



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**A-2021-041**

**October 14, 2021**

### **Royal Newfoundland Constabulary**

**Summary:**

The Complainant made an access to information request to the Royal Newfoundland Constabulary for records relating to specific firearms used by the organization. The RNC responded to the request by notifying the Complainant that all responsive records were being withheld under sections 31(1)(a), (f), (m) (disclosure harmful to law enforcement) and 37(1)(b) (disclosure harmful to personal or public safety) of *ATIPPA, 2015*. The Complainant made a complaint to this Office questioning the decision to withhold the records. The Commissioner found that section 31(1)(m) applied to the records and that no further analysis on the other claimed exceptions was necessary. The Commissioner therefore recommended that the RNC continue to withhold the records.

**Statutes Cited:**

[\*Access to Information and Protection of Privacy Act, 2015\*](#), SNL 2015, c. A-1.2, sections 8, 13, 17, 31, and 37.

## I BACKGROUND

- [1] The Royal Newfoundland Constabulary (the “RNC”) received a request under the Access to Information and Protection of Privacy Act, 2015 (“ATIPPA, 2015” or the “Act”) from the Complainant for the following:

*For the period January 1, 2006 to May 31, 2021 all files, communications, analysis, justifications, consultation, briefings, memos, and presentations, regarding the selection & adoption & procurement & issuance of: (A) .223 / 5.56 mm firearms; and (B) .308 / 7.62mm firearms.*

- [2] The RNC provided the Complaint with a response indicating that all responsive records were being withheld under sections 31(1)(a), (f), (m) and section 37(1)(b).
- [3] The Complainant made a complaint to this office objecting to the decision to withhold the records. The Complainant also asserted that there was a lack of communication from the RNC while processing the access to information request.
- [4] 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

- [5] The RNC argued that the responsive records fall under sections 31(1)(a), (f), (m) and section 37(1)(b). It also noted that the release of any information that could fall under section 31(1)(m), could lead to the harm contemplated in sections 31(1)(a), (f) and 37(1)(b).
- [6] The main concern expressed by the RNC was the use that such information could be put to in the hands of a “motivated person”, as evidenced by the events that unfolded in Nova Scotia in 2020. For example, knowing the particulars of weapons used by the RNC would allow a person to know their range and the type of body armour required to withstand such weapons. Knowing the range could allow a person to acquire their own weapons with a longer range, placing officers and the public at risk.

[7] Additionally, the RNC made the decision to withhold the records in their entirety rather than do a line-by-line redaction based on the premise that as the request is about specific firearms, the release of any responsive records could confirm the use of those weapons and as such reveal technical information of weapons used in law enforcement.

[8] On the issue of communication between the RNC and the Complainant, the RNC explained that there was no confusion regarding what the Complainant was seeking so no clarification was necessary. The RNC provided the Complainant with an advisory response and a final response as required by the Act.

### III COMPLAINANT'S POSITION

[9] The Complainant argues that as some of the information is already publicly available there is no harm in releasing the information. The Complainant points to such publicly available information as a 2014 Public Tender Exception allowing the RNC to obtain its patrol rifle and patrol carbine from one company. The Complainant also points to the RNC's Policy and Procedures manuals in relation to use of force and use of firearms.

[10] The Complainant has also indicated that they have been provided with similar records from other jurisdictions and thus should be provided with these records.

[11] The Complainant also suggests that the release of the information is in the public interest.

[12] Finally, the Complainant also takes issue with the extent of communication from the RNC regarding the request. They note that they did not receive any correspondence other than the advisory and final response.

### IV ISSUES

[13] The issues to be decided in this report are:

I. Has the RNC fulfilled its duty to assist under section 13?

II. Has the RNC appropriately applied section 31 to the responsive records?

III. Has the RNC appropriately applied section 37 to the responsive records?

IV. Was it appropriate for the RNC to withhold the records in their entirety rather than do a line by line redaction?

## V DECISION

[14] There is no basis on which to find that the RNC failed in its duty to assist under section 13 of the Act. It provided both an advisory and final response to the Complainant's access request, and provided an explanation as to why no further communication was warranted.

[15] With respect to the RNC's decision to withhold the responsive records, the relevant portions of section 31 are:

*31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to*  
*(a) interfere with or harm a law enforcement matter;*

...

*(f) endanger the life or physical safety of a law enforcement officer or another person;*

...

*(m) reveal technical information about weapons used or that may be used in law enforcement*

[16] The most straightforward of the above-noted exceptions is section 31(1)(m) as it does not require a harms test. Rather, it only requires that the release of the information would reveal technical information of a weapon used or that may be used by law enforcement. As the request is specifically about two particular types of weapon, the responsive records would contain technical information related to those weapons. In support of their position that significant information is already available to the public, the Complainant has provided us with copies of publicly-available records containing information about weapons used by the RNC. Having reviewed the information provided by the Complainant, our view is that this publicly-available information provides minimal details – generally only referencing the type of firearm (for example, describing a weapon as a pistol or a shotgun) and its manufacturer. The information withheld by the RNC responsive to the Complainant's access to information

request is significantly more detailed and contains technical information which does not appear in these publicly-available documents.

[17] It is not necessary to assess the application of sections 31(1)(a), (f) or section 37(1)(b) as the records fall under the section 31(1)(m) exception.

[18] Section 8(2) requires a public body to sever information excepted from disclosure when it is reasonable to do so. In this case, the RNC has withheld any responsive records in their entirety rather than doing a line-by-line review and redacting specific information. The basis for this decision was that any release of any information in the responsive records would confirm the use or non-use of the specific weapons identified in the request. Upon review of the records, we accept this argument.

[19] In future circumstances of this nature it would be advisable for the RNC to consider section 17(2)(a) (which applies at the record level rather than information level), rather than making an argument regarding the reasonableness of redactions under section 8(2), however the RNC in this case has discharged its burden of proof.

## VI RECOMMENDATIONS

[20] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Royal Newfoundland Constabulary continue to withhold any responsive records.

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

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14<sup>th</sup> day of October 2021.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador