



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-013

May 20, 2026

Royal Newfoundland Constabulary

Summary:

The Complainant made an access request to the Royal Newfoundland Constabulary for investigation records. The RNC provided a number of records, with redactions based on sections 37 (disclosure harmful to an individual), and 40 (disclosure harmful to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. The RNC refused to disclose one record 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 the RNC had met the statutory burden of proving that section 5(1)(m) applied, and therefore, recommended that the RNC continue to maintain its position. The Commissioner found that the remaining exceptions had been properly applied and recommended the RNC maintain its position.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 2, 5, 37, and 40.

Authorities Relied On: NL OIPC Reports [A-2023-022](#), [A-2015-003](#), [2007-001](#)

BACKGROUND

- [1] The Complainant made an access to information request to the Royal Newfoundland Constabulary (the “RNC”) under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) for investigative files in which the Complainant was identified by name or where two addresses associated with the Complainant appeared in the records.
- [2] The RNC provided a response to the Complainant, producing 41 pages of responsive records, withholding some information under sections 37(1)(a) and 40(1).
- [3] The RNC refused access to one RNC General Occurrence File claiming that due to an expressed suspicion of guilt within the file that section 5(1)(m) of the Act applied to exclude the record from the application of the Act. The Complainant made a complaint to this Office seeking our review of the decision to withhold information.
- [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 has withheld information according to the Act.

COMPLAINANT’S POSITION

- [6] The Complainant disagreed with the RNC’s decision to redact some information from the records that were disclosed, as well as the decision to withhold records in their entirety under section 5(1)(m).

ISSUES

- [7] The issues for this Report are whether sections 5(1)(m), 37(1)(a), and 40(1) apply to the requested records as claimed by the RNC.

DECISION

Section 5(1)(m)

- [8] The RNC refused access to an RNC General Occurrence File based on section 5(1)(m), which reads:

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;

- [9] The RNC has not provided any of 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.

- [10] In its submissions, the RNC articulated that the investigating officer clearly identified a suspicion of guilt sufficient to engage section 5(1)(m) of the Act. The RNC provided additional supporting details indicating that the suspect was identified by the officer and noted in the file conclusion. Despite not having access to the records, we are satisfied, based on the information provided, that section 5(1)(m) was properly applied.

Section 40

- [11] Section 40(1) of the Act states:

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.

- [12] Personal information is defined under section 2 of the Act as, "recorded information about an identifiable individual." After reviewing the redactions this Office is satisfied that the information would constitute personal information. Considering all relevant circumstances,

our assessment is that the disclosure of the withheld personal information would constitute an unreasonable invasion of personal privacy.

Section 37(1)(a)

[13] There are three important aspects to consider when applying section 37(1)(a) to responsive records. First, it is not a record-level exception - it can only be applied as part of a line-by-line review. 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.

[14] This Office has reviewed the redactions and can confirm that the information withheld under section 37(1)(a) was of a type that disclosure could reasonably be expected to threaten the safety or mental or physical health of a person other than 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 Royal Newfoundland Constabulary maintain its position and continue to withhold the information pursuant to sections 5(1)(m), 37(1)(a), and 40(1).

[16] 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.

[17] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of May 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador