



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2022-002

February 14, 2022

### Royal Newfoundland Constabulary

#### Summary:

The Complainant submitted an access to information request to the Royal Newfoundland Constabulary under the *Access to Information and Protection of Privacy Act, 2015* seeking access to records regarding the RNC's Automatic Vehicle Locator system for the year 2017. In its final response, the RNC denied access pursuant to section 31(1)(a) (disclosure harmful to law enforcement). During the complaint investigation, the RNC additionally sought to apply sections 31(1)(c), 33 (information from a workplace investigation) and 40 (disclosure harmful to personal privacy). The Commissioner concluded that the RNC had properly applied section 31(1)(a) to a portion of the records involved in an ongoing complaint overseen by the Public Complaints Commission who identified the records as relevant to its investigation. However, the Commissioner found that the remaining records had been improperly withheld pursuant to section 31(1)(a), and rejected the application of sections 31(1)(c), 33 and 40. The Commissioner determined these remaining responsive records should be released.

#### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 31, 33, and 40.

#### Authorities Relied On:

NL OIPC Report [A-2020-012](#).

## I BACKGROUND

[1] The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015” or the “Act”) to the Royal Newfoundland Constabulary (the “RNC”) for the following records:

*all emails generated by the RNC Automatic Vehicle Locator (AVL) system that indicate excessive speeds and speed limit violations by RNC vehicles between January 1, 2017 and December 31, 2017.*

[2] The RNC’s Automatic Vehicle Locator system (“AVL”) is technology installed on RNC vehicles which combines global positioning system (“GPS”) with additional vehicle tracking software to provide real time vehicle location, fuel and vehicle usage reports.

[3] The RNC responded to the request by denying access to the records under section 31(1)(a) (disclosure harmful to law enforcement) of the Act.

[4] The Complainant made a complaint to this Office objecting to the decision to refuse access to the records.

[5] 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

[6] The RNC initially maintained that release of the responsive records could reasonably be expected to interfere with or harm an ongoing law enforcement matter, which the RNC identified as a complaint being investigated by the Public Complaints Commission (the “PCC”). In support of this position the RNC provided commentary from the PCC, noting:

- i. *“This is an active public complaint, naming one Subject Officer’s police unit on specified dates.”*
- ii. *“RNC PCC investigations review AVL data from police vehicles driven by subject officers whenever available/relevant.”*

- iii. *“The RNC PCC would as a matter of course review AVL data to establish firm timelines for occurrences and any file sensitive AVL output.”*
- iv. *“Going forward, the investigation of this file will review AVL data from the vehicles driven by the Subject Officer on specified dates. This will include emails generated by the AVL system for each vehicle driven by the SO on those dates, and emails sent or received by the Chief respecting each vehicle driven by the SO on various dates.”*

[7] The RNC went on to note that because, “it is not aware of the route or scope that the RNC PCC investigation will encompass ... it would be irresponsible to provide information to the complainant that could potentially later be used as a part of the PCC investigation.”

[8] At the conclusion of informal resolution, the RNC made formal submissions to this Office which continued to maintain that release of some of the responsive records would be harmful to law enforcement pursuant to section 31(1)(a). However, the RNC also provided further details to this Office on specific records which the PCC had identified as being related to its investigation and therefore subject to section 31(1)(a). In its submissions the RNC also sought to apply additional exceptions to access.

[9] The RNC noted that while it initially, “formed a position that information not related to the PCC’s investigation would be able to be disclosed,” it subsequently argued that additional issues had been identified, including section 33 (information from a workplace investigation). It submitted that the AVL was implemented a number of years ago as a requirement from the Department of Justice and Public Safety, “for the purpose of maintaining officer and public safety, efficient and safe allocation of resources, and vehicle maintenance.”

[10] In these submissions, the RNC outlined the purpose and usage of the AVL, indicating that when a vehicle exceeds the speed limit, a notification email is forwarded to the vehicle operator’s supervisor to review the matter with the operator. Following this review with their supervisor, the operator files an Incident Report outlining the circumstances and rationale for exceeding the speed limit. Depending on whether the explanation is satisfactory and whether the incident is considered serious, further action may be taken up to and including an investigation by the RNC’s Professional Standards section.

[11] The RNC argued that because the AVL notifications are generated, in part, for the purpose of being reviewed by supervisors to ensure compliance with applicable policies and the safe operation of RNC vehicles by members, and that improper or unsafe operation of RNC vehicles disclosed through the AVL may lead to an investigation of an operator's conduct "it is felt that these records fall within the mandatory section of the Act as it relates to workplace investigations."

[12] In addition to newly raising the applicability of section 33, the RNC also argued in its formal submissions that section 40 (disclosure harmful to personal privacy) is applicable. It noted that,

*while the records themselves do not identify the drivers of vehicles specifically there is enough identifying information within the record, including unit number, time stamp, and location information for a person to easily be able to determine the driver of the vehicles when an automatic notification was generated through a number of internal avenues. As the automatic notifications are generated as part of a review of a person's duties at work it is felt by the RNC that this could potentially lead to an invasion of members' privacy within the workplace. This becomes more evident in situations where an employee was further investigated and possibly reprimanded for their actions as discovered by the automatic notifications.*

[13] The RNC also submitted that section 31(1)(a) of the Act still applies to those records as,

*information within the records highlight locations of RNC vehicles, discloses vehicle stops at a scene or call for service, discloses information about unmarked or undercover vehicles such as license plate and vehicle identification numbers, as well as include other AVL features that are designed to keep both the officer and the public safe.*

Additionally, it raised section 31(1)(c) as also relevant, noting it is,

*not uncommon for the RNC to use this data from the AVL system to assist with criminal, public, and internal investigations. Therefore providing this information would also highlight one of the tools that the RNC have to carry out investigations.*

### III APPLICANT'S POSITION

[14] The Complaint argued that he should be provided any records not directly involved in any ongoing investigations and that any information related to personal privacy of third parties could simply be redacted without the need to withhold the entirety of the responsive records.

### IV DECISION

[15] The RNC initially took the position that section 31(1)(a) is solely applicable to the records in question because of an ongoing RNC PCC investigation. Section 31(1)(a) sets out:

*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;*

[16] This Office is in agreement that specific records, as identified by the PCC as directly relevant to its investigation, can be withheld pursuant to section 31(1)(a). The responsive records related to the PCC investigation fall within this exception to access as disclosure of these specific records could reasonably be expected to interfere with or harm a law enforcement matter and this exception is therefore at the RNC's discretion to apply. However, this Office fails to see how records that have not been identified by the PCC, which are not directly related to the matter under its investigation, and which are now several years old, could be said to, "reasonably be expected to interfere with or harm a law enforcement matter."

[17] While additional exceptions should not normally be raised late into the complaint review process, the RNC raised two mandatory exceptions, sections 33 and 40, so this Office will address these. The relevant portions of section 33 set out the following:

*33.(1) For the purpose of this section*

- (a) "harassment" means comments or conduct which are abusive, offensive, demeaning or vexatious that are known, or ought reasonably to be known, to be unwelcome and which may be intended or unintended;*
- (b) "party" means a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation;*  
*and*

- (c) *"workplace investigation" means an investigation related to*
- (i) the conduct of an employee in the workplace,*
  - (ii) harassment, or*
  - (iii) events related to the interaction of an employee in the public body's workplace with another employee or a member of the public which may give rise to progressive discipline or corrective action by the public body employer.*
- (2) *The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.*

[18] The RNC argues that the records in question constitute records “created or gathered for the purpose of a workplace investigation,” and therefore must be withheld. This Office rejects this argument on the basis of the RNC’s own description of the records and the process they trigger.

[19] The RNC acknowledged in its submission that, “the records themselves do not identify the drivers of vehicles.” As section 33(1)(c) sets out, a “workplace investigation” is defined as an investigation about “the conduct of an employee in the workplace.” Without identifying a specific employee then, the records themselves cannot constitute records of a workplace investigation. Additionally, the RNC’s process in relation to the records describes the material as essentially raw data collected for a number of reasons beyond promoting officer and public safety. Only a portion of that data might be used for a process that could fall within the description of a workplace investigation, and only then after an employee has been identified, the data is reviewed, and it is determined there is both no satisfactory explanation for the incident and it is considered serious. The RNC identified this as the point at which the matter is forwarded to its Professional Standards division where an investigative file will be generated. In our view, the process described in paragraph 10 does not itself constitute a workplace investigation, though it may lead to one; the RNC has explicitly stated that not all AVL records lead to an investigation of a specific employee, and in fact has indicated most do not. To argue then that the raw data itself constitutes information from a workplace investigation does not fit with the RNC’s own description of the records and events they set in motion.

[20] Additionally, the RNC raised section 40(1), which sets out:

*40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[21] The RNC acknowledged that the records themselves do not identify the drivers of vehicles, but argued there is enough identifying information within the record, including unit number, time stamp, and location information that could potentially be used to determine the identity of the driver. The view of this Office is that it seems unlikely that the unit number, time stamp and location alone could reveal the driver's personal information. Further, the information is more than four years old. However, it may be possible that someone with internal knowledge of the RNC, and access to further information could potentially use data produced by the AVL to identify the driver of a vehicle. That said, even if the information constitutes personal information a simple line-by-line redaction of some of this information, where necessary, could be done to protect against such concerns. Finally, if the RNC is seeking to suggest this information could reveal the identity of driver officers, section 40(2) sets out,

*(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where*

...

*(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;*

[22] The potential personal privacy concerns raised by the RNC here rest with the identification of its own officers and their positions and functions, which all falls within the above noted description of information not deemed an unreasonable invasion of a third party's personal privacy. For a further analysis of this issue, see Report A-2020-016 which found that the City of St. John's could not withhold the identity of a snowplow operator.

[23] Finally the RNC raised section 31(1)(c). While this section is not a mandatory section and, therefore, this Office is not bound to consider it when raised late in the investigation process, this Office will nonetheless provide comment on its application. Section 31(1)(c) sets out:

*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;*

[24] The RNC argued that disclosure of the records in question would reveal its investigative techniques and procedures. This Office rejects this argument. The existence of AVL is public knowledge and the information it generates is not novel or revelatory. Rather, it is simply data produced from GPS and tracking vehicle speeds. The RNC itself acknowledged that the AVL system was implemented under the direction of the Department of Justice and Public Safety, “for the purpose of maintaining officer and public safety, efficient and safe allocation of resources, and vehicle maintenance.” Nothing about the above description or the records themselves indicates any disclosure of law enforcement investigative techniques and procedures. Rather, the fact the information has public safety and resource allocation purposes speaks to public transparency rather than the need to withhold from public disclosure.

## V CONCLUSION

[25] This Office concludes that some of the responsive records that meet the description of section 31(1)(a) as having been identified to this Office by the PCC as relevant to its investigation can be withheld by the RNC pursuant to that section. All remaining records which do not fall within section 31(1)(a), and which are not related to the PCC’s investigation, should be disclosed.

## VI RECOMMENDATIONS

[26] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the Royal Newfoundland Constabulary:

- (i) continue to withhold the portion of the records set out in the attached Appendix;
- (ii) release all other responsive records to the Complainant.



[27] 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.

[28] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14<sup>th</sup> day of February 2022.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador