



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2012-010

September 13, 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 lands, reversion of former railway land and other property issues. The Department granted the request and provided responsive records and explanations to the Applicant. The Applicant filed a Request for Review claiming that the Department had failed to fulfill its duty to assist the Applicant under section 9 of the *ATIPPA*. The Commissioner concluded that the Department had conducted a reasonable search for the records requested by the Applicant, and that the Department had responded to the Applicant in an open, accurate and complete manner. The Commissioner further concluded that the Applicant's Request for Review was really a request for a legal interpretation of the information that the Applicant had in his possession, and that the *ATIPPA* imposes no duty on a public body to provide an applicant with explanations or legal interpretations of the information in the records.

Statutes Cited: *Access to Information and Protection of Privacy Act*, SNL 2002, c. A-1.1, as amended, s. 9.

Authorities Cited: Newfoundland and Labrador OIPC Report A-2009-011.

I BACKGROUND

[1] On October 6, 2010 the Applicant made a request to the Department of Environment and Conservation (the “Department”) for access to information under the *Access to Information and Protection of Privacy Act* (“ATIPPA” or “the Act”) as follows:

1. *“Access to the Record’s And Information Name of Official’s with Crown Lands that done a follow-up on the contract Agreement signed by [named resident] with Canadian National Railway on September 1st/1976 #1740 Next to [named land-owner]’s Land in Brigus Junction to build an store outside [second named land-owner]’s old property including in the contract Attach Map of A Right-of-way to the old track bed, And new cabin is build on that Right-of-way in 2006*
2. *“started by [government official]’s buddy [named resident] for [other named individuals],”*
3. *“so do [government official]’s Letter dated August 28th 2006 concerning Right-of-way’s And C.N Property in Brigus Junction wrote to the Applicant only Applie to the Applicant from the old crossing to the Applicant’s fence is 90 FEET Crown Land said’s is C.N. Land”*
4. *“What distance applie’s to [second named land-owner]’s old property from C.N. property.”*
5. *“Why is that Right-of-way closed by a cabin build on it.”*

[2] In a letter dated November 5, 2010 the Department responded to the Applicant’s access request. The Department attached a number of responsive records and gave the following explanation:

Below is our response to your request in the order noted above:

1. *We have attached the Notice of Assignment of Lease from Canadian National Railway to her Majesty the Queen in the Right of Newfoundland. The official who facilitated the assignment was [government employee], Land Survey Inspector. A copy of the plan contained in CNR lease #1740 is included in the attached.*
2. *With respect to your implication of a personal relationship between [government official] and [first named resident], we know of no such relationship.*
3. *[Government official]’s letter dated August 28, 2006 was specifically addressing a right of way on Crown land that runs parallel to the front boundary (of the “applicant’s property”) and the circumstances at that particular location only.*
4. *The distance from the crossing to the front boundary appears to be 90 feet on plans in the Crown Lands offices.*

5. Both “the applicant’s property” and “the old [second named land-owner] property” lie within a large parcel of land that was conveyed to the Crown in 1993 by Canadian National Railways (CNR). However, any lands conveyed to others by CNR, prior to the conveyance to Newfoundland and Labrador would not have been included in the 1993 conveyance. If you wish to review the railway corridor width, you can visit the Crown Land Registry at the Howley Building during normal business hours to review the CNR plans.

[3] The response provided by the Department was not satisfactory to the Applicant. On November 24, 2010 this Office received a Request for Review from the Applicant. In the section of the Request for Review form entitled: “Provide the Specifics of your Request/Complaint Here” it reads as follows:

Act or Failure to Act And Failure to Fulfill the duty to Assist Applicant under Section 9 of the Act with Correct and Accurate information on number’s 1, 2, 3, 4, 5 (Also important [government official] Letter August 28, 2006, C.N property Applie to the Applicant And 90 Feet, What Distance Applie to [second named land-owner]’s old property by C.N. property Letter Applicant Got was After 1993 so answer is required As part of Information under the Act. Why is Right-of-way Closed by cabin build on it.

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

Remedy the Applicant is Seeking Comply with the Applicant’s Request because if the C.N.R. property Reverted to the Crown, the Right-of-way Also Reverted to the Crown, and Right-of-way’s Are deemed to be open to the public by this Department [government official] And Are not permitted to be obstructed From public use, so is [government official] saying Right-of-way that [named resident] Agree to Sept 1976 Can be Closed on the other side of the old track bed.

[5] In keeping with our usual practice, an Analyst from this Office forwarded a copy of the Request for Review to the Department, and had a number of discussions with the Department’s Access and Privacy Coordinator about the matter. As a result, the Department wrote a further letter to the Applicant dated March 8, 2011, copied to this Office. In that letter, the Department stated that it had provided the Applicant with all of the records in its custody or control that related to his access request, and suggested that the Applicant’s Request for Review was actually a request for a legal interpretation of the information that the Applicant already had in his possession. In the Department’s view the *ATIPPA* does not include a requirement for a public body to provide legal interpretations of information, only for the provision of records. However, the Department invited

the Applicant to meet with staff at the Crown Lands office to review maps and other documents and have a discussion to clarify property ownership and right of way issues related to the previous CN transportation corridor.

[6] Our Office viewed this offer by the Department as a reasonable resolution to the Request for Review. However, the Applicant was not satisfied, and asked that the file be referred to the formal investigation process. Accordingly, written submissions were requested from both parties. The Department provided its submission on May 25, 2011. The Applicant provided his submission on June 2, 2011.

II SUBMISSION OF THE DEPARTMENT

[7] In its submission the Department reiterated and expanded upon the responses it had previously provided to the Applicant. It took the position that it had provided the Applicant with all of the records responsive to his request, and repeated its offer to arrange a meeting to clarify the ownership, boundary and right of way issues.

III SUBMISSION OF THE APPLICANT

[8] The Applicant provided a lengthy handwritten submission. In part, it appears to assert that the Department has either failed to provide him with some of the information he requested, or that the Department did not provide him with accurate information. Most of the Applicant's submission consists of material which appears to include excerpts copied from a transcript of a court hearing which is stated to have taken place in 1985 concerning land title issues. It also includes excerpts from Newfoundland and Labrador statutes and excerpts from one or more reports issued by this Office. If there is a common thread linking these portions of the Applicant's submissions, it appears to be an attempt to support an argument that one or more persons in the community of Brigus Junction are illegally claiming title to, or are in illegal occupation of, a piece of property.

IV DISCUSSION

[9] The core of the Applicant's Request for Review is a "...failure to fulfill the duty to assist the Applicant under section 9 of the *Act* with correct and accurate information..." 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.

[10] 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.

[11] 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.

[12] I have reviewed the Applicant's five-point access request, and the Department's response to it, which are reproduced above at paragraphs [1] and [2] respectively. With respect to the first four points, it appears to me that the Department has provided straightforward factual responses to each of the questions, and has attached what records it has in its custody that relate to those factual responses. I conclude that with respect to those questions, the evidence presented to me shows that the Department has conducted a reasonable search, and has responded openly, accurately and completely.

[13] Point number 5 is different. The Applicant asks why a certain right of way is closed by a cabin built on it. Viewed in the overall context of the remainder of the request, this part is not really a request for factual information. Rather, it is a request for an explanation of a particular state of affairs which the Applicant views as illegal or improper.

[14] This conclusion is reinforced by the way in which the Applicant has framed his Request for Review. He states that if the C.N.R. property reverted to the Crown, then the right of way also reverted to the Crown, and a right of way is deemed to be open to the public and not permitted to be obstructed from public use. Clearly this is an argument that relates to what the Applicant considers illegal occupation of property by certain persons in the community. It is not an argument that relates in any way to a “decision, act or failure to act” of a public body in response to an access request. The Department is correct when it says that Applicant’s Request for Review was really a request for a legal interpretation of the information that the Applicant already had in his possession.

[15] The Department’s response to the Applicant’s point number 5, in my view, is appropriate. First, the Department has pointed out to the Applicant that when the railway property in question was transferred to the Crown, any land that may have been previously been transferred by the railway to someone else would not be included in the property transferred to the Crown. It provided copies of records, including plans, related to this issue, in response to the Applicant’s request. Second, the Department acknowledged that this can be a complex issue, and without taking sides on the Applicant’s argument, offered him an opportunity to meet with Departmental staff to further discuss questions that he might have on specific cases of reverted property, boundaries or right of way issues.

[16] The *ATIPPA* provides a means for an applicant to gain access to records, in the custody or control of a public body, that contain information related to a request. The duty to assist will often require that a public body contact an applicant at the outset, to clarify a request. Further, it will sometimes be appropriate for a public body to enter into additional discussions with an applicant to refine the process and ensure that its response is what the applicant really wants. Such communications between the public body and the applicant are in keeping with the spirit of the *Act*, and can be extremely valuable.

[17] However, at the end of the process the public body must provide its response. If there are no responsive records, that is the end of the matter. If there are records, and the public body provides them to the Applicant, then it has fulfilled its duty under the *Act*. The *ATIPPA* imposes no duty on the public body to provide an applicant a legal interpretation of the information in the records. The Applicant must accept these statutory limitations on the access to information process.

[18] I hasten to add that under some circumstances a public body, or government generally, may have an obligation to provide an explanation, or even a legal interpretation, of information to a citizen. Indeed, it might be viewed as good policy to do so even in the absence of some positive obligation. This is in fact what the Department has offered to do in the present case, by proposing a meeting in which the Applicant can ask questions about the Department's land management practices, and the legislation, policies and processes related to that. However, this is not part of the access to information process under the *ATIPPA*, but a separate process outside the *Act*.

V CONCLUSION

[19] I have concluded that the Department has conducted a reasonable search for the records requested by the Applicant, and that the Department has responded to the Applicant in an open, accurate and complete manner. Consequently the Department has not failed in its duty to assist the Applicant under section 9 of the *ATIPPA*.

VI RECOMMENDATIONS

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

[21] 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.

[22] 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.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 13th day of September 2012.

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

