



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2014-007

April 29, 2014

### Department of Tourism, Culture and Recreation

**Summary:**

The Applicant made two access requests to the Department of Tourism, Culture and Recreation (the “Department”) under the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) for access to records relating to big game hunting activities in three specific areas of Labrador and the 2004 tender and/or sale of three hunting and fishing lodges, including the disposition of any non-resident big game licenses connected to any of these lodges. The Department released the responsive records to the Applicant in part with portions severed in accordance with several exceptions under the *ATIPPA*. The Applicant filed one Request for Review with this Office (regarding both access requests) in which the main issue was not the redactions but instead the adequacy of the search. In his Report, the Commissioner found that the Department had complied with the duty to assist pursuant to section 9 of the *ATIPPA* by performing a reasonable search for the responsive records and responding to the access request in an open, accurate and complete manner. The Commissioner made no recommendations.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c.A-1.1, as amended, s. 9.

**Authorities Cited:**

Newfoundland and Labrador OIPC Report A-2009-011.

## I BACKGROUND

- [1] Pursuant to the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) the Applicant submitted two access to information requests on November 22, 2012 to the Department of Tourism, Culture and Recreation (the “Department”). The first request (TCR5/2012) sought disclosure of records as follows:

*Any and all records/reports/correspondence/e-mails/internal memos and/or notes as contained in the files of the NL government with respect to the monitoring of, and/or the reporting of, Big Game hunting activities in areas known as Crystal Lake (CL 115451); Andre Lake (CL115467) and/or Seal Lake (CL73158), Labrador, during the months of August, September and October 2009. Information to include, but shall not be limited to, any and all correspondences of any type, with respect to the issuance on Non-Resident Big Game licences in connection with any of the above noted locations, from the Government Service Centre, and/or any and all correspondences in connection to Big Game hunting activities at any of the above locations, between the Dept. of TCR, and/or Dept. of Natural Resources, and/or the NL Wildlife Division.*

- [2] The second request (TCR6/2012) sought disclosure of records as follows:

*Any and All information contained in the files of the NL government with respect to the 2004 Tender and/or sale of Hunting and Fishing Lodges located in Labrador, and known as SEAL LAKE (CL73158); ANDRE LAKE (CL115467) and CRYSTAL LAKE (CL115451; (the “Assets”). Said Tender was distributed by Deloitte & Touche Inc., St. John’s, NL, in its capacity as Trustee in Bankruptcy, of the Estate of [named individual], with a Tender close date of November 3, 2004. In particular, information to include, but not be limited to, the disposition as to any Non-Resident Big Game licences connected to either of the above noted locations, at the time of the sale and/or closing date.*

*Any and All information contained in the files of the NL government with respect to any Cabinet submissions presented and/or awarded, on any of the above noted locations, following the sale and/or closing date as described above, for the purpose of obtaining Non-Resident Big Game Licences and/or Tourist Establishments License (s). Any and all information with respect to the current status of the above noted location, in particular, but not limited to, any Big Game Allocation (s) that currently exist on any of the above noted.*

- [3] The Department confirmed receipt of these requests on November 22, 2012. On December 5, 2012 the Department provided the Applicant with fee estimates in relation to both access requests. Fifty percent deposits were paid on both by the Applicant.

[4] On January 3, 2013, the Department extended the time for responding to the first request in accordance with section 16 of the *ATIPPA*. On January 4, 2013, the Department notified the Applicant that the second request may contain information that, if disclosed, might affect business interests of a third party and that notice had been sent to the third party, as required under section 28 of the *ATIPPA*.

[5] On April 18, 2013 the Department waived the fees previously estimated and provided a refund of the deposit paid by the Applicant due to the delay in processing the requests. In that same correspondence the Department released the records, in redacted form, to the Applicant. The Department severed information under section 20 (policy advice and recommendations) and section 30 (personal information) on the first request and section 20 (policy advice and recommendations), section 21 (legal advice), section 27 (disclosure harmful to business interests of a third party) and section 30 (personal information) on the second request.

[6] On April 19, 2013 this Office received a Request for Review from the Applicant as follows:

- *I wish to have the redacted portions of the information supplied reviewed by your office, as I feel this is pertinent to the original request.*
- *As per the original cost estimates provided, it was indicated that there was a total of 225 pages, yet less than half that amount is contained in the package provided. Also, some pages are completely blank, while other correspondences have been included several times over.*
- *The TCR06/2012 request specifically requests information on the Tender and/or sale of the hunting lodges. While some information has been provided in this respect, there is no reference at all to the actual Tender, the responses to the Tender, and the ultimate selection of the successful Purchaser. Furthermore, there is very limited information with respect to the disposition of any Big Game License Allocation (s) connected with the sale.*
- *The TCR05/2012 specifically requests “any and all correspondences of any type, with respect to the issuance of Non-Resident Big Game licenses” in 2009, and in connection with the named locations. There is no information concerning that, however, there were in fact Big Game licenses issued by the Government Service Centre in 2009 under the Seal Lake location, and I wish to be provided the details of how this order was processed and the licenses made available. Furthermore, it was requested that “any and all correspondences in connection to Big Game hunting activities” between TCR and/or DNR and/or the Wildlife Division be provided. While there is limited information in this respect, it only contains correspondences which took place at the end of September 2009. I am confident there should be more info relating to this request, prior to the end of September, that has not been supplied.*

[7] During the informal resolution process, an analyst from this Office had discussions with the Department and some of the redacted information was released to the Applicant on July 11, 2013.

The Applicant however felt that there were responsive records still not provided, in particular the documents surrounding the tender itself.

- [8] An analyst from this Office continued informal discussions with the Department to ensure that all information to which the Applicant was entitled in accordance with the ATIPPA had been released. As a result of this process this Office was satisfied that the remaining redactions were legitimate. Unfortunately, the issue of the completeness of the records provided could not be resolved informally and by correspondence dated December 16, 2013 the Applicant and the Department were advised that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the ATIPPA. As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47. Formal submissions were received from both parties.

## II THE APPLICANT'S SUBMISSION

- [9] On February 5, 2014 the Applicant made the following formal submission:

*In order to eliminate confusion as to specific types of "licenses" that are referred to, I will clarify the following:*

*An "**Outfitter License**" allows a Tourist Operator to gain access to "Big Game Licenses". This is typically referred to as an "**Allocation**". In this instance, the Tourist Operator known as [a named individual] had an Allocation of 300 caribou licenses.*

*The "**Big Game Licenses**" are issued by the Wildlife Dept., and distributed to the Tourism Operators through the Government Service Centre, with the approval of Dept. of TCR. I will refer to those as "**Hunting Licenses**".*

*In order to gain approval for the release of the Hunting Licenses, a Tourist Operator must have a "**Tourist Establishment License**". In this instance the Hunting/Fishing Lodges that were sold through the bankruptcy process held a Tourist Establishment Licenses on the Seal Lake Lodge, and the other two lodges were known as "spike camps" operating under the Seal Lake **Establishment License**.*

*The initial request was for information surrounding the Tender and Sale of these lodges, through Deloitte & Touche. The responsive package did not include any information with regards to the Tender, other than documents indicating that "camp inspections" were carried out on the lodges. It*

would be reasonable to assume that a copy of the Tender itself, along with any responses to it, would be included.

The Dept. of TCR is clearly listed as a “Creditor” in the bankruptcy proceedings, yet they deny to have had any involvement in the Tender and Sale, and claim to have no information in this regard. It is my understanding that any and all Creditors are fully apprised of the proceedings in a bankruptcy matter, and in fact, participate in the process, especially when assets are being disposed of. In this instance, the Hunting/Fishing lodges were valued at \$700,000.00, as per the “Statement of Affairs”. It would be a reasonable expectation that all Creditors would have an interest in the sale of the assets, especially if there is an opportunity to recoup all, or a portion of, their outstanding debt. In this instance, the Dept. of TCR maintains they know nothing of the Tender/Sale; that listing them as a Creditor was a “misunderstanding” and that there was no attempt whatsoever to recoup any loss of taxpayer money through the sale of the lodges. If this is truly the case, the Dept. should provide written confirmation to that effect.

Aside from the financial aspect of the bankruptcy, there is the question of the “Outfitter License” or Big Game Allocation as outlined above, as well as the Tourist Establishment License which were connected to the lodges. Following the sale of the lodges through the Tender process, the Dept. of TCR approved the transfer of the Big Game Allocation to the new owner. They further approved the transfer of the Tourist Establishment License to the new owner. Neither of these “licenses” automatically came with the purchase of the lodges, they had to be specifically approved by TCR, following the sale.

As you can see, there is quite a large gap here in information. It does not seem plausible that the Dept. has no knowledge of the Tender / no knowledge of the sale of assets / no knowledge of how they came to be listed as a Creditor / no knowledge of the bankruptcy proceedings / no knowledge as to how much money was realized by the sale of assets and no knowledge as to how any proceeds were disbursed. Yet, the Dept. remains at the centre of it all. Without the Big Game Allocation approved by TCR, and a Tourist Establishment License approved by TCR, one cannot obtain the “Hunting Licenses” issued by Wildlife. So this places TCR at the very front and center of the whole scenario, as the use of the lodges would be very restricted without the appropriate “licenses” attached. In view of these facts, it does not seem possible that they simply approved these license transfers without question or concern, or without any background information on the former license holder. I firmly believe the Dept. was very familiar with the former license holder, and very familiar with all the circumstances involved. For this reason I have requested that your office review the file.

- [10] The Applicant also provided a formal submission on the other request for review but the issues raised had been resolved in the informal resolution process.

### III THE DEPARTMENT’S SUBMISSION

- [11] On December 23, 2013 the Department made the following submission:

*Although the applicant believes the Department has more information than it is releasing, specifically tender and bankruptcy information, the Department maintains that there are no further documents surrounding the Tender or bankruptcy in the Department of Tourism, Culture and Recreation's files. The ATIPPA Coordinator, [named employee], has had discussions on several occasions with the officer responsible for the file, as well as that employee's director, and has confirmed that the company did not owe any money directly to the Department of Tourism, Culture and Recreation. The Department acknowledges that it is listed in the tender document; however, that reference is strictly in error. To the best of this department's knowledge, funds were owed to Crown Lands and/or Wildlife. If these were repaid, it would have been through the Newfoundland and Labrador Exchequer. The Department of Tourism, Culture and Recreation's only involvement would consist of holding license approvals if an operator had an outstanding balance owed to the Exchequer. The Department was not advised the balance was cleared and the hold was never released for this operator.*

*The only documentation on file within the Department of Tourism, Culture and Recreation's files concerning the Tender is the Agreement of Sale, which was included in TCR 6-2012, pages 35-38. The actual tender would have been a personal matter and was not handled in any way by the Department. There is no further documentation within the Department of Tourism, Culture and Recreation's files. This has been confirmed by the officer responsible for the file, as well as the ATIPP coordinator through a complete review of that officer's files. As noted, any documentation surrounding debt owed to Government would likely be held in the files of Wildlife, Crown Lands or the Newfoundland and Labrador Exchequer, if it exists at all. The Department of Tourism, Culture and Recreation also notes that in the initial stages of processing this request, then-Acting Coordinator, [named employee], confirmed with the applicant that we would only be providing those records in the files of the Department of Tourism, Culture and Recreation. Any records in the files of other government departments would not be included.*

[12] Further, the Applicant had asked:

*As there is no 'outfitter allocation' included in the sale of the camps, how, or through what process, did the recipient obtain the 'outfitter allocation' of the bankrupt company, and was any monies and/or compensation of any kind realized from the transfer of allocation to a new company?*

The Department provided the following clarifying comments:

*Contrary to the applicant's understanding, the "outfitter allocation" went with the camp when sold.*

...

*The new owner would have had to meet all regulatory requirements, including Crown Lands Fees and ensuring any outstanding monies were paid to the NL exchequer. At that point, the allocation would be released through the Government Services Centre in Happy Valley-Goose Bay (Wildlife Office). TCR would receive a phone call that all was in place, and then would release the Tourist Establishment License. The Government Services Centre would release the tags.*

## IV DISCUSSION

[13] Section 9 of the *ATIPPA* reads as follows:

*9. 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] The duty to assist has been discussed in a number of Reports from this Office. In Report A-2009-011, the Commissioner summarized the content of the duty to assist as follows:

*The duty to assist, then, may be understood as having three separate components. First, the public body must assist an applicant in the early stages of making a request. Second, it must conduct a reasonable search for the requested records. Third, it must respond to the applicant in an open, accurate and complete manner.*

[15] In this Request for Review, the Applicant believes the Department must have more records surrounding the tender. In Report 2006-009, my predecessor discussed the onus on an applicant when asserting that a public body is refusing to acknowledge the existence of responsive records or refusing to conduct a reasonable search:

*[17] In this case, the Department is asserting that the record being sought simply does not exist. It is important to note that when an Applicant, in a Request for Review, takes the position that a public body is intentionally withholding a record or has not undertaken an adequate search for a record, there is some onus on the Applicant to present a reasonable basis for that position. As I noted in my Reports 2005-003 and 2006-006, adequacy of search with regard to access to information requests has been dealt with by other jurisdictions in Canada. In Ontario Order M-909, the Inquiry Officer commented that:*

*Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding such records may, in fact, exist.*

...

*[18] I noted in my Report 2005-006 that "the Inquiry Office in Order M-909 also states that record searches 'must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.'" I accept that this was the case in this instance.*

[16] In this case, the Department performed a complete review of the files of the officer responsible and has indicated what other Government sources would likely have the records surrounding the tender. I accept that the Department did undertake a reasonable search for the responsive records,

and that no records were found. I accept the explanation offered by the Department for why no other records exist within their custody or control.

[17] In coming to this conclusion, I have also carefully considered the arguments put forth by the Applicant. The Applicant is of the opinion that that the Department should have records pertaining to the tender. In my view, the Department has provided this Office with a satisfactory explanation as to why they do not have any more records than those provided.

## V CONCLUSION

[18] I have concluded that the Department has conducted a reasonable and thorough search for all records which could reasonably be deemed responsive to this access request. Furthermore, the Department has given the Applicant suggestions of other Departments or Offices that may in fact have the records that the Applicant is seeking. Therefore I conclude that the Department has met its duty to assist the Applicant, as required by section 9 of the *ATIPPA*.

## VI RECOMMENDATIONS

[19] In view of the conclusions I have reached above, there is no need for me to make any recommendations to the Department under section 49(1)(a) of the *ATIPPA*.

[20] Although I have made no recommendations, under the authority of section 50 of the *ATIPPA*, I direct the head of the Department to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the Department with respect to this Report.

[21] In addition, in accordance with subsection 49(2) of the *ATIPPA*, I hereby notify the Applicant of the right to appeal the decision of the Department to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60. The Applicant must file any appeal within 30 days after receiving a decision of the Department referenced above.



[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of April 2014.

E. P. Ring  
Information and Privacy Commissioner  
Newfoundland and Labrador

