



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2022-032

December 21, 2022

Department of Fisheries, Forestry and Agriculture

Summary:

The Complainant made an access to information request to the Department of Fisheries, Forestry and Agriculture (FFA) for records related to Nine Island Pond, near the Town of Colliers. The Department responded to the request and provided responsive records. The Complainant alleged that the Department had failed to conduct a reasonable search for records and had not met its duty to assist pursuant to section 13. The Commissioner found that the Department had conducted a reasonable search for records and that no further action be taken.

Statutes Cited:

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

Authorities Relied On:

NL OIPC Report [A-2022-030](#).

BACKGROUND

- [1] The Complainant made an access to information request to the Department of Fisheries, Forestry and Agriculture (the “Department” or “FFA”) under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”). Following discussions between the Complainant and the Department to clarify and narrow the scope of the request, the wording was as follows:

All records from January 1, 2019 to present regarding: a. Nine Island Pond, Colliers, NL and [named individual]; and b. Nine Island Pond, Colliers, NL and Nine Island Pond Growers Inc. All records as stated above shall include but is not limited to all applications, leases, grants, and records of any kind (including meeting or telephone notes from FFA employees). In addition to the above, please include any records related to the May 30, 2019 forest fire at or near Nine Island Pond, Colliers, NL.

- [2] The Department provided records with its final response, however the Complainant was dissatisfied with the completeness of the search for records. The Complainant noted the absence of certain documents, such as information about soil samples and information about the forest fire referenced in the request.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [4] The Department’s position is that the search for records conducted was reasonable and that the Department met its obligations under section 13 of *ATIPPA, 2015*.
- [5] The Department submits that each division of FFA was searched for records, including the Agriculture Business Development Division, the Land Management Division, the Crown Lands Division, the Minister and Deputy Minister’s offices, the Forest Industry and Engineering Division, and the Forestry Regional Services Division. The managers or district officers of these divisions tasked staff with searching for responsive records. The located records were reviewed and passed on to the ATIPP Coordinator. In addition to email searches conducted by

individuals, multi-mailbox searches were conducted and the ATIPP Coordinator and Department staff searched departmental share drives, personal drives, hard copies, and its record management system.

[6] Prior to this Office notifying the Department of the within complaint, the Department determined that it was not itself satisfied with the records provided and proceeded to conduct an additional search of some of its divisions. During this secondary search, an additional 64 pages of records were located and provided to the Complainant. These records were largely about the forest fire the Complainant was interested in receiving information about.

[7] Additionally, late in this investigation, an additional two pages of records were discovered in the Department's paper files but have not yet been provided to the Complainant.

[8] Having conducted three searches for records, the Department's position is that it has fully complied with section 13 and the duty to assist.

COMPLAINANT'S POSITION

[9] The Complainant submits that there are, or should be, additional records related to the request. The Complainant denies that the Department has provided them with records related to the 2019 forest fire and alleges that the Department only searched its email records and, as such, did not conduct a reasonable search.

[10] Further, the Complainant alleges that they have received additional records related to soil samples through other access to information requests and states that these records were not contained within the records provided in response to the present request. On the basis that these records were not located, the Complainant believes that the Department has not conducted a reasonable search and wonders what other records may be missing.

DECISION

- [11] A public body's duty to conduct a reasonable search for records responsive to an access request is found in section 13 of *ATIPPA, 2015*, the relevant portion of which reads as follows:

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.

- [12] This Office has written several reports on the duty to assist and reasonable search, including, most recently, Report A-2022-030. While in that report the public body failed to provide sufficient details about its search, in the present complaint the Department has provided our Office with detailed accounts of not just one, but three searches for responsive records. The standard for a search in compliance with the duty to assist is reasonableness, not perfection. It is possible that a nonetheless reasonable search may not capture every record. This does not mean a reasonable search was not conducted. The Complainant, in particular, noted an absence of records related to a forest fire and the Department's second search returned substantial records related to that forest fire. Taken together, I find that the three searches conducted by the Department constitute a reasonable search for responsive records.

RECOMMENDATIONS

- [13] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Department of Fisheries, Forestry and Agriculture release to the Complainant the two pages of records located in its third search, subject to any exceptions to access.
- [14] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Fisheries, Forestry, and Agriculture 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.

[15] Dated at St. John's, in the Province of Newfoundland and Labrador, this 21st day of December, 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador