



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-034

August 22, 2025

Royal Newfoundland Constabulary

Summary:

The Complainant made an access to information request to the Royal Newfoundland Constabulary (RNC) seeking information on themselves and their child. The RNC conducted a search, which produced more than 50 files. Of those, 25 files were withheld pursuant to section 5(1)(m) (suspicion of guilt) and five were withheld pursuant to section 37(1)(a) (disclosure harmful to personal safety). The remaining files disclosed to the Complainant also contained redactions under section 30 (legal advice), section 31 (disclosure harmful to law enforcement), section 33 (workplace investigation), and section 40 (personal information). This Office concurred with the exceptions to access applied by the RNC in the records disclosed to the Complainant and with the application of section 5(1)(m). This Office, however, disagreed with how section 37(1)(a) was applied to withhold the entirety of five files. It was recommended that the RNC perform a new review of these files to assess what information can be disclosed to the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, ss. 13(1), 30(1), 30(2), 31(1), 33(2), 33(4), 37(1), and 40(1).

Authorities Relied On: NL OIPC Reports [A-2015-003](#), [A-2023-022](#).

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v. Newfoundland and Labrador \(Justice and Public Safety\) 2023 NLCA 27.](#)

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Royal Newfoundland Constabulary (“RNC”) seeking the following:

I am seeking a list of all information as it relates to myself and my child [named individual]. This includes all information where my or my child’s name is used, involved, investigated or referred to any other services or departments within or outside the RNC. This includes referrals to any other department or communication or visits to the school by the RNC on any and all matters with files numbers.

- [2] The RNC conducted a search which returned over fifty individual RNC files. These files can be divided into three distinct categories: files that were disclosed to the Complainant with some information withheld, files withheld in their entirety pursuant to section 5(1)(m), and files withheld in their entirety pursuant to section 37(1)(a).

- [3] The Complainant asserts that the RNC did not perform a reasonable search for records, as specific interactions between herself, her son, and the RNC were not disclosed. The Complainant also argues that all files should be disclosed and that no information should be withheld.

- [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 RNC submits that it performed a reasonable search for responsive records and that it has withheld information according to the Act.

COMPLAINANT’S POSITION

- [6] The Complainant has provided a detailed breakdown of alleged interactions between them, their child, and the RNC and notes that some of these interactions have not been

disclosed. As a result, the Complainant submits they are not able to access the information that the RNC maintains about them and their child.

ISSUES

- [7] This Report will address four issues:
1. Whether the RNC met its duty to assist the Complainant,
 2. Redactions to those files that were partially disclosed to the Complainant,
 3. The decision to withhold files in their entirety pursuant to section 5(1)(m), and
 4. The decision to withhold other files in their entirety pursuant to section 37(1)(a).

DECISION

Duty to Assist

- [8] Section 13(1) states:
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.
- [9] As this Office has stated in numerous reports, the duty to assist is a fundamental component of the access to information process. A key part of the duty to assist is ensuring the public body conducts a reasonable search for responsive records based on the applicant's request. A public body's search does not have to be perfect, but a reasonable effort must be made to locate possible records.
- [10] In its submission to this Office, the RNC stated it conducted a search of its record management system, which is its primary database. The search was conducted using the first three letters of the first and last names of both the Complainant and their child. In addition to the database, a physical search of records was also conducted with support from the Information Services Division. Lastly, a search was conducted of the RNC email system. Overall, the search appears to be comprehensive and reasonable.

[11] The Complainant's assertion that the RNC did not meet its duty to assist is based on their own personal experience and information provided by their child. The Complainant has provided this Office with a record of dates of alleged contact between themselves and their child and the RNC. On review of this record, this Office has no reason to doubt the accuracy of the information it contains. However, there are also a significant number of files that are withheld in their entirety by the RNC, and it is possible that such interactions are confirmed within those files.

[12] When confronted with competing perspectives on whether all records have been disclosed, this Office applies a balance of probabilities standard to determine whether it is more likely than not that the public body has or has not performed a reasonable search. By that standard, the search performed by the RNC was reasonable.

Records Partially Disclosed to the Complainant

[13] There are 22 police files, and three complaint reports that were partially disclosed to the Complainant. There are also six audio files fully disclosed to the Complainant. The police files, and complaint reports all have information withheld pursuant to various exceptions to access under the Act. These sections are:

- 30.(1) The head of a public body may refuse to disclose to an applicant information
 - (a) that is subject to solicitor and client privilege or litigation privilege of public body; or
 - (b) that would disclose legal opinions provided to a public body by a law officer of the Crown.
- (2) The head of the public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

...

- 31.(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
 - (a) interfere with or harm a law enforcement matter;

...

(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;

...

(e) reveal law enforcement intelligence information;

...

33. ...

...

(2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.

...

(4) Notwithstanding subsection (3), where a party referred to in that subsection is a witness in a workplace investigation, the head of a public body shall disclose only the information referred to in subsection (2) which relates to the witness' statements provided in the course of the investigation.

...

40.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

[14] Section 30 is applied twice in the disclosed material. Many of these police files are related to an ongoing family law dispute and during police investigations, individuals disclosed to the RNC legal advice they have received from their lawyers. This is information that is subject to solicitor-client privilege and is properly withheld pursuant to section 30.

[15] The RNC also applied sections 31(a), (c), and (e) several times to various files that were disclosed to the Complainant. These files cover a wide array of matters and in some cases describe investigative techniques and intelligence that would likely interfere with or harm a law enforcement matter. This information is appropriately withheld by the RNC.

[16] As noted above, there are also three RNC member complaint files that involve the Complainant. Pursuant to section 33(4), the Complainant, as a witness in the complaint file, is entitled to information that relates to their statements in the investigation. This information has been disclosed to the Complainant. The remainder of the complaint files are withheld, as the RNC is required to do pursuant to section 33(2) of the Act. This Office concurs with the RNC's application of section 33(2) in this matter.

Section 5(1)(m)

[17] Section 5(1)(m) of the Act, when applied to a record, appears to remove that record from being covered by the Act. Section 5(1)(m) states:

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:

...

(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.

[18] Section 5(1)(m) presents a challenge to this Office, as section 97 of the Act does not give us the authority to demand that the RNC produce for our review those records that it claims fall under this section, (although it does not prevent the RNC from doing so voluntarily). Not being able to review the records hampers our ability to confirm the applicability of section 5(1)(m). To simply trust a public body without evidence is contrary to the principles of transparency and accountability upon which the Act rests.

[19] To provide some assurance that section 5(1)(m) is being properly applied, this Office has encouraged the RNC to provide details in support of its section 5(1)(m) claim. For example, in Report [A-2023-022](#), it was noted that,

... they [the RNC] have provided documentation that explains the issues outlined in the withheld information and how such information meets the requirements of section 5(1)(m) of ATIPPA, 2015. Upon review of these documents, this Office is satisfied that section 5(1)(m) is properly applied in this case.

[20] In its submission to this Office, the RNC provided a table that set out for each of the 25 files that were withheld, the file number, investigating officer, the possible criminal offence, along with a brief description. While it would be preferable to review the files, this information does provide this Office with sufficient confidence that section 5(1)(m) is properly applied in this matter.

Section 37(1)(a)

[21] The RNC withheld five files in their entirety citing section 37(1)(a) of the Act. That section states:

37.(1) The head of a public body may refuse to disclose to an applicant personal information, including personal information about the applicant, where the disclosure could reasonable be expected to:

(a) threaten the safety or mental or physical health of a person other than the applicant.

[22] There are three important aspects to consider when applying section 37(1)(a) to responsive records. First, it is not a record-level exception. Section 37(1)(a) can only be applied as part of a line-by-line assessment of the record. Each instance of its application must be proven. Second, it is a discretionary exception to access. Unlike personal information in section 40(1), a public body is not compelled to remove information that may be subject to section 37(1)(a). Third, there is a high standard that must be met to support the application of section 37(1)(a). The use of this section must be supported by a harms test, as was set out in Report [A-2015-003](#):

As with other harms tests under ATIPPA, 2015, public bodies cannot rely on speculation that harm might take place but must establish a reasonable expectation that harm would result from the disclosure of the specific records or information at issue and not from unrelated factors. Report 2007-001 from former Commissioner Wall examined the former section 37(1) of *ATIPPA, 2015* (section 26) and stated that a public body wishing to use section 26(1) must present evidence of a reasonable expectation of such threat to result if the records are released.

[23] With respect to one of these files, while the RNC had withheld it in its entirety from the Complainant, in its response to this Office the RNC did provide us with a copy of the file with a line-by-line assessment of information it believes could be withheld under section 37(1)(a).

No analysis of the potential harm was provided; however, the information withheld under section 37(1)(a) was of a type that the reasonable threat to physical safety was clear. Nonetheless, there were also large portions of that file for which no exception to access would apply and the information could be disclosed to the Complainant. On this particular file, we agree with the line-by-line review conducted by the RNC and will recommend that the file, with the same line-by-line redactions, now be provided to the Complainant.

[24] As for the other four files, there were no reasons given for why the information would fall within section 37(1)(a). Three of these remaining four files address complaints against RNC officers and in its submission to this Office the RNC merely cited “Professional Standards privatized file” as the reason for not providing disclosure. No such exception to the right of access is provided for in the Act. The Act is a complete code and any exception to access must be found within it; therefore, “Professional Standards privatized file” cannot be used as a reason to withhold information from an applicant. The last of those four files is a criminal investigation file where RNC has not provided the line-by-line analysis to the record to support withholding any information. This needs to be done if such claims are to be supported.

RECOMMENDATIONS

[25] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend as follows:

1. The Royal Newfoundland Constabulary conduct a line-by-line review of RNC File Numbers 2023-29655; 2023-29642; 2023-26940; 2022-51182; and 2023-62963. Once this review is complete, provide the information in these files that can be disclosed to the Complainant within 20 business days of this Report.
2. The Royal Newfoundland Constabulary maintain its position with respect to all other exception or exemptions to access applied to the remaining files.

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

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 22nd day of August 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador