



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-010

April 6, 2026

Royal Newfoundland Constabulary

Summary:

The Complainant made an access to information request to the Royal Newfoundland Constabulary for an investigation record. The RNC refused to disclose the information, on the grounds that it was excluded from the Access to Information and Protection of Privacy Act, 2015 by section 5(1)(m). The Commissioner concluded that on the evidence provided, the RNC had not met the statutory burden of proving that section 5(1)(m) applies and therefore recommended that the RNC disclose the record to the Complainant, subject to any applicable exceptions. Upon review by this Office, it was determined that the RNC had met its duty to assist the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 5(1)(m), 13, 40, 43, and 97(1)(a).

Authorities Relied On: NL OIPC Reports [A-2025-001](#), and [A-2024-055](#).

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”) relating to an occurrence the Claimant had filed themselves with the RNC. The Complainant asked specifically for the contents of that RNC investigation file and included a forensic examination report within the scope of the access request.
- [2] The RNC provided partially redacted general occurrence file information but withheld the forensic report claiming that section 5(1)(m) of the Act applied to exclude the record from the application of the Act. The Complainant was not satisfied with this response and filed a complaint with this Office.
- [3] During our investigation of the access complaint, the RNC maintained its position on the application of 5(1)(m). The RNC, relied on section 97(1)(a) to refuse to provide the responsive record to our Office for review. As the burden rests with the public body, the OIPC sought a description and explanation of how the excluded document meets the requirements of section 5(1)(m) of ATIPPA, 2015.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

ISSUES

- [5] The following issues will be dealt with in this Report:
1. Whether s.5(1)(m) applies to exclude the record from the application of the Act?
 2. Whether the RNC has met its section 13 duty to assist the Complainant?

DECISION

[6] The Complainant has asked for specific records from an investigation file that was initiated by that individual's own complaint to the RNC against another individual. The RNC refused access, based on section 5(1)(m), which reads:

(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;

[7] In [Report A-2024-055](#) and [Report A-2025-001](#), this Office addressed the RNC's interpretation of section 5(1)(m) and our disagreement with that interpretation. The RNC has rejected our recommendations in both Reports and has filed applications under section 50 of the Act for declarations that it is not required to comply with the Commissioner's recommendations. Those matters are still before the court. However, until such time as the court may direct otherwise, this Office must continue to interpret and apply the Act as we believe appropriate and correct.

[8] The RNC has not provided the 5(1)(m) responsive records to our Office for review. However, under section 43(1) of the Act the burden remains on the RNC to prove that the Complainant does not have a right to the record or part of the record:

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.

[9] While we do not have a copy of the forensic record, the RNC has confirmed the record is a forensic report, and eight pages were withheld in their entirety, pursuant to section 5(1)(m).

[10] During the investigation our Office requested the position of the RNC on the issue of whether any “suspicion of guilt” contained in the record was expressed by the RNC. The RNC provided no additional evidence and maintained their previous position pending the outcome of the matters before the court. In the meantime, the Act continues to place the burden of proof on the RNC. A pending application does not suspend disclosure obligations or release the RNC of their burden of proof in the current investigation.

[11] The burden of proof applies regardless of whether the public body has claimed that an exception to access applies to a record, or that a record is excluded from the application of the Act, as in the present case. The RNC has failed to persuade this Office that its reasons for claiming section 5(1)(m) are correct, and therefore it has not met the burden of proof required by section 43 to withhold the records. The records must therefore be released subject to any exceptions to access as set out in the Act.

[12] In its submissions, the RNC provided a description of the efforts it undertook to assist and conducted a reasonable search for records. The public body has met its duty to assist by responding adequately to the request.

[13] After the RNC provided its final response to the access request, the Complainant asked additional questions. The RNC is not required to continue correspondence with the Complainant indefinitely. Therefore, the RNC’s obligation was met, and it was not a failure of the duty to assist. The RNC advised the Complainant that any further questions would be deemed post response, and the only recourse for the Complainant would be to contact this Office.

RECOMMENDATIONS

[14] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that within 10 business days of the issuance of this report, the Royal Newfoundland Constabulary disclose the responsive record to the Complainant, subject to any exceptions to access as set out in Division 2 of the Act.

[15] 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.

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 6th day of April 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador