



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

A-2022-027

November 10, 2022

## Department of Environment and Climate Change

### Summary:

The Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* to the Department of Environment and Climate Change for records pertaining to the appointment of a Vice-Chairperson of the Labour Relations Board as well as information explaining the decision not to appoint a second Vice-Chairperson. The Department responded to the Complainant providing records with information withheld based on sections 29 (policy advice or recommendations), 31(disclosure harmful to law enforcement) and 40 (disclosure harmful to personal privacy). The Commissioner found that the Department had conducted a reasonable search for records and concluded that the Department had properly applied some exceptions to access. The Commissioner recommended the Department release some information that it had withheld under sections 29(1)(a), 31(1)(l), and 40(1) of *ATIPPA, 2015*.

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13, 29(1)(a), 31(1)(l), and 40(1).

### Authorities Relied On:

NL OIPC Report [A-2022-024](#), [A-2022-025](#), [A-2021-034](#), and [A-2021-039](#).

OIPC Practice Bulletin – [Reasonable Search](#).

## BACKGROUND

- [1] The Complainant filed an access to information request with the Department of Environment and Climate Change (the “Department”) under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or the “*Act*”). The Complainant requested records pertaining to the appointment of a new Vice-Chairperson of the Labour Relations Board as well as information explaining the decision not to appoint a second Vice-Chairperson and any anticipated timeline for the appointment of a second Vice-Chairperson. This request was made to the Department as the Minister for the Department of Environment and Climate Change is also the Minister Responsible for Labour.
- [2] The Department responded to the Complainant and provided records with some information withheld under sections 29(1)(a) (policy advice or recommendations), 31(1)(l) (disclosure harmful to law enforcement), and 40(1) (disclosure harmful to personal privacy) of *ATIPPA, 2015*. The Complainant filed a complaint with this Office, disagreeing with the Department’s decision to withhold some information and disputing the reasonableness of the search conducted by the Department. The Complainant specifically questioned whether the Department had located records documenting a decision by the Minister not to appoint the second Vice-Chair of the Labour Relations Board. The Complainant was concerned that this correspondence was not located or released.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY’S POSITION

- [4] The Department’s position is that most exceptions to access were properly applied to the records and the search conducted was reasonable. In its initial submissions, the Department indicated that it was no longer relying on section 31(1)(l), and that some information originally withheld under sections 29 and 40 could also be released. However, as of the writing of this Report, the Department has not released this information to the Complainant.

[5] In relation to the search conducted, the Department advised that the Access to Information and Protection of Privacy (“ATIPP”) Coordinator emailed departmental executive and divisional directors requesting any responsive records to the access request. Responsive records were located and provided to the ATIPP Coordinator. As well, a search was conducted of the Department’s electronic content management system for records relating to the Labour Relations Board and specifically the appointment of a Chairperson and Vice-Chairperson. The ATIPP Coordinator advised that Department officials were consulted who confirmed that there is no record of a decision not to appoint a second chairperson.

### COMPLAINANT’S POSITION

[6] The Complainant’s position is that the Department failed in its duty to assist by not conducting a reasonable search and that the Department improperly applied some exceptions.

[7] It is the Complainant’s position that records exist which document a decision by the Minister to not appoint the second and third Vice-Chairs in March 2022, but that the Department did not release them. The Complainant relies on information in the responsive records that reference the pluralized words “resumes” and “applicants”.

[8] Regarding the redactions, the Complainant’s position is that the name of the person appointed to the Vice-Chair position was redacted in a number of areas when it should not have been. The Complainant relies on section 40(2)(f) of *ATIPPA, 2015* which states that the disclosure about a third party’s position, functions or remuneration as an officer, employee of a public body is not an unreasonable invasion of the third party’s privacy. The Complainant also submits that some of the information withheld under section 29(1)(a) should be released, especially given that the section 29 exception is discretionary.

### ISSUES

[9] At issue are whether the Department properly applied sections 29(1)(a), 31(1)(l) and 40(1) to withhold information, and whether the Department conducted a reasonable search for responsive records.

## DECISION

### Section 29

[10] Section 29 exists to protect information which reveals advice, proposals, policy options, or analysis, in the interest of promoting open and frank discussion of policy issues within the public service. Some of the information that the Department withheld consists of employees of the Department discussing the suitability of applicants and how those applicants should be screened against the job criteria. However, there are passages which do not disclose policy advice, but rather general comments about the appointment process, factual information, timelines for the process, and the resignation of a member of the board and the need for a further appointment to replace them. The Department indicated in its submissions that it was abandoning its application of section 29 to several of these passages and made no submissions in support of withholding them. However, my review has found that there are also further passages which cannot be withheld pursuant to section 29 and should be released.

### Section 31(1)(l)

[11] The Department applied section 31(1)(l) in two instances, to remove document reference numbers for its internal records management system. Section 31(1)(l) allows a public body to withhold information where the disclosure of information could reasonably be expected to:

(l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;

[12] This Office has previously upheld the application of section 31(1)(l) to withhold links and passwords associated with videoconferencing applications (see Reports A-2021-025, A-2021-034, and A-2021-039) on the grounds that a public body need only demonstrate that the information could reveal security arrangements for its information technology systems and equipment. Conversely, in Report A-2021-049, this Office found that section 31(1)(l) would not apply to generic information common to any computer with a Windows operating system.

[13] At issue are document references for the Department's record management system, consisting of an acronym, a date reference, and a document number. This numbering system is used widely across Government of Newfoundland and Labrador departments and does not,

in our view, disclose any information about the arrangements for the security of the Department's computer system. Further, during the course of our investigation, the Department indicated that it was no longer relying on this exception and provided no submissions in support of its application. Accordingly, section 31(1)(l) does not apply and this information should be disclosed.

#### **Section 40**

[14] As the records relate to a search for candidates to fill certain positions on the Labour Relations Board, considerable personal information in the form of names of candidates, their applications, and their resumes is contained in the responsive records. For the most part, this information has been properly withheld under section 40(1), in particular with reference to section 40(4)(c) ("the personal information relates to employment or educational history").

[15] However, there are several instances where the Department should not have applied section 40. These include:

- a. withholding the name of an appointee, as well as biographical information about that individual which had already been released to the public through a news release by the Department;
- b. the name and publicly-available contact information for a member of the media inquiring about the Labour Relations Board appointment process; and
- c. information about the Complainant.

[16] In its initial submissions to this Office, the Department indicated that it was no longer relying on section 40 to withhold this information and made no submissions in support of its application. Accordingly, I conclude that the above information must be released.

[17] The Department relied on the exceptions at sections 29(1)(a), 31(1)(l), and 40(1) of *ATIPPA, 2015*, which state:

*29.(1) The head of a public body may refuse to disclose to an applicant information that would reveal*

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;*

...

*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.*

### **Reasonable Search**

[18] Regarding the search conducted, 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.*

[19] This Office has commented on the requirements of a reasonable search in many previous reports and just recently in Report A-2022-024 and A-2022-025. The Practice Bulletin on Reasonable Search outlines that a reasonable search is one conducted by knowledgeable staff in locations where the records in question might reasonably be located. The standard for assessing a public body's efforts is reasonableness, not perfection.

[20] Based on the description of the search conducted, even though specific information relating to the decision not to appoint a second Vice-Chairperson was not located, I conclude that the Department conducted a reasonable search for records.

### **RECOMMENDATIONS**

[21] Under the authority of section 47 of *ATIPPA, 2015*, I recommend the release of the information our Office has highlighted on pages 9, 12, 15, 16, 18, 21, 22, 30, 34, 38, 41, 45, 49, 53, 57, 60, 61, 63, 64, 68, 73, 77, 97, 99, 100, 108, 109, 114, and 115 of the records that I am enclosing with the Department of Environment and Climate Change's copy of this Report. I recommend that the Department continue to withhold the remaining information redacted pursuant to sections 29(1)(a) and 40(1). Whereas I have found that the Department of Environment and Climate Change conducted a reasonable search for responsive records, I

recommend that the Department take no further action regarding its search efforts for the requested information.

[22] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Environment and Climate Change 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.

[23] Dated at St. John's, in the Province of Newfoundland and Labrador, this 10<sup>th</sup> day of November, 2022.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador