



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2021-021**

**May 07, 2021**

**Department of Transportation and Infrastructure**

**Summary:**

The Department of Transportation and Infrastructure (“TI” or the “Department”) received an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) for records relating to bronze work at the War Memorial in St. John’s. In its final response, TI indicated that it had no responsive records. The Complainant made a complaint to this Office stating that they believed that responsive records existed. Through the informal resolution process, and after clarification on what records the Complainant was seeking, records were located and provided. However, the Complainant believed that there should still be additional records. TI described its search, and the Commissioner concluded that it had conducted a reasonable search, thereby fulfilling its duty under section 13 (duty to assist) of *ATIPPA, 2015*.

**Statutes Cited:**

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

**Authorities Relied On:**

NL OIPC Reports [A-2009-011](#) and [A-2019-023](#)

[OIPC Practice Bulletin – Reasonable Search](#)

## I BACKGROUND

- [1] The Department of Transportation and Infrastructure (“TI” or the “Department”) received an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) as follows:

*I am looking for the following -The quote submission materials for the bronze work at the National war memorial Project # 111705047 from [individuals name] and all corresponding invoices submitted -All e-mails exchanged between the department of Transportation and Works and [individuals name] -All e-mails exchanged between all project stakeholders including the Royal Canadian Legion and the department of Transportation and works for project Project # 11170504 [sic]*

- [2] The Department provided a final response to the request, noting that it did not have any responsive records.
- [3] The Complainant made a complaint to this Office indicating that they believed that records did exist, and requesting that they be provided with those records.
- [4] Through this Office’s investigation, it was determined that there was a misunderstanding on the part of the Department as to what records the Complainant was seeking. Once this misunderstanding was corrected, TI completed a new search for records and provided the Complainant with 66 pages of responsive records.
- [5] After the release of the records, the Complainant had some additional questions to which TI provided a response and a further two pages of responsive records. The Complainant was not satisfied and continued to assert that there should be more records.
- [6] 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

- [7] The Department asserts that it has provided the Complainant with all of the records that it has and that it has done its best to address the concerns brought forth by the Complainant.
- [8] Initially there was a misunderstanding between TI and the Complainant with respect to what records the Complainant was seeking. The Department interpreted the original request to be for records relating to actual work done on the bronze at the War Memorial; however, no work has yet been done. The Department did put out an RFP for inspection, analysis and guidance on future bronze work. This was determined to be the records that the Complainant was seeking in their request. As well, the Department had previously provided the records in relation to project #111705047, which involved general site work, and not any work on the bronze.

## III COMPLAINANT'S POSITION

- [9] The Complainant believes that TI should have additional records. In particular, the Complainant believes there should be more records of communication regarding the bronze work, in particular communication with third parties such as the Royal Canadian Legion. The Complainant also has outstanding questions about the decision to undertake the project and the allowable travel expenses.

## IV ISSUES

- [10] Did the Department fulfill its duty to assist under section 13 by conducting an adequate search for responsive records?
- a. Are there any further records containing internal/external communications regarding the project?
  - b. Are there any further records relating to the decision to undertake this project?
  - c. Are there any further records relating to the decision to subsidize travel expenses?

## V DECISION

[11] A public body's duty to conduct a reasonable search for records responsive to an access request is found in section 13 of *ATIPPA, 2015*, the relevant portion of which reads as follows:

*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.*

[12] This Office has elaborated on the content of this provision in a number of previous Reports, as outlined in Report A-2009-011:

*[80] ...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.*

[13] For a more recent Report summarizing the duty to assist and reasonable search, see Report A-2019-023.

[14] Our Practice Bulletin on Reasonable Searches outlines that a reasonable search is one conducted by knowledgeable staff in locations where the records in question might be reasonably located. The standard for assessing a public body's efforts is "reasonableness", not perfection.

[15] Once TI discovered that there was a misunderstanding about the records the Complainant was seeking, the Department worked diligently to respond to the request. TI provided the Complainant with a package of responsive records as well as addressing the questions posed. While TI could have been more proactive by contacting the applicant prior to providing the final response to the request, it was not unreasonable for TI to rely on the actual wording of the request.

[16] With respect to the specific remaining issues, TI has indicated that the email accounts for the Director, Manager, and Project Manager have all been searched for any records related

to the clarified request. As well, a search was completed of TI's servers and electronic document management system.

[17] TI has confirmed that it has no further communications relating to the project, either internally or externally. The Complainant believes there must be some communication with outside stakeholders such as the Royal Canadian Legion or other groups. However, TI has confirmed that it did not consult with any outside stakeholders. There are no additional records relating to the decision to obtain the bronze condition report. Finally, the travel expense allowance was outlined in the RFP, which was provided to the Complainant.

## VI RECOMMENDATIONS

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

[19] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Transportation and Infrastructure 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.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 7<sup>th</sup> day of May 2021.

  
Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador