



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2023-019

April 14, 2023

Office of the Premier

Summary:

The Complainant made a request for all records from the Office of the Premier related to former Prime Minister of the United Kingdom Sir Tony Blair for the year prior to December 5, 2022. In response to this request, the Office of the Premier provided ten pages of records, consisting of several emails between Office of the Premier staff and employees of the Tony Blair Institute for Global Change between August and November of 2022. The Complainant questioned why there would be so few records of interactions between the Office of the Premier and Sir Tony Blair and his staff, given the latter had made a high-profile visit to the province on November 30, 2022 and met with the Premier and members of his cabinet. The Commissioner concluded that there was insufficient evidence that the Office of the Premier had carried out a reasonable search for responsive records and recommended that it conduct a new search.

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 Office of the Premier under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) on December 5, 2022 for:

. . .notes, memos, briefings and emails that mention Tony Blair going back a year

Following discussions with the Office of the Premier, the Complainant narrowed the request to records held by five named individuals within the Office of the Premier, including the Premier, his chief of staff, deputy chief of staff, director of policy, and a senior advisor.

- [2] During the period covered by the Complainant’s request – in fact, only five days prior, on November 30, 2022 – the former Prime Minister of the United Kingdom, Sir Tony Blair, had visited the province and met with the Premier and members of his cabinet.

- [3] In response to the access request, the Office of the Premier released ten pages of records to the Complainant, all emails, ranging from August 2022 to November 2022. The records can be summarized as follows:

- August 2022: email exchanges between the Office of the Premier and staff of the Tony Blair Institute for Global Change (“TBIGC”) starting August 22, 2022 about arranging, and participating in, a teleconference call involving the Premier.
- September 2022: staff from TBIGC contact the Office of the Premier about a meeting between the Premier and Sir Tony Blair in London on September 26, 2022. Staff at the Office of the Premier accept this meeting.
- October 2022: a single email about a conference call on October 26, 2022. Staff from the TBIGC allude to an upcoming meeting in St. John’s (rather than the above-mentioned meeting in London).
- November 2022 – a single email from an employee of the Office of the Premier providing their contact information to an employee of TBIGC.

- [4] Some information was redacted pursuant to section 40 (disclosure harmful to personal privacy), (personal information about TBIGC staff and non-government of Newfoundland and Labrador email addresses) and section 31(1)(l) (log-in details for various teleconferencing platforms) but are not at issue. The question of whether the Office of the Premier had conducted a reasonable search and provided all responsive records was not resolved informally and the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [5] The Office of the Premier advised in its initial submissions that the scope of its search for responsive records encompassed emails and electronic records in its records management system.
- [6] In later submissions, to explain the dearth of responsive records related to arranging a visit from a prominent former Prime Minister of the United Kingdom and founder of an active international non-governmental organization, the Office of the Premier further noted that, as the former UK Prime Minister is neither an employee of the Government of Newfoundland and Labrador nor a serving official meeting with the Government of Newfoundland and Labrador in an official capacity, most records related to meetings between him and the Premier were considered transitory, with the implication that those records have since been destroyed.

COMPLAINANT'S POSITION

- [7] The Complainant remains concerned that the Office of the Premier did not conduct a reasonable search for responsive records, noting that they expected that arranging a visit to this Province by Sir Tony Blair would involve more than ten pages of emails.

ISSUES

- [8] The sole issue is whether the Office of the Premier met its obligation under section 13 to conduct a reasonable search for records responsive to the request.

DECISION

- [9] As noted above, a request for records related to interactions between the Office of the Premier and former Prime Minister of the United Kingdom Sir Tony Blair over a one-year period – which culminated in a meeting between the Premier of this province and Sir Tony Blair – returned a mere ten pages of emails. The Complainant is skeptical that these records represent the sum total of all records responsive to their request. This Office also would have expected more than this small amount of records from such a meeting and for, in particular, a meeting note to exist.
- [10] Section 13 of *ATIPPA, 2015* imposes on public bodies a duty to assist access to information applicants. This duty includes a duty to conduct a reasonable search for responsive records. What constitutes a reasonable search has been the subject of several past reports from this Office, as well as a guidance document outlining the elements of a reasonable search and the questions this Office asks when investigating an access complaint and reviewing a search.
- [11] Our Report A-2022-030 notes in detail some of the potential locations where responsive records may be found, including staff offices containing written records; paper files; handwritten notes; black books; working folders and files; emails; electronic record management systems; texts and instant messages on smartphones; shared network folders. That report also dealt with a request for records related to a series of meetings but for which fewer records than would have been expected were located. Our recommendation in A-2022-030 was for the Department of Industry, Energy and Technology to search the offices of key individuals for records. In this instance, the request is clearly for “notes” and while a search for written records like black books or locations such as smartphones is not always required, this matter is similar to that in A-2022-030 and the search for responsive records should have encompassed such records or locations.
- [12] The Office of the Premier’s initial submissions in response to our investigation stated only that “A comprehensive search of emails and HPRM [government’s electronic record management system] was completed” and that the “ATIPP Coordinator, upon receipt of the

request, completed a search of emails via the Multi Mailbox program and HPRM". In these initial submissions, no mention is made of efforts to search for written notes or other paper records or records that may exist on smartphones or in other locations beyond email and HPRM. In later submissions made during the course of our investigation, after this Office specifically asked whether it had searched for notes and other paper records, the Office of the Premier advised that such a search had taken place.

[13] In explaining why only ten pages of emails were located, the Office of the Premier advised that throughout the process of arranging a meeting between the Premier of Newfoundland and Labrador and the former Prime Minister of the United Kingdom, all communications took place informally and the meeting itself was a casual affair. As such, the Office of the Premier considered any records to be transitory. Further, the Office of the Premier submits that as Sir Tony Blair is not a currently serving head of government, no government decisions were made during the various calls and the November visit, and Sir Tony Blair and the TBIGC did not receive public funds, then, furthermore, agendas, briefing notes and other records of the meetings were not made. The Office of the Premier advises that its search also included a search for any record received by the Office of the Premier related to the request and it advises that it did not receive records from other departments or branches of the Government of Newfoundland and Labrador. This would mean that, based on the Office of the Premier's submissions, other offices such as the Intergovernmental Affairs Secretariat or the Protocol Office under Cabinet Secretariat, were not involved in preparing background notes or other advice or arrangements related to a visit to this Province by the former Prime Minister of the United Kingdom.

[14] While the Office of the Premier takes the position that this meeting – and any planning for this meeting – took place informally, I must note that it very much appears the Premier met with Sir Tony Blair in his official capacity as Premier. While the Government of Newfoundland and Labrador did not issue a press release about the meeting, it was covered by the media. The meeting was also publicized through several of the Government of Newfoundland and Labrador's social media accounts including the official Twitter accounts for the Premier of Newfoundland and Labrador (@PremierNL) and for the Department of Municipal and Provincial Affairs (@MPA_GovNL). Much of the coverage of the meeting featured pictures of

the Premier and members of his cabinet with Sir Tony Blair and in some of these pictures documents were clearly present.

[15] With respect to the Office of the Premier's position that most records were transitory, I note that *ATIPPA, 2015* does not make any distinction between transitory and other responsive records. For reference, the *Management of Information Act* defines a transitory record as "... a government record of temporary usefulness in any format or medium having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record." While the *Management of Information Act* may provide for some records to be considered transitory and allow for their destruction, that is not the case here. Under *ATIPPA, 2015* any record which exists at the time that an access request is made, and which is related to the subject matter of the request, is responsive and ought to be preserved and provided to an applicant. This holds true even if the record might otherwise be considered transitory and a candidate for deletion. As noted above, the Applicant made this access to information request on December 5, 2022, only five days after Sir Tony Blair's visit. If any records ever existed about the visit, but were deemed transitory, that would mean they were destroyed within a matter of days after the visit.

[16] This Office has commented in the past about the duty to document – an obligation for public bodies that does not yet exist in legislation in this province. While the Office of the Premier may not have been specifically required to create records, it is concerning that the Premier and members of his Cabinet, acting in their official capacity, would meet with a prominent former world leader and either make a conscious decision to not document those interactions or declare that almost all records that do exist are merely transitory. In any case, whether or not the Office of the Premier was obliged to document its activities, I conclude that its search for records, notwithstanding its latter claim to have searched for paper records, to fall short of the standard of reasonableness.

RECOMMENDATIONS

[17] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Office of the Premier conduct a new search for responsive records within 10 business days of providing its

response to this Report. This new search should specifically direct the five individuals named in the request to conduct a search of their written records; paper files; handwritten notes; black books; working folders and files; and texts and instant messages on smartphones relating to the subject matter of the request. Following this search, the Office of the Premier will provide this Office with a description of the search undertaken and document the responses from the five individuals as well as provide an update to the Complainant.

[18] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Office of the Premier 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.

[19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14th day of April, 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador