof has not been met in the present case, we must conclude that section 5(1)(n) does not apply to the responsive record, and therefore it should be disclosed to the Complainant.

RECOMMENDATIONS

[36] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Serious Incident Response Team disclose the responsive record to the Complainant, subject to any applicable exceptions to access set out in Division 2 of the Act.

[37] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of the Serious Incident Response Team 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.

[38] Dated at St. John's, in the Province of Newfoundland and Labrador, this 6th day of May, 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador