



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-024

May 28, 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 records relating to an earlier court matter. The Department asked the Complainant for clarification of the request, and provided a final response, withholding some records under section 31(1)(g) of the **Access to Information and Protection of Privacy Act, 2015** (records relating to prosecutorial discretion). The Complainant alleged that the Department had improperly rejected their request, had not conducted a reasonable search for records, had provided false or misleading information, had failed to properly apply exceptions to access, had failed to identify the decision-maker, had created procedural barriers, and had obstructed justice. The Commissioner found that the Department had conducted a reasonable search for records and appropriately applied exceptions to access, and that the allegations made by the Complainant were without merit. The Commissioner recommended that the Department maintain its position.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 8, 11, 13, 16, 31(1)(g), and 102(4).

BACKGROUND

- [1] The Complainant submitted an access request under **the Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Department of Justice and Public Safety in the form of questions about previous matters involving Public Prosecutions, the Royal Newfoundland Constabulary (the “RNC”) and the courts.
- [2] The Department responded, asking the Complainant for clarification. The Complainant re-submitted the request as follows:
- records indicating the date on which [RNC officer]’s notes were provided to legal counsel;
 - records indicating the method by which the notes were delivered;
 - records that explain the reason for the change of court date in 2020, including communications between the RNC and the Prosecutor’s Office;
 - records showing whether the Prosecutor’s Office was notified of this change;
 - records showing whether RNC or the Prosecutor’s Office changed the date and the name of the person responsible.
- [3] The Department responded to the request stating that some information had been withheld under section 31(1)(g) (records relating to prosecutorial discretion). With respect to the first item requested, the Department informed the Complainant that the RNC officer’s notes were provided sometime between July 7, 2021, the date Crown received the notes, and September 16, 2021, but that no specific date is indicated in the records. For the other information requested, the Department stated that as the Crown did not receive the file until January 2021, there were no responsive records.
- [4] The Complainant filed a complaint with our Office, stating that the Department had improperly rejected their request, had not conducted a reasonable search for records, had provided false or misleading information, had failed to properly apply exceptions to access, had failed to identify the decision-maker, had created procedural barriers, and had committed an obstruction of justice.
- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

ISSUES

- [6] There are several issues to be dealt with in this Report, as follows:
1. Whether the initial access request was improperly rejected,
 2. Whether the Department conducted a reasonable search for records,
 3. Whether the Department properly applied section 31(1)(a) to withhold information,
 4. Whether the Department improperly refused to identify the decision-maker,
 5. Whether the Department created procedural barriers to delay or frustrate the request, and
 6. Whether the Department's actions constitute an obstruction of justice.

DECISION

Initial Rejection of Request

- [7] The Complainant states that the Department improperly rejected their request “based on a false procedural technicality.” The access request was received by the Department on January 21, 2025. The Coordinator for the Department wrote to the Complainant immediately, requesting clarification of the request which, as noted above, was in the form of questions rather than in the form of a request for records. The Complainant characterized this response as a rejection of the request.
- [8] In our view the Department's procedure was entirely appropriate. First, it must be understood that under section 8 of the Act, the legislation creates a right of access to records containing the information. Therefore, to be clearly understood, a request should be in the form of a request for records, not in the form of questions.
- [9] Under section 13 of the Act, a public body has a duty to make every reasonable effort to assist an applicant in making a request. This duty includes efforts at the earliest stages to clarify a request, so that the public body can properly conduct a search and provide a response that focuses on the information that the requester actually wants.
- [10] Section 11 of the Act reinforces this, by providing that a request shall:
- (a) be in the form set by the minister responsible for this Act;

- (b) provide sufficient details about the information requested so that an employee familiar with the records of the public body can identify and locate the record containing the information with reasonable efforts;

[11] After the Complainant replied to the Department's request, rephrasing the access request appropriately, it was processed and a final response was provided within the statutory period of 20 business days. The request was neither rejected nor unreasonably delayed. The Department is one of the government departments that receives a large number of access requests and in recent months has done well in meeting its deadlines, as it did in this case.

[12] The Complainant argues that the "delay" constituted a "constructive refusal." However, that argument is groundless. Under section 16 of the Act a public body is considered to have refused access only if no response is provided within the statutory 20 days. That is not the case here.

Failure to Conduct a Reasonable Search

[13] The Department has provided to our Office a detailed description of the steps taken to locate records responsive to the request. Those steps included a request to the Director of Public Prosecutions for records, an electronic search of the file management system, and additional contacts with individual staff who may have been involved in the case. From the Department's description of its efforts, we conclude that the search was thorough and reasonably complete.

[14] The Complainant objects that they were not provided with the details of the Department's search methodology, what search steps were taken, what systems were reviewed, whether relevant staff were consulted, or whether email records, disclosure logs, or digital file tracking systems were searched. This is true – that is the way the investigation process works. Nothing in the Act entitles a requester to such information. Our Office was, however, provided with those details, and our conclusion was based on that information.

[15] A few records (three pages) were located by the Department's search. In its response letter, the Department provided some information to the Complainant that was responsive to the request (providing a date range for when the officer's notes were provided to legal counsel,

noted above), but the records themselves were withheld. We have reviewed those records and have confirmed the Department's statement, that the records do not contain any of the specific details requested by the Complainant.

False or Misleading Information

[16] The Complainant argues that by stating the officer's notes were provided to legal counsel sometime during a particular period, rather than on a particular date, the Department is misleading. This appears to be purely confusion on the part of the Complainant, who refers to a police record in their possession as evidence that the notes were provided to the Crown on a specific date, July 13, 2021.

[17] The Department's response to the access request stated that the notes were provided to legal counsel sometime between July 7, 2021, when the Crown first received the file from the RNC, and September 16, 2021. The date claimed by the Complainant, July 13, 2021, of course falls within this period, and so there is no conflict between the Complainant's and the Department's statements. The Department accurately states that the records located in the search do not contain a specific date. There is nothing false or misleading in the Department's response.

Redactions

[18] The Department withheld all three pages of records located by the search based on section 31(g) of the Act, which provides:

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
- ...
- (g) reveal information relating to or used in the exercise of prosecutorial discretion;

[19] Prosecutorial discretion is a term that includes a number of related actions or decisions, such as whether to bring a prosecution for a charge laid by police, whether to accept a plea, or whether to enter a stay of proceedings. The Department has provided our Office with the responsive records it located, and we have reviewed them. In our view substantially all the information in these records was used in the exercise of prosecutorial discretion, and therefore the records were properly withheld under section 31(1)(g).

Failure to Identify the Decision-Maker

[20] The Complainant asked for the names of the decision-makers involved in responding to their access request and complains that the information was not provided. However, the Complainant had considerable correspondence with the Department's ATIPP Coordinator, who was quite obviously the person dealing with the access request. In addition, the Deputy Minister for the Department was clearly identified in the Department's letter of response to the Complainant as the maker of the decision. Therefore, this complaint is without merit.

Procedural Barriers

[21] The Complainant insists that the Department erected unnecessary procedural barriers to frustrate or delay their request. The evidence provided by the Complainant to support this claim consists of the alleged delay in processing the request, and their correspondence with the Coordinator. We have already dealt with the Department's effort to clarify the request, above. The Complainant further argues that the Department failed to respond to their requests for reconsideration and review. Again, however, that is a misunderstanding of the way the request process is intended to work. Once a public body has engaged with a requester, clarified the request if necessary, and provided a Final Response to the request, its duty is done. Apart from routine matters of clarification, the public body is not expected to engage in potentially interminable correspondence with the requester after completing its search and responding to the request. Rather, if at that stage the requester is unsatisfied, they have the right to file a complaint with this Office.

Obstruction of Justice

[22] The Complainant has submitted that the Department has deliberately obstructed justice by withholding critical information that is required for a complaint made to the Law Society. This is a very serious accusation of criminal conduct, as the Complainant explicitly states. The Complainant cites sections of the Criminal Code, and further requests that our Office refer the matter to law enforcement.

[23] First, it is clear that the Department has not "withheld information" other than what it has legitimately withheld in compliance with the provisions of the Act. The Department took all the

appropriate and necessary steps to process the Complainant's request within the statutory time limits, thereby fulfilling its duty under the Act.

[24] Second, it must be emphasized that a requester's reason or motivation for making an access request is not relevant to how a request is processed. In fact, it would be inappropriate for a public body to ask an applicant for such information. Whether the Complainant is involved in legal proceedings for which the information may be needed is not something that either the public body or our Office should normally take into account.

[25] The duty to assist does not impose a higher standard on a public body where an applicant is seeking records for an important purpose. In any event, the **Law Society Act** allows the tribunal hearing a complaint to summon evidence, so a complainant does not have to rely on the access to information process to produce evidence for a complaint.

[26] Our Office does have the authority, under section 102(4) of the Act, to:

. . . disclose to the Attorney General information relating to the commission of an offence under this or another Act of the province or Canada, where the commissioner has reason to believe an offence has been committed.

In appropriate circumstances our Office has done that. In the present case, however, there is absolutely no evidence of obstruction of justice that would warrant further investigation or comment by this Office.

[27] Our conclusion, after a thorough investigation and a careful review of the lengthy submissions provided by the Complainant, is that the Department responded adequately to the access request, conducted a reasonable search for records, and appropriately applied exceptions to access. The allegations made by the Complainant are without merit.

RECOMMENDATIONS

[28] 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 maintain its position and continue to withhold the information withheld in its final response to the Complainant.

[29] 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.

[30] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28th day of May 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador