

**NEWFOUNDLAND AND LABRADOR**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**REPORT 2006-009**

**Department of Government Services**

**Summary:**

The Applicant applied to the Department of Government Services (the “Department”) for access to an electrical permit and related information regarding a building owned by another individual. The Department advised the Applicant that no such record exists. Efforts to resolve this matter informally were not successful, and the Applicant requested that the Commissioner review this matter. The Applicant was of the opinion that the permit and related information must be in the custody of the Department, but gave no evidence of this other than that he had recently seen lights on in the building. The Commissioner observed that the Department had in fact determined that no permit had been granted to the individual, and the Department had therefore taken the significant step of ordering the property owner to disconnect the power to the building. The Commissioner found that this was acceptable evidence to support the Department’s position that no electrical permit exists for that building. The Commissioner also indicated that if the Applicant has recently seen lights on in the building in question, this is a matter for enforcement by the Department or other agencies as appropriate, not an issue to be pursued under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”). The Commissioner issued one recommendation in relation to the Department’s failure to respond to the Applicant within the 30 day time limit as prescribed by Section 11 of the ATIPPA.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A-1.1, as am, ss. 3, 9,11, 49(1), 50 and 60.

**Authorities Cited:**

Newfoundland and Labrador OIPC Reports 2005-003, 2006-006; Ontario OIPC Order M-909.

## I BACKGROUND

- [1] On 29 August 2005 the Applicant submitted the following request under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) to the Department of Government Services (the “Department”):

*[Individual’s] garage application number [#]. When was the electrical permit issued for that garage, and the connection authorization approved month, day, year. The name of the person who done the electrical wiring in that garage, and the name of the person who issued the permit, and the name of the person who approved it for my record, and a copy of the permit as evidence in a court of law under subsection 37(1) and (2), and subsection 38, Crown Lands Act [sic].*

- [2] In a letter to the Applicant dated 4 October 2005, the Department acknowledged receipt of a number of access requests from the Applicant, including this particular request. The Department then issued a further letter dated 14 November 2005 in which it responded to the Applicant’s request. In this letter, the Department refers to previous correspondence sent to the Applicant, taking the position that the Applicant’s request has already been addressed in that series of correspondence.

- [3] The Applicant then forwarded a Request for Review to this Office, received on 17 January 2006. In it, the Applicant further elaborated on his original access request as follows:

*[Individual] of [location] built a illegal building on crown land application number [...]. It was supposed to be a carpenter shop then he wanted to build a confectionary store, and then a garage which he built and six year lease was up on the crown land and suppose to go back to the crown under crown lands act. Did [individual] put electrical wiring in that illegal garage and the year, month, day it was done. Mr. [government official] is supposed to be the electrical inspector why doesn’t he lay charges under the electrical regulations [sic].*

The Applicant included with his Request for Review some additional comments expressing his opinion about the process for issuing an electrical permit. The Applicant felt in this case that the individual owning the building in question should face penalties for allegedly obtaining an illegal electrical connection. The Applicant also indicated in his Request for Review that he wanted me to review an alleged failure of the Department’s duty to assist applicants.

[4] Attempts to resolve this Request for Review by informal means were not successful. On 6 February 2006 the Applicant and the Department were notified that the file had been referred to the formal investigation process. It should be noted that this Office is issuing three Reports simultaneously in relation to similar types of requests from the same Applicant (see Reports 2006-007 and 2006-008).

## II PUBLIC BODY'S SUBMISSION

[5] The Department provided a formal submission dated 10 February 2006 in which it briefly addresses this matter as well as two other Requests for Review relating to similar requests for information from the same Applicant. The Department advises in its submission that the Applicant was not denied access to any information he requested, but that this information was simply not available. The Department also forwarded to this Office copies of correspondence which further details the process followed in responding to the Applicant's request.

[6] In a letter dated 4 October 2005, the Department acknowledged receipt of this particular request from the Applicant, along with acknowledgement of a number of different requests received from the Applicant during the same period. The Department advised the Applicant that it intended to extend the 30 day time period for a response as per section 16(1)(a), and that it would respond by 17 November 2005. The Department stated in the letter that "the reason for this extension of time is to allow us to obtain additional information in order to properly identify the records you are requesting." The Department then issued a further letter dated 14 November 2005 in which it responds to 18 different requests from this particular Applicant, including the request which is the focus of this Report. In this letter, the Department refers to previous correspondence sent to the Applicant on 20 January 2005, 8 July 2005 and 13 May 2005. The Department takes the position that the Applicant's request has already been addressed in that series of correspondence.

[7] The Department's letter groups together this request and two other similar ones relating to electrical permits, and advises the Applicant that "these requests were previously acknowledged

in responses to you dated May 13 and July 8, respectively. Also attached is a copy of a letter from [Deputy Minister] dated January 20, 2005.” The two letters from May and July were signed by an Electrical Inspector, employed by the Department, in response to “allegations” and a “complaint” by the Applicant, as opposed to a request under the *ATIPPA*. The letter dated 13 May 2005 is unrelated to the substance of this Report, but the letter dated 8 July 2005 advises that “the undersigned has responsibility only for electrical matters,” and the Applicant’s allegations of violations under various pieces of legislation “has been forwarded to the Province’s Department of Justice for its review and opinion.”

- [8] The letter from the Deputy Minister of the Department to the Applicant dated 20 January 2005, acknowledges receipt of a letter from the Applicant dated 14 December 2004 to an official of the Department who is responsible for electrical inspections. The Deputy Minister notes that the Applicant “requested, under the province’s Freedom of Information Act, a copy of the permit issued to Mr. [individual] of [location] to install electrical wiring in his garage.” The Deputy Minister advises that the proper permits and authorization were not in place in relation to the individual and the property which was the subject of the Applicant’s request, and as a result,

*[Individual] was directed, in writing, to disconnect the electrical power to his garage until such time that all electrical work is completed by a qualified Electrical Contractor. This department is satisfied that [individual] has complied with this request.*

The Department also provided to this Office a copy of a letter dated 18 November 2004 from its Electrical Inspector in relation to the property and individual referenced in the Applicant’s request, specifying that the individual must disconnect the power from his garage and take other related action.

- [9] On 30 January 2006 the Department issued a letter to the Applicant in which it indicated in reference to the Applicant’s request that:

*There were no electrical permits issued to [individual]. He was told to disconnect the power in his garage November 2004 and to the best of our knowledge, has complied with that directive.*

[10] On 25 April 2006 the Department issued a further letter to this Office on the specific measures undertaken to assist the Applicant and to locate the requested records. Subsequent to sending out the aforementioned letter of 4 October 2005, the Department initiated a meeting with the Applicant. The Department states that it had received eleven separate requests for information from this Applicant between 29 August and 13 September 2005, and “these requests often contained several requests relative to one or more departments.” The Department noted that the number and nature of the requests made it difficult to determine the specific information sought. The Department says in relation to that meeting that:

*On October 19, 2005 the coordinator met with the appellant for about two hours to try and determine what the exact nature of his requests were and to offer him some verbal responses on the information that had been collected to date. It was quickly apparent that this session did not meet the expectations of the appellant.*

[11] The Department, in its letter to this Office of 25 April 2006, says that “to investigate these requests, telephone calls and faxes were made and sent to GSC Managers of Operations, [name], St. John’s, and [name], Harbour Grace.” The Department further states that this particular request was determined to be repetitive, the matter having been addressed in previous correspondence to the Applicant.

### **III APPLICANT’S SUBMISSION**

[12] On 16 February 2006 the Applicant forwarded a submission to this Office in which he outlined his position regarding the requested material. The Applicant goes to great pains in his submission to make the point that he sometimes sees a light on in the individual’s garage, and over the garage door, so therefore in his opinion the Department must have issued a permit to the individual. He then quotes legislation and regulations in relation to the installation of electrical wiring which stipulate the various requirements and permits for doing so. He also proposes that various individuals should be charged with an offence under the provisions of those acts and regulations.

[13] A further submission from the Applicant dated 22 March 2006 was also received by this Office, in which he repeats similar arguments, stating in relation to the garage in question that “electrical wiring should never be put into that building.” He also points out what he believes to be various violations of agreements between the individual who owns the garage and Crown Lands authorities.

#### IV DISCUSSION

[14] I should begin by summarizing what I believe to be the facts of this particular case. Clearly, the Applicant has an issue with a particular individual and whether this individual has had an electrical connection installed in his garage without a permit. The Applicant pursued this with the Department, who has authority over electrical permits, and the Department clearly stated to the Applicant in correspondence from the Deputy Minister that the Applicant’s complaint was well-founded, based on the fact that no permit or authorization for the electrical connection existed in the Department’s files. As a result, the Department took the very significant step of ordering the individual to disconnect the power until such time as the individual could bring in a qualified electrical contractor to re-install the service. This, to me, is very clear evidence that the Department does not have the record requested by the Applicant. I believe that the Department would not have taken the serious step of ordering the electrical service to the garage to be disconnected if there was any chance that it was in possession of paperwork permitting and authorizing such a service.

[15] In discussing this particular matter, it is important to reflect on the purpose of the *ATIPPA* as outlined in section 3(1):

*3.(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by*

*(a) giving the public a right of access to records;*

*(b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;*

*(c) specifying limited exceptions to the right of access;*

*(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and*

*(e) providing for an independent review of decisions made by public bodies under this Act.*

[16] In his correspondence to the Department and to this Office, this Applicant has continually confused the concept of access to information as described in section 3(1)(a) with other issues. I must make it clear that the Applicant's arguments about whether an individual has or has not contravened the *Crown Lands Act* or any electrical regulations established in law is completely irrelevant to this Report. These are not issues which can be dealt with by this Office or by using the provisions of the *ATIPPA*.

[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 that such records may, in fact, exist.*

In my opinion, the Applicant has not provided a reasonable basis to conclude that records relating to this electrical permit exist.

[18] I noted in my Report 2005-006 that "the Inquiry Officer in Order M-909 also states that records 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.

[19] In addition to the main thrust of his Request for Review, the Applicant also requested me to determine whether the Department had failed in its duty to assist applicants. The duty to assist is set out in section 9 of the *ATIPPA* 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.*

[20] With the exception of one issue, I believe the Department fully and properly carried out its duty to assist the Applicant in this matter. Although the Applicant never referenced the timeliness of the Department's response in his Request for Review, the one notable failure here is the fact that the Department took 36 days to issue its initial response to the Applicant. Section 11 of the *ATIPPA* requires that a public body must respond to an Applicant within 30 days. This is not an acceptable time frame, regardless of the many requests received from the Applicant in a short period of time

## **V CONCLUSION**

[21] If the individual who owns the garage has reconnected the power to his garage without a permit, or has done other things which contravene other pieces of legislation, the Applicant has the right to continue to pursue those matters in other venues which are appropriate to those activities, whether through the courts or through other statutory bodies established by government. Clearly, however, the Department was sufficiently satisfied that no record of a permit exists, to the extent that it issued the letter of 18 November 2004 to the individual owning the garage, requiring him to disconnect the power. I do not think that this was a step which could have been taken lightly by the Department, and I am satisfied that this step in and of itself is reasonable evidence that a sufficient search was undertaken for the records in question, and I accept the Department's position that such records do not exist.



## VI RECOMMENDATION

- [22] I find that the case of the Applicant is not well founded with respect to the records described above and I therefore issue no recommendation with respect to the requested records. With respect to the Department's delay in responding to the Applicant's request, I hereby recommend under authority of Section 49(1) of the *ATIPPA* that the Department review its procedures for responding to access requests in order to ensure that it is in a position to comply with its obligations under section 11 of the *ATIPPA*.
- [23] Under authority of section 50 I direct the head of the Department of Government Services to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the Department's final decision with respect to this Report.
- [24] Please note that within 30 days of receiving a decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court Trial Division in accordance with section 60 of the *ATIPPA*.
- [25] Dated at St. John's, in the Province of Newfoundland and Labrador, this 9<sup>th</sup> day of May, 2006.

Philip Wall  
Information and Privacy Commissioner  
Newfoundland and Labrador