



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2025-036

August 29, 2025

### Department of Justice and Public Safety

#### Summary:

The Complainant made an access to information request to the Department of Justice and Public Safety with 13 specific record requests. Twelve of the 13 involved a request for metadata, with one request seeking information on a watching brief. The Department provided the information on the metadata and remained silent on the watching brief. Upon review of the information provided to the Complainant, this Office concluded that the Department did conduct a proper records search for the metadata information. With respect to the watching brief, there was some confusion between the parties regarding the nature of a watching brief. To provide clarity as to what records, if any, exist regarding the watching brief, this Office recommended that the Department conduct a search for responsive records related to the brief, advise the Complainant as to whether records exist or not, and if there are records, provide the Complainant with whatever information they are entitled to receive under ATIPPA, 2015.

#### Statutes Cited:

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

## BACKGROUND

[1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** to the Department of Justice and Public Safety seeking the following:

When responding to the ATIPP request JPS/98/2024, JPS did not consider metadata (information about information) of responsive records as their integral part, as the outcome of the OIPC's investigation 0005-084-24-125 appears to suggest. Therefore, the requestor seeks access to screenshots or printouts of the containers with metadata (title, subject, author, date created, assigned actions, due dates, addresses, etc.) associated with the following records previously released in response to the ATIPP request JPS/98/2024:

1. The copy of MUN's application court docket number 2020 01G 4399 and the assignment of [JPS lawyer] to have carriage of this file (at pp. 348-354 of the released material)
2. The watching brief mentioned by Whalen C.J. in *Oleynik v. Newfoundland and Labrador (Justice and Public Safety)*, 2024 CanLII 61156 ("a Crown counsel, who was appearing on a watching brief in" the proceeding court docket 2020 01G 4399)
3. The copy of Noel J.'s decision in *Oleynik v. Memorial University of Newfoundland and Labrador* 2021 NLSC 99 (at pp. 929-968 of the released material.).
4. The copy of Goodridge J.A.'s reasons for judgment in *Oleynik v. Memorial University of Newfoundland*, 2021 NLCA 56 (at pp. 1244-1264 of the released material.).
5. The copy of Noel J.'s decision in *Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 151 (at pp. 1369-1412 of the released material.).
6. The assignment of Justin Mellow to have carriage of the proceeding court docket number 2022 01G 5037 – *Anton Oleynik v. Legal Appointments Board* (at pp. 1413-1581 of the released material.).
7. The copy of Noel J.'s decision in *Oleynik v. Memorial University*, 2023 NLSC 86 (at pp. 1582-1679 of the released material.).
8. The Notice of Constitutional Questions pertaining to MUN's application court docket number 2020 01G 4399 (at pp. 1680-1748 of the released material.).
9. The copy of O'Brien J.A.'s memorandum of disposition in *Oleynik v. Memorial University of Newfoundland*, 2023 NLCA 29 (at pp. 1749-1755 of the released material.).
10. The copy of Whalen C.J.'s decision in *Memorial University of Newfoundland v. Oleynik*, 2023 NLSC 126 (at pp. 1756-1769 of the released material.).
11. The correspondence sent on behalf of the Minister of Justice and Public Safety on December 27, 2023 and January 22, 2024 (at pp. 1770-1773 of the released material.).
12. The copy of Whalen C.J.'s decision in *Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42 (at pp. 1774-1883 of the released material.).
13. The copy of Noel J.'s decision in *Oleynik v. Memorial University of Newfoundland*, 2021 NLSC 4 (at pp. 1893-1919 of the released material.).

Possible location: HP TRIM (printouts of screenshots of relevant metadata fields) and/or the other document/email management systems used by the Government. An example of the “Records detailed” container can be found on pp. 249-250 of the material released in response to the ATIPP request JPS/222/2024. Format request: the format in which a record was made, sent or received or in a format that does not materially change the information that was originally created, sent or received. Since the above-listed records are stored on HP TRIM, containers with metadata are associated with them.

- [2] The Department conducted a search, and for 12 of the 13 points it provided the metadata to the Complainant. For point 2, the Department provided no response.
- [3] The Complainant asserts that the Department did not disclose all records, noting that some metadata was still missing, as well as a response on point 2 regarding the existence of a “watching brief.”
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

#### **PUBLIC BODY’S POSITION**

- [5] The Department submits that it performed a reasonable search, that the access request was clear and precise, and that it provided records for all but one of the 13 points submitted by the Complainant. The Department does acknowledge that some confusion exists regarding the request for the “watching brief” as it was only ever mentioned in the decision of Chief Justice Whalen in **Oleynik v. Newfoundland and Labrador (Justice and Public Safety)** and never within the Department or the file for that case.

#### **COMPLAINANT’S POSITION**

- [6] The Complainant did provide an example of a record for which no metadata was provided as proof that the Department did not meet its duty to assist in this matter.

## DECISION

### Duty to Assist

[7] 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.

[8] As this Office has stated in numerous reports, the duty to assist is a fundamental component of the access to information process. The duty to assist continues throughout the ATIPP process, and includes clarifying access requests from applicants, searching for responsive records, and explaining why information is withheld. In this matter, there are two aspects of the duty to assist that need to be assessed: the search for responsive records and the clarification of the access request.

[9] In its submission to this Office, the Department provided a table that explained how it provided all the metadata information requested in 12 of the Complainant's specific requests. The Department also provided this Office with the metadata records that were provided to the Complainant, which appears to match the information that was requested. The Complainant disagrees with the submission of the Department and pointed out information that they believe is still missing. That assertion was refuted in detail by the Department. In the end, it appears that the Complainant is seeking further information than what was originally set forth in their access request and the Department is not required to respond to those requests. Given the Department's efforts to provide the metadata specifically requested by the Complainant, this Office finds that the Department conducted a reasonable search for responsive records.

[10] As noted above, the Department did not provide any information or explanation on the Complainant's request for copy of the watching brief set out in point 2 of the Complainant's access request. In its submission to this Office, the Department dismissed this part of the access request, determining that it was not considered as part of the request. The Department

also stated that the Complainant did not provide enough specifics, such as page numbers, to allow the Department to complete the search.

[11] From communication with the Department, it is clear the Department made no attempt to contact the Complainant to seek clarity as to their request. Communication with a complainant by the public body to clarify the exact meaning and purpose of an access request is a critical component of the duty to assist. The onus for initiating this communication rests with the public body, as it has a better understanding of its own responsibilities and processes; as well, it is unlikely that an applicant understands that their access request is unclear. In this respect, the Department did not meet its section 13(1) duty to assist the Complainant.

[12] The challenge with this file is the “watching brief.” The existence of this watching brief has not been confirmed and the mention of it in the decision noted in point 2 of the access request does not confirm its existence. That statement by the Chief Justice only confirms that the Complainant sought notes that the Crown may have made during a watching brief in an earlier court hearing.

[13] There appears to be some confusion amongst the parties as to what a watching brief is. A watching brief is not a document, rather it refers to a situation where a person, often a lawyer, sits in on a legal proceeding to which they are not a party to ensure that their client’s interests are protected; there is no participation in the proceedings by the party conducting a watching brief. What an individual does while conducting a watching brief is not specific – they may take notes, they may not. In this case, the Complainant, however, is operating under the assumption that there are records related to this watching brief; the Department has also suggested this may be the case, though this may be a misstatement based on an incomplete understanding of a watching brief.

[14] Though there is now less confusion about what is a watching brief, there is still confusion as to whether there are records related to that which the Complainant is referring to in point 2 of their access request. This confusion needs to be resolved, which can only be done by the Department making a determination as to whether records exist in relation to the specific watching brief referenced in the Complainant’s request. If it is determined that records do

exist, then the Department can determine what information can be disclosed to the Complainant.

## RECOMMENDATIONS

- [15] 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, within 10 business days of receipt of this Report, conduct a search to determine whether records exist related to the “watching brief” referred to in **Oleynik v. Newfoundland and Labrador (Justice and Public Safety)** 2024 CanLII 61156, and notify the Complainant of the results. Further, if responsive records are found, review them and provide the Complainant with whatever information they are entitled to receive under ATIPPA, 2015.
- [16] As set out in section 49(1)(b) of *ATIPPA, 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.
- [17] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of August 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador