



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-014

March 22, 2023

Department of Justice and Public Safety

Summary:

The Complainant made an access to information request to the Department of Justice and Public Safety related to a workplace review, specifically requesting records where the Complainant's name was mentioned. The Department provided limited responsive records, advising that it had no other records related to the request. The Department also applied section 40 (disclosure harmful to personal privacy) to withhold some information from the records. The Complainant alleged that the Department failed to conduct a reasonable search for records and failed to meet its duty to assist pursuant to section 13. The Commissioner found that the Department had conducted a reasonable search for records.

Statutes Cited:

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

Authorities Relied On:

OIPC Practice Bulletin – [Reasonable Search](#)

BACKGROUND

- [1] The Complainant made an access to information request to the Department of Justice and Public Safety (the “Department” or “JPS”) seeking all records – in written or oral form – gathered by a consultant hired by the Department to conduct a workplace review of the Royal Newfoundland Constabulary (the “Consultant”) where the Complainant was mentioned. The request covered the period from October 2021 to July 2022.
- [2] The Department provided the Complainant with 17 pages of records, containing 15 pages of survey results, a single email relating to the survey, and a page which was almost entirely redacted due to non-responsiveness (on the basis that the other information did not reference the Complainant). The Department also applied section 40 to three lines of the records.
- [3] The Complainant was not satisfied with the response from the Department and requested that this Office review why the Department provided limited records.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY’S POSITION

- [5] The Department’s position is that its consultant did not provide the Department with anything other than the final report, which has subsequently been made public. However, the Department requested that the Consultant conduct a search of her records for anything responsive to the request. The Consultant conducted a search and advised that she only had limited records responsive to the request, a copy of survey results and a page with a single comment about the Complainant. These records were provided to JPS and in turn JPS released them to the Complainant
- [6] The Department advises that it contacted the Consultant multiple times in response to similar access to information requests (including broader requests) by the Complainant, but the Consultant advised that she had not kept the emails that she had received from

individuals, which were very few, and also she did not receive any emails related to the Complainant.

- [7] The Department notes that the Consultant did speak with individuals via telephone and video-conferencing, and the Consultant advises that the Complainant was mentioned during these conversations. The Department advised that, to its knowledge, the Consultant did not record these conversations and that the Consultant did not provide records to the Department regarding telephone or video-conferencing calls.
- [8] The Department submits that while the Consultant is not an employee of JPS, the Consultant was the individual who conducted the review and therefore was the best person to conduct the search for records, given that the records in question are in the possession of the Consultant and her knowledge of the matter.
- [9] The Department states that it does not have possession of any records relating to the review, other than the final report. However, at no point did the Department assert that it did not have custody or control of the Consultant's records, within the meaning of section 8 of *ATIPPA, 2015*. The Department also confirmed with the Consultant that most of the records were not kept after the project was finished.

COMPLAINANT'S POSITION

- [10] The Complainant's position is that the records provided to him were deficient and he believes that more records exist or ought to exist. The Complainant submits that the Department does, or should have, records in its custody or control belonging to the Consultant in relation to the request.

DECISION

- [11] The primary issue in this Report is whether the Department conducted a reasonable search for records in relation to the Complainant's request, in compliance with section 16. However, there also is the matter of the applicability of section 40 to three lines in the records.

Section 40

[12] Information withheld pursuant to section 40 consists of the Consultant's email address. While the Consultant used this address to communicate with the Department as well as parties making submissions to her review, it does appear to be a personal as opposed to a business or professional email account. The email address also does not appear to be publicly available in connection with the Consultant's professional services. The email address is personal information and in the submissions from JPS and the Complainant, there is nothing that rebuts the presumption that its disclosure would constitute an unreasonable invasion of a third party's personal privacy. I find that section 40 has been properly applied to withhold this information. That said, where a public body has retained an outside consultant or contractor, it would be advisable that they have separate, work-related contact information.

Reasonable Search

[13] The other issue is whether the Department conducted a reasonable search for records. The OIPC guidance on [Reasonable Search](#) states that public bodies must establish that for a reasonable search to have been conducted, "an employee experienced in the subject matter expends a reasonable effort to locate records which are reasonably related to the request." Furthermore, where an individual who is not the Coordinator conducts a search, they need to be "aware that all potentially responsive records (including handwritten notes, printed and electronic copies of emails, meeting notes, etc.) must be turned over to the Coordinator for review and redaction."

[14] The Consultant is not an employee of the Department, but has been hired to do a specific job by the Department. As the Department suggested, the Consultant would indeed be the person most familiar with the subject matter and, according to JPS, the only person who had records related to the request.

[15] The Department has provided evidence that it went to the Consultant on a number of occasions to ensure that no further responsive records were within the Consultant's possession. With the Consultant's admission that most of the records were "not kept" after the completion of the review, it is difficult to prove that additional records therefore do exist.

However, in the communications provided by the Department, the Consultant has been responsive to requests from the Department that she search her records and has provided records when they existed. As a result, it can be concluded that a reasonable search has been conducted by the Department.

RECOMMENDATIONS

- [16] Under the authority of section 47 of *ATIPPA, 2015*, I find that the Department of Justice and Public Safety conducted a reasonable search for records and I recommend that the Department maintain its position on this matter.
- [17] Further, under the authority of section 47 of *ATIPPA, 2015*, I find that the Department of Justice and Public Safety has appropriately applied section 40 and recommend that it continue to withhold this information.
- [18] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the Department of Justice and Public Safety 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.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 22nd day of March 2022.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador