



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report P-2020-003

December 14, 2020

Royal Newfoundland Constabulary

Summary: A Complainant filed a privacy complaint under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or “the Act”) with this Office alleging that the Royal Newfoundland Constabulary (“RNC”) had breached their privacy. The alleged breach was the distribution, via email, of a personnel order, regarding a disciplinary decision relating to the complainant, to an internal RNC listserv with over 500 recipients. The personnel order contained personal information of the Complainant, including name, police registration number, and the duration of suspension. The RNC claimed that it was entitled to use the information under sections 66(1)(a) and 66(1)(c) of the Act. The Commissioner concluded that there was no privacy breach, but recommended that the RNC clarify to its employees that this information is subject to disclosure in the future.

Statutes Cited: [Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, ss. 2(u), 66, 68(1)(r), 68(1)(t), 69.

[Royal Newfoundland Constabulary Act, 1992](#), SNL 1992, c R-17, ss. 6, 7, 8.

[Royal Newfoundland Constabulary Regulations](#), CNLR 802/96, ss. 7, 16.

[Provincial Offences Act, SNL 1995](#), c. P-31.1, ss. 3, 6.

[Criminal Code](#) RSC, 1985, c. C-46, s. 486.

I BACKGROUND

- [1] A Complainant filed a privacy complaint with this Office under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or “the Act”) alleging that the Royal Newfoundland Constabulary (“RNC”) had breached their privacy. The alleged breach was the distribution, via email, of a personnel order, regarding a disciplinary decision relating to the complainant, to a listserv entitled “All Staff Royal Newfoundland Constabulary”. This listserv had, at the time of the email, over 500 recipients. The personnel order contained personal information of the Complainant, including name, police registration number, and duration of suspension.
- [2] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 74(2) of *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

- [3] The RNC does not believe that the internal distribution of the personnel order was a breach of the Complainant’s privacy as the use of the information is permitted under *ATIPPA, 2015*, particularly sections 66(1)(a), 66(1)(c), 68(1)(r), and 68(1)(t).

III COMPLAINANT’S POSITION

- [4] The Complainant believes that as the personnel order contained their personal information and was distributed without their consent, it constitutes a privacy breach. The Complainant also indicates that this release is not consistent with RNC past practices regarding the release of information relating to disciplinary decisions.

IV DECISION

- [5] The information at issue is clearly the personal information of the complainant, because it is “recorded information about an identifiable individual” as defined in section 2(u) of *ATIPPA, 2015*. In order to determine if a privacy breach occurred in this matter, it must be

determined if this particular use of the information is authorized under *ATIPPA, 2015*. Use of personal information by a public body is governed by section 66 of the Act which states:

66. (1) *A public body may use personal information only*
- (a) *for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose as described in section 69;*
 - (b) *where the individual the information is about has identified the information and has consented to the use, in the manner set by the minister responsible for this Act; or*
 - (c) *for a purpose for which that information may be disclosed to that public body under sections 68 to 71.*

(2) *The use of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.*

[6] The RNC's justification for the use of the Officer's personal information in this matter falls under section 66(1)(a), which allows a public body to use personal information for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose as described in section 69; as well as section 66(1)(c), which permits use for a purpose for which that information may be disclosed to that public body under sections 68 to 71.

[7] As noted above, in order for section 66(1)(a) to apply, section 69 must be considered. This section states:

69. *A use of personal information is consistent under section 66 or 68 with the purposes for which the information was obtained or compiled where the use*

- (a) *has a reasonable and direct connection to that purpose; and*
- (b) *is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.*

[8] Therefore, the purpose of the release of the information is the key consideration in this analysis. The RNC has provided the following information on the purpose of internally releasing the information:

- a. Suspensions under the *Royal Newfoundland Constabulary Regulations*, have a particular and unique meaning as they come with a legal prohibition against the officer

exercising any powers or authorities of an officer while suspended. It is essential that all other officers and employees of the RNC are aware of this, particularly when the officer is a sergeant or higher rank and has other officers reporting to them as part of the command structure.

- b. RNC Officers are granted special protections under the law, which are suspended when they are subject to a suspension. An Officer who attempts to exercise their police powers while suspended is no longer protected from civil liability.
- c. An Officer who is subject to a suspension is not allowed access to RNC files. Therefore other staff and officers must be made aware that allowing access, or providing information to that officer during their suspension would be a breach in and of itself.
- d. An Officer who is suspended is also no longer permitted to issue orders to their subordinates while on suspension.

[9] Based on this, the RNC felt it was necessary to inform all RNC members and civilian employees of the Complainant's suspension. Officers and staff needed to be aware of the suspension in the event that the Complainant acted outside of their temporarily limited authority. Any exercise of suspended powers is a separate reportable offence and could lead to legal consequences for the officer, members of the public, other officers, and the RNC as a whole. The disclosure of the information (name, police number and duration of suspension) has a reasonable and direct connection to the purpose for which it was released and it was necessary for performing the RNC's statutory duties under the *Royal Newfoundland Constabulary Act, 1992*, particularly the administrative duties of the chief set out in section 6, the Constabulary's duties set out in section 7, and the Officers duties set out in section 8.

[10] There have been many decisions from Information and Privacy Commissioners and courts across the country relating to the release of disciplinary decisions relating to police officers. However, this particular situation is distinguishable from those decisions, as the information was used internally, did not contain any information on the nature of the offence or related evidence, nor did it contain any reasons for the decision. The information in this instance was used internally for the purpose of informing RNC staff that an officer, who was part of the

command structure, was suspended for a specific time period and, as such, was prohibited from exercising their usual functions and authority.

[11] The Complainant has also noted that when the RNC releases decisions related to police complaints the officer is only identified by their initials, while the Complainant's full name was included in the personnel order. This is not a valid argument, as the inclusion of just the Officer's initials would be insufficient to identify them for the purpose of ensuring that all staff and officers are aware of the suspension and related limited functions and authority.

[12] With respect to section 66(1)(c), the RNC relies on the permitted disclosures under section 68(1)(r) and section 68(1)(t) to permit the use of the Officer's personal information. According to section 68(1)(r) of *ATIPPA, 2015*:

68. (1) A public body may disclose personal information only

(r) in accordance with an Act of the province or Canada that authorizes or requires the disclosure;

[13] The legislative authority allowing for the disclosure of the information contained in the personnel order starts with the *Royal Newfoundland Constabulary Regulations*, as enacted under the *Royal Newfoundland Constabulary Act, 1992*, particularly sections 7(3) and 16(1):

7. (3) A police officer who fails to comply with or otherwise contravenes a provision of these regulations is guilty of an offence.

...

16. (1) A police officer who pleads guilty or is found guilty of an offence under these regulations is liable to one or more of the following penalties:

- (a) dismissal;*
- (b) a reduction in rank;*
- (c) suspension without pay for a period not exceeding 6 months; or*
- (d) reprimand.*

[14] Based on the interplay between the *Royal Newfoundland Constabulary Regulations* and the *Provincial Offences Act*, an internal disciplinary offence of an RNC officer constitutes an offence for the purposes of the *Provincial Offences Act* as the

Royal Newfoundland Constabulary Regulations carry the potential for an officer to face a penalty or other punishment.

3. *Subject to special provisions otherwise enacted, this Act applies to, and a judge may try in a summary manner without a jury,*

(a) *a case in which a person is charged with having committed an offence over which the Legislature has legislative authority and for which that person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;*

[15] Further, certain provisions of the *Criminal Code* of Canada apply to offences under the *Provincial Offences Act*:

6.(1) *Except where and to the extent that it is otherwise specifically enacted, the provisions of the Criminal Code respecting summary convictions and the proceedings relating to them apply, with the necessary changes, in respect of offences and orders and proceedings relating to the offences and orders made or to be made under this Act.*

(2) *Without restricting the generality of subsection (1), the provisions of sections 21 and 22 and Parts XVI, XVIII, XXII, XXIII, XXVI and XXVII and sections 463 to 465, 484 to 490, 492.1 and 492.2, 770 to 773 and 783 of the Criminal Code apply, with the necessary changes, to matters to which this Act apply.*

[16] Therefore our analysis must now move on to the *Criminal Code*, in particular, section 486(1), which states:

486 (1) *Any proceedings against an accused shall be held in open court, [...]*

[17] As a disciplinary decision against an RNC Officer falls under the *Provincial Offences Act*, and that Act has imported section 486 of the *Criminal Code*, then such a disciplinary decision is made in “open court” and would be part of the public record. Therefore any disclosure of the information would be authorized in accordance with an act of this province or of Canada as per s. 68(1)(r) of *ATIPPA, 2015*. As such, the RNC was authorized to use the personal information in this matter by virtue of the interplay between the *Royal Newfoundland Constabulary Regulations*, *Provincial Offences Act*, *Criminal Code*, and *ATIPPA, 2015*.

[18] The Complainant indicated that they did not believe that the hearing was held in accordance with the “open court” principal, as their friends and family were not permitted to

attend. The RNC noted that, since at least 2013, they have not received a request for any friends or family to attend a disciplinary hearing. The Complainant also noted that not all disciplinary personnel orders are distributed in this manner. The RNC confirmed that all decisions are either posted on their internal system or sent out via email. However, prior practices are not determinative of the issue in this case and the only issue to be addressed is whether the disclosure was made in accordance with an act of this province or Canada. As the discussion above sets out, the disclosure was made in accordance with acts of this province and Canada.


[19] As the use of the information is in accordance with section 66(1)(c) and 68(1)(r) it is not necessary to consider the application of section 66(1)(t).

V RECOMMENDATIONS

[20] I find that no breach of privacy has occurred. I recommend in accordance with section 76(2)(a) that the RNC amend its policies to clarify the extent to which information from disciplinary decisions will be distributed internally and also to communicate policies regarding the openness of hearings and the public availability of information relating to those hearings and resulting decisions. Any such policy changes should be communicated to all officers and RNC staff.

[21] As set out in section 78 of *ATIPPA, 2015*, the head of RNC 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 14th day of December 2020.


Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador