



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2021-015

March 19, 2021

Royal Newfoundland Constabulary

Summary:

The Complainant made an access to information request to the Royal Newfoundland Constabulary (the “RNC”) for all information relating to himself. The RNC provided him with several pages of information, much of which was redacted under sections 40(1) (disclosure harmful to personal privacy) and 40(4)(b) (disclosure harmful to personal privacy – law enforcement record). The Complainant believed that more records should exist, and also asked our Office to review the redactions. During our investigation, the RNC submitted that some information withheld under section 40(4)(b) could instead be withheld under section 31 (disclosure harmful to law enforcement) and much of the redacted information was provided to the Complainant, now applying sections 31 and 40(1) to withhold some passages. The Commissioner found that the RNC had conducted a reasonable search for records and that the RNC had properly applied sections 31 and 40(1) in the second version of the records provided to the Complainant. The Commissioner therefore recommended that the RNC continue to withhold the remaining redacted information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 31, 40.

Authorities Considered:

NL OIPC Report [A-2021-003](#).

I BACKGROUND

- [1] The Royal Newfoundland Constabulary (the “RNC”) received an access request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”) from the Complainant for all information the RNC had on file relating to himself. The RNC found only a small amount of information relating to a traffic stop and the issuance of a highway traffic ticket in 2013 by the Royal Canadian Mounted Police (the “RCMP”) in central Newfoundland.
- [2] The RNC provided those records to the Complainant, with some redactions, claiming section 40(4)(b) of the *Act* (personal information, part of a law enforcement record). A small amount of information was also redacted under section 40(1) (personal privacy). The Complainant filed a complaint with our Office, requesting that we review the redactions, and also stating that there ought to have been more records found.
- [3] During the course of the investigation process the RNC agreed to revise its decision regarding the relatively brief record to disclose more information, and it was provided to the Complainant. However, informal resolution was unsuccessful, and the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

II PUBLIC BODY’S POSITION

- [4] The RNC submits that it has described the search for records that it conducted, that its search was reasonable and complete, and the Complainant has been provided with all of the records found, subject to appropriate redaction.
- [5] The RNC submits that the exceptions to access under sections 31 and 40 claimed in the revised version of the records sent to the Complainant were properly applied.

III COMPLAINANT'S POSITION

- [6] The Complainant states that in his view, there ought to be more records relating to him. In particular, he states that there should be more records relating to an incident involving his vehicle and other vehicles on the highway that led to the traffic stop, and that there should be more records relating to other law enforcement agencies that may have been involved.
- [7] The Complainant was also not satisfied that the redactions were necessary and asked that our Office review them.

IV DECISION

- [8] The Complainant, who is a resident of another province, sent an access request to the RNC for “all information relating to himself” and included his photo identification containing his full name and date of birth. The RNC searched its files and found only a few records, which they provided to the Complainant with some of the information redacted.
- [9] The responsive records consisted of photos of the Complainant's driver's license and motor vehicle registration, made by the RCMP in the course of a traffic stop in 2013 in central Newfoundland, and two e-mails containing the Complainant's name along with other information. These records were created by the RCMP, not by the RNC, since policing in central Newfoundland falls under RCMP, not RNC, jurisdiction.
- [10] These records would not normally have been in the RNC files. However, they had been sent to the RNC by the RCMP as part of a distribution of information about the surveillance of several motorcycle club events, in which the Complainant apparently participated in the summer of 2013.

Reasonableness of the Search

- [11] There are two issues for determination in this complaint. First, the Complainant states that there should have been more records found. However, the RNC files are almost entirely all

electronic, and the search was relatively straightforward, conducted using the name of the Complainant and a number of other keywords. We are satisfied that the ATIPP Coordinator has conducted a thorough search of the files and found nothing related to the Complainant except the two e-mails, referred to above, from the RCMP to several RNC officers, with the Complainant's license and registration attached.

[12] It is not surprising that this should be the case. First, the Complainant is a resident of another province. In addition, the RCMP and RNC operate in separate geographical jurisdictions in the province of Newfoundland and Labrador, and the events in question took place in RCMP jurisdiction. The RCMP would not normally share files with the RNC, especially regarding routine matters such as traffic tickets, without an operational reason to do so. In the present case the Complainant's name only appeared in RNC records because of the distribution of two e-mails from the RCMP, that were not primarily about the Complainant, but mainly about the activities of motorcycle clubs in the region that summer.

[13] *ATIPPA, 2015* requires, in section 13, that a public body has a duty to assist an applicant by responding to an access request in an open, accurate and complete manner. This duty includes a duty to conduct a reasonable search for records. We are satisfied that the RNC's search for responsive records was reasonable and complete.

[14] It is of course possible that the RCMP's records might contain more information related to the Complainant. However, the RCMP is a federal police agency, under the jurisdiction of federal access to information legislation, and the Complainant would have to make a separate access request under the federal *Access to Information Act* to the RCMP to answer that question. The RNC could not transfer the Complainant's request under section 14 of *ATIPPA, 2015* as the RCMP is not a Newfoundland and Labrador public body.

Exceptions to Access Applied

[15] The second issue is the redaction of information from the records provided to the Complainant. The RNC initially redacted most of the contents of the two responsive records, applying sections 40(1) and 40(4)(b) of *ATIPPA, 2015*. Section 40(1) was applied to protect

the personal information of individuals other than the Complainant, which it would be an unreasonable invasion of their privacy to disclose. Section 40(4)(b) specifically presumes the disclosure of personal information from a law enforcement record to be an unreasonable invasion of personal privacy:

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

[16] During the course of informal resolution discussions the RNC agreed that its reliance on section 40(4)(b) was not the most appropriate exception to apply, and agreed to revise its redactions, resulting in the disclosure of more information to the Complainant. A newly redacted copy of the records was sent to the Complainant, in which some information previously identified as being redacted under section 40(4)(b) was now redacted on the basis of two provisions of section 31 of the Act:

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;

(e) reveal law enforcement intelligence information;

[17] Our Office has sometimes refused to consider exceptions to access claimed by a public body late in the proceedings (see, for example, Report [A-2021-003](#)). The rationale for this refusal is that the complaint under investigation is about the decision that was made by the public body in its final response to the applicant. In the present case, the RNC did not initially claim the exception in section 31 in its response to the access request. However, the claim of section 31 was made at the very beginning of our complaint investigation, and it involved information created and provided by another law enforcement agency in another jurisdiction. Therefore we have agreed to consider it.

[18] The records shared by the RCMP with the RNC mainly constitute information about their surveillance of certain motorcycle club events in the summer of 2013, some of which the Complainant may have been peripherally involved in. The RNC has withheld information that does not relate to the Complainant from that record, on the basis of the two above provisions of section 31. We are satisfied that this exception has been properly applied, and in fact it actually resulted in the disclosure of more information to the Complainant.

[19] Along with the application of section 31 to some of the information formerly withheld under section 40(4)(b) and the release of further information to the Complainant, a small amount of information continued to be withheld under section 40(1) and we are satisfied that this exception was also properly applied.

[20] The Complainant's remaining issues are, in essence, complaints about law enforcement processes, not access to information issues, and our Office has no role to play in those matters. It may be that access requests to other law enforcement agencies might provide him with the information he seeks.

[21] In conclusion, we find that the RNC has conducted a reasonable search for records, and disclosed what was found to the Complainant, save for some information that was properly withheld under sections 31 and 40.

V RECOMMENDATIONS

[22] Under the authority of section 47 of the *Access to Information and Protection of Privacy Act, 2015*, I recommend that the Royal Newfoundland Constabulary continue to withhold the redacted information.

[23] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Royal Newfoundland Constabulary 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.

[24] Dated at St. John's, in the Province of Newfoundland and Labrador, this 19th day of March, 2021.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador