OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-033

October 9, 2026

Department of Justice and Public Safety

Summary: The Complainant made a request under the **Access to Information and Protection of Privacy Act, 2015** to the Department of Justice and Public Safety for records related to the Conception Bay North Wildfires. JPS did not provide any records to the Complainant, stating the records were not in the Department's custody or control. The Complainant was not satisfied with this response and filed a complaint with this Office. The Commissioner concluded that the Department did not have custody or control of the requested records and recommended that JPS maintain its position.

Statutes Cited: Access to Information and Protection of Privacy Act, 2015, SNL 2015, c A-1.2, sections 5, 13 and 14.

Authorities Relied On: Bose v. Newfoundland and Labrador (Information and Privacy Commissioner), 2025 NLSC 18.

Other Resources: Order in Council Under the Executive Council Act, OC2026-042

BACKGROUND

[1] The Complainant made four access requests under the **Access to Information and Protection of Privacy Act, 2015** (the "**Act**") to the Department of Justice and Public Safety ("**JPS**"), seeking various records related to the Conception Bay North Wildfires.

[2] JPS responded that the requested records were not in its custody or control. The Complainant was not satisfied with that response and filed a complaint with this Office.

[3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY'S POSITION

[4] The Department states the requested records are not within its custody or control as the documents were transferred to the Department of Forestry, Agriculture and Lands ("**FAL**") when the Emergency Services Branch was moved from JPS to FAL via Order in Council OC2026-042 (the "**Order**").

COMPLAINANT'S POSITION

[5] The Complainant asserts "no one has ever produced the instrument that transferred the records - OC2026-042 moved a division, not records, and no schedule and no account of what JPS retained has ever been produced."

[6] The Complainant asserts the Department did not discharge its duty to assist in completing a reasonable search and should have transferred his access request to the other Department.

ISSUES

[7] The issues to be addressed in this report are:

1. Whether the requested records are in the custody or control of JPS,
2. Whether JPS met its duty to assist under section 13 of the Act by conducting a reasonable search for responsive records and declining to transfer the original request to FAL.

DECISION

Custody or Control

[8] Section 5 states. "This Act applies to all records in the custody of or under the control of a public body…".

[9] Order in Council OC2026-042, was the legal instrument used by the Government of Newfoundland and Labrador to reorganize the Emergency Services Branch, previously located within the Department of Justice and Public Safety. The Order states:

> Under the authority of sections 5 and 17 of the Executive Council Act and the Prerogative of the Crown, the Lieutenant-Governor in Council is pleased to restructure the Department of Forestry, Agriculture and Lands, effective February 20, 2026, to consist of all those functions formerly within the Department of Forestry, Agriculture and Lands and all those functions related to emergency services formerly within the Department of Justice and Public Safety, with five branches as follows:
>
> a) Agriculture and Food Security,
> b) Crown Lands,
> c) Dairy Industry,
> d) Emergency Services, and
> e) Forestry, Wildlife and Resource Enforcement.

[10] JPS provided the Complainant with an explanation and a link to this document in its response dated July 10th, 2026.

[11] The Order effectively transferred all of the functions of the Emergency Services Branch from JPS to FAL. As noted by the court in **Bose v. Newfoundland and Labrador (Information and Privacy Commissioner),** 2025 NLSC 18 at paragraph 72 "The terms "custody" and "control" are not defined in the *ATIPPA* and are fluid contextual concepts." Given their fluid and conceptual nature, it is reasonable to conclude that a transfer of "functions" includes a

transfer of custody and control. While JPS may have bare possession of some of the records pending completion of migration, it has no authority over their disclosure.

[12] JPS has not disputed that it may have access to records responsive to the request. However, following the transfer of responsibility, control of the records moved to FAL. As a result, while a search of email accounts or JPS HPRM (data management system) could potentially return references to or copies of the same records, such results would not alter the custody or control analysis. JPS established it has temporary possession of some records pending the complete migration. However, JPS does not control the records as the function and authority over those records has transferred to FAL.

Duty to Assist

[13] All public bodies have a duty to assist access applicants. Specifically, section 13(1) of the Act states:

> 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.

[14] An important aspect of a public body's duty to assist is to conduct a reasonable search for records responsive to an access request. As stated by this Office in previous reports, a reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. The standard is not perfection, but one of reasonableness.

[15] Upon receipt of the request, JPS consulted with relevant staff and executives to identify potential records, using a broad keyword search for the timeframe: March 1, 2025 – June 14, 2026, with a description of the areas and record types searched. JPS provided evidence that a reasonable search was conducted. To ensure completeness, JPS consulted again with subject matter experts and all JPS executives to confirm that no additional responsive records existed within the Department, beyond those awaiting transfer to FAL. JPS provided all communication with relevant parties, to support their search, and copies of correspondence to this Office for review.

[16] JPS did conduct a search to determine if it had any records responsive to the Complainant's request. It did not confine its response to simply stating that JPS did not have custody and control, rather it made an effort to determine if any additional records existed.

[17] Based on the Department's description of the search it conducted, we find that the Department conducted a reasonable search for records and that it has met its duty to assist under section 13 of the Act. Throughout this investigation the Complainant shared his concern with the lack of transfer of this JPS request to FAL. Section 14 of the Act states:

> 14. (1) The head of a public body **may**, upon notifying the applicant in writing, transfer a request to another public body not later than 5 business days after receiving it (emphasis my own)

[18] The Act is clear that the Department may transfer but it is not required for JPS to meet its obligations under the Act. Furthermore, transfer is not even an option for public bodies once 5 business days have passed.

[19] Section 13(1) states that a response to a request should be open, accurate, and complete. Rather than transfer the request, JPS directed the Complainant to FAL to obtain the records, which was an adequate response under the circumstances and in keeping with the duty to assist.

RECOMMENDATIONS

[20] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department of Justice and Public Safety maintain its position.

[21] 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.

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 9th day of October 2026.

Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador