



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

A-2021-005

February 1, 2021

Executive Council

Summary:

Executive Council received an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”). It responded by providing the Complainant with the requested records. The Complainant made a complaint to this Office stating that they believed there were additional records that were not found. Executive Council described its search and the Commissioner concluded that it had fulfilled its duty under section 13 (duty to assist) of *ATIPPA, 2015*.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#),
S.N.L. 2015, c. A-1.2, section 13

Authorities Relied On:

NL OIPC Reports A-2021-001 and A-2021-004

[OIPC Practice Bulletin – Reasonable Search](#)

I BACKGROUND

- [1] The Complainant made an access request under the *Access to Information and Protection of Privacy Act, 2015*, (“*ATIPPA, 2015*” or “the Act”) to Executive Council requesting all communications between Executive Council and the Labour Relations Board, the Office of the Premier, and the Department of Immigration, Skills and Labour (ISL) in relation to a privacy breach at the Labour Relations Board the previous month. Executive Council provided the Complainant with the requested records subject to some of the information being withheld under various sections of *ATIPPA, 2015*.
- [2] The Complainant made a complaint to this Office asking for a review of the processing of their request as they believed that there were missing records. They did not raise any objections to the exceptions applied by Executive Council and focused exclusively on the reasonableness of the search.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

- [4] Executive Council believes it conducted a reasonable search for the records and provided all responsive records in its custody and control.

III COMPLAINANT’S POSITION

- [5] The Complainant believes there are additional records that were not provided to them, in particular an email received by Executive Council on a particular date. The Complainant was aware of this record through an access request that they had made to ISL – the public body that had sent the email – and suggests that its absence from the package provided by Executive Council is indicative of an inadequate search and, moreover, that there may be other such missing records.

IV DECISION

- [6] A public body's duty to conduct a reasonable search for records is found in section 13 of *ATIPPA, 2015*, which states:

13.(1) 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.

- [7] Recently, in Reports A-2021-001 and A-2021-004, this Office has reiterated that the standard for assessing the search completed by a public body is not perfection, but reasonableness.

- [8] Our Practice Bulletin entitled "Reasonable Search" includes guidance on the information that a public body should provide to this Office as evidence that it conducted a reasonable search. The bulletin states:

As it is difficult to prove a negative, the ATIPPA, 2015 does not require a public body to prove with absolute certainty that records do not exist. When a complaint is received by the Commissioner, the public body must provide evidence to show that it has made a reasonable effort to identify and locate records responsive to the request. The public body's evidence should include a description of the business areas and record types searched (for example emails, paper files, databases), identify the individuals who conducted the search (by position type), and indicate the time taken to conduct the search. If there is an explanation for why a requested record may not exist, it should be provided.

- [9] In this instance Executive Council has provided a detailed summary of the steps taken in conducting the search.

- [10] The ATIPP Coordinator for Executive Council oversaw the search. They contacted any employees who may have had any responsive records, being any communications with the other public bodies in relation to the privacy breach. Those employees then either searched their own email or allowed the ATIPP Coordinator to complete a search on their behalf. Evidence was provided showing that other than those provided in the final response, no

further responsive emails exist. The search terms used were also provided and were appropriate.

[11] There was also a search completed of Executive Council's electronic filing system. Evidence was provided showing that there are no further records than those already provided. There were no physical files to search and no responsive records would have been stored off-site.

[12] All responsive records located during the search were reviewed by the ATIPP coordinator prior to release. Those records included emails, an information note and speaking notes prepared by ISL, and a notice to the public prepared by the Labour Relations Board.

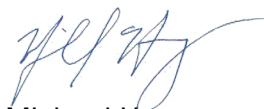
[13] Executive Council confirmed that some emails received from ISL were not included in the final response package. The emails were deemed to be transitory and deleted prior to the ATIPP request, as per its records retention policy. Executive Council confirmed with ISL that those emails were included in the package provided to the Complainant in response to a similar access to information request to ISL.

V RECOMMENDATIONS

[14] Under the authority of section 47 of *ATIPPA, 2015*, I find that Executive Council has conducted a reasonable search for records and responded to the Complainant appropriately under section 13 of *ATIPPA, 2015*. Therefore, I recommend that Executive Council maintain its position regarding these matters.

[15] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Executive Council 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.

[16] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of February 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador