



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2012-004**

**February 23, 2012**

## **Department of Environment and Conservation**

**Summary:**

The Applicant applied under the *Access to Information and Protection of Privacy Act* to the Department of Environment and Conservation for access to certain information about Crown land usage and other matters. The Department granted the request in part, disclosed a number of records and stated that no records could be found in relation to some of the Applicant's questions. The Applicant filed a Request for Review citing a failure by the Department to fulfill the duty to assist the Applicant under section 9 of the *ATIPPA*. The Assistant Commissioner concluded that the Department had conducted a thorough search, had given the Applicant all of the records in its possession responsive to his requests, and had given a reasonable explanation why there were no more records. The Assistant Commissioner therefore concluded that the Department had not failed in its duty to assist the Applicant.

**Statutes Cited:** *Access to Information and Protection of Privacy Act*, SNL 2002, c. A-1.1, as amended, ss. 2(q), 3, 9, 57.

**Authorities Cited:** Newfoundland and Labrador OIPC Reports A-2009-011, A-2011-015.

## I BACKGROUND

- [1] On February 26, 2010 the Applicant made a request for access to information under the *Access to Information and Protection of Privacy Act* (“ATIPPA” or “the Act”) to the Department of Environment and Conservation (“the Department”) which reads as follows:

*“(1) [Grant #] application for crown land site in Brigus Junction by [named individual “A”] dated May 4<sup>th</sup>, 1990 build a confectionary store within 3 year’s, and the year 2000 build a private garage. Access to all rent receipt’s plus grant receipt for \$3600.00 for this illegal building. (2) [Grant #] [named individual “B”] of Brigus Junction access to ALL rent receipt’s for that private land. (3) [Grant #] [named individual “B”] and [named individual “C”]. Copy of application for change of name from [full name of named individual “B”] to [shortened version of named individual “B”] and reason why. Copy of ALL rent receipt’s from 1990 to 2006 plus grant receipt(s) for \$5300.00, and the reason and year, month, day it was law market value price is next to grant amount, and do it apply to illegal building’s on crown land and private land. Copie’s of ALL the Applicant’s request’s made since ATIPPA (Act) was law, and ALL response’s send to the Applicant, and the number of request’s made by the applicant up to the year 2010. Copy of notice’s send to Application #’s [Four Grant #’s] in Brigus Junction or are they all legal building’s. Copy of Minister’s decision about scrap metal area in Bay Bulls for car wrecks if any decision was made. Access to the policy who’s involved, and who make’s the decision to release record’s or not to the applicant on an request.”*

- [2] The Department responded to the Applicant’s request by sending him an estimate of the fee he would be required to pay for processing his request. Because the Applicant had asked for copies of all of his own previous access requests, which at that time numbered over 60, and all of the material that had been provided to him in response to those previous requests, the amount of work required to search out and reproduce those records resulted in an original fee estimate of more than \$1,000.00. That fee estimate was the subject of a fee complaint to this Office by the Applicant, which was resolved in April 2010 when the Applicant agreed to withdraw his request for copies of all of the responses to his access requests and to pay a reduced fee of \$125.00 for the balance of the requested records.

- [3] On June 11, 2010 the Department wrote to the Applicant stating that his access request had been granted in part, and enclosed a package of records. In addition, the Department broke the Applicant’s request down into seven separate items, and addressed each item with an explanation of its response and, in some cases, additional information.

- [4] On June 22, 2010 this Office received a Request for Review from the Applicant, which in the section of the Request for Review form entitled: “Provide the Specifics of your Request/Complaint Here” reads as follows:

*“Act and a deliberate attempt and failure to fulfill the duty to assist the applicant under section 9 in the Act on application’s numbers [Grant #’s] [named individual]’s Land Applicant Got evidence to support it and [Grant #], (1) a copy of Receipt’s Lease/Grant’s (2) copy change of name [full name of named individual “B”] to [shortened version of named individual “B”] because new application could not be done out. (3) copy of all rent receipt’s 1990 to 2006 plus Grant receipt \$5,300.00, y/m/d it was law market value price (important) did it apply to illegal building’s on crown land and private Land. (4) 12 request’s, 8 Gov. Services, 2 transportation, 1 Finance, 1 Municipal Affairs.”*

- [5] In the section of the Request for Review form entitled: “What Request/Remedy are you Seeking?” the request reads as follows:

*“Remedy I am seeking is the \$125 fee too much because [Deputy Minister] mislead the Applicant #5 if no notice’s are send to #’s [Grant #’s] answer the question are they ALL buildings., And why did [Deputy Minister] Block out a Request made by Applicant to Government Service’s when he send applicant a copy because section 30 in the Act don’t apply if the request belong to the applicant not [Deputy Minister], And what about the applicant’s right’s do he have any. (6) Why can’t applicant get answer Bay Bull’s start scrap metal yard or not. (7) Policy to release Record’s to the Applicant who is the judge and jury.”*

- [6] During the informal resolution stage of the investigation, an investigator from this Office had a number of discussions with the Access and Privacy Coordinator for the Department, and reviewed the written response to the Request for Review that had been provided by the Department. On September 8, 2010 the investigator wrote to the Applicant summarizing his conclusions and expressing the view that the Department had conducted a reasonable search and provided the Applicant with all of the responsive records in its possession.

- [7] The Applicant replied on September 20, 2010 with a lengthy letter, which consisted mainly of re-copied paragraphs from the investigator’s September 8, 2010 letter accompanied in some places by the Applicant’s own observations or comments. Where those comments are related to the present request I will address them below.

- [8] Efforts to resolve the review informally were not successful, and on September 27, 2010 the Applicant and the Department were advised that the file had been referred to formal investigation

pursuant to section 46(2) of the *ATIPPA*. Both parties were invited to submit written representations in support of their positions. A written submission was received from the Applicant on October 4, 2010. On October 27, 2010, the Department requested that our Office accept all responses and information previously submitted as its submission.

[9] Pursuant to section 57 of the *ATIPPA* the Information and Privacy Commissioner, Ed Ring, has delegated authority for this matter to me as Assistant Commissioner.

## II DEPARTMENT'S SUBMISSION

[10] The Department took the position that the Coordinator had responded to all concerns put forward by the Applicant and had made every effort to assist the Applicant, particularly in the early stages of responding to the request and in finding a satisfactory resolution to the fee complaint. During the informal resolution process the Department had written a point by point explanation of its actions in response to the access request. For simplicity I will not set that response out in detail here; rather, I will refer to it as necessary in the "Discussion" section of this Report.

## III APPLICANT'S SUBMISSION

[11] The Applicant's written submission of October 4, 2010 consisted of a two-page letter and eight pages of attached documents. The letter set out the Applicant's position that this Request for Review should be referred to formal investigation on the ground that the Department's response to his request for copies of all of his previous access requests was incomplete. The Applicant stated that there were five previous requests missing from the responsive record: one dated February 28, 2007, three dated July 11, 2007 and one dated May 19, 2010. The Applicant, however, has included with his written submission photocopies of all of the access requests that he alleged were missing.

## IV DISCUSSION

[12] 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.*

[13] 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.*

[14] The issues to be dealt with in the present case are whether the Department has conducted a reasonable search for the records requested by the Applicant, and whether the Department has responded to the Applicant in an open, accurate and complete manner.

[15] The original access request was broken down into seven different questions or requests, which the Coordinator answered on June 11, 2010. I will deal with them one at a time.

### **Request 1:**

[16] The Applicant asked for all receipts in connection with three Crown Lands lease or grant numbers. The Department provided the Applicant with printouts of all of the payments from the computerized system, and explained that the paper copies of receipts are not always kept. The Department conducted a search but no receipts were found relating to those lease or grant numbers.

[17] In his Request for Review, the Applicant stated the Department has failed to fulfill its duty to the Applicant under the provisions of section 9 of the *ATIPPA* in regard to the receipts related to those Crown Land lease or grant numbers. I have reviewed the Department's response, and it states that the Department has given the Applicant all of the records it had, and explains why there are no other records. The *ATIPPA* places the burden on the public body to satisfy this Office that it has conducted a reasonable search for records, and responded to the Applicant in an open, accurate and

complete manner. I am satisfied that the Department has done so. The Department states that it keeps track of all payments and other financial information in its computerized accounting system, and that paper copies of receipts are not always kept. This seems straightforward and reasonable to me. Even though the paper records requested by the Applicant were not found, however, the Department, in accordance with the spirit of the *Act*, went further and provided the Applicant with a printout of the payment records.

### **Request 2:**

[18] The Applicant wanted a copy of an application for a change of name, from the full name of a named individual to a shortened version of that name. The Department explained that it has no record of any such change of name by that individual.

[19] In his Request for Review the Applicant has again asked for the records on that change of name although the Department has stated it has no such record. The Department has explained that what may have led the Applicant to his conclusion about a change of name is the fact that the individual in question sometimes signs his name in a way that appears to omit the last syllable. It is not uncommon that an individual's signature may appear to be a stylized or abbreviated version of the full name, sometimes to the point of being unrecognizable. I accept the Department's explanation on this issue.

### **Request 3:**

[20] The Applicant asked for copies of rent receipts in relation to a particular grant, and asked a number of additional questions about that property. The Department gave him a printout of the payment history for that property from its computerized files, and advised that there are no other records relating to the questions asked by the Applicant.

[21] In his Request for Review, the Applicant again asked for copies of receipts in relation to that particular grant, and asked for the same additional information. I am satisfied that the Department has already sent him all of the payment records and I accept the Department's statement that there are no other records relating to his request. That being the case, I conclude that the Department is not required to answer the Applicant's additional questions.

**Request 4:**

[22] The Applicant asked for copies of all the access requests he had previously made to the Department, and copies of all the responses sent. This request was the subject of a Fee Complaint which was previously dealt with by this Office. In response to that request, the Department sent the Applicant a fee estimate indicating that it would cost over \$1,000.00 to fill the complete request. The Applicant agreed to resolve the fee complaint by revising his access request to ask only for copies of his previous requests, not for copies of all the responses as well, for a fee of \$125.00.

[23] In his Request for Review the Applicant has stated that the \$125.00 fee for providing copies of his previous access requests is too much. I would note that that fee was agreed to by the Applicant as part of the resolution to his earlier fee complaint, and that he was sent copies of all of his previous access to information requests in return for the fee. That being the case, the matter has been resolved by the agreement of the parties and their subsequent fulfillment of the terms of that agreement, and I am satisfied to let it stand.

[24] I note that, in his formal submission, the Applicant also alleges that the Department did not fulfill the terms of the fee agreement, because, he alleges, the Department failed to provide him with copies of five of his previous requests. However, the Applicant attached copies of all five of those request forms, signed and dated by the Applicant – the same ones he alleges were not provided to him. As a result, the basis of the Applicant's complaint is not apparent. Either the Applicant already possessed those records at the time he filed his request, or the Department did not fail to supply them as alleged. In either case, there is no issue of substance for me to consider because the Applicant clearly possesses those records.

**Request 5:**

[25] The Applicant requested copies of notices sent regarding four different grant numbers. The Department states there is no record of any such notices sent to any individuals. My review has not resulted in any information that would contradict this response.

[26] In his Request for Review, the Applicant has stated that, if there were no notices sent, he wants the Department to answer the question: "Are they all buildings?" However, this is not a question

that the Applicant asked in his original Access Request. In my view, it may be appropriate for an applicant to ask a public body reasonable questions of clarification once he has received records responsive to an access request. It is not usually appropriate, however, to bring up new questions on review, since that could lead to a never-ending series of supplementary queries, and a public body could never respond to an access request with finality.

[27] In addition, the Applicant in his September 20, 2011 letter appears to argue that the Department has sent notices to other individuals in other locations requiring them to remove cabins built illegally on Crown land, and that if there were no such notices sent to anyone in relation to the grant numbers he provided, then that constitutes discrimination, and a “cover-up” so that those individuals could keep their illegal buildings. I can only reiterate to the Applicant that our role is to review the response of public bodies to requests for information under the *ATIPPA*. It is not the role of this Office to judge how government Departments are applying policies within their sphere of responsibility. If the Applicant believes that he possesses evidence of wrongdoing there are other avenues available to him.

#### **Request 6:**

[28] The Applicant asked for a copy of the Minister’s decision about a scrap metal yard in Bay Bulls. The Department sent him a copy of an Environmental Assessment Bulletin containing the relevant “Undertaking” which is a form of written permission to operate in accordance with certain stated conditions. I have concluded that this was the record the Applicant asked for.

[29] In his Request for Review, the Applicant asked why he “can’t get an answer whether Bay Bulls started a scrap metal yard or not.” However, that was not the question he asked in his original Access Request. What the Applicant asked for was the Minister’s decision, and the Department has sent him the Undertaking referred to above. The Department has confirmed that while it has given environmental permission for the scrap metal operation, it does not currently have any record of whether the operation has actually started up. With respect to that question, the Applicant may not be asking the right body. Perhaps another department, or the Town of Bay Bulls, might have that information. However, that would require a new, separate access request to a different public body.



**Request 7:**

[30] The Applicant asked for the Department's policy on access requests, and information on who makes the decisions in response to access requests. The Department referred him to the *Access to Information and Protection of Privacy Act*, available online. In his Request for Review, the Applicant asked again for the policy. As the Department's answer indicated, the Department has no separate policy. The provisions set out in the *ATIPPA*, and the Policy Manual prepared by the Department of Justice ATIPP Office and similarly available online, are the only guidelines used.

[31] In addition, in his Request for Review, in the paragraph entitled "Remedy You are Seeking" the Applicant asked why the Deputy Minister, who usually signs letters in response to access requests on behalf of the Department, blacked out a request made by him to the Department of Government Services. I have confirmed that there were certain portions of an earlier access request made by the Applicant that were blacked out on the copy sent back to him in response to the present request for copies of his previous Access Requests. However, this was not done in response to his present request, and was not an attempt to hide something from him.

[32] Rather, this was a case where one government department (Government Services) did a search covering part of that earlier request, and then transferred the balance of the request to a different department (Environment and Conservation). The first department blacked out a portion of the request before transferring it to the second department, in order to show what part of the search had already been completed. It had already been blacked out when the Applicant made his request for copies of all of his previous requests, and the blacked out version was the only version available to photocopy. I have been advised that in future, if a department wants to do something similar it will simply highlight the completed portion, instead of blacking it out completely. However, it is clear that the blacking out was not done with any ulterior motive or to hide anything from the Applicant. This explanation has already been provided to the Applicant.

## V CONCLUSION

[33] I have reviewed all of the questions in the original access request and the Request for Review, as well as the Applicant's letters of September 20 and October 4, 2010. I have concluded that the Department has conducted a thorough search, has given the Applicant all of the records in its possession responsive to his requests, and has explained why there are no more records. Therefore I conclude that the Department has not failed in its duty to assist the Applicant.

[34] There are two additional matters on which I wish to comment. First, it appears that, over the years, in responding to the numerous access to information requests made by the Applicant, the Department has established a pattern. In addition to simply providing him with available records, as required by the *Act*, the Department has often written to the Applicant with lengthy additional explanations. In many cases these explanations included information about Departmental processes or past events, information that was not recorded anywhere, but which came out of the accumulated experience of Department staff.

[35] Section 3 of the *ATIPPA* is its fundamental statement of purpose, and it reads as follows:

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.*
- (2) *This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.*

[36] “Record” is defined in the *ATIPPA* in subsection 2(q), which reads:

*(q) "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;*

[37] Read together, those two provisions make it clear that the right of access provided by the *ATIPPA* is to **records**. As the Commissioner has stated previously in Report A-2011-006:

*When an applicant includes questions in their access requests, the duty to assist under section 9 of the Act triggers an obligation on the public body to assist the applicant in the early stages of their Request. In Report A-2011-002 I recently referenced a Report of my predecessor, A-2009-011, that discussed the elements of the duty to assist:*

*[80] 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. . .*

*This duty includes assistance in the formulation and clarification of their requests, which in turn, may include reformulating questions into requests for specific records.*

*There is not however, an obligation to answer all questions. The public body must consider whether there are records that would be responsive to the questions asked by the applicant in an access request. If there are records that provide answers, they will be found to be responsive and should be provided as part of the response to the access request. If, however, there are no records responsive, there is no obligation under the *ATIPPA* to respond to these questions. A public body must then decide whether, in the spirit of open government, they wish to provide answers to these questions without the statutory obligation to do so. The Town in this case did choose to provide answers to all of the Applicant's questions during the course of the informal investigation of this Office even though some of these answers were not found in records.*

[38] As in the above-cited case, it has been the experience of this Office that the Department of Environment and Conservation has routinely gone to additional lengths, in the course of responding to the Applicant's access requests, to answer questions, even though to do so is often beyond the strict scope of the *Act*. This is commendable and entirely consistent with the spirit and intent of the *Act*, and I wish to acknowledge the efforts made by the Department in this direction.

[39] My second point concerns the way in which the Applicant has formulated this access request. It is the experience of this Office that public bodies can respond most efficiently and completely when an access request is clear, concise and focused on one particular topic. This request, like many of the access requests previously filed by this Applicant, consists of numerous separate requests or

questions, some of which are unrelated to each other. It is suggested that if the Applicant makes further requests in future, perhaps he could try to make separate requests on different subjects rather than attempting to join many topics together in one request. This may assist the public body in understanding and responding to the Applicant efficiently and, furthermore, will simplify the process should the matter subsequently come to this Office for review.

## VI RECOMMENDATIONS

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

[41] Although I have made no recommendations, under the authority of section 50 of the *ATIPPA* I direct the head of the Department of Environment and Conservation 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.

[42] 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 of Environment and Conservation 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.

[43] Dated at St. John's, in the Province of Newfoundland and Labrador, this 23<sup>rd</sup> day of February 2012.

Sean Murray  
Assistant Information and Privacy Commissioner  
Newfoundland and Labrador